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ASSOCIATION OF SERB MAJORITY MUNICIPALITIES IN KOSOVO (Association Impasse)

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Association of Serb Municipalities in Kosovo (Association Impasse)

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ASSOCIATION OF SERB MAJORITY MUNICIPALITIES IN KOSOVO (ASSOCIATION IMPASSE)

Introduction

Four years ago in Brussels, on April 19th 2013, Kosovo and Serbia reached the “First agreement on principles governing the normalization of relations”.¹ Widely known as The Brussels Agreement, the deal was reached through EU mediation.² The agreement was immediately hailed as “historic” by EU³, while there was unconditional praise from all sides, including UN.⁴ The exaltation was so high, there were even suggestions that the signatories of the agreement – then EU High representative Catherine Ashton, then Prime Minister of Kosovo Hashim Thaci, and then Prime Minister of Serbia Ivica Dacic – should be awarded a Nobel Peace Prize.⁵

The cornerstone of the Brussels Agreement was the creation of the Association of Serb-Majority Municipalities in Kosovo, an institution tying together ten Serb-majority Kosovo municipalities.⁶ Six out of 15 points of the Agreement relate to the establishment, scope and functions of the proposed "Association/Community of Serb majority municipalities in Kosovo", with this dual label as “Association/Community” reflecting different interpretations of the mandate this body will have. Since before the Agreement, the Government of Kosovo has continuously insisted that the Association will be nothing more than just an NGO⁷, while the Government of Serbia has insisted it will be an autonomous entity that will have, as then prime minister of Serbia Ivica Dacic insisted - “key competencies” in governing itself.⁸

The EU facilitator continuously refused to clarify such differences of interpretation, to some extent because it did not want to take up the role of a mediator and thus share responsibility for implementation of the reached agreements, but also because what was labeled “constructive ambiguity” was necessary in order to reach the deals.⁹

The Association was accepted by the Kosovo government in return for the dismantlement of all the illegal Serbian security structures in the North as well as Serb participation in Kosovo elections.¹⁰

However, the First Agreement was just a framework that required further steps for the Association of Serb majority municipalities to be established. Hence, more than two years later, on August 26th 2015, at a dialogue round hosted by EU High Representative Federica Mogherini, the Prime Ministers of Kosovo and Serbia, Isa Mustafa and Aleksandar Vucic, respectively, agreed on “the general principles and the main elements of the Association/Community of Serb majority municipalities, which paves the way for its establishment”¹¹. At this meeting, they also agreed on the implementation of the energy agreement and the Action Plan for Telecoms

¹ See text of the Agreement: http://www.kryeministri-ks.net/repository/docs/FIRST_AGREEMENT_OF_PRINCIPLES_GOVERNING_THE_NORMALIZATION_OF_RELATIONS,_APRIL_19,_2013_BRUSSELS_en.pdf

² EU continuously insists it only “facilitates” the dialogue, but various sources involved in the process describe it as pure mediation

³ http://europa.eu/rapid/press-release_IP-13-347_en.htm

⁴ <http://www.un.org/apps/news/story.asp?NewsID=44708#.WNj8sfmGM1I>

⁵ <http://www.euractiv.com/section/global-europe/news/ashton-balkan-officials-nominated-for-nobel-peace-prize/>

⁶ See text of the First Agreement

⁷ Then Prime Minister Hashim Thaci insisted that the future Association of Serb majority municipalities will be “facultative”. “It is an association, an NGO that has been defined by the President Ahtisaari’s document, the Constitution and the laws of the Republic of Kosovo”, said Thaci at his Cabinet meeting on February 27, 2013 <http://www.kryeministri-ks.net/?page=2,9,3386>

⁸ “...Community (of Serb majority municipalities) has to have decisive influence in the field of policing, interior affairs, judiciary and cadres”, said then PM of Serbia Dacic at a press conference, held in Belgrade, on March 12, 2013 <http://www.srbija.gov.rs/vesti/vest.php?id=186043>

⁹ Off the record talk with an EU diplomat

¹⁰ Points six and seven of the Agreement envisage dismantlement of all parallel police and security forces in the North, and their integration in the Kosovo Police force

¹¹ https://eeas.europa.eu/headquarters/headquarters-homepage/3182/statement-high-representativevice-president-federica-mogherini-following-meeting-eu-facilitated_en

(which were both parts of the First Agreement and already should have been completed two years earlier, in June 2013¹²), as well as on arrangements for the Mitrovica Bridge.¹³

As in most other cases, these agreements were not implemented in a timely manner. Apart from the Association Agreement, the implementation of the other three deals never met the agreed deadline: After an escalation in December 2016, when the municipality of Mitrovica North erected a wall behind the Mitrovica Bridge, the “revitalization” agreement had to be renegotiated in order to avoid open Albanian-Serb confrontation in the divided town. The Agreement on Telecom was implemented almost one year later than envisaged while the Energy Agreement is still not implemented.¹⁴

Complicated Affair

The implementation of the Association Agreement was “always going to be a complicated affair”.¹⁵ Ever since the First Agreement of April 2013, there was continuous and wide political and public opposition in Kosovo against establishing the Association, mostly because there was fear that it may evolve into an entity similar to Republika Srpska in Bosnia and Hercegovina.¹⁶

Yet, the biggest blow to the Association Agreement came after the Constitutional Court ruled that the August agreement on general principles/main elements of the Association/Community of Serb majority municipalities was “not entirely in compliance with the spirit of the Constitution”, thus declaring the General Principles to be unconstitutional.¹⁷ On the other hand, the Court endorsed the First Agreement as valid and ordered the Kosovo Government to correct the general principles, which meant that Association was to be established, but only through a legal act and a Statute that was to be deemed in line with the Constitution by the Court.¹⁸

Consequently, the whole dialogue process entered a dead end road. The Constitutional Court effectively killed the Association deal reached in August 2015, and initially it looked as the whole agreement had to be renegotiated.¹⁹ Instead, the process was slowed down, with dialogue concentrating on other issues, such as telecom and energy. In the meantime, it was expected that the process would be brought back on track once the drafting of the Association’s Statute starts, but that was also not the case. The Management Team that was supposed to draft the Statute was established in 2013, after the Brussels Agreement, but was not functional for a long time.²⁰

A conflict over the Management Team erupted between Kosovo and Serbia on September 8th 2016, during a round of talks in Brussels, when the government in Belgrade announced that a new Management team was formed, and it would take part in the dialogue discussions.²¹ This was denied by the Kosovo Team head, Edita Tahiri, who said that the news about the Management Team were disinformation. “This is just another lie from Serbia”, said Tahiri.²²

¹² Point 13 of the First Agreement calls for discussions on energy and telecom to be intensified and completed by June 15 2013.

¹³ See text of Mitrovica Bridge agreement here: http://www.kryeministri-ks.net/repository/docs/WG_Freedom_of_Movement-Bridge_Conclusions_25_Aug_2015-2.pdf

¹⁴ “Brussels Agreement Implementation State of Play 16 June – 25 November”, Kosovo Government Report to the European Union/External Action Service, http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_implementation_of_the_Brussels_Agreements_25_November_2016.pdf

¹⁵ Quote from a Western diplomat speaking on condition of anonymity

¹⁶ Initially, the Agreement was backed by the Parliament through a Resolution adopted with 89 votes. It was opposed only by Vetëvendosje and part of Civic Society organizations and public personalities. In time, especially since 2015, the whole opposition block came together against the establishment of the Association.

¹⁷ See text of the Constitutional Court’s ruling, page 38, paragraph 189 section 4: http://www.gjk-ks.org/repository/docs/gjk_ko_130_15_ang.pdf

¹⁸ Constitutional Court’s ruling, page 38: http://www.gjk-ks.org/repository/docs/gjk_ko_130_15_ang.pdf

¹⁹ Government source, speaking on condition of anonymity

²⁰ Government source, speaking on condition of anonymity

²¹ http://www.b92.net/eng/news/politics.php?yyyy=2016&mm=09&dd=08&nav_id=99146

²² <http://www.kryeministri-ks.net/?page=2,9,6132>

However, the Belgrade move was probably intended to put pressure on Kosovo to move forward with the Association issue, which by September had been frozen for almost ten months.²³

Be that as it may, just a week later, on September 16th, after a meeting with EU, US and OSCE officials, the Kosovo Prime Minister Mustafa announced that the Team was completed, and it would start working on the draft-statute of the Association, “in full compliance with the 2013 agreement and the decision of the Constitutional Court”.²⁴

By December, though, things have not moved at all. Kosovo’s official position has hardened, with head negotiator Tahiri stating that the process of drafting the statute will start only after Kosovo obtains its country code from ITU, and then the process will have to go parallel with the “removal of remaining Serbia’s parallel structures in Kosovo”.²⁵

On the other hand, the whole idea of dialogue was put into question by the end of the year, when Serbian PM Vucic demanded Kosovo Serb representatives to freeze their participation in Kosovo institutions.²⁶ The Kosovo-Serb political representatives have already boycotted the Government and Parliament since October 2016, over the adoption of the Law on the Disputed Trepca mine Complex, which Serbia claims.²⁷ But some differences of opinion seemed to appear among the Kosovo-Serbs regarding what to do next, with some reportedly ready to end the boycott of institutions. On December 16, 2016, Kosovo PM Mustafa dismissed Serb Minister of Local Government, Ljubomir Maric, and appointed another Serb representative, Mirjana Jevtic, as his replacement. The decision was said to have been taken in consultation with Serb representatives.²⁸ This seems to have triggered Vucic’s intervention with a publicly issued warning to those who might think of acting without Belgrade’s approval.²⁹ Less than two weeks after being appointed, Jevtic resigned and Serbs froze their participation in Government and Parliament.³⁰

The truth of the matter is that Belgrade continuously had power over Kosovo Serb representatives, but in December 2016 it seemed the stakes were suddenly much higher, and series of events that unfolded immediately after the New Year were proof enough that there was credible risk of descent into open conflict.³¹

Winter tensions

During January 2017, several incidents underlined the war-like tensions between Kosovo and Serbia. On January 4th, French Police arrested Kosovo opposition leader, Ramush Haradinaj, based on Serbian arrest warrant for alleged war crimes.³² In Kosovo, there were angry reactions and protests from opposition, while Government demanded Haradinaj’s release and annulment of all war-time related Serbian issued arrest warrants against Kosovo citizens.³³ Wider public debate followed, during which there were frequent calls for Kosovo government to withdraw from the EU sponsored dialogue with Serbia. A week after his detention, a court in French city of Colmar released Haradinaj, but ordered him to remain in France, until the final ruling over Serbia’s extradition is reached. Four months since, and Haradinaj is still in France waiting for Court’s decision.³⁴ In Prishtina, public

²³ Diplomatic source in Prishtina, speaking on condition of anonymity

²⁴ <http://www.kryeministri-ks.net/?page=2,9,6159>

²⁵ “Brussels Agreements Implementation State of Play - 16 June – 25 November 2016”, http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_implementation_of_the_Brussels_Agreements_25_November_2016.pdf

²⁶ <http://www.srbija.gov.rs/vesti/vest.php?id=120124>

²⁷ <http://www.reuters.com/article/us-kosovo-mines-idUSKCN12808T>

²⁸ <http://kryeministri-ks.net/?page=2,9,6427>

²⁹ <http://www.srbija.gov.rs/vesti/vest.php?id=120124>

³⁰ <http://www.balkaninsight.com/en/article/kosovo-serb-minister-quits-under-serbian-pressure-12-30-2016>

³¹ Western source in Prishtina, speaking on condition of anonymity

³² <http://www.bbc.com/news/world-europe-38510579>

³³ “Haradinaj held in prison pending Serbia’s request for extradition”, Koha Ditore, January 6 2017, frontpage

³⁴ In the latest session, held on April 6 2017, Colmar Court postponed decision for three weeks. Next session is to be held on April 27th

pressure for the Government to act resulted with the Parliament suspending the dialogue with Serbia until Haradinaj is released.³⁵ This step was not welcomed by European Union, while Serbia expressed “surprise”.³⁶ Few days after the detention of Haradinaj, a new crisis was brewing in the region. In Bosnia and Hercegovina, “Bosnian Serb separatists have taken a second step toward secession, with a martial parade attended also by far-right MEPs”.³⁷ The Bosnian Serb leader, Milorad Dodik, went on to say that Serbs in Bosnia should be joined by Kosovo Serbs in creating a “Greater Serbia” together with Belgrade government.³⁸ This talk only added to the suspicions within Kosovo (and part of international community) that the Association of Serb majority municipalities could actually lead towards the division of Kosovo, with (at least) the Northern Serb-dominated municipalities separating to join Serbia. While many Kosovar opponents of the Association Agreement have publicly expressed fear that it might lead to the creation of some kind of Kosovo version of “Republica Srpska”, this was usually denied as a possibility by Kosovo government as well as international diplomats. Nevertheless, a few diplomats have indirectly acknowledged that such risk exists.³⁹

The feeling that Belgrade might be taking a step in that direction was already enforced during the last week of December 2016, when in series of obviously coordinated statements, various Serb officials from Belgrade and Kosovo announced that unless the Kosovo Government starts the process of formation of the Association of Serb-Majority Municipalities, then Serbs and Serbia will themselves create the entity on 15th of February 2017.⁴⁰ The set deadline was a symbolic one, as well: 15th of February is at the same time Serbia’s official “Statehood Day”⁴¹ and a religious holiday.⁴² Other Immediate developments put this ultimatum into shade, and the threat of self-declared autonomy for Serbs in Kosovo never came close to materialization, but the fact that the threat was issued, publicly and by some official sources, is to be considered a sign that Belgrade gave a serious thought to the idea, which, as a foreign diplomat in Prishtina put it, “means that it would be extremely foolish to disregard it as a possibility in the future”.⁴³

The Association ultimatum was overshadowed by the Haradinaj case, which itself was put out of the spotlight - for some time at least - by the “Train incident”. On January 14th, a Serbian government sponsored train, painted with Serbian national colors and the phrase “Kosovo is Serbia” in 20 languages, was cut short of its journey from Belgrade to Mitrovica after Kosovo government had deployed special police forces to prevent the train from crossing the border.⁴⁴ The incident raised the level of tensions to new heights, and a probable confrontation was evaded only after EU intervention with Vucic.⁴⁵ The day after the train was stopped, Kosovo PM Mustafa signaled Prishtina’s willingness to bring tensions down, by stating that his Government was ready to start implementing the agreement on Association.⁴⁶

While Mustafa might have believed what he said, the truth of the matter is that there’s little that the Government could have done at this point to move forward with the Association issue.

First, there’s a general problem with the functioning of the PDK-LDK Government. Sources from within the executive portray the governing coalition as deeply divided. According to a source, there are continuous efforts

³⁵ “Parliament votes to suspend the dialogue until Haradinaj is freed”, Koha Ditore, March 10 2017, page 2

³⁶ *ibid*

³⁷ “Republica Srpska defies EU and US”, January 10 2017, Reuters, <https://euobserver.com/foreign/136490>

³⁸ *ibid*

³⁹ Western source in Prishtina, speaking on condition of anonymity

⁴⁰ Statement of the head of Kosovo office of Government of Serbia, Marko Djuric

<http://www.kim.gov.rs/eng/v400.php>

⁴¹ A meeting held on 15th of February 1804 in small town of Orasac is considered to be the starting point of the First Serbian Uprising against the Ottoman rule.

⁴² According to the calendar of the Serbian Orthodox Church, February 15th is the day of “Presentation of Jesus at the Temple”.

⁴³ Western diplomat in Prishtina, speaking on condition of anonymity

⁴⁴ <http://www.npr.org/sections/thetwo-way/2017/01/15/509957543/sparks-on-the-tracks-kosovo-serbia-spar-over-train-stopped-at-the-border>

⁴⁵ According to an international source, in a telephone conversation on January 14th, EU High Representative Mogherini asked Serbian PM Vucic to stop the train from entering Kosovo territory

⁴⁶ PM Mustafa’s Facebook post of January 15th,

<https://www.facebook.com/IsaMustafaKS/posts/1219396574793244>

from certain parts of the Government to create as many obstacles as it's possible to Prime Minister Mustafa.⁴⁷ The rift seems rather obvious in the last several months, with PDK pushing for early elections behind the scenes.⁴⁸ On the other hand, there has also been unprecedented reluctance from PM Mustafa to fully take Government under control.⁴⁹

Second, all issues surrounding dialogue with Serbia are highly sensitive and complicated to navigate. The failure of the governing coalition to ratify the Demarcation Agreement with Montenegro made the opposition feel stronger than it actually is, but more than that it also showed the government to be quite weak. Or, as an international diplomat observed, "with the government unable to complete the fairly simple task of Demarcation with Podgorica, it's difficult to expect them dealing effectively with such a complicated and sensitive issue as the Association of Serb Municipalities".⁵⁰

The circumstances have been complicated during the months of March and April, first after an unexpected (and as it soon turned out ill-conceived) initiative of President Hashim Thaci to transform the Kosovo Security Force into an Army through amendments of the Law on KSF, avoiding the required Constitution changes.⁵¹ Also, the Presidential elections in Serbia, held on April 2nd, put the dialogue issue out of Belgrade's agenda, too.⁵²

Therefore, the only remaining issue that needs to be solved before the dialogue is to resume is the Haradinaj case. Acting in line with the Kosovo Parliament Resolution adopted on March 9th with 71 votes in favor, the Kosovo Government has suspended the dialogue with Serbia until Haradinaj is released.⁵³ The capacity of the Haradinaj case to provoke further deterioration in Kosovo-Serbia relations, and consequently to make Brussels dialogue impossible was vividly demonstrated just recently, when Mr. Haradinaj's brother, Daut Haradinaj, warned of "consequences" if the French court decides to extradite his brother to Serbia.⁵⁴

Conclusions

Parallel with all these months of raising tensions (or maybe as their unintended consequence) came the new international push to bring back the dialogue – and with it the issue of Association – back on track, using the process of European Integration to compel Serbia and Kosovo into implementing what they agreed. Hence, during the first meeting of the Special Group on normalization of relations with Serbia under the EU-Kosovo Stabilisation and Association Agreement, the European External Action Service and the European Commission "stressed the importance for Kosovo to start the work on the drafting of the statute of the Association/Community without any further delay".⁵⁵ At the same time, many Western diplomats have publicly started calling for the process to finally start.

But, while the new drive to push the parties toward completing what was started four years ago might bring parties back to dialogue table, the possibility of the Association deal being brought to a conclusion acceptable for all involved seems beyond reach.

⁴⁷ Government source, speaking on condition of anonymity

⁴⁸ A highly ranked sources from PDK claims party wanted elections before June 2017. Publicly, PDK never said that officially, but their rank and file is openly talking about elections as the goal now, while the idea is not being dismissed by the party head, as well

⁴⁹ Government source, speaking on condition of anonymity

⁵⁰ Western diplomat, speaking on condition of anonymity

⁵¹ The initiative was criticized by NATO and US, and briefly put the President of Kosovo on a collision course with most of Western allies

⁵² In presidential elections, current PM Vucic ran for President and won in the first round with more than 55 per cent of the vote

⁵³ Parliament of Kosovo Resolution NO. 05-R-011, adopted on March 9th 2017 www.kuvendikosoves.org

⁵⁴ Daut Haradinaj has reportedly warned that extraditing Ramush Haradinaj to Serbia would make Serbs stay in Kosovo impossible, which was interpreted as threat with "ethnic cleansing", and was condemned by many sides, including US, EU as well as Kosovo President Thaci, while Serbia government used this as "proof" of Kosovo's "intentions".

⁵⁵ EEAS Press release of March 21, 2017: https://eeas.europa.eu/delegations/ukraine/23154/first-meeting-special-group-normalization-relations-serbia-under-eu-kosovo-saa_en

First, the calls for the Association agreement to be implemented are, somehow, avoiding the irreconcilable differences between Prishtina and Belgrade when it comes to what such Association is and what it is not.

The Serbian Government continues to see the Association as an autonomous entity, in which Kosovo Serbs would be run independently from Prishtina, and more closely to Belgrade.⁵⁶

On the other hand, Kosovo's Government is now obliged to limit the Association powers according to the Constitutional's Court ruling, which found that the agreement on general principles and the main elements of the Association of Serb majority municipalities was "not entirely in compliance with the spirit of the Constitution".⁵⁷ Besides the ruling, the Government will also have to find a way to deal with the generally negative attitude towards Association from the majority of the population. While reliability of opinion polls in Kosovo has been continuously put into question, when it comes to Brussels dialogue and Kosovo-Serbia agreements most polls and analysis concur that a majority of Kosovo Albanian citizens are generally uninformed about the dialogue process and resent the idea of concessions to Serbia.⁵⁸

An KDI/Transparency International Kosova poll, published in January 2017, found also that 52.9 per cent of citizens consider that Kosovo team in dialogue with Serbia has to be led by an "comprehensive coalition of political parties", meaning the opposition parties have to be included in the dialogue team.⁵⁹

Recommendations

This brings to the front the real problem with the Association: the conflict over the extent of its powers. With winter tensions reduced, it might be tempting to think that time is ripe for the Association deal to be finally implemented. Tensions might have come as a result of a changing world,⁶⁰ as well as internal political games.⁶¹ But, the reality of the dialogue remains the same as it was before the recent Kosovo-Serbia confrontations: there's simply no agreement on what the Association should look like. Prishtina insists it can only be within the Constitutional and legal order of Kosovo. And Belgrade insists it can only be a level of autonomy, with some executive powers.

For four years now, dialogue in Brussels could not find a way to overcome this impasse. Maybe it's time to seek a different angle if the Association deal is to be possible.

In any case, it would be important to take into account few things:

- There is simply no way around the sovereignty. The Association can only exist within a clear legal and Constitutional framework. It is therefore essential that all sides - Serbia especially, but EU as well - recognize the legal and sovereign framework within which the Association is being created.
- There needs to be common agreement on what the Association of Serb Majority municipalities in Kosovo actually is. And that agreement has to be supportive of Kosovo's functionality as a whole. It also

⁵⁶ During the recent public spats, Serbia's Duric stated that the Association " will be integral part of Serbia, just as our Southern Province of Kosovo and Metohija is integral part of Serbia..." http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=12&dd=28&nav_category=640&nav_id=1214956

⁵⁷ Constitutional Court's ruling, page 38, paragraph 189 section 4: http://www.gjk-ks.org/repository/docs/gjk_ko_130_15_ang.pdf

⁵⁸ The latest poll on dialogue, conducted by Kosovo Democratic Institute and Transparency International Kosova, published in January 2017, resulted with 35.9 % of the interviewees convinced Association will have executive powers, 32.7 % saying they are not informed, 19.3 % saying it will be similar to the current Association of Kosovo municipalities, while only 3.3 % believe it will be a simple NGO www.kdi-kosova.org

⁵⁹ *ibid*

⁶⁰ Some sources have expressed their view that the British vote to leave EU, the new administration in Washington, as well as a weakened Europe and a rising Russia, have incited Belgrade to take some bolder steps, that have caused part of the tensions

⁶¹ A government source said that many within the PM cabinet believe some of the unexpected developments, such as the Army initiative, happened because part of the governing coalition wanted to impose new elections before Special Court issues first indictments.

has to be in line with European standards. This specifically means the political agreement on Association cannot include discriminatory provisions, such as predetermining the ethnicity of public servants.

- The facilitator's role that the EU has undertaken has to include the role of supreme interpreter of the reached agreements. If the EU continues to refuse the role of the final arbiter, the implementation of this and every other agreement will remain unlikely.
- Kosovo's government has to actively incite internal debate, and seek social and political consensus, regarding the Association, as well as the general issue of dialogue with Serbia. This is essential for Kosovo to be able to implement all agreements, especially the one on Association.
- The Government of Serbia has to accept and acknowledge that Association does not imply territorial Autonomy. Otherwise, the whole deal will remain impossible.

POLICY NOTES

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