

POLICY BRIEFS

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Brussels “First Agreement” -A year after-

Engjellushe Morina
Prishtina Council on Foreign
Relations

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INTRODUCTION

The Brussels 'First Agreement of Principles Governing the Normalization of Relations' as it is named in the official documents of the European Union and verbally hailed as historic, does not stand on its own and should not be analyzed separately. Before the numerous meetings of the two Prime Ministers (Kosovo and Serbia) in Brussels that eventually led to the agreement, there were other dialogue processes ongoing that frankly did not yield the desired results. The technical dialogue, behind which cunningly hid the issue of the north, started hastily in March 2011 as a follow up of the UN General Assembly Resolution of September 09, 2010, and was led by the Deputy Prime Minister Edita Tahiri representing the Kosovo side and Borko Stefanovic representing the Serbian side. Although agreements were reached on sectors such as cadastre records, custom stamps, freedom of movement, university diplomas, civil registry, regional representation, and integrated border/boundary management, issues of the disputed northern territory were hardly tackled directly.

Both dialogue processes, the technical and the high level one, were facilitated by the European Union through the Office of the High Representative of Common Foreign and Security Policy (CFSP). Baroness Catherine Ashton, head of CFSP, became the sponsor and the main lead of the dialogue. The meetings would take place in Brussels and were strongly supported by the United States. The principles and the parameters under which the process was constructed contained elements including 'bringing parties closer to the EU; without prejudice to either side about the status; common handling of the press; nothing is agreed until all is agreed; EU handles the process and sets the agenda.' Following almost two years of tête-à-tête between Kosovo and Serbia a two pager was produced containing ambiguous language in fifteen vaguely defined points.¹ A quick glance at the document will give the reader the impression that the disputed north territory of Kosovo is the main object of the agreement reached between Kosovo and Serbia, and the three main elements in the paper were state structures: police, judiciary and a separate association of municipalities for Serb majority inhabited municipalities of the north. In other words the bullet point agreement is not only un-constitutional but it also suggests the opening of the state pillars – the blueprints of a self-governing autonomous area seemed obvious.

¹First agreement of principles governing the normalization of relations. April 19, 2013.

A quick reminder to the reader: during the pre-dialogue phase and following the International Court of Justice Opinion on Kosovo² the parties involved and the EU member states bent over backwards to convince the public that the upcoming dialogue was about normalization of relations between Kosovo and Serbia, and not about the internal issues of Kosovo such as the disputed northern territory.

However, the First Agreement was followed by an implementation plan that came out in May 2013 and consist of six main elements: adjustment of legal framework; municipal elections association/community, justice and general provision.

The aim of this policy brief is to assess the state of the agreement one year after it was concluded, it will not focus on the adjustment of the legal framework but it will tackle it when and if appropriate. The policy brief will try and elaborate three main questions that have surrounded the process since its inception:

- Is the international community approach the right one towards the issues of the north of Kosovo?
- How far has the implementation of the 'First Agreement' moved?
- What is the future of the "First Agreement"?

THE NORTH: HUMAN RIGHTS OR ETHNIC-TERRITORIAL ISSUE

To date the international community has been far from successful in treating the problem of the north of Kosovo head on, rather it has followed in the footsteps of a long tradition to deal with such problems via a human rights and minority protection focus.³ But the disputed north of Kosovo is not and was never a human rights issue, rather it has always been an ethnic territorial conflict and seen as such by Kosovar Albanians and Serbs, as well as Serbs in Serbia. This is not to suggest that a human rights approach should not be considered, instead it should have been combined with the ethnic territorial

²International Court of Justice, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*. Advisory Opinion of July 22, 2010.

³Andreas Ernst, 'Local Election in Kosovo – A Step Closer to Normalization?' *Critical Reflection*. December 19, 2013.

approach in order to move closer to integration rather than disintegration of the communities. In reality, inhabitants of the north of Kosovo who are mainly Serbs will have their own police and judicial system and their own association of municipalities while the rest of Kosovo including other minorities will be governed by the existing institutions. This not only segregates the communities but it also sets the 'boundaries' of different ethnic territories in Kosovo.

Of course the agreement is not a finished job since its implementation is not only lagging behind but the signs of success are still heavily blurred, but if we were to hypothetically conclude the implementation complete then the picture of the state of Kosovo in the years to come will be that of a bi-ethnic state rather than multiethnic state as it was envisioned originally by the international community starting from the times of Rambouillet Conference and all the way to the Ahtisaari Plan and the Constitution of Kosovo.⁴ Another quick reminder to the reader: the Ahtisaari Plan was a result of over two years of negotiations between Kosovo and Serbia (2005-2007) regarding the final status settlement of Kosovo, which led to Kosovo declaring independence in February 2008 in close coordination with various parts of international community.

It was precisely after the declaration of independence that the reality on the ground in the north of Kosovo changed drastically, custom points were burned down, the regional court located in north Mitrovica was attacked and destroyed while all the employees had to flee. Serb police officers serving with Kosovo Police resigned and the north of the country became a lawless area. All this happened under the noses of the international community, UNMIK and KFOR troops.

Arguably, the north is the key to a long lasting solution for stability and has been a grey cloud hanging over the development of the full functioning of the state of Kosovo. Since after the war of 1999 when the demographics changed in the area, with Kosovar Albanians moving further south and Kosovar Serbs from throughout Kosovo heading to the north, it has been a highly disputed territory and a type of a frozen conflict. Within years the whole area developed its own type of sovereignty, self-governance and self-control supported politically and financially by the state of Serbia and hardly ever

influenced by the Prishtina authorities. The lack of outreach plan by all governments of Kosovo to integrate the citizens of the north combined with the status neutral nature of UNMIK did not help matters improve on the ground. In 2002 the north was even de-jure 'partitioned' with the passing of the Administrative Directive⁵ by then SRSG Michael Steiner, authorizing UAM (UNMIK Administrative in Mitrovica) to administer the part of Mitrovica north of Iber River and the other municipalities of Zvecan, Leposavic and Zubin Potok, and assume the same responsibilities as other municipalities in Kosovo.

The *realpolitik* created in 2008 in the north, after the declaration of independence by the Kosovar authorities was clearly a risk to the stability not only of Kosovo but the region as well, so the situation presented an urgent need to define the status of the north and perhaps even treat it as a compromise between Kosovo and Serbia. The follow up dialogue processes and the subsequent First Brussels Agreement could be viewed as the first compromise to the solution of the north.

THE STATE OF IMPLEMENTATION TO DATE

The fifteen subtle points of the First Agreement were followed by an implementation plan agreed by the two parties. The plan was far too ambitious, to say the least. It foresaw the implementation to take place by the end of the year 2013, additionally the plan called on both parties to 'commit themselves to fully implement previously-reached agreements, namely: cadastre, civil registry, custom stamps, university diplomas, freedom of movement, regional representation, IBM, liaison arrangements, special police units for the protection of Religious and Cultural heritage and customs collection/development fund for the northern Kosovo.'⁶ The Implementation plan concludes abruptly with a short line stating that 'The two sides will continue their political dialogue.'⁷

Amnesty Law

The first point of implementation plan emphasizes that the Law on Amnesty as a 'legal requirement for the implementation' should be in place by June

⁴Constitution of the Republic of Kosovo. Chapter I. Article 1.3.

⁵UNMIK Administrative Directive Nr. 2002/26

⁶Implementation Plan. May 23, 2013.

⁷Ibid.

2013.⁸ This law was mainly foreseen to amnesty those who had violated Kosovo law in the north of the country. By the end of June 2013 a draft Law on Amnesty was approved by the Government of Kosovo; the pressure for the prompt passing of the Law on Amnesty came from the Serbian side that conditioned the dissolving of their security structures (policy and judiciary) with the passing of the said law. The Government of Kosovo did not shun away from exploiting the circumstances and drafted a more inclusive law than required by the agreement.⁹ The first draft of the law, which did not pass the first reading in parliament, stipulated amnesty for serious crimes throughout Kosovo and not limited to the north only. This drew the attention of civil society organizations and subsequently that of some of the embassies and EU lawyers who got engaged with the assessment of the law. As a result a new and improved draft version was presented to the parliament in early July that coincided with Baroness Catherine Ashton's visit to Prishtina. It goes without saying that the Law was voted by the majority in the parliament. Nonetheless, civil society organizations and the Self-determination/Vetevendosje movement continued to express dissatisfaction regarding the substance of the law, although the new version had improved and 'only those who were engaged in an act of rebellion' were to be amnestied. Protests and a petition were organized throughout Kosovo, and close to 13,000 signatures were collected and handed over to the President of Kosovo ceremoniously by the civil society representatives who asked the President not to sign the law and to send it back for rewrite. The law was additionally challenged and brought to the Constitution Court by the Self-determination Movement who deemed the law anti-constitutional and in violation of human rights. Neither the President of Kosovo nor the Constitutional Court could exert their powers to have the law take different form.

The hasty procedure and poor management of the substance of the law coupled with the lack of functioning of checks and balances, in this case civil society protests and petition, only deepened the growing dissatisfaction of the ordinary citizens

⁸*Ibid.*

⁹Kurt Bassuener and Bodo Weber; *Not Yet a Done Deal: Kosovo and the Prishtina-Belgrade Agreement. A DCP Policy Paper. November 2013. Sarajevo-Berlin.*

vis-à-vis the institutions and the not-so-transparent dialogue process.

Elections

The second point of implementation plan calls on parties to create a Management Team for the establishment of an Association/Community of Serb Municipalities in the north by the end of May 2013.¹⁰ For the Association of Municipalities to be formed local elections had to be held in the whole of Kosovo but particularly in the north of the country where there was a total absence of any official representation of the institutions of the Republic of Kosovo. Local elections were held in the four northern municipalities, for the first time after the war of 1999, on 3 November 2013.

For the election to take place, however, yet another hasty process needed to be set into motion. Serb inhabitants of the north who until now had been praised as 'patriots' and 'protectors' of a 'Serbian Kosovo'¹¹ were told by Belgrade to take part in elections and abandon the parallel Serb institutions after fourteen years of being part of them. Of course the lack or transparency of the dialogue and any form of democracy caught the ordinary citizens off guard and they had no idea about the consequences of the agreement for their daily lives and for their income, most of which until then had been paid by the Serbian institutions. A theme recurs often: the fate of the Kosovo Serbs is not to decide over their fate.¹²

The November 2013 local election and December runoff changed the political landscape across Kosovo but in particular had an immense effect in the Kosovo Serb political scene. Couple of months before the elections a new Civic Initiative (Gradanska Inicijativa Srpska – GIS, known colloquially as *Srpska*) that would gather under one umbrella Belgrade sponsored political parties based in Kosovo was created and subsequently won in 9 out of 10 Serb majority municipalities, including the municipalities in the south of Kosovo, many of which until then were governed by SLS (Samostalna

¹⁰*Implementation Plan. May 23, 2013.*

¹¹Andreas Ernst, 'Local Election in Kosovo – A Step Closer to Normalization?' *Critical Reflection. December 19, 2013.*

¹²Petar Miletic, *Vice-President of Kosovo Assembly quoted in Andreas Ernst 'Local Elections in Kosovo – A Step Closer to Normalization?' Critical Reflection. December 19, 2013.*

Liberalna Stranka – Independent Liberal Party) otherwise known as 'Thaqi's Serbs.' Only in the municipality of Shtërpe in the south of Kosovo SLS managed to keep the governing position.

Local election results clearly made the Belgrade sponsored list *Srpska* the third strongest player in Kosovo politics. To put it in perspective, PDK – the largest party in Kosovo – controls ten municipalities, while LDK – the main opposition and second largest party – governs in nine municipalities. This might not only mean that Belgrade politics hold the reins over northern municipalities but also that it gained vast influence in other Serb municipalities scattered throughout Kosovo. Clearly 'Thaqi's Serbs' have been marginalized and the investment into the SLS over the years produced poor results at a crucial time. The new political situation not only questions the integration of the Serbs in Kosovo during the past 14 years but also their future, considering competition against Belgrade's incitement and political manipulation to strengthen ties with the motherland and bring more 'Serbia into Kosovo.'

Hence, the political discourse exercised by various actors in Serbia comes as no surprise when they elaborate how the First Brussels Agreement has secured ethnic-Serbian institutions for the first time in Kosovo that are recognized both by EU and Prishtina authorities and that the 'new entity' (Zajednica Srpskih Opština – ZSO) will open new official channels for Belgrade to influence and protect Serbian population in Kosovo.

Moreover, the hasty and incorrect electoral procedures under which the elections in north were held, from registration of parties and voters, through public outreach, ballot papers, lack of the presence of Kosovo institutions, to the handling of the OSCE which organized and oversaw the process, makes debatable whether these elections held for the first time were free and fair. As a consequence the institutions resulting from these elections will not stand on strong ground to gain the trust, confidence and the legitimacy in the eyes of local population.

Association of Municipalities

Although local elections took part in the north amid the intricacies of four rounds, the murder of one candidate and the arrest of another, with turnout of 20 percent, the candidates were chosen and the process was welcomed as successful by parties.

But the creation and constitution of the new authorities in the municipalities is developing at snail's pace. Problems, such as municipal statutes and building of the administrative capacities persist.

Newly elected mayors are stuck between Belgrade politics and the respect (or lack of it) for Kosovo legislation – issues such as flags, stamps and participation continue to hinder the approval of municipal statutes. Integration of the large number of employees from parallel structures into the new municipal structures is also a prevalent problem due to the fact that new municipalities simply do not have the capacities to absorb all of them.

The not so smooth creation of municipalities acts as a hindrance to the implementation of point one of the first agreement which stipulates the creation of the 'Association /Community of Serb majority municipalities in Kosovo' (ZSO).¹³ The implementation of point one was foreseen to go through after the conclusion of local elections at the latest by the end of the year 2013.

To date, the managerial group for the preparation of establishment of the Association is in place, according to a decision taken by Ministry of Local Governance in Kosovo, and is composed of representatives of each of the four northern municipalities. Additionally, the statute for the creation of the Association is also in existence and has been drafted by MLGA but the establishment of the Association itself is still pending.

According to the first agreement and implementation plan the Association will be tasked to deal with issues such as health, education, economic development, urban and rural planning and 'other additional competencies as may be delegated by the central authorities.'¹⁴ Further, the Association will have a seat in the consultative council of communities in the monitoring role.

While skeptics would like to compare the Association as an entity with Republika Srpska in Bosnia, the political discourse coming out of Prishtina institutions speaks of an 'NGO,' and in Belgrade the Association is referred to as 'a kind of entity' through which the Serbs will be in a position to govern themselves autonomously from Prishtina. Clearly the Association will not have a veto power to block decisions on the

¹³First agreement of principles governing the normalization of relations. April 19, 2013.

¹⁴Ibid.

central level but politically it will be empowered to present and push for political interests of a certain group. In this way it can endanger the functionality of the state and as such it can widen the segregation

gap between the Serbs and Albanians of Kosovo – in other words the whole concept of a multiethnic Kosovo is questioned.

Security Structures

Points seven and nine of the first agreement treat the police sector. They call for the integration of all police in northern Kosovo into the Kosovo police framework. It is also stipulated that 'there shall be one police force in Kosovo.'¹⁵ In August 2011, Chancellor Merkel publicly told the then President of Serbia to remove its security apparatus from northern Kosovo and dismantle parallel municipality structures as a prerequisite for the continuation of the Serbia's path to EU. Removal of parallel structures in particular security structures was deemed necessary, and demanded loudly by other international officials visiting Belgrade, to ensure the stability of Kosovo and the stability of Serbs in the north, considering that the northern part of the country had become a haven for smuggling and other criminal activities due to its lawless nature over 14 years.

The implementation plan states that by the end of May 2013 a joint working group of Kosovo and Serbia should be established in order to implement points seven, eight and nine of the first Agreement. By June/July Serbia would have to 'commence the closure of security structures as well as all their premises,' and by the end of the year 'members of the security structures in Kosovo would have been fully integrated into the equivalent Kosovo structures and salaries paid exclusively from the Kosovo budget.'¹⁶

To date the integration of 285 MUP¹⁷ personnel has started although months later than foreseen by the implementation plan.

However the process does not seem to be simple and is followed with many organizational disagreements: the ownership of the vetting process, the short duration of the induction training, the agreement on police being applicable only to the north and the media reports raising the issue of loyalty of MUP officers to the KP chain of command.¹⁸

Further, the process is followed by uncertainties regarding the establishment of KP Regional Command North. The first agreement, in its point nine, emphasizes that 'there shall be Police Regional Commander for all the four northern Serb majority municipalities. The commander of this region shall be a Kosovo Serb nominated by the Ministry of Internal Affairs from a list provided by the four mayors on behalf of the Association.' Since the establishment of the Association is pending, the functioning of the Regional Command North is on hold. However there is an acting head in place for the time being.

Judiciary

Point ten of the First Agreement states: 'the judicial authorities will be integrated and operate within the Kosovo legal framework. The Appellate court in Prishtina will establish a panel composed of majority of K/S [Kosovo Serbs] judges to deal with all Kosovo Serb majority municipalities. A division of this Appellate court, composed both by administrative staff and judges, will sit permanently in northern Mitrovica (Mitrovica District Court). Each panel of the above division will be composed by a majority of K/S judges. Appropriate judge will sit dependent on the nature of the case involved.'¹⁹

Further and according to the implementation plan²⁰ parties should establish a working group which will be charged with developing detailed plans for the integration of Serbian judicial authorities into Kosovo structures and the establishment of any new structures required under the agreement including basic courts and public prosecutor's offices in Serb majority municipalities. In the meantime Serbia had 'to provide information on the number of its judicial

¹⁵*Ibid.*

¹⁶*Implementation Plan. May 23, 2013.*

¹⁷*Ministarstvo Unutrasnjih Poslova (Reublike Srbije) – Serbian Ministry of Internal Affairs*

¹⁸*Maja Bjelos, Bojan Elek and Fjolla Raifi, 'Police Integration in North Kosovo: Progress and Remaining Challenges in Implementation of the Brussels Agreement.' BCSP and KCSS Publication. Belgrade and Prishtina, March 2014.*

¹⁹*First agreement of principles governing the normalization of relations. April 19, 2013.*

²⁰*Implementation Plan. May 23, 2013.*

personnel employed in Kosovo who have expressed an interest in joining Kosovo structures immediately after the law on Amnesty is passed.’²¹ The integration of judicial authorities was foreseen to have been completed by the end of 2013. While this brief is being written (April 2014) there is still no agreement reached and it is not clear when there will be one. The little that is known to the public through media reporting leaves the impression that it will take a considerable amount of time for common ground to be found by the two parties regarding point ten.

WHAT IS THE FUTURE OF THE FIRST AGREEMENT

Clearly the EU led dialogue processes of the past years between Kosovo and Serbia cannot be praised for transparency, democracy and inclusiveness, it has been carefully kept closer to the chest of the main decision makers. In overall there are not more than a handful of people involved in the process and certainly the ownership of the process does not lie with the citizens of Kosovo, or Serbia for that matter. Throughout the process there has been an almost complete exclusion of other elements of the society such as civil society, academia, association of the missing and so on. Worst even, Kosovo and Serbia political teams throughout the whole duration of the dialogue were accountable towards EU rather than the very own people that have elected them in the first place.

The political manufacturing exercised by the EU in Serbia-Kosovo relations sugar coated into the state-building terminology does not seem to bear the necessary fruit let alone the desired fruit. So far the implementation of the First Agreement has proven to be very complex and far from smooth, this is mainly due to the faulty approach of the EU and its efforts to link a real peace process with EU integration process. It seems almost congenial that the two processes should be closely run together but they have a different pace and longevity. Unfortunately the real peace process in Kosovo has not even started and focusing only on strengthening the institutions while segregating the communities will only lead to disillusionment and lack of proper results.

Given the importance of EU accession gravity, arguably the two countries would by default want to fulfill the criteria to join the Club. But the two processes have different dynamics and one cannot replace the other although the EU uses ‘the carrot and stick’ approach it still did not bring the needed results on the ground and on the reconciliation process which is what is mostly essential for the Albanians and the Serbs in the Balkans. A note to the reader: there are still 1754 missing persons that are a huge obstacle to the beginning of any reconciliation process.

The rush and the urge to reach an agreement in April 2013 were not without an agenda. On June 28, 2013 the Council of Ministers of the European Union²² were to meet where they would take decisions whether to grant Serbia opening of the Accession Negotiations for January 2014 and the opening of the negotiations for Stabilization and Association Agreement to Kosovo, all this was pending on its successful implementation. We are now in April 2014 and hardly 30 percent of the implementation has been somehow achieved. In January 2014 Serbia started negotiation talks on Accession whilst Kosovo was promised the signing of the SAA in spring 2014, but only promised. Understandably Baroness Ashton’s office needed a success story to complete the mandate, Kosovo and Serbia believe that the first agreement will move the countries closer to the EU and keep the same politicians in power, while the ordinary citizens are startled and confused about their future and the future of their children. Without real and lasting reconciliation and peace process between Serbs and Albanians in the Balkan the first agreement is far from historic. Hopefully the time will prove this policy brief wrong!

²¹*Ibid.*

²²*European Council 27/28 June 2013 Conclusions, for more see:*
http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/137634.pdf

About the Author:

Engjellushe Morina is the Co-founder and Chairperson of Prishtina Council for Foreign Relations, a think tank based in Prishtina. Previously Engjellushe was the Executive Director of Iniciativa Kosovare per Stabilitet – IKS (2008-2012), think tank focusing on socio-economic and socio-political issues, based in Prishtina. Following extensive archaeological experience in Egypt, Albania, Italy and the UK, she returned to Kosovo in 1999 to help further the country's social, economic and political development. This included voluntarily assisting with the establishment of the third largest political party at the time. Prior to joining IKS, Engjellushe managed the Higher Education portfolio in the Public Diplomacy Section of the U.S. Embassy in Prishtina (2001-2006). During the negotiations regarding Kosovo's political status, she served as an expert and consultant in the Cultural Heritage group within the Unity Team (2005-2007). Her input focused in particular on the protection of Cultural and Religious Heritage in Kosovo. Since 2007, she has co-authored numerous IKS reports and analyses on the political economy of Kosovo and the country's current affairs and continues as a regular contributor of editorials to local newspapers. Engjellushe studied Greek and Roman Archaeology at the Institute of Archaeology, University College London (UCL) and International Relations and Diplomatic Studies at Oxford University (Somerville College).

The views expressed in the paper are the author's personal points of view and they do not necessarily represent the views of the Konrad-Adenauer-Stiftung.

Contact:**Konrad-Adenauer-Stiftung**

Kosovo Office
Boulevard Mother Theresa 30-3/6
KO-10000 Pristina
Telefon +381 (0) 38 229 874
Prishtina@kas.de
www.kas.de/kosovo