

BELGRADE-PRISTINA: WHAT STANDS IN THE WAY OF AGREEMENT?



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The process of negotiations between Belgrade and Pristina so far has not led to the resolution of the disputed status and legal implementation of an agreement. Therefore, the main question I take as a starting point is: Why have the existing agreements not led to the constitutional redesign of Serbia and Kosovo?

Negotiations between Belgrade and Pristina have been ongoing since 2011, with the mediation of the European Union. In addition to a series of technical agreements, the most important is the First Agreement on the principles of normalization of relations, i.e. the Brussels Agreement achieved in 2013. The dialogue process has a key feature: the normalization of the relations between the two sides as the main political condition in the process of European integrations. The formal recognition of Kosovo's independence by Serbia was not required, but normalization meant the unblocking of Kosovo internationally and strengthening its sovereignty.

The intention of Brussels was to show competence in resolving bilateral disputes in the Western Balkans and directly link them with the perspective of EU membership. Only the issues agreed by both sides were being discussed. It also allowed parties to have agreements with ambiguous significance so as not to impede the dialogue process.

The Brussels Agreement was of particular political importance, although it was not signed, but initialed by the initials of the two prime ministers without specifying their functions. The document contains the key objectives of both sides: Pristina wanted the integration of northern Kosovo through local elections, the judiciary and the police in order to achieve effective authority in the territory of Kosovo with the Serb majority, while Belgrade linked the north with Serbian municipalities south of the Ibar river in order to provide a high level autonomy for Serbs and protect special ties with Serbia.

The so-called “constructive ambiguity”, as the essential feature of the entire Brussels dialogue between Serbia and Kosovo, is already noticeable in the very name of future association of municipalities, as for the Albanian side it is an association that is already provided for by the Kosovo Constitution, while for the Serbian side, it is a separate entity, which means autonomy for Serbs and requires constitutional changes. The original text is signed in English, but the Serbian and Albanian versions of the document contain inadequate translations and consequently different interpretations. Furthermore, according to the earlier Agreement on Integrated Cross-border Management, since Pristina refers to established borders, whereas for Belgrade those are administrative crossings.

In addition to constructive ambiguity, the basic lack of agreement is that it was not binding for both parties to adopt constitutional changes. Thus, in political terms, Serbia accepted the implementation of the agreement and ensured the integration of northern Kosovo into the institutions of Pristina, but the Constitutional Court refused to consider this document as a legally relevant agreement for the constitutional order, still treating Kosovo as an autonomous province of Serbia. On the other hand, the Constitutional Court of Kosovo accepted the Brussels Agreement as an international and legally valid agreement, but lacked the political will of Pristina authorities to apply the formation of the A/CSM (Association/Community of Serb Municipalities) in accordance with the Constitution or Constitutional amendments. Serbia is interested in the status quo, and Kosovo does not want to apply agreements without official recognition by Belgrade.

The second scenario is the normalization of a relationship that means a territorial delimitation. So far, it has not been published what would demarcation mean exactly, but it is close to the idea that the lines of demarcation should be adapted to ethnicity. There are three reasons why borders correction acts as an acceptable solution. First, a significant part of the international community wants to come up with a permanent and sustainable solution, but within a limited timeframe, there is not enough room for a comprehensive normalization of relations. Secondly, the high degree of ethnic distance that currently exists between Serbs and Albanians prevents permanent reconciliation. Finally, political leaders in Belgrade and Pristina want to come to an agreement that will be presented as a political success and a national victory.

In the current relations, the normalization of the relations seems to be a mutual interest and a way out of the post-conflict veto relations in which Belgrade and Pristina mutually disrupt the processes of final constitutionalizing. Serbia and Kosovo are currently incomplete political systems, where one has no control over the territory it considers to be its province, and the other does not enjoy full international recognition and membership in international organizations.

Fragile states include those who have the absence of authority and control over certain parts of their territory. Serbia has faced this problem since the end of the conflict in 1999, and Kosovo as a political system with disputed status, despite the implementation of the Brussels Agreement, is unable to fully integrate the north with the majority Serb population.

Unfortunately, the main goal of the long-standing engagement of the EU in the relations between the Serbs and Albanians has been to avoid conflict, not to build a viable political system. The lack of a single EU policy towards Kosovo (5 members do not recognize its independence) and the distance of the perspective of Serbia's and Kosovo's membership in the EU precludes a stronger EU influence on the final agreement. As Bieber states in his article, "Building Impossible States?", the conditional approach on which the EU relies heavily in the state-building process proved to be ineffective for two reasons. Firstly, due to the lack of commitment of political elites to EU integrations, and secondly, the "unsolvable" status issues that have a paralyzing effect on all other political processes.

The basic disadvantage is the avoiding of the status issue of Kosovo without which constitutional redesign is impossible. For this reason, the EU in the final phase of the negotiations, before they were interrupted, insisted on a final agreement, which is a key condition for further EU integrations of Serbia. It was found that technical agreements cannot lead to a change in the conflict paradigm. It's about a so-called comprehensive, legally binding agreement, which the two parties would have to recognize as an international agreement and integrate it into their constitutions. However, the legacy of failure to implement the agreements so far, different interpretations of the agreed, absence of EU perspective and deep distrust between the two sides stand in the way of normalizing relations between Serbia and Kosovo.

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