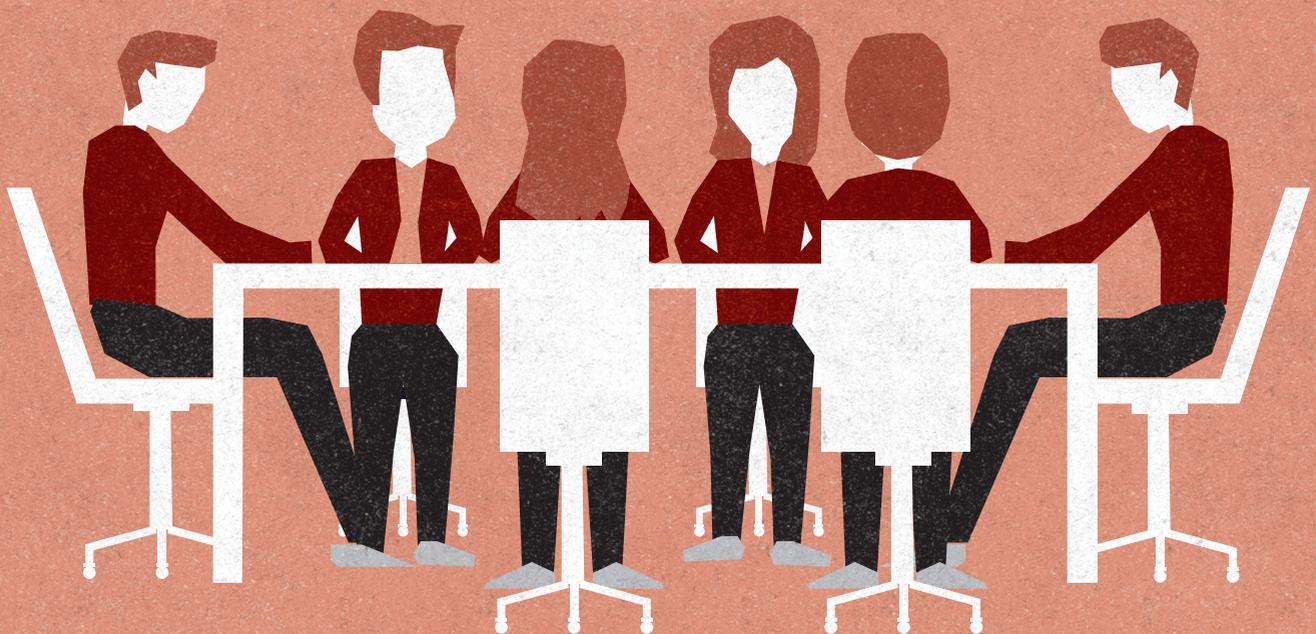


POLICY BRIEF

INTERNAL CONSENSUS AS A PRECONDITION FOR CONTINUATION OF KOSOVO-SERBIA DIALOGUE

NOVEMBER, 2019



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Remark: This analysis was carried out within the project "*European perspective - building national consensus on normalizing relations with Serbia*", funded by the Swiss Embassy in Pristina.

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I. INTRODUCTION

In 2017, the new government led by Ramush Haradinaj did not exercise its constitutional role in the dialogue process with Serbia. It delegated this responsibility to the President of the country, Hashim Thaçi, by a decision of the Government which also called for the formation of a state delegation.¹ Although this decision failed to materialize in an Assembly resolution, due to objection from the opposition parties, the President’s role as leader of the dialogue process remained uncontested by the coalition parties until the idea of ‘border correction’ began to be supported and proclaimed by President Thaçi.

The emergence of this idea brought fourth differences in attitudes between the two institutional leaders and beyond within the political spectrum. Some of them started engaging in building a state delegation that would represent the state of Kosovo in these talks², while the rest, consisting of the two largest opposition parties, demanded the re-legitimization of the government and the prevention of President Thaçi’s actions.³

The political stability in the country also suffered a blow when on November 21, 2018, the Government decided to impose a 100% tariff on products imported from Serbia and Bosnia and Herzegovina, as a result of Serbia’s aggressive lobbying campaign against Kosovo, as well as non-tariff barriers of Serbia on Kosovo products⁴. Against this measure, Serbia retaliated by withdrawing from the dialogue process and refusing to return to the negotiating table until the tariff was lifted.

The positioning of the international factor against the 100% tariff and the pressure on the Government to suspend it caused divisions among the ruling coalition partners, with the PDK in favor of the tariff suspension⁵ and the AAK against it. This issue further exacerbated the relations between Haradinaj and Thaçi, with the latter seeking the Government’s reflection on the tariff suspension request⁶.

The lack of consensus on the tariff and options for the final agreement resulted in ununified Kosovo state position vis-à-vis Serbia and international partners, to which Kosovo was conveying various messages, both at bilater-

1 See Government Decision no. 01/63 dated September 3, 2018. Available at: http://www.votaime.org/Uploads/Data/Documents/VendimiQeverisep-erthemelimineekipitnegociatorperDialog_3shtator2018_twebfKBJe.pdf [Accessed on 8 November, 2019]
2 See the Resolution on the Process of Dialogue on Normalization of Relations between the Republic of Kosovo and the Republic of Serbia initiated by the PSD parliamentary group. Available at: http://www.votaime.org/Uploads/Data/Documents/2018_12_18_Rezoluta06-R-015_USUNuUR6vm.pdf [Accessed on 8 November, 2019]
3 See Assembly transcript dated 31 October 2018. Available at: http://www.votaime.org/Uploads/Data/Documents/trans__2018_10_31_10_7679_a_ATx-NvavEw3.pdf [Accessed 11 November 2019]
4 Prime Minister Haradinaj sent an explanatory letter on 28 January 2019 to the “Quint” states on the Government’s decision to impose a 100% tariff and the requirements of the Government of Kosovo to withdraw this measure. For more, see: http://kryeministri-ks.net/ep-content/uploads/2018/11/Lista-e-mallrave-te-perjashtuara.pdf?fbclid=IèAR2Y6eDIm-Zbob88s2P4MXE6KRFh1yHblumB6OhcNDzAY_JJVvKcpC3bèBo [Accessed on 8 November 2019]
5 For more, see: https://www.koha.net/arberi/142112/veseli-propozon-qe-taksa-te-pezullohet-per-120-dite/?fbclid=IèAR36giZ_3arfCzUdV2I9HD-4q7Yp25HD8NuQ60sx_hPf7AMÈ5UvDIdufEv0 [Accessed on 8 November 2019]
6 For more, see: https://kallxo.com/shkurt/thaci-ben-thirrje-per-pezullim-te-taksës/?fbclid=IèAR2RyhRVFdxncju1HZKpo2g_TrpK71Ct-oomobzdtAAe-oGKuxE4iLECFk0 [Accessed 11 November 2019]



al meetings and during international summits⁷. Whereas, in the internal aspect, conceptual differences made it impossible to adopt a resolution with broad political support for building of a broad political consensus needed for the dialogue process with Serbia.

On December 15, 2018, the Assembly adopted a resolution initiated by the PSD parliamentary group, supported only by the ruling coalition - excluding the Serbian List. On the basis of this resolution, a State Delegation was formed comprising the political parties that supported it⁸. This document also resulted in the adoption of the Law on State Delegation for Dialogue⁹ and the Dialogue Platform¹⁰ on March 7, 2019. However, even these documents were not adopted with broad political consensus. The two largest opposition parties, the LDK and VV, boycotted these initiatives, calling the state delegation illegitimate, while also contesting the constitutionality of the law itself, sending it to the Constitutional Court for interpretation. The latter declared the law wholly incompatible with the Constitution.¹¹

Following the Constitutional Court's ruling, the State Delegation ceased to exist, and the legal validity of the State Dialogue Platform remained unclear. Two months after the decision, the country went to early parliamentary elections following the resignation of Prime Minister Haradinaj. As a reason for this decision, Prime Minister Haradinaj articulated, at a Government meeting, the invitation for interview he had received from the Specialist Chambers. Haradinaj also publicly articulated international pressure to suspend the tariff¹² as a reason for his resignation. The demand of the international factor for tariff suspension remained constant even during the time of the Government in resignation, while the need to build a broad consensus across the political spectrum on the basis of the Constitutional Court's judgment remained a necessity to be addressed in the future.

7 For more, see: <https://indeksonline.net/thaci-e-haradinaj-neser-ne-berlin-pa-nje-qendrim-te-dakorduar-institucional/> [Accessed on 8 November 2019]

8 The resolution was supported by the Democratic Party of Kosovo (PDK), the Alliance for the Future of Kosovo (AAK), the Social Democratic Initiative, the New Kosovo Alliance (AKR), and political entities of other non-majority communities, not including the Serb List.

9 Draft Law on Duties, Responsibilities and Competencies of the State Delegation of the Republic of Kosovo in the Process of Dialogue with the Republic of Serbia, http://kuvendikosoves.org/Uploads/Data/Documents/145PLperpergjegjesitedelegacshteterorteKosoves-procesiialogiutmeSerbine_WqT-4NzhB58.pdf [Accessed 13 November 2019]

10 Dialogue Platform on the Final, Comprehensive and Legally Binding Agreement for the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia, http://www.votaimo.org/Uploads/Data/Documents/PlatformaperDialogunmbiMarreveshjenPerfundimtare_shkurt2019_g8G-cYDjuNF_ELBd2KfpmL.pdf [Accessed November 8, 2019]

11 Judgment of the Constitutional Court on the Law on State Delegation, 27 June 2019, http://gjk-ks.org/wp-content/uploads/2019/06/ko_43_19_agj_shq.pdf [Accessed November 8, 2019]

12 For more, see: https://telegرافي.com/haradinaj-shtetet-e-quint-presion-e-detyruan-qeverine-qe-te-jape-doreheqje/?fbclid=IëAR3lYcizuroBVN1FFxct-g07_kë7bQqBH-UStoë2ghrt_7ëP4iYanuYJN024 [Accessed on 8 November 2019]



II. POSITIONS OF THE POLITICAL SPECTRUM REGARDING THE FINAL PHASE OF THE DIALOGUE

The new political constellation created after the October 6th early parliamentary elections, expected to bring about a ruling coalition made up of the previous opposition, represents a significant change in the dynamics of political developments in the country. These changes are expected to also affect the process of Kosovo-Serbia dialogue, considering the positions articulated by them on the current dialogue process and the agreements reached, the need for a new approach to the format and topics of discussion, and the necessity of building a political consensus.

Taking into account the different stances of the political parties, the continuing lack of consensus related to the Kosovo-Serbia dialogue is also expected to accompany the next ruling coalition. Reaching a broad political agreement on the tariff suspension first and then on options for a final agreement with Serbia is expected to be difficult. Political clashes among institutional leaders, especially the President and incoming Prime Minister, may affect the consensus among the political spectrum while continuing polarization in attitudes may also contribute to old political spites and party calculations. In fact, the latter have long characterized the political scene in the country, especially when it comes to the need to unify attitudes about the state interest beyond narrow party interests.

The experience so far in the dialogue with Serbia shows the lack of will amongst the political spectrum to build a wide political consensus. Even when there were attempts to reach a consensus, such as that of 2012, which resulted in the appointment of Blerim Shala by the AAK as political coordinator for the dialogue by the then President Atifete Jahjaga, they were limited to a single governing mandate and only within the initial dialogue period.

Only one of the agreements reached under this process was ratified by the Assembly on April 19, 2013 as an international agreement. As no other agreement reached within this process was brought to the Assembly for ratification, the absence of a two-thirds (2/3) consensus requirement did not oblige the parties involved in the dialogue to go beyond statements and calls for consensus. After 2013 the opposition parties were no longer directly involved in the dialogue process.

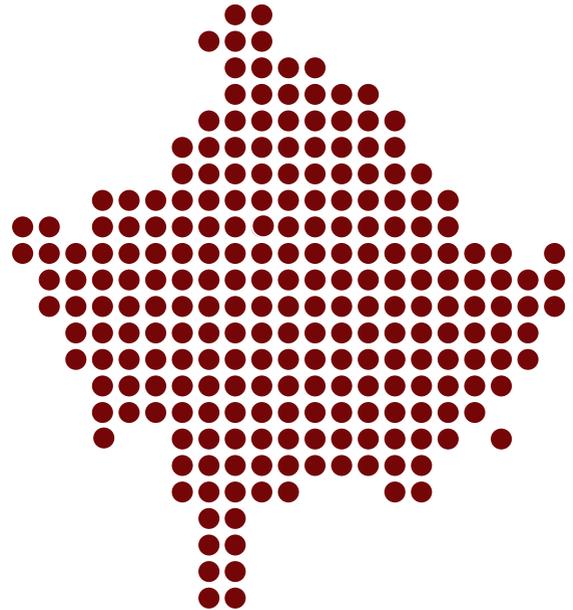
However, it is worth pointing out that the attitude of the political spectrum in Kosovo, since the beginning of this process, has gone towards recognizing that dialogue has no alternative, and that it is one of the most important political processes¹³ Kosovo has been going through since the declaration of independence in 2008. However, dis-

¹³See the positions of the Parliamentary Group Chairmen articulated at the KDI Roundtable of 6 October 2017 on, <http://www.votaime.org/Public/DialogActivity/Detail/134> [Accessed November 8, 2019]





THE KOSOVO-SERBIA DIALOGUE CAN LARGELY DETERMINE KOSOVO'S FUTURE, BOTH IN TERMS OF ITS EURO-ATLANTIC PERSPECTIVE, AND THE EXTERNAL AND INTERNAL CONSOLIDATION OF THE STATE OF KOSOVO.¹⁴



agreements on the political spectrum related to certain aspects of this process have led to frequent political and institutional crises.¹⁴

The Kosovo-Serbia dialogue can largely determine Kosovo's future, both in terms of its Euro-Atlantic perspective, and the external and internal consolidation of the state of Kosovo. Considering the importance and sensitivity of the conclusion of the dialogue process with Serbia for the state of Kosovo and its citizens, it is extremely necessary to reach a consensus among the political spectrum regarding the continuation of the dialogue, namely the principles on which the Kosovar side will conclude this process.

The burden of responsibility for reaching a consensus rests with the future governing coalition, especially the winning entity. This coalition will have the opportunity to translate all criticism directed at the previous Government about managing the dialogue process into concrete governing actions. It goes without saying that, among other things, this implies real commitment to reaching consensus, followed by transparency and full accountability.

¹⁴ For more, see: <https://kosovotwopointzero.com/tear-gas-eggs-and-protests-seven-things-you-need-to-know-about-kosovos-political-standoff/> [Accessed 11 November 2019]





III. REACHING POLITICAL CONSENSUS ON CERTAIN ASPECTS OF DIALOGUE

Dialogue format represents one of the dividing points of this process, taking into account the deep disagreements that existed between the main political entities, especially regarding the role of the President at this stage, and the need to establish a comprehensive negotiating team. Although the Constitutional Court's ruling on the matter has finally clarified that the Government, namely the Prime Minister, is the authority that should lead the foreign policy, and that it is required to carry out its foreign policy in consultation with the President¹⁵. Moreover, the relations between the President and the Prime Minister in reaching international agreements, such as that which may eventually be reached with Serbia, are also set forth in the Law on International Agreements, which explicitly requires the President to authorize actions to conclude international agreements¹⁶. So, in spite of eventual differences, the President and the future Prime Minister are obliged to cooperate and coordinate in order to reach a final agreement with Serbia.

Involving the opposition as an integral part of the whole process remains an important element. This is, in fact, one of the key preconditions for reaching the necessary political consensus to conclude the dialogue with Serbia. An eventual

agreement between the parties must be ratified by the Assembly of Kosovo by a two-thirds majority vote. The future opposition, which is expected to consist of political entities that were previously in power, should not consider itself exempt from these responsibilities. Naturally, it is expected from them to be constructive in reaching a political consensus on the dialogue, given that it has been leading the current dialogue process and has proclaimed the need for a political consensus on the subject. But in this regard, reaching the consensus must not in any way be interpreted or used by the parties as an opportunity to block the process, and this fact should not be overlooked.

Time dimension of an eventual agreement with Serbia is another issue on which internal political consensus is needed. Although this aspect is not independent of developments in the international arena, the entire political spectrum in Kosovo will need to agree on the timeframes within which an agreement will be reached, as this will also largely determine the quality of the eventual agreement. Such a consensus on timelines should be part of preparations of the institutions responsible for the highest quality representation of Kosovo in the dialogue. Add to this the fact that current practices have

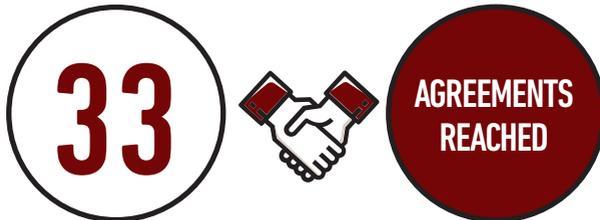
15 For more, see the Judgment of the Constitutional Court in case no. K043/19. Available at: http://gjk-ks.org/ep-content/uploads/2019/06/ko_43_19_agj_shq.pdf [Accessed 11 November 2019]

16 For more, see Article 7, paragraph 1, of Law no. 04/L-052 on International Agreements. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2789> [Accessed on 8 November 2019]





ANOTHER VERY IMPORTANT ISSUE RELATES TO THE



THE LEGAL STATUS OF MOST OF THEM REMAINS UNCLEAR SINCE ONLY THE FIRST AGREEMENT ON PRINCIPLES HAS BEEN RATIFIED BY THE ASSEMBLY OF KOSOVO AS AN INTERNATIONAL AGREEMENT, WHICH IS NOT THE CASE WITH THE OTHER AGREEMENTS.

shown that even when the negotiation processes were prolonged, there was no genuine preparation by the Kosovo side in articulating its positions and demands and the readiness of the political spectrum to conclude it.

Although there is a “tacit” consent among the Kosovar political spectrum regarding the **topics** that should be part of the dialogue, there is still an important need to build a unified position and a common strategic document related to the talks between Kosovo and Serbia. The draft agreement drafted by the Haradinaj government, as well as the Dialogue Platform, voted on by the Kosovo Assembly, failed to gain support across the political spectrum, while the latter’s status after the Constitutional Court’s ruling remained unclear. Obviously, it is the Government to take that initiative, which should take into account and reflect the demands and views of the citizens on the topics that should be part of the dialogue.

Another very important issue relates to the **33 agreements reached** so far, the legal status of most of them remains unclear since only the First Agreement on Principles has been ratified by the Assembly of Kosovo as an international agreement, which is not the case with the other agreements. Discussions about the need to evaluate the process so far and re-evaluate its own agreements so far may be an ‘apple of contention’ within the eventual governing coalition and the dialogue process itself, given the uncertainty about the ultimate effect intended to be achieved with the re-evaluation of the agreements.

During its last governing mandate, Kosovo presented its position based on various theses by institutional leaders thus undermining Kosovo’s position in the negotiations and its power to advance its interests. **Lobbying on the basis of a unified position** should accompany this process from the first steps, unlike the wrong practices of the past. Representatives of Kosovo institutions should engage in a lobbying diplomacy for the demands and position of the Kosovo side in this process, targeting world capitals, but also being present at each formal and informal table discussing Kosovo-Serbia solution, and the European future of the Western Balkans.





IV. THE EFFECTS OF (NON) REACHING POLITICAL CONSENSUS

Reaching political consensus in certain phases and aspects of the dialogue would undoubtedly bring multi-dimensional advantages to Kosovo. The process of dialogue is expected to determine the relations between the two countries that have been part of a long-standing conflict, the interethnic relations between the two societies, should lay the foundations for peace relations and internal stability of the two countries and the region.

Internally, reaching a consensus would also reflect broad public consent for the conclusion of dialogue with Serbia, thus avoiding situations of objecting, even in violent forms, to an eventual agreement. Externally, Kosovo's unified stance on dialogue, as a derivative of achieving internal political consensus, would firstly strengthen Kosovo's negotiating position with Serbia, but also facilitate lobbying initiatives the third countries. These elements are clear indications of the importance and need to find a common position of political entities on the dialogue process, which goes beyond daily political views and stances.

But on the other hand, *what would be the consequences of not achieving such a political consensus?*

First, if the political spectrum fails to build a unified state position on the dialogue with Serbia based on a compromise, there will inevitably be polarization of the political spectrum, and given the sensitivity of this process, it is

easy to conclude that polarization at the political level would also lead to **social polarization**, which carries with it the risk of civil riots.

Concerning the regular functioning of institutional life, past experience shows that a lack of consensus on issues of national interest can lead to **paralyzing of institutional life, especially parliamentary life**. This risk can even be evident, even if the parliamentary majority is made up of a considerable number of MPs. Most of them have fresh memories of tear gas scenes in the Assembly, which had also come as a result of an agreement reached within the dialogue process, which was opposed by the then opposition.

Speaking of parliamentary life, in the absence of the necessary consensus, the possibility of achieving **an agreement that cannot be passed to the Assembly** cannot be excluded along the lack of **a unique position** of the Kosovar side vis-à-vis Serbia and international partners. This would present Kosovo not only as a non-constructive party in the international arena, but also as a party that fails to fulfill the commitments it made earlier. Kosovo would also be harmed in terms of negotiating position and power, which would be significantly diminished.





V. RECOMMENDATIONS

Based on the findings of this analysis, and taking into account the importance of internal political consensus in relation to the dialogue process, as the most sensitive political process Kosovo is undergoing, the Kosovo Democratic Institute (KDI) offers recommendations as follows:



THE NEW GOVERNMENT should intensify efforts to reach consensus across the political spectrum on all stages of dialogue for reaching a final agreement with Serbia, including pre-preparatory phase, preparatory phase, agenda-setting and options on a final agreement with Serbia. The consultations should be conducted on the basis of trust, putting the interest of the state of Kosovo first.



OPPOSITION PARTIES should be equally responsible for reaching consensus on issues of state interest. They must show commitment and constructiveness in order to overcome the obstacles to achieving consensus.



THE PRESIDENT AND THE PRIME MINISTER OF THE COUNTRY, in accordance with their constitutional responsibilities, should consult one another on an ongoing basis and contribute to building political consensus on the Kosovo-Serbia dialogue process.





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