

DIALOGUE WITH SERBIA: THE CHALLENGE OF EVERY GOVERNMENT

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1. Introduction: Kosovo-Serbia Dialogue: A Brief History

8 March 2021 marks a decade since the beginning of the dialogue between Kosovo and Serbia. This process, which became a challenge for every government in Kosovo, was imposed by a **United Nations Assembly resolution** adopted on 9 September 2010,¹ two months after the opinion of the International Court of Justice on the independence of Kosovo. Serbian state, outraged by ICJ opinion², which concluded that Kosovo's declaration of independence was not contrary to international law, launched a new campaign to oppose Kosovo's new status. Thus, Serbia proposed a resolution to the UN, which called for a dialogue with Kosovo, as written in this document, "on all outstanding issues", including the status of Kosovo.³ Aware of the inappropriateness of this term, Kosovo's allies in the UN, the US and EU member states managed to modify this resolution from "dialogue on all outstanding issues" to "*dialogue to facilitate the lives of citizens and integration of the two countries in the EU*". On the basis of this resolution, the first dialogue meeting started in March 2011 in Brussels with the facilitation of the EU representative Robert Cooper.

From this **first phase of the dialogue**, which was defined as a technical process, Kosovo and Serbia agreed on seven conclusions on issues such as free movement, civil registers, cadastral registers, IBM, regional representation, mutual recognition of diplomas and customs stamps. The status of these documents was not clear as they were not signed by the parties and did not go through the ratification process.



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The language used in them was also ambiguous, something that characterized other subsequent agreements reached under the dialogue. This language left the interpretation of

1 UN Resolution on the Kosovo-Serbia Dialogue, "A/RES/64/298", 9 September 2010, at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/298

2 ICJ Opinion on the Declaration of Independence of Kosovo, 22 July 2010, at <https://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>

3 REUTERS, "Serbia backs compromise U.N. resolution on Kosovo", 9 September 2010, at <https://www.reuters.com/article/us-serbia-kosovo-un-idUSTR6885IJ20100909>



the terms at the discretion of the parties, enabling them to look for “a way out” when facing the opponents of the agreements and the citizens. The first phase of the dialogue concluded with an important agreement on regional representation and cooperation whereby Kosovo agreed to be represented in these mechanisms with a footnote which did not prejudice the status and invoked the ICJ opinion and Resolution 1244.⁴

In October 2012, **technical dialogue entered a new phase**, perceived and defined as a political process, as a new range of issues was included on the discussion table. These focused on the internal pillars of the state of Kosovo and their connection with the integration of the Serb community in the country. Even the facilitating side, the EU, raised the level of representation to the level of the High Representative for Foreign Affairs and Security Policy, while the parties would now meet **at the level of prime ministers and presidents**. Only a few months after the start of this phase of the dialogue, one of the most important agreements of the dialogue was reached, the **First Agreement of Principles for the Normalization of Relations between Kosovo and Serbia**.⁵ The main and largest part of the document, specifically six of its points, provided for the establishment of an Association of Serb-Majority Municipalities with extended competencies. The other nine points regulated other issues such as justice, security, elections in the north, funding by Serbia, energy, telecom and the path to the EU. The agreement was **ratified in the Assembly of Kosovo** with 2/3 votes of MPs amid political and civil objections, while being described as historic by the bearers of the process at the time.

Other agreements derived from this agreement during this phase of the dialogue, which defined the details of the issues agreed between the parties. One of the most important derivatives was the specific Agreement establishing the Association reached on 25 August 2015. Amid controversies that this mechanism was unconstitutional even in 2013 with the First Agreement, the August agreement was sent to the Constitutional Court for interpretation in October 2015 by the then President, Atifete Jahjaga. The Constitutional Court concluded that the content of the document was not in accordance with the Constitution, paving the way for the establishment of this mechanism in accordance with the judgment and provided that the founding decree is sent back to the Court for verification.⁶ The controversies surrounding this topic gave a new direction to the dialogue in the following years. **By 2016, the dialogue was considered to have entered a new phase**. In the following years, an attempt was made to give the process another course, culminating in the **idea of border correction/land swap** in 2018, as an option for reaching a final agreement between Kosovo and Serbia. From this period until 2020, the process was accompanied by fierce discussions across the political spectrum. Controversies over land swap seem to have ended, at least for a while, after reaching an agreement on economic normalization in Washington on 4 September 2020.

Continuation of the dialogue in 2021 finds Kosovo with a new government. The former opponents of this process, Vetëvendosje Movement, are now at the forefront of the process with the mediators' expectations to conclude the dialogue with a final and legally binding agreement. It is not known whether the topic of border correction/land swap can be returned as an option, but the topic of the Association seems to be one of the central parts of this process. Now eight years after the First Agreement was reached and six years after the August Agreement, the Association has not yet been established. Although Kosovo has made several attempts to start the establishment process, there has been

⁴ See agreement on regional representation and cooperation, at <http://votaimo.org/Public/Dialog>

⁵ See the first agreement of principles for the normalization of relations, at <http://votaimo.org/Public/Dialog>

⁶ See the judgment of the Constitutional Court on the Association, at http://www.votaimo.org/Uploads/Data/Documents/VLERES-1_GmystyF653.PDF



resistance from the Serb representatives for the process to take place according to the judgment of the Constitutional Court of Kosovo.⁷ Therefore, the Serbian side has requested that this issue be discussed and concluded in Brussels. While it is clear that this topic will be part of the discussions at this phase of the dialogue, the position and actions of the new Government of Kosovo on this issue in particular, but also on the dialogue process in general, remain unclear. At the 15 June meeting between Prime Minister Kurti and President Vucic in Brussels, which marked the beginning of a new chapter of dialogue, Mr Kurti presented four proposals which, according to him, are necessary to move the process forward.⁸ As for the Association, all that has been said so far by the Government is that the Association cannot be established



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on ethnic grounds as this is contrary to the constitutional order of the country.⁹ Whereas, the chairwoman of the parliamentary group of LVV, Mrs. Mimoza Kusari-Lila has stated that the Government cannot implement the earlier agreements of the parties if they are considered harmful by the Constitutional Court. Therefore the Government has come up with new proposals in their place such as the one for the establishment of the National Council, in accordance with the Constitution of the country.¹⁰ It remains to be seen what the Government's steps will be on this issue and the dialogue in general.

This analysis seeks to assess the Kurti Government's approach to dialogue and provide recommendations on the way forward in this important process for Kosovo.

⁷ This has been confirmed by members of civil society of the Serb community in Kosovo. For more see the statement of the director of NGO AKTIV Miodrag Milićević at the KDI conference held on June 23, 2021 at, <https://fb.watch/6tcAmuSrfn/>

⁸ Prime Minister Kurti in Brussels has presented 4 proposals: 1) Advancing the CEFTA agreement to the SEFTA agreement; 2) Kosovo and Serbia sign a declaration of peace; 3) Removing Velko Odalovi from the Serbian delegation; and 4) Bilateral reciprocity: the establishment of a National Council for Kosovo Serbs as it is in Serbia for Albanians and Bosniaks. See details in "Prime Minister Kurti's statement to the media in Brussels", 15 June 2021, at <https://kryeministri-ks.net/deklarimi-i-kryeministrit-kurti-per-media-ne-bruksel/>

⁹ DW, "Kurti: There can be no association of municipalities on ethnic grounds", 17 June 2021, at <https://www.dw.com/sq/kurti-nuk-mund-t%C3%AB-ket%C3%AB-asociacion-komunash-mbi-baza-etnike/a-57934342>

¹⁰ See the statement of the chairwoman of the LVV Parliamentary Group, Mrs. Mimoza Kusari-Lila at the KDI conference on June 23, 2021 at, <https://fb.watch/6tcAmuSrfn/>



2. The effects of the dialogue process on the internal aspect

Since its inception, the dialogue process has produced fierce verbal clashes and deep divisions in the political spectrum in the country. Although all political entities have been in principle in favour of dialogue with Serbia, the reason for disagreements has been the agreements and topics raised in the dialogue, including the Association, the correction of borders and trade measures against Serbia. However, the attitudes of political parties towards the dialogue have, not infrequently, reflected narrow party interests. It can be said that there was some level of consensus only from 2011 to 2013, when certain opposition parties at that time supported the dialogue by appointing representatives to the Government team¹¹ or by voting the Agreement of 19 April 2013, which was ratified in the Assembly with 2/3 of votes of all MPs.

From 2013 onwards, political parties have mainly approached the topic of dialogue from the perspective of party calculations, ignoring the fact that this issue affects the national interest of Kosovo. As a result, the subjective approach of the parties has made it difficult to reach consensus and political unity on this important topic. There have been cases when even the Prime Minister and the President, as co-leaders of foreign policy, namely dialogue as a topic that falls into this domain,¹² did not speak with one voice on this topic, presenting different positions in dialogue meetings and with international actors. As a result, the lack of political unity has penalized Kosovo's position in the dialogue, as the different attitudes



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expressed by political representatives on this topic have led to different messages being conveyed, thus making Kosovo look like a frivolous state.¹³

The approach to the dialogue and relations with Serbia was the main reason for the fall of the two governments in Kosovo due to the rifts that this topic caused between the parties in the ruling coalitions. The Haradinaj Government fell after the resignation of Prime Minister Haradinaj, who had imposed a 100% tariff on goods from Serbia and Bosnia and Herzegovina. For this decision, he had long lost the support of the main governing partner PDK. After that, the 'Kurti 1' Government replaced the 100% tariff with reciprocity measures, a decision for which it did not receive support from the then coalition partner LDK. Eventually, this government also fell, following a no-confidence motion in the Assembly. Based on the public

¹¹ Free Europe, "Blerim Shala - Dialogue Coordinator", 22 November 2012, at <https://www.evropaelire.org/a/24778466.html>

¹² According to the Constitution, the Prime Minister leads the dialogue in consultation with the President, while these provisions have been clarified also by the Judgment of the Constitutional Court regarding the Law on State Delegation for Dialogue. See the judgment at https://gjk-ks.org/wp-content/uploads/2019/06/ko_43_19_agj_shq.pdf

¹³ See KDI press release, KDI open letter for the President and Prime Minister of the Republic of Kosovo, 26 April 2019, at <http://www.votaimo.org/Public/DialogActivity/Detail/304>



statements of the parties' representatives, the reason for not supporting the measures against Serbia were the demands of international partners for lifting these measures in order to open the way for resuming the dialogue.

In addition to political effects, the dialogue as a topic has also influenced other internal aspects. Being one of the main challenges of each government, this topic has for many years now drawn the main institutional and media attention. Consequently, other topics of public interest have remained in the shadow, especially in periods when developments regarding the dialogue have been top news, leaving the impression that everything else in the country had stopped in order to serve this process only. In the meantime, Kosovo has continued to have other challenges such as corruption, unemployment, low level of economic development, migration, etc.

However, dialogue continues to be a topic that manages to get to the top of the agenda even when governments do not prefer to deal with it. This was seen in the case of the new 'Kurti 2' Government, which already in the election campaign had stated that the dialogue would not be in its focus, as this topic was listed below among the priorities of citizens. This position was also reflected in the program of this government, which will be addressed in more detail in the next chapter.



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3. The dialogue in the program of the 'Kurti 2' Government

That the dialogue with Serbia would continue to be one of the main challenges became evident once the 'Kurti 2' Government took office in March this year. This is because the continuation of the dialogue was one of the first demands of the international partners. However, the ruling party ignored the topic by listing it down on the list of governing priorities. Consequently, in the Government program, the sub-chapter on dialogue with Serbia is placed at the end of the program, specifically on pages 55 and 56 of the said 60-page document. It says that Kosovo is ready to recognize Serbia if the latter recognizes Kosovo and distances itself from threats against Kosovo and its neighbours, from interferences and nationalist and racist language.¹⁴ The program further states that Kosovo, in cooperation with American and European partners, will strive to achieve normalization of relations, mutual recognition and maintenance of relations with Serbia on the basis of reciprocity. In this regard, it is not clear whether this implies the establishment of political and trade reciprocity towards Serbia, as has happened in 'Kurti 1' Government, or after reaching a final agreement.

The program does not mention the concrete topics that the Government intends to discuss in the dialogue, but only states that the dialogue will address interstate and good neighbourliness issues and the main orientation is the benefits of citizens from the results of the dialogue. It also states that the final targeted agreement will include all unresolved issues since the succession of the former Yugoslav Federation.

The program further states that the Government plans to evaluate the agreements reached so far to see the degree of their fulfilment and impact. In this regard, the Government has published a document, which Prime Minister Kurti has discussed with the MPs in one of the sessions held.¹⁵ In this discussion, the mistakes made by previous governments in reaching dialogue-related agreements have been identified; however, the Prime Minister did not disclose how he plans to approach these agreements, which continue to be present on the ground for many years now. Within the dialogue with Serbia from 2011 to 2020, a total of 35 agreements were reached, including basic agreements, renegotiated ones and implementation plans.¹⁶

Regarding the involvement of the opposition, the program states that there will be regular talks to build a national consensus in general on foreign policy, and in particular on the relationship with Serbia. So far, the Prime Minister has held meetings with some of the opposition leaders, but based on the statements after the meetings, there is still no progress in building a unique position on this topic. Opposition parties have stated that they are not yet clear about the government's position on the dialogue and have not been notified of it in closed meetings.¹⁷ Achieving political consensus remains crucial to advancing the dialogue process in preserving Kosovo's national interest.

¹⁴ The Program of the Kurti II Government, at <https://kryeministri-ks.net/wp-content/uploads/2021/05/Programi-i-Qeverise-se-Kosoves-2021-2025.pdf>

¹⁵ See Government document on achievements and challenges in implementing dialogue agreements, at http://votaimo.org/Uploads/Data/Documents/RaportimbiarritjetdhesfidatnezbatimineMar-reveshjesseBrukselit_Qershor2021_hnDJ3gw5FE.pdf

¹⁶ See all Kosovo-Serbia dialogue agreements, at <http://votaimo.org/Public/Dialog>

¹⁷ See the statements of the opposition representatives at the KDI conference held on June 23, 2021, at <https://fb.watch/6tcAmuSrtn/>



The program mentions several times the importance of close coordination with the USA. Whereas, it is intended that Kosovo's participation in the dialogue be based on proper preparation and mutual agreement on the topics to be discussed, in cooperation with international partners, political parties, as well as subject-matter experts.¹⁸ Finally, under this program, the Government aims to develop the dialogue on certain principles or goals such as mutual recognition, recognition by the five EU countries and membership in the UN. Nevertheless, there is no explanation as to how these goals are intended to be achieved, given that Kosovo is not yet recognized by five EU Member States and Security Council members such as Russia and China.

In comparison, the previous program of the 'Kurti 1' Government, agreed between the LVV and the LDK, has provided more clarity about the approach and plans towards the dialogue than the current one.¹⁹ The new program does not mention Kosovo's red lines in dialogue, the adoption of a resolution/platform for the dialogue as well as transparency to the public and reporting to the Assembly on dialogue. The latter, although not mentioned in the program, is a constitutional obligation of the government, as the Constitution mandates the Assembly as the main foreign policy supervisory body. Hence, the Prime Minister must report to the Assembly on these processes, especially regarding the dialogue.

As the program provides little information on this Government's approach to dialogue, it remains to be seen whether the Government will develop a strategy and platform for this process and whether it will share them with the Assembly and the public.



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¹⁸ Ibid.

¹⁹ See the previous program of the Kurti 1 Government, part on the dialogue with Serbia pp. 42-43, at https://www.koha.net/uploads/files/2020/March/06/Programi_i_Qeverise_se_Kosoves_2020-2023_watermark1583513074.pdf



4. Conclusions and the Way Forward

It was expected that the dialogue with Serbia, as in the past, would be a challenge for the current government as well. Despite efforts to move this issue to the bottom of the list of priorities, it is already evident that the dialogue will continue to be one of the main topics until this process is concluded with a final agreement between Kosovo and Serbia.

So far, the Kurti Government has published only its general governance program, in which the dialogue has been given marginal space, without sufficiently and properly clarifying the approach and which should be the objectives related to this process. The program does not provide many details about what Kosovo's requests will be in this process, the red lines, the topics that will be raised, the expectations from the dialogue and how this process will be developed in general or how the intended objectives will be achieved. Meanwhile, the government has not yet drafted a platform and strategy on the dialogue, while it has pledged that these documents will be drafted after the first meeting in Brussels.

At this meeting between Prime Minister Kurti and President Vucic, Prime Minister Kurti presented four proposals for the continuation of the dialogue, which were rejected by the Serbian side. On the other hand, the Kosovar side is being asked to establish the Association, for which the government has stated that they cannot accept that this mechanism is established on ethnic grounds. The next political meeting in Brussels is expected to take place on 25 July. Until then, it is not known what the government's steps towards the dialogue will be, how it will approach the issue of the Association and what will be the requests in the meeting in July.

The advantages of this government are the lessons that Kosovo has learnt during the dialogue process developed so far, thus the same mistakes should not be repeated. While the shortcoming is the very phase in which this process has reached, because it is the most complex phase since the aim is to reach a final closing agreement at the end of it.

Representatives of civil society are of the opinion that the Kosovar side should insist that the final agreement between Kosovo and Serbia be based on a European model that has worked and stood the test of time. As for reaching this agreement, it seems that the right momentum for Kosovo is now.²⁰

The need for coordination and consensus: The new chapter of the dialogue finds Kosovo with a new political constellation, which consists of a government led by LVV, a party which has been in principle against negotiations with Serbia even before the beginning of this process. Whereas, in opposition are the political entities LDK, PDK and AAK, which have led the government and the dialogue with Serbia over certain periods.

For the time being, there seems to be coordination between Prime Minister Kurti and President Osmani regarding the dialogue. This coordination between the Prime Minister and the President must continue in each round of the dialogue, as provided by the country's Constitution. However, efforts to build a broad not only political but also social consensus remain necessary to conclude this process, first and foremost to strengthen Kosovo's position, but also to provide support for the final agreement, which needs 2/3 of the votes in the Assembly to pass the ratification process.²¹ This is because we have already seen the crises that

²⁰ See the statement of the executive director of the Epic Institute Mr. Demush Shasha at the KDI conference held on June 23, 2021 at, <https://fb.watch/6tcAmuSrfn/>

²¹ See the statements of the panelists at the KDI conference held on June 23, 2021 at, <https://fb.watch/6tcAmuSrfn/> and <https://fb.watch/6teq9XM8DV/>

can be caused by agreements for which no domestic support has been reached in advance, as was the case with the agreement of 19 April 2013 and the 25 August 2015 on demarcation with Montenegro.

The political and institutional crises that have arisen as a result of disagreements over the dialogue may be repeated again, if, neither at this stage, a unity of broad political spectrum is not reached. Given this, the Prime Minister, as the bearer of the dialogue process, and the President, as a factor of the unity, should try to build political unity and broad consensus for dialogue in order to strengthen Kosovo's position, but also to provide support for the final agreement.²² On the other hand, given the complexity of this phase of the dialogue and its importance for the national interest of Kosovo, the political spectrum should put aside party calculations and aim for Kosovo to be presented in this process with a position that is unique as possible. Otherwise, the continuation of political divisions will continue to damage Kosovo's position in the dialogue.

Therefore, the Government and the Prime Minister, as bearers of the dialogue, should continue with initiatives and efforts to ensure unity regarding this process. In this regard, the consensus should be reached initially on the points that unite all parties and then try to find agreement on points where the government and the opposition have different positions. The Platform and Strategy on the dialogue may be the right way to articulate a common position of the political spectrum on the dialogue. Consequently, the Government should draft a platform and strategy on the dialogue, including the opposition parties in this process. Civil society and the academy of sciences can also contribute to the process of drafting these documents.

As a manner to secure broad political support for the dialogue with Serbia, previous governments have practiced proposing resolutions in the Assembly before almost any phase of this process. These resolutions which have been adopted in

the Assembly have defined the principles based on which the dialogue should take place. However, some of these resolutions have, knowingly or unknowingly, exceeded the mandate of the Assembly as the supervisory body, interfering with the mandate of the Government.²³ This is because some of them have aimed to authorize the government to lead the dialogue. Therefore, if a new resolution on dialogue is to be initiated, its content must be in accordance with the constitutional provisions in force and must adhere to the principle of separation and balance of powers.

While the Assembly's resolutions are not binding on the Government, the Constitution designates the Assembly as the supervisory body for the dialogue process and foreign policy in general. Consequently, the Government/Prime Minister has a constitutional obligation to report to the Assembly regarding the actions on foreign policy/dialogue in accordance with the constitutional provisions on checks and balances. So far, the prime ministers have practiced reporting to the Assembly regarding the dialogue either before or after the meetings held within the dialogue. To date, these reports have been largely superficial, while the prime ministers justified themselves for doing so calling on the need to maintain the confidentiality of the negotiations. As a result, MPs have failed to guarantee transparency and accountability of the dialogue process, while their preparation for dialogue topics has been insufficient to challenge the government. This situation is continuing even in the new legislature that is being characterized by a government reserved in providing information regarding the dialogue. The government is facing an opposition which has not been proactive enough in guaranteeing transparency and accountability of the executive on this issue. On the other hand, even the attitudes of the opposition regarding this process do not coincide with the approach they took when they were in government and led the dialogue. This whole picture shows that the approach to the topic of dialogue is still based on party calculations and the much-needed consensus remains difficult to achieve.

²² Ibid

²³ See Assembly resolutions on dialogue with Serbia, <http://www.votaimo.org/Public/DraftLaws#resolutions>



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