

# Agreement on Comprehensive Normalization of Relations between Serbia and Kosovo

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## Political and Legal Analysis



EU-RS THINK TANK



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# PREFACE

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Choosing a subject for this publication was rather easy as the Serbia-Kosovo issue seems to be omnipresent in the last decades. Yet, due to the complexity of this relation, it was only assessed from the perspective of the EU integration, which implies the necessity to reach a comprehensive, legally binding agreement on normalization of relations.

Designed to explain and offer some practical guidelines and concrete recommendations for the forthcoming agreement, the present analysis goes in depth looking for possible, creative solutions. Without any intention to refer to the possible political solutions or to take part in the ongoing debate on the territorial changes, this analysis is intended to provide for recommendations that could be generally applicable. It is indeed perceived as to furnish a conceptual framework for the prospective drafters of the agreement, whilst taking into account the relevant political, legal, and institutional context. The work is the outcome of both authors' collaboration, yet Đorđe Bojović is responsible solely for the legal analysis section (chapter 3) and Nikola Burazer is solely responsible for the introduction (chapter 1) and political analysis section (chapter 2).

Finally, we are indebted to a number of colleagues and friends who have helped us to bring this project to fruition, and provided their comments, insight and advice. In particular, we would like to thank the Konrad Adenauer Foundation for recognizing significance of the project; Aleksandra Popović, Nemanja Todorović Štiplija and Enrico Nadbath, for their valuable assistance and editorial comments.

Đorđe Bojović and Nikola Burazer

November 2018

*The Yugoslav crisis began in Kosovo, and it will end in Kosovo.*

Noel Malcolm

## 1. INTRODUCTION

### 1.1. Normalization of Relations between Serbia and Kosovo

The process of normalization of relations between Serbia and Kosovo represents one of the most important political processes in the Western Balkans today. Its course has had significant effects on European integration of Serbia and Kosovo, but also on the entire region. Its outcome, regardless of whether it would be considered a success or not, will be of fundamental importance for many intertwined processes in the Western Balkans – European integration, reconciliation, stabilization and economic development.

The EU Facilitated Dialogue between Belgrade and Pristina, commonly known as the “Belgrade-Pristina Dialogue” or “Brussels Dialogue” is a process that began in March 2011 in the form of technical dialogue between two sides. The basis for this dialogue could be found in the UN General Assembly resolution 64/298, jointly proposed by Serbia and the European Union and adopted on 9 September 2010, which practically put future negotiations between two sides under the auspices of the European Union.<sup>1</sup>

The first phase of the dialogue, commonly referred to as the technical dialogue, lasted from March 2011 until February 2012, and resulted in many important agreements such as agreements on cadastre, customs stamps, mutual recognition of diplomas, integrated border/boundary management and representation of Kosovo in regional forums.<sup>2</sup> In this phase of the dialogue, the main negotiators were not high officials of the two governments and it was frequently emphasized that this was just a technical process, one aimed at resolving practical issues in the interest of all people living in Kosovo. At that time, it was impossible to imagine high government officials shaking hands or being directly engaged in conversations.

However, after the Serbian parliamentary elections in May 2012, which brought the coalition of the Serbian Progressive Party (SNS) and the Socialist Party of Serbia (SPS) to power, the two governments elevated the dialogue process on the “political level”, with meetings between two Prime Ministers, Ivica Dačić of Serbia and Hashim Thaçi of Kosovo, taking place in Brussels.<sup>3</sup> This „political dialogue“ started in October 2012 and is still ongoing today,

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1 UN GA Resolution A/RES/64/298.

2 For the timeline of the Belgrade-Pristina Dialogue see: [Overview of the EU Facilitated Dialogue between Belgrade and Pristina](#), Centre for Contemporary Politics, Belgrade, March 2016.

3 *Ibid.*



with the technical dialogue between two negotiating teams held in parallel in this whole period.

The milestone of this phase of the dialogue was the First Agreement of Principles Governing the Normalization of Relations,<sup>4</sup> commonly known as the Brussels Agreement, which was reached on 19 April 2013. This 15-point document outlined the basic principles and framework of the normalization process and served as a foundation for all future negotiations. The main components of the agreement were the creation of the Association/Community of Serb Majority municipalities in Kosovo (ASM), which would serve as a vehicle for Serb autonomy on a higher level than the level of municipalities, integration of Serbian “parallel” structures such as the police, civil protection and judiciary in the Kosovo police and judicial system, and the commitment of both sides not to hinder each other’s EU integration processes.<sup>5</sup>

However, instead of being a turning point in the normalization process, the Brussels Agreement was largely unimplemented and remained a contention point, with both sides accusing each other for the lack of progress. The principle of “constructive ambiguity”, representing a lack of clarity over the reached agreements, did allow for deals to be made leaving aside the key differences regarding the perceived status of Kosovo. However, it proved to be a major problem once the ambiguity made the implementation of agreements quite difficult.

Because of reaching the Brussels Agreement and subsequent agreements in the following years, both Serbia and Kosovo were rewarded by the EU with important steps in their EU accession processes. Whilst Kosovo successfully ratified the Stabilization and Association Agreement (SAA) with the EU in 2015,<sup>6</sup> Serbia was given a date for opening EU accession negotiations, scheduled for January 2014. Serbia only opened the first negotiating chapters in December 2015, again following a major agreement with Kosovo – this time a cluster of four agreements reached in August 2015, the most important one being the agreement on the Association/community of Serb majority municipalities, a follow-up on the Brussels Agreement. One of the two chapters Serbia opened first was chapter 35, which in the case of Serbia contained an item “Normalization of Relations with Kosovo”.

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4 The full title is ‘First Agreement of principles governing the normalization of relations’. Available at: <http://www.kim.gov.rs/lat/p03.php> Accessed on 14 November 2018.

5 *Ibid*

6 EU-Kosovo SAA.

With the opening of the EU accession negotiations in January 2014 and Chapter 35 in December 2015, the link between the normalization of relations with Kosovo and the EU accession process of Serbia was formalized. On the other hand, Kosovo, which was not able to make any steps toward EU accession since the SAA was ratified as it is still not recognized as an independent state by 5 EU member states, continues to depend on the normalization process for “unfreezing” its EU accession path. As of November 2018, it was not even granted visa free access to the Schengen area for the citizens of Kosovo, in part due to the visa liberalization process being the only “carrot” the EU presently has to offer to Kosovo for undergoing certain reforms and engaging in dialogue with Serbia.<sup>7</sup>

## **1.2. Comprehensive Normalization of Relations and the EU Accession Process**

The Negotiating Framework for the EU accession of Serbia, adopted during the intergovernmental session in January 2014, established a formal link between the EU accession process and the normalization of relations with Kosovo. The mechanism for establishing this link was found in Chapter 35 of the EU accession negotiations, which is reserved for “other issues” but which in the case of Serbia contains an item „Normalization of relations with Kosovo“. Moreover, the Negotiating Framework also established a mechanism through which lack of progress in negotiating chapter 35 could have an effect on the entire negotiations progress, as it could lead to non-opening and non-closing of all other chapters. Such a mechanism was first used with Montenegro, where it was reserved to chapters 23 and 24, but was now expanded to include chapter 35 in the case of Serbia. According to the Negotiating Framework, such mechanism will be used if normalization of relations “significantly lags behind progress in the negotiations overall, due to Serbia failing to act in good faith, in particular in the implementation of agreements reached between Serbia and Kosovo”.<sup>8</sup>

Chapter 35 was one of the first two chapters Serbia opened in December 2015. Despite significant controversy over the content of this chapter, the EU common position for chapter 35 did not contain any surprising elements.

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7 The formal link between visa liberalization and engagement in dialogue with Serbia does not exist, but can be occasionally heard from European officials. For example, see: <https://european-westernbalkans.com/2018/11/06/kurz-visitis-belgrade-pristina-majority-eu-supports-deal-guarantees-peace/> and <http://www.rtklive.com/en/news-single.php?ID=12757>

8 Negotiating Framework for the EU accession of Serbia, <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=AD+1+2014+INIT>, accessed on 14 November 2018.

As is the case with several other negotiating chapters, it contains interim benchmarks, initial requirements that need to be met in order to make progress and establish final benchmarks for closing the chapter. Interim benchmarks for Chapter 35 consisted of the implementation of agreements from both the “technical” and “political” phases of the Belgrade-Pristina Dialogue, as well as continuation of the dialogue process in good faith.<sup>9</sup>

However, one of the most significant elements of both the Negotiating Framework and the EU common position for Chapter 35 was the formulation that the normalization of relations with Kosovo is expected to result in “comprehensive normalization of relations” with Kosovo. According to the Negotiating Framework:

“The Negotiating Framework also takes account of Serbia’s continued engagement and steps towards a visible and sustainable improvement in relations with Kosovo. This process shall ensure that both can continue on their respective European paths, whilst avoiding that either can block the other in these efforts and **should gradually lead to the comprehensive normalisation of relations between Serbia and Kosovo, in the form of a legally binding agreement** by the end of Serbia’s accession negotiations, with the prospect of both being able to fully exercise their rights and fulfil their responsibilities.”<sup>10</sup>

And according to the EU Common position on Chapter 35:

“Serbia should engage in reaching further agreements, furthering the normalisation in good faith, with a view to **gradually lead to the comprehensive normalisation of relations between Serbia and Kosovo**, in line with the negotiating framework.”<sup>11</sup>

The Serbian public is largely unfamiliar with these requirements from these two important documents, as is arguably the case with the normalization process in general. Therefore, there were no significant public discussions about the end result of normalization of relations with Kosovo, with most of the public debate simply revolving around the recognition – non-recognition dichotomy, and the Serbian government presenting the entire normalization process as a struggle for preserving Kosovo inside Serbia.

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9 EU Common Position for Chapter 35, <http://data.consilium.europa.eu/doc/document/AD-12-2015-INIT/en/pdf>, Accessed on 14 November 2018.

10 *Supra* note 8.

11 *Supra* note 9.

Even the internal dialogue on Kosovo, launched by the Serbian president Aleksandar Vučić in July 2017, which represented an excellent opportunity for a constructive debate on what should comprehensive normalization be, hardly touched upon the issue, and few voices even reminded the public about the requirement Serbia is faced with in chapter 35 and its EU accession process.<sup>12</sup> According to some experts, the internal dialogue even “collapsed” as “the normalization of the relationship between Belgrade and Pristina was neglected” within this process.<sup>13</sup>

However, addressing this issue became unavoidable in the new circumstances that came in 2018, with strong winds of encouragement for Western Balkan countries’ EU accession. Whereas the aforementioned documents referred to comprehensive normalization of relations as something which should be reached at the end of Serbia’s EU accession process – thus only after all existing agreements have been implemented – there was suddenly a lot of pressure and encouragement from the EU to reach the comprehensive agreement as soon as possible.

The European Commission’s Communication “A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”,<sup>14</sup> commonly referred to as the “Western Balkans Strategy”, which was presented on 6 February 2018, contains the formulation that “A **comprehensive, legally binding normalisation agreement is urgent and crucial** so that Serbia and Kosovo can advance on their respective European paths” and that “in Serbia’s case, the interim benchmarks related to the normalisation of relations with Kosovo (chapter 35) must be met and a **comprehensive, legally-binding normalisation agreement concluded urgently**”.<sup>15</sup> There are multiple obvious references to the urgency of the legally-binding comprehensive normalization agreement, which is a clear departure from previously used wording. Moreover, it is speculated that earlier versions of this document even contained a formulation that the comprehensive normalization agreement should be reached by 2019, but that the date was later scrapped, only days before final publication.

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12 Has the internal dialogue on Kosovo been unsuccessful?, European Western Balkans – Serbia, <https://europeanwesternbalkans.rs/da-li-je-unutrasnji-dijalog-o-kosovu-bio-neuspesan/>, accessed on 15 November 2018.

13 Final Stage of Internal Dialogue - No Major Progress, Euractiv, <http://www.euractiv.rs/vesti/12702-final-stage-of-internal-dialogue-no-major-progress>, accessed on 15 November 2018.

14 Communication from the Commission, A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, COM(2018) 65 final, Strasbourg, 6.2.2018.

15 *Ibid.*

The reason for this change in circumstances is not entirely clear, but it could be explained by several factors. First, the process of normalization is taking much longer than anticipated, as it is plagued by the lack of political will for its implementation, and Kosovo is not able to move forward in its EU accession process until it is finalized. Therefore, the comprehensive normalization agreements needs to be reached as soon as possible in order for Kosovo to move out of the deadlock. Second, as the current European Commission is finishing its term in spring 2019 and it is not clear whether the new Commission and the new High Representative will dedicate much attention to the Serbia-Kosovo issue and the enlargement in general, it would be beneficial to conclude the process in the following several months. Third, as the prospects for EU enlargement in the Western Balkans are not entirely clear, concluding the normalization process as soon as possible would be a major boost for EU prospects of Serbia and Kosovo, but also the entire region.

Serbia and Kosovo have both expressed their commitment toward reaching the comprehensive normalization of relations agreement, and large parts of the international community have expressed their full support. Interestingly, some key Western governments, as well as the European Commission, have more or less openly stated that any agreement freely reached by the two sides is an acceptable solution to the dispute, thus positively responding to the possibility of territorial changes as a part of the normalization process, which surfaced in summer 2018. This will be discussed later in the publication.

What is entirely clear, however, is that whatever agreement Serbia and Kosovo might reach to complete the normalization process, it needs to be in the form of a legally binding agreement that will enable both sides to move forward on their EU accession paths. This is not only because there is such a formal or informal requirement by the EU, but because the legally binding agreement between Serbia and Kosovo is fundamental for stability and sustainability of the normalization process.

## 2. POLITICAL ANALYSIS OF THE CONTENT OF THE AGREEMENT

The content of the comprehensive, legally binding agreement on normalization of relations between Serbia and Kosovo is naturally the most important question to be addressed when it comes to this document. However, despite more and more frequent mentioning of the agreement as a goal to be achieved in the near future, very little attention has been paid to the question of its content.

The only two issues that were addressed in public debate, both in the region and beyond, were the questions of recognition vs. non-recognition and territorial changes vs. territorial status quo. Even though these are important issues, there are still a large number of them to be considered in the normalization agreement regardless of the answers on these two questions.

One of fundamental questions when it comes to the content of the comprehensive normalization agreement is whether it should be truly „comprehensive“ and therefore contain a large number of provisions pertaining to different issues that are important for the normalization process, or simply represent an euphemism for formal or de facto recognition of Kosovo by Serbia, and therefore only contain basic provisions on the status of Kosovo and Serbia-Kosovo relations, whilst all the other issues being dealt with in the future. In this publication we approach the normalization agreement as the former, as a complex document that should address many important issues in Serbia-Kosovo relations and in large part complete the normalization process.

### 2.1. European Integration

One of main goals the agreement on normalization of relations needs to achieve is to enable both Serbia and Kosovo to move forward in their EU integration processes. This provision can already be found in the Brussels Agreement from 2013, which point 14 states that “it is agreed that neither side will block, or encourage others to block, the other side’s progress in their respective EU paths”.<sup>16</sup> Serbia’s Negotiating Framework also states that “this process shall ensure that both can continue on their respective European paths, whilst avoiding that either can block the other in these efforts”, as was presented earlier.<sup>17</sup>

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<sup>16</sup> *Supra* note 2.

<sup>17</sup> *Supra* note 8.

One way to fulfil this requirement is for Serbia to recognize Kosovo as an independent state, which would then be expected to have an unhindered path towards membership in the UN and other international organizations, as well as gain recognition by the five EU member states that do not recognize Kosovo's independence. Even though a full recognition by Serbia would not automatically guarantee UN or EU membership, as these would still depend on other countries, namely permanent members of the UN Security Council and EU member states, this would still be the best possible option for Kosovo.

The alternative option would be for Serbia to not formally recognize the independence, but to accept Kosovo's membership in international organizations such as the UN and the EU. Finding such a solution would not be an easy task, but it is a requirement that would need to be fulfilled for the normalization agreement to allow Kosovo to move forward with its EU accession process in the case of non-recognition.

The questions of recognition and non-recognition were rare ones concerning the comprehensive normalization of relations that were present in the public debate. This question has divided both experts and decision-makers. Whilst the Kosovar side maintains its position that the process of normalization must end with mutual recognition, the Serbian side is adamant that such recognition will never occur.<sup>18</sup>

This issue will be addressed in more detail in the chapter 3.3.

## **2.2. Position of the Serbian Community in Kosovo**

The position of the Serbian community in Kosovo is a fundamental issue within the normalization process. It was arguably the most important topic within the Belgrade – Pristina Dialogue, and issues related to the interests of Serbs in Kosovo constitute a large part of the Brussels Agreement from 2013 and subsequent agreements on the Association/Community of Serb Majority Municipalities, judiciary, energy, and telecommunications. There is tendency to merge the general question of rights for Serbs in Kosovo with the establishment of the Association/Community of Serb Majority Municipalities (ASM), even though the latter only covers certain topics that are important for functioning and prosperity of the Serbian community.

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<sup>18</sup> Serbian government's position somewhat softened with the calls on "compromise" in the last year, but it never formally put recognition on the table, avoiding explaining what "compromise" actually means.

The foundation for the system of minority rights for Serbs in Kosovo is found in Ahtisaari Plan, which prescribed extensive political and cultural rights and benefits for the Serbian community and envisioned strong local self-governments as a tool of minority autonomy.<sup>19</sup> Many provisions of the Ahtisaari Plan later found their place in the 2008 Constitution of Kosovo and laws related to municipal self-governance, rights of communities and establishment of special protective zones for Serbian cultural heritage have been adopted soon after. According to the Kosovo's Constitution and aforementioned laws, Serbs in Kosovo enjoy significant political and cultural rights, which Kosovo government frequently uses as an argument that no further concessions and autonomous arrangements are necessary within the normalization of relations process.

However, implementation of these provisions remains an important challenge, as many rights proscribed by Kosovo laws are not followed in practice. Also, there are certain very important issues that are not adequately covered by Kosovo laws, but which are of fundamental importance for the Serb community. Finally, the establishment of the ASM, which was a major point in the Belgrade–Pristina Dialogue and arguably the largest concession given by the Kosovo government in the negotiating process, needs to be implemented for the normalization process to be successful.

The Brussels Agreement established basic provisions for the establishment of the Association/Community of Serb Majority Municipalities (ASM), and 6 out of 15 points of this important document are related to the ASM and its competences.<sup>20</sup>

In August 2015, two years after the Brussels Agreement was reached, Serbia and Kosovo reached a separate agreement on the ASM, which defined in much more detail its institutional design and competences. According to the agreement, the ASM would have as its objectives to exercise full overview in the areas of education, coordination of urban and rural planning, development of local economy and improvement of primary and secondary health and social care, adoption of measures to improve local living conditions for returnees to Kosovo, etc. It was supposed to be established according to the provisions of the Brussels Agreement, law on its ratification and the Kosovar

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19 Comprehensive Proposal for the Kosovo Status Settlement, or colloquially known as the Ahtisaari Plan. Available at: <https://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf>, accessed on 01.11.2018.

20 *Supra* note 2.



laws. The draft of its statute was supposed to be presented in 4 months.<sup>21</sup> However, the implementation of the agreement on the ASM has proven to be a much bigger problem, having in mind that more than 5 years since the Brussels Agreement and more than 3 years since the aforementioned agreement the ASM is yet to be established.

The reasons for the delay are multiple, and both sides have accused the other for the lack of progress, with the Serbian government being especially vocal about the Kosovar side not implementing the cornerstone of the Brussels Agreement. Especially important was the ruling of the Kosovo Constitutional Court on 23 December 2015, which deemed several points of the agreement on the ASM unconstitutional and called on the establishment of the ASM more in line with the Brussels Agreement. Especially problematic was the shift from “have full overview” towards “exercise full overview” in these two agreements, and the unacceptable transfer of competences from municipalities to the ASM.<sup>22</sup>

The main question regarding the ASM seems to be the following: will the ASM be created according to the existing Kosovo laws and the Kosovo’s Constitutional Court ruling, or Kosovo will have to change its laws, and perhaps through a new constitutional law enable the ASM to be established according to the 2015 agreement?<sup>23</sup> Having in mind the strong opposition in Kosovo, the second option seems unlikely at the moment. However, the implementation of the 2015 agreement on the ASM is necessary for comprehensive agreement to be reached, as Serbia is unlikely to accept anything that goes below an already accepted deal, and the creation of the ASM is an issue of great importance for both Serbia and the Serbian community in Kosovo.

Therefore, provisions on the establishment of the ASM need to find their place in the legally binding agreement on the comprehensive normalization of relations, as the ASM would function as the key institution of Serb autonomy in Kosovo and represents both substantial and symbolic “victory” for the Serbian side in the negotiations. The creation of the ASM was “traded” for the disbandment of the parallel security and legal institutions in North Kosovo

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21 *Supra* note 4.

22 ECMI: Constitutional Court’s Decision on the Association/Community of Serb Majority Municipalities, <http://www.ecmikosovo.org/uploads/Community-Association-Agreement-23-December-ENG1.pdf>, accessed on 15 November 2018.

23 This summer BIRN reported that Kosovo laws would in fact have to be changed, <http://www.balkaninsight.com/en/article/serb-municipalities-association-needs-kosovo-laws-changes-07-10-2018>, accessed on 15 November 2018.

within the Brussels Agreement, and thus represents a key compromise required for the success of the normalization process.<sup>24</sup>

Education is another key issue for the Serbian community that needs to be addressed by the comprehensive normalization agreement. Currently the educational system in Kosovo operates in two parallel tracks, with schools operating in Albanian language functioning under the Kosovo system and jurisdiction of the Kosovo Ministry of Education, Science and Technology, whilst Serbian language schools continue to operate under the Serbian system. Even high education is segregated, with the Serbian language University of Pristina (located in North Mitrovica), being accredited under the Serbian education system. Even though Serbia and Kosovo reached agreement on mutual recognition of diplomas, educational institutions operating under the Serbian education system were not covered by this agreement. Currently there are mechanisms in place for recognition of these diplomas,<sup>25</sup> but a permanent solution is yet to be found.

This problem could be solved through full integration of Serbian-language educational institutions in the Kosovo system, with a large degree of autonomy and special links with the Serbian Ministry of Education, as per the Ahtisaari Plan.<sup>26</sup> In addition, Serbian-language educational institutions might also be provided with double accreditation, whilst students will be given dual diplomas, thus accredited by both Ministries. This would raise concerns in Kosovo about what kind of curriculum might be accepted within the Kosovo system, but this is precisely what a deal on comprehensive normalization of relations should resolve by establishing appropriate mechanisms.

Competences regarding education in Serbian language might also be granted to the Association/Community of Serb Majority Municipalities in Kosovo if it is established with executive competences. Similar concerns exist when it comes to healthcare and social care systems, where Serbs believe should keep on functioning within the Serbian system.<sup>27</sup> Solution would have to be found for these issues, as they are of fundamental importance for the Serb community in Kosovo and have not yet been adequately tackled by the

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24 This argument loses importance if the proposed territorial exchange goes through. However, the ASM remains an important aspect of Serb autonomy even in that scenario

25 Education in the Serbian language and diploma verification in Kosovo, [http://www.ecmikosovo.org/uploads/Brochure\\_Diploma\\_Verification\\_ENGs.pdf](http://www.ecmikosovo.org/uploads/Brochure_Diploma_Verification_ENGs.pdf), accessed on 15 November

26 *Supra* note 19.

27 Kosovo Serbs want Belgrade to run Education, Healthcare, Health, Balkan Insight, <http://www.balkaninsight.com/en/article/kosovo-serbs-want-belgrade-to-run-education-welfare-health-07-11-2018>, accessed on 15 November 2018.

normalization process.

What is also important to note here is that the comprehensive agreement on normalization of relations between Serbia and Kosovo should not only focus on the interests and well-being of the Serb community in Kosovo, but also the Albanian community in Serbia. Even though full reciprocity seems highly unlikely, it would be prudent to include provisions that would aim to improve the position of Albanians in Serbia and integrate them in the Serbian society. As a consequence of past conflicts and uncertainty over the status of Kosovo and the end result of the normalization process, Albanian minority in Serbia found itself marginalized. Solution to this problem should also find its place within the normalization agreement.

### **2.3. Cultural Heritage and Property**

The question of cultural heritage in Kosovo represents one of the topics which have insofar been largely avoided within the Belgrade-Pristina Dialogue, but which should find their place within the legally-binding agreement on comprehensive normalization of relations.

It can be argued that the Serbian cultural heritage in Kosovo represents one of the most important issues for the Kosovo Serbs and the Serbian society when it comes to the outcome of the normalization process. Kosovo is home to many holy sites belonging to the Serbian Orthodox Church, which are as Medieval Monuments in Kosovo listed at the UNESCO World Heritage site, consisting of four localities – Gračanica Monastery, Visoki Dečani Monastery, Bogorodica Ljeviška Church and Patriarchy of Peć. UNESCO considers these localities to be in Serbia, which is responsible for their protection.<sup>28</sup>

This is why Kosovo's attempt to join UNESCO in 2015 was vigorously opposed by Serbia and its supporters, as Kosovo's UNESCO membership would render Kosovo government responsible for UNESCO World Heritage site's protection, restoration and maintenance. Having in mind the severe damage done to these and other Serbian holy sites in the violence of March 2004, such a possibility represents a painful option for the Serbian community in Kosovo, as well as the Serbian society.

As the comprehensive normalization of relations is expected to result in Kosovo's membership in international organizations, it can be assumed that Kosovo's UNESCO membership will only be a matter of time and might as

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<sup>28</sup> UNESCO: Medieval Monuments in Kosovo, [http://whc.unesco.org/pg.cfm?cid=31&id\\_site=724](http://whc.unesco.org/pg.cfm?cid=31&id_site=724), accessed on 16 November 2018.

well occur even before the normalization process is completed. Therefore, it would be beneficial to tackle this issue within the normalization process in order to avoid further controversy and escalation of tensions.

There are several mechanisms that could be employed to protect Serbia's interests when it comes to cultural heritage sites. One could be the guarantees for the Serbian Orthodox Church as the owner of the holy sites, which can be found in the Ahtisaari Plan,<sup>29</sup> but which should be further strengthened and guaranteed through safeguards of the legally-binding agreement. The same goes for the provisions of the existing Law on special protective zones,<sup>30</sup> which are not adequately implemented and respected.<sup>31</sup> Other frequently mentioned model for addressing Serbian concerns is the model of extraterritorial status for Serb holy sites, which could be in practice but these localities under the Serbian jurisdiction, and therefore Medieval Monuments in Kosovo would be listed as a Serbian UNESCO World Heritage Site.

Even though issues related to cultural heritage do not seem as significant for normalization of relations as some aforementioned ones, they are nevertheless of great importance for both Serbs in Kosovo and the state of Serbia. Their importance is due to the fact that they not only represent objects of Serbian cultural heritage but are also a major factor for survival of the Serb ethnic community in Kosovo. Leaving some of these issues unresolved within the normalization process would therefore represent a significant danger for the sustainability of the normalization process, as it could produce long-term grievances that could have a significant effect on stability and reconciliation.

Property issues are also a very serious matter that need to be addressed within the normalization agreement. There are numerous problems regarding property in Kosovo. First, the question of property of public enterprises owned or financed by the Republic of Serbia, which Serbia considers to be unlawfully nationalized and privatized by the Kosovo government.<sup>32</sup> Second, there is a high number of cases of usurped private property, with 96.84 per

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29 *Supra* note 19.

30 Law on Special Protective Zones, [http://www.kuvendikosoves.org/common/docs/lig-jet/2008\\_03-L039\\_en.pdf](http://www.kuvendikosoves.org/common/docs/lig-jet/2008_03-L039_en.pdf), accessed on 16 November 2018.

31 OSCE: Challenges in the Protection of Immovable Tangible Cultural Heritage in Kosovo, <https://www.osce.org/kosovo/117276?download=true>, accessed on 16 November 2018.

32 According to the Ahtisaari Plan, all public property in Kosovo became a property of Kosovo's government.

cent of the 41,399 registered cases belonging to Serbs.<sup>33</sup> Third, there are open issues concerning pensions, as some Kosovo citizens have contributed to the Serbian pension system and vice versa. Fourth, there are issues concerning Kosovo's foreign debt. Finally, there is an important issue of war reparations, which could be sought by the Kosovo government in relation to the 1998-1999 Kosovo war, which was already announced by Kosovo's high officials.<sup>34</sup>

Even this short presentation of major property issues shows that the situation is very complex, and that addressing all these questions within the soon-to-be reached normalization agreement is all but impossible. However, the normalization agreement needs to contain some basis for addressing all or at least some of the aforementioned issues, as they are of major importance not only for the two governments but to a large number of citizens. Moreover, addressing some of these property issues is fundamental for economic viability of the Serb community in Kosovo, as well as Kosovo's future economic stability and development.

#### **2.4. Security Issues**

Another topic which should find itself covered by the agreement on comprehensive normalization of relations is security cooperation. Several agreements within the Belgrade-Pristina Dialogue were related to the issue of security, primarily in North Kosovo. Especially important were provisions on the integration of Serbian police and civil protection in the Kosovo system, which were found in the Brussels Agreement.<sup>35</sup> Also, agreements such as the one on integrated border/boundary management and integration of the judiciary were important steps in improving the security situation.

However, cooperation between security structures in Serbia and Kosovo is still underdeveloped. With no bilateral agreement on police cooperation and without Kosovo's membership in the Interpol, there is no direct cooperation between two police forces, which is now established through Interpol and UNMIK. Kosovo's membership in Interpol, expected either before or after reaching the normalization of relations agreement (may as well occur in November, whilst this publication is in print) will resolve a significant portion

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33 Stolen Homes: Kosovo Struggles with Wartime Property Seizures, Balkan Insight, <http://www.balkaninsight.com/en/article/stolen-homes-kosovo-struggles-with-wartime-property-seizures-05-22-2018>, accessed on 16 November 2018.

34 Pristina wants to talk "war reparations" with Belgrade, B92 [https://www.b92.net/eng/news/politics.php?yyyy=2017&mm=03&dd=03&nav\\_id=100674](https://www.b92.net/eng/news/politics.php?yyyy=2017&mm=03&dd=03&nav_id=100674), accessed on 16 November 2018.

35 *Supra* note 2.

of the problem concerning police cooperation.<sup>36</sup> However, it needs to be followed by a bilateral agreement on police cooperation, which could find itself incorporated into the comprehensive normalization agreement.

Another security-related topic which cannot be avoided in the agreement is the issue of Kosovo Security Force and its transformation into the Kosovo Armed Forces. As KFOR's presence in Kosovo cannot become permanent, the two sides need to find an agreement over the mandate of Kosovo's Security Force.

Whilst formal recognition of Kosovo by Serbia would probably lead to a clear green light for the Kosovo Security Force's transformation into Kosovo Armed Forces and the evolution of its mandate, scenario of normalization without recognition leaves this issue to be resolved within the normalization agreement in order to avoid controversies further down the road. Special attention should be given to possible temporal or troop number restrictions that would address Serbia's concerns and allow for a smooth transition into the new security framework.

## **2.5. Reconciliation**

Reconciliation is crucial topic for the future of Serbia-Kosovo relations and sustainability of the normalization of relations process. However, having in mind the evident lack of will of both governments to devote themselves toward this goal, it is hard to imagine major provisions on reconciliation finding their place within the comprehensive normalization agreement.

If the normalization process is truly going to be successful in the long term, the two governments need to at least rhetorically show their commitments towards reconciliation within the agreement, and perhaps create mechanisms that could be used for solving the issues of missing persons and war crimes prosecution.

Another great step forward would be the creation of mechanisms that would encourage cultural and youth exchange between Serbia and Kosovo, which are currently left to non-governmental organizations and the recently established Regional Youth Cooperation Office (RYCO), which covers the entire Western Balkans. The two governments should also encourage academic and scientific exchange that could be of great benefit to both societies and to the success of the normalization of relations process.

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<sup>36</sup> Why Kosovo's membership in Interpol matters?, BBC, <https://www.bbc.com/serbian/lat/srbija-45980430>, accessed on 16 November 2018.

## 2.6. Other Issues

There is a large number of smaller, but surely not insignificant issues that could be as a part of the comprehensive normalization agreement. Primarily, issues related to energy and telecommunications, which are already a part of the framework of the Belgrade-Pristina Dialogue, could be covered by the agreement, either by confirming already reached deals or expanding their scope further. Several other issues agreed on in previous phases of the dialogue such as regional representation of Kosovo, recognition of diplomas and exchange of liaison officers, should also be a part of the normalization agreement, as their terms could perhaps be updated to create long-lasting solutions instead of provisional measures.

Also, the comprehensive normalization agreement could contain provisions on numerous different issues that are in other cases covered by bilateral agreements between two states. These range from minority protection, education and institutional cooperation – which were already touched upon earlier – to cooperation in different areas. If the two parties agree on a normalization agreement that would have a wide scope as possible, it would be prudent to include provisions on different forms of cooperation. Despite not representing problems which are required to be tackled in negotiations, their inclusion could represent a step towards achieving good-neighbourhood relations, a clear necessity for both sides and the EU membership prospects of the entire region.

## 2.7. Territorial Changes

One scenario for normalization of relations between Serbia and Kosovo features territorial changes as a part of the comprehensive normalization agreement. This idea, being tossed around in the 1990s, as well as during UN-mediated pre-2008 talks between Belgrade and Pristina, stayed at the margins after Kosovo's declaration of independence, as it did not have the support of the international community and was not promoted as an official policy of any of the two governments.

However, during the summer of 2018, the idea of territorial changes, contained in different terms used by the governments of Serbia and Kosovo such as “demarcation” or “adjustment of borders”, found its place in the mainstream discourse. It was proposed by the two presidents – Aleksandar Vučić of Serbia and Hashim Thaçi of Kosovo – most notably on their appearance at

the European Forum Alpbach 2018 on 25 August 2018.<sup>37</sup> Even though the idea was originally opposed by all major Western countries, it now became an acceptable option for many, as both the United States and the EU<sup>38</sup> made it clear they allow room for the two governments to reach an agreement they desire, implicitly expressing support for such a scenario of territorial changes. Germany and the United Kingdom remained opposed to the idea.

It is hard to analyse the scenario of territorial changes, as it is not entirely clear how would this agreement even look like. Both presidents have avoided being clear on the subject, putting focus on what could be won through territorial changes, but now what would actually be conceded. There are at least three major questions when it comes to such an agreement.

First, would such an agreement lead to the recognition of Kosovo's independence by Serbia, or would Serbia continue to pursue the policy of normalization of relations without full recognition?<sup>39</sup>

Second, would this agreement annul all agreements reached within the EU facilitated dialogue between Belgrade and Pristina and the requirements from the chapter 35 in Serbia's EU accession negotiations, or would the existing arrangements and agreements stay in place, with their implementation still on the table?

And third, what territories would actually be exchanged? This agreement could mean partition of Kosovo, where Serbia would (re)integrate all or some of the four municipalities in Northern Kosovo, but it could also represent a territorial exchange where Serbia would give up some of its own municipalities in Preševo valley, most probably parts of municipalities of Preševo and Bujanovac.

Since it would be pure speculation to present any of these scenarios as a realistic option, it is fairly impossible to present and analyse the scenario containing territorial changes and offer any specific recommendations. This is why we have opted for presenting this scenario in a separate sub-chapter,

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37 Serbia, Kosovo presidents broach border changes for historic deal, Politico, <https://www.politico.eu/article/aleksandar-vucic-hashim-thaci-serbia-kosovo-balkans-eu-enlargement-alpbach-forum/>, accessed on 16 November 2018.

38 Hahn: We should leave Serbia and Kosovo to discuss the issue of territory, European Western Balkans, <https://europeanwesternbalkans.com/2018/09/04/hahn-leave-serbia-kosovo-discuss-issue-territory/>, accessed on 16 November 2018.

39 Many legal experts claim that any territorial changes necessarily entail formal recognition. For example, see <https://www.juznevesti.com/Politika/Varadi-Secesija-protivpravna-ali-Kosovo-de-facto-nije-deo-Srbije.sr.html>, accessed on 19 November 2018.



as a specific issue that needs to be mentioned, but which should not be in the focus of this research.

However, most recommendations from this publication will remain relevant in most scenarios containing territorial changes. Even though many consider territorial changes as an “easy” solution that would make it easier for both governments to reach an agreement on comprehensive normalization of relations and most probably mutual recognition, any agreement containing territorial changes would still need to resolve a myriad of issues, from minority protection, security and cultural heritage, and would be faced with many legal obstacles and challenges.

Even in the most extreme scenario of territorial changes – featuring an exchange of North Kosovo for Preševo valley - there would still be minorities living in both Serbia and Kosovo and the majority of the Serb community in Kosovo – along with most of Serbian cultural heritage – would remain south of the Ibar river.

### 3. LEGAL ANALYSIS OF THE AGREEMENT

#### 3.1. Legal Context

Problems between Serbia and Kosovo were evident even during the Yugoslav period, when the federal ties between Serbia and its then autonomous province Kosovo\*<sup>40</sup> were in trouble. During the dissolution of Yugoslavia, the Kosovo issue was not solved, leading to another war (1998-1999) which ended by adoption of the United Nations Security Council (UN SC) Resolution 1244<sup>41</sup> and installation of the international administration – United Nations Mission in Kosovo (UNMIK). Resolution 1244 provided that Kosovo would have autonomy within the Federal Republic of Yugoslavia, and affirmed the territorial integrity of FR Yugoslavia, which has been legally succeeded by the Republic of Serbia. The UNMIK mission, afterwards joined by EULEX,<sup>42</sup> essentially meant the complete suspension of the Serbian legal order, and particularly the withdrawal of military and police forces from Kosovo.

According to the 1244 UN SC Resolution, one of the “main responsibilities of the international civil presence” in Kosovo is to “facilitate the political process designed to establish the future status of Kosovo”.<sup>43</sup> After the failure of the status negotiations in 2006-2007, Kosovo declared independence on 17 February 2008, which has since been recognized by more than 100 states. In spite of this, Serbia stated it would never recognize Kosovo’s independence, claiming it to be its southern autonomous province.<sup>44</sup>

Furthermore, the International Court of Justice issued an Opinion<sup>45</sup> in 2010 stating that Kosovo’s declaration of independence is not against public international law. As the ICJ concluded, “Resolution 1244 (1999) thus does not preclude the issuance of the declaration of independence of 17 February 2008 because the two instruments operate on a different level: unlike resolution 1244 (1999), the declaration of independence is an attempt

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40 Hereinafter: \*This designation is without prejudice to position on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration on independence.

41 United Nations Security Council Resolution 1244 on the situation relating Kosovo, S/RES/1244 [1999] of 10 June 1999.

42 European Union Rule of Law Mission in Kosovo, which was established in 2011

43 UN SC Resolution 1244, *supra* note 40, paragraph 11.

44 Serbian high official claimed that the ICJ avoided answering the substantive question “whether the Kosovo Albanians were entitled to secession from Serbia”, but just pronouncing on the legality of an act. See more at [http://www.rtv.rs/sr\\_ci/politika/tadic-i-jeremic-msp-izbegao-da-se-iz-jasni-o-sustinskom-pitanju\\_202236.html](http://www.rtv.rs/sr_ci/politika/tadic-i-jeremic-msp-izbegao-da-se-iz-jasni-o-sustinskom-pitanju_202236.html), accessed on 03.04.2018.

45 Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 403.

to determine finally the status of Kosovo”.<sup>46</sup>

This Opinion led to the launch of the Brussels dialogue under the auspices of the EU High Representative, which started in 2011 and aims to normalize Serbia-Kosovo relations. The rapprochement between Serbia and Kosovo within the Brussels dialogue is intended to bring both sides to signing a “comprehensive, legally binding agreement on normalization of relations”, allowing them to continue their respective EU integration processes.

A substantial agreement was signed on 19 April 2013 (Brussels Agreement),<sup>47</sup> which provides for the deregulation of the Serbian authority in the North of Kosovo and the establishment of Association/Community of Serb majority municipalities. The talks have continued at the highest political level aiming to culminate with the signing of the comprehensive, legally binding agreement on normalization of relations. This analysis will thus look into the legal context of both Serbia and Kosovo, namely the respective constitutions and the international instruments, and provide some concrete recommendations for the substantive parts of the forthcoming agreement in the scope of Brussels dialogue.

### 3.2. Constitution and EU integration

Constitutions occupy a unique position in Central, Eastern and Southern Europe, particularly after regaining the national sovereignty in the 1990s. “Constitutions have been portrayed as a reflection of a society’s soul, that is a characteristic way of life, the national character of a people, their ethos or fundamental nature as a people, a product of their particular history and social conditions”.<sup>48</sup> Their ‘souverainist character’ and constitutional questions will thus be explored in this chapter.

Taking into account all the above, by adopting the Constitution in 2006, Serbia in essence wanted to introduce strong constitutional provisions safeguarding the sovereignty and preserving the territorial integrity, thus marking out Kosovo as an *inalienable* and *inseparable* part of Serbia. Indeed, the circumstances under which the 2006 Constitution was adopted were remarkably marked by the talks about the Kosovo status, and the Constitution drafters claimed that “the question of status of Kosovo and

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46 *Ibid.*, paragraph 114.

47 *Supra* note 4.

48 ALBI, A, “Europe Articles in the Constitutions of Central and Eastern European Countries”, (2005) *Common Market Law Review* 42, p.404.

Metohija<sup>49</sup> is of such political, historical and legal importance that it cannot be circumvented in the constitutional *materia* of any Serbian constitution". It is therefore necessary to assess the relevant Kosovo provision in the Serbian constitution<sup>50</sup> and whether they could hinder the EU accession process.

### 3.2.1. The 2006 Serbia Constitution and Kosovo Provisions

The 2006 Serbia Constitution has amongst its objectives to determine Kosovo's status. Already the Preamble of the 2006 Constitution bears a clear message as to the position of Kosovo within Serbia, since it reads:

"Considering the state tradition of the Serbian people and equality of all citizens and ethnic communities in Serbia, Considering also that the Province of Kosovo and Metohija is an integral part of the territory of Serbia, that it has the status of a *substantial autonomy* within the sovereign state of Serbia and that from such status of the Province of Kosovo and Metohija follow constitutional obligations of *all state institutions to uphold and protect* the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations".<sup>51</sup>

Thus, the crucial position of Kosovo's status stems directly from the Preamble, particularly imposing constitutional obligation on all state institutions which have to uphold and protect the interests of Serbia in Kosovo. This is further developed in the different constitutional provisions, including Article 114, which prescribes the text of the oath of the President of Serbia,<sup>52</sup> repeated then in the Law on the Government of Serbia.<sup>53</sup> Not only does it set a *ligne rouge* that high state officials cannot cross, but it furthermore obliges them to *direct all their efforts* to preserve Kosovo as a constituent part of Serbia. It essentially means that the highest state officials, albeit having wide

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49 The term Kosovo and Metohija is used in official documents of the Republic Serbia, including its Constitution. Term Metohija labels a geographical area. In this paper the term Kosovo will refer to both.

50 GAJIĆ, A, International legal status of Kosovo and Metohija and Serbia's accession to the EU, Faculty of Law University of Belgrade: Belgrade, 2018, p.177.

51 The Preamble of the 2006 Serbia Constitution, emphasis added.

52 Article 114 of the Serbian Constitution reads as follows: "I do solemnly swear that I will devote all my efforts to preserve the sovereignty and integrity of the territory of the Republic of Serbia, including Kosovo and Metohija as its constituent part, as well as to provide exercise of human and minority rights and freedoms, respect and protection of the Constitution and laws, preservation of peace and welfare of all citizens of the Republic of Serbia and perform all my duties conscientiously and responsibly".

53 Serbian Law on Government, Službeni Glasnik RS, No. 55/2005, 71/2005 - ispr., 101/2007, 65/2008, 16/2011, 68/2012 - odluka US, 72/2012, 7/2014 - odluka US i 44/2014.

discretionary powers, may breach the Constitution, if do not adhere to the oath prescribed in Art. 114 of the Constitution. Moreover, pursuant to Article 118 of the 2006 Constitution, the President of Serbia can be dismissed “for the *violation of the Constitution*, following a decision of the National Assembly voted by at least at least two thirds of the deputies”.<sup>54</sup>

Article 182 of the Constitution defines Kosovo as an autonomous province within Serbia. This Article envisages that “the *substantial autonomy* of the Autonomous province of Kosovo and Metohija shall be regulated by a special law”.<sup>55</sup> Since the adoption of the Constitution in 2006 there has been no attempt to pass such law, undoubtedly due to, inter alia, the requirement that this law should be adopted in accordance with the procedure envisaged for the amending of the Constitution.<sup>56</sup>

The precise legal implications of the aforementioned constitutional provisions are unclear. Firstly, the problem lies in the fact that neither the Constitution nor any other legal act define the phrase “substantial autonomy”. It is thus left unanswered what it entails in practice. “Potential interpretation given by the Constitutional Court would not lead to legal certainty or fairness, since the intention of the constitutional drafters remains undisclosed”.<sup>57</sup> Secondly, as both the Preamble and Article 182 provide for the *substantial autonomy* of Kosovo, high state officials are required to *protect and preserve the interests of Serbia in Kosovo*. Naturally, this obligation entails a reasonable margin of discretion due to the given circumstances, but, nonetheless, has legal implications on their work. For instance, pursuant to these two provisions, none of the Serbian officials is entitled to recognize the independence of Kosovo without changing the Constitution.<sup>58</sup> Finally, it remains to be determined to what extent the Preamble should be taken into account in the interpretation of the substantive provisions of the Constitution. Whilst there is no case-law on the matter, it could be argued that certain substantive provisions that refer to the autonomous provinces of Serbia<sup>59</sup> would need to

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54 Article 118 of the 2006 Serbia Constitution, emphasis added.

55 Emphasis added.

56 Article 203(1)(2) of the Constitution reads as follows: “A proposal to amend the Constitution shall be adopted by a two-third majority of the total number of deputies. The National Assembly shall adopt an act on amending the Constitution by a two-third majority of the total number of deputies and may decide to have it endorsed in the republic referendum by the citizens”.

57 GAJIĆ, A, *supra* note 49, p.180.

58 *Ibid.*, p.186.

59 Namely, Art. 99, Art. 105, Art. 137, and the Part Seven on ‘Territorial Organisation’ of the Serbian Constitution.

be interpreted in light of the Preamble. Such a discussion remains, at least for the time being, purely theoretical, since the Constitutional Court has yet to rule on the matter.

It is appropriate to add that the Kosovo provisions in the Serbian Constitution became an important part of the constitutional identity, along with the political order, of Serbia. Through the Preamble and the above mentioned constitutional provisions, the principles of sovereignty and territorial integrity are firmly embedded in the highest legal act of the Serbian legal order. Indeed, the primary reason for introducing these safeguard clauses was to constitutionally define the Serbian position for the forecoming Kosovo status negotiations. Yet, taking into account the Serbian aspiration to join the EU, these provisions need to be assessed in the light of the EU pre-accession context, as will be done in the sub-chapter 3.2.4.

### **3.2.2. European Integration Process of Serbia**

The basic instrument of EU policy towards the Western Balkans is the Stabilization and Association Process (hereinafter: SAP), which is based on the conclusion of Stabilization and Association Agreements (SAA). Both Serbia and Kosovo participate in the SAP.

With the fall of the Milošević regime in 2000, Serbia turned towards the Euro-Atlantic integration. The application for membership was submitted in 2009, and the March 2013 European Council granted Serbia the candidate country status, whilst the negotiations were formally opened in January 2014.<sup>60</sup> The SAA between the EU and Serbia<sup>61</sup> was signed on 29 April 2008, and entered into force only on 1 September 2013. It is Serbia's key international agreement reflecting its aspiration to join the EU. The SAA encompasses the comprehensive preparations for EU membership and will be in force until Serbia joins the EU. The European Council decided already in December 2013 to open the negotiations with Serbia, but the first chapters were opened only in December 2015.<sup>62</sup>

However, unlike the previous EU enlargement processes, where negotiating Chapter 35 ('Other issues') was of the least importance, in Serbia's case it is undeniably of immense significance. The Chapter 35 contains the item

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60 So far, Serbia has opened 14 negotiation chapters and temporarily closed 2. (November 2018)

61 Stabilisation and Association Agreement between The European Communities and Their Member States Of The One Part, And The Republic Of Serbia, Of The Other Part, [2013] O.J. L 278.

62 See more at: <http://www.consilium.europa.eu/media/21901/press-release-accession-conference-with-serbia.pdf>, accessed on 01.11.2018

‘Normalization of relations between Serbia and Kosovo\*’ and is being linked with the Serbia-Kosovo Brussels dialogue conducted under the auspices of the High Representative.<sup>63</sup> Furthermore, the Chapter 35 was the very first opened and quite probably will be the last one to be closed, conditioning the Serbia’s whole accession process to the EU.<sup>64</sup>

“If progress in the normalization of relations with Kosovo significantly lags behind progress in the negotiations overall, *due to Serbia failing to act in good faith, in particular in the implementation of agreements reached between Serbia and Kosovo*, the Commission will propose to withhold its recommendations to open and/or close other negotiating chapters, and adapt the associated preparatory work, as appropriate, until this imbalance is addressed”.<sup>65</sup>

It therefore follows from all the above that the *normalization process* between Serbia and Kosovo is the essential requirement of Serbia’s progress towards the EU membership, which can condition the whole EU accession process.

Lastly, it should be pointed out that the 2018 EC Enlargement Strategy states that “in Serbia’s case, the interim benchmarks<sup>66</sup> related to the normalization of relations with Kosovo (chapter 35) must be met and a *comprehensive, legally-binding normalization agreement concluded urgently*”.<sup>67</sup> Whilst the form is well known (legally binding agreement), the content remains to be decided. The ultimate objective is in essence that this agreement shall enable the unhindered integration of both Serbia and Kosovo into the EU.

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63 Conference on Accession to the European Union – Serbia, European Council Common Position, Chapter 35: Other Issues, Item 1 Normalization of relations between Serbia and Kosovo (This designation is without prejudice to position on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration on independence), Brussels, 30 November 2015, AD 12/15 CONF-RS 1/15 (<http://data.consilium.europa.eu/doc/document/AD-12-2015-INIT/en/pdf>).

64 GAJIĆ, A, *supra* note 49, p.118.

65 Conference on Accession to the European Union – Serbia, *supra* note 62, p. 2; emphasis added.

66 Benchmarks serve as tools for evaluating the readiness of the CCs by setting specific targets for opening and closing of *acquis* chapters and form part of the programming and monitoring task of the Commission.

67 Commission Communication of 6 February 2018 “A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”, *supra* note 4; emphasis added.

### 3.2.3. Relevant Provisions of the 2008 Kosovo Constitution and Kosovo's EU integration process

As indicated above, Kosovo has declared independence on 17 February 2008, whilst the Constitution was ratified on 9 April 2008 and came into force on 15 June 2008. Since it is the very first Constitution after the declaration of independence, it logically contains very strong provisions relating to the sovereignty, territorial integrity and independence of Kosovo. Article 1(1) proclaims that “[T]he Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible state”.<sup>68</sup> Moreover, Article 2(2) states that “[T]he sovereignty and territorial integrity of the Republic of Kosovo is *intact, inalienable, indivisible* and protected by all means provided in this Constitution and the law”.<sup>69</sup>

It is noteworthy how often the 2008 Kosovo Constitution insists on the *sovereignty and independence* of the Republic of Kosovo. Specifically, there are three constitutional provisions related to Kosovo's sovereignty, whilst one article explicitly mentions that Kosovo is an independent state. It comes as no surprise, taking into account the circumstances in which this constitution was drafted. Nevertheless, it clearly indicates the constitutional choices regarding Kosovo's status and leaves no room for discretion about the potential negotiation regarding its sovereignty or independence.

Furthermore, it has already been pointed out that Kosovo is part of the Stabilization and Association Process (SAP). Even though five EU Member States have not recognized Kosovo<sup>70</sup> as an independent state, “the absence of an agreed position on Kosovo's status does not prevent the EU from substantial engagement with Kosovo”.<sup>71</sup> The official slogan regarding Kosovo is “diversity on recognition but unity in engagement”,<sup>72</sup> which thus allows the EU to act based on this principle without dealing with the question of Kosovo's status.

In line with that, the SAA between the European Union and the European Atomic Energy Community, of the one part, and Kosovo\*, of the other part,

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68 Article 1(1) of the 2008 Kosovo Constitution.

69 Article 1(2) of the 2008 Kosovo Constitution; emphasis added.

70 Cyprus, Greece, Slovakia, Spain and Romania have not recognized Kosovo's independence.

71 Communication from the Commission to the European Parliament and the Council – Kosovo – Fulfilling its European Perspective, Brussels, 14.10.2009, COM (2009) 534, 2.

72 ELSUWEGE, Van P, “Legal Creativity in EU External Relations: The Stabilization and Association Agreement Between the EU and Kosovo”, *European Foreign Affairs Review*, 3/2017, p.394.



entered into force on 1 April 2016.<sup>73</sup> Even though association agreements are in principle mixed agreements, which require ratification by national parliaments, since five MSs do not recognize Kosovo as a state, this is the only SAA which is in the *EU-only* format.<sup>74</sup> “The choice for mixity is not necessarily a result of legal orthodoxy but frequently the consequence of crude political interests on behalf of the MS”.<sup>75</sup> In the given case, the EU showed a significant dose of legal creativity and flexibility to achieve the enlargement objectives.

Finally, it is necessary to mention that Article 13 of the EU-Kosovo SAA obliges Kosovo to commit to “a visible and sustainable improvement in relations with Serbia”.<sup>76</sup> Moreover, this Article confirms that the Serbia-Kosovo Brussels dialogue shall “lead to the comprehensive normalization of relations between Kosovo and Serbia, in the form of a legally binding agreement”.<sup>77</sup>

It is clear from the foregoing that both Serbia and Kosovo have as a pre-accession criterion the conclusion of a *comprehensive, legally binding agreement on normalization of relations*. Moreover, in the EU-Kosovo SAA, Article 13 thereof further elaborated on the matter, stating that the agreement “shall ensure that both can continue on their respective European paths, whilst avoiding that either can block the other in these efforts”.<sup>78</sup>

### 3.2.4. The Tension between the Constitutional Order and the Reality of European Integration

Having outlined both the Serbian constitutional provisions and the EU pre-accession criteria, it seems that this normalization agreement requirement might be in conflict with the Serbian constitutional order. As it stems from the foregoing analysis, the 2006 Serbia Constitution defines the Kosovo's position as an autonomous province which enjoys the *substantial autonomy* (the Preamble and Article 182). On the other hand, the *conditio sine qua non* for European integration is the normalization agreement between Serbia and Kosovo.

Firstly, it would be appropriate to mention that the question of adequate legal

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73 Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo \*, of the other part, [2016] O.J. L 71

74 GAJIĆ, A, *supra* note 49, p.145

75 ELSUWEGE, Van P, *supra* note 71, p.403.

76 SAA between the EU and Kosovo \*, *supra* note 72, Article 13(1).

77 *Ibid.*, Article 13(1).

78 *Ibid.*, Article 13(1).

framework for the conclusion of this agreement is crucial and still remains 'open',<sup>79</sup> as Serbia does not recognize Kosovo as an independent state.

Secondly, even though there is no *à la carte* model or action points as to what this comprehensive normalization agreement should encompass, it is possible to presume certain elements, namely the non-blocking of Kosovo's EU integration and membership of other international institutions, such as the UN. By 'enabling' Kosovo to accede international organizations, such as the EU or the UN, or to conclude international agreements, Serbia would *de facto* recognize Kosovo's independence. Hence, the term *normalization* of relations could be interpreted in that regard as a substitute for the term *recognition*. Consequently, the comprehensive normalisation agreement would, ultimately, represent a serious breach of Serbia's constitutional order.

It follows from all of the above that the prospective normalization agreement between Serbia and Kosovo would be in collision with the present Serbian constitutional order. The problems that emerge with simultaneous comparison of the 2006 Serbia Constitution and the EU pre-accession criteria are something that needs to be addressed at the constitutional level. In order to remedy the situation and to respond to all legal challenges that the EU accession requires, Serbia has to show readiness to amend those conflictual constitutional provisions, namely the Preamble, Article 114 and Article 182. Yet, the choice between *Scylla and Charybdis* - in other words, the choice between EU integration and maintaining the current constitutional arrangements - would represent a political rather than a legal decision. Lastly, this analysis has shown that resolving the Kosovo issue defines and conditions the progress in the field of European integration. In that respect, the constitutional adaptation is a necessary step for the further continuation of Serbia's EU integration. The "law can lead opinion and influence social attitude"<sup>80</sup> and the respective constitutions can in that sense offer guidance for the conclusion of the normalization agreement.

### 3.3. Recognition Revisited – Comparative Experience

The SAP for Serbia and Kosovo imply the conclusion of the comprehensive agreement on normalization of relations, as set out in Negotiation Chapter 35 and the EU-Kosovo SAA respectively. However, the only substantial provision

79 GAJIĆ, A, *supra* note 49, p.196.

80 JACOBS, F, "The Constitutional Impact of the Forthcoming Enlargement of the EU: What Can Be Learnt from the Experiences of the Existing Member States", in KELLERMAN, A., DE ZWANN, J. W, CZUCZAI J. (eds.), *EU Enlargement: The Constitutional Impact at EU and National Level*, T.M.C. Asser Press: The Hague, 2001, p.88.

that can be drawn from these instruments is the so-called *non-blocking criterion*. As previously indicated, the aim of the comprehensive agreement is to allow the unhindered EU integration process for *both* Serbia and Kosovo. Given the fact that five EU Member States do not recognize Kosovo as an independent state, this agreement must thus facilitate the process of Kosovo's *recognition* by them and its accession to the EU. Moreover, due to Serbia's stance, there is no Kosovo's membership to the UN until this very day. Since it is perceived as the symbol of the international recognition, UN membership is a *red line* for Serbian authorities. Besides the UN and the EU, the membership in other international fora might pose a problem and this agreement should thus provide for a general solution in these cases.<sup>81</sup>

Despite the Serbian firm position on Kosovo's status, the interim solution has been found in the use of asterisk.<sup>82</sup> Still, since the EU membership is at stake, it is undoubted that Kosovo *must be recognized* by all current Member States. The situation where there is one prospective member state which is not recognized by all the others is hardly conceivable since principles of mutual recognition and sincere cooperation are at the heart of the EU legal order. Furthermore, due to the accession process under Article 49 TEU, the Member States remain from the beginning till the very end the masters of the game. Hence, it leaves no room to circumvent the possible blocking of any MS.<sup>83</sup> In essence, it means that the forthcoming agreement has to find a way, both in political and legal terms, to allow the unhindered EU integration of Kosovo, which implicates the acceptance of its international status by both Serbia and five EU MS.

Since the main issue for Serbian authorities is indeed the formal, official, *de iure* recognition of Kosovo's independence, it might be useful to look what has been done in comparative contexts in the past. In particular, during the various negotiations since the end of Kosovo war in 1999, the quest for alternative solutions of Serbia-Kosovo relations has been on the table. For the sake of consistency and due to the constrains of this analysis, it

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81 The membership in international organizations, such as UNESCO, is often on the agenda whenever the annual meeting of such organizations take place. Thus far, Serbia has blocked with success any attempt of Kosovo to join UNESCO or INTERPOL, whereas in majority of international sport federations Kosovo is a member, i.e. FIFA or International Olympic Committee

82 The asterisk refers to the following footnote: 'This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.', which has been agreed as the status neutral designation for Kosovo in the scope of the Brussels dialogue.

83 Due to the name issue, Macedonia's EU integration has been practically blocked by Greece for more than a decade.

is impossible to mention and elaborate all of them. Thus, the analysis will focus on the cases of two agreements concluded between West and East Germany, and between the United Kingdom and Ireland in 1972 and 1998 respectively.

### 3.3.1. The 1972 German Basic Treaty

The comparison of Serbia-Kosovo issue with the solution of two Germanies in the Cold War period is the most mentioned. The reason lies in the 1972 German Basic Treaty<sup>84</sup> between the Federal Republic of Germany and the German Democratic Republic which in essence restored the diplomatic relations between West and East Germany *without* the formal recognition. As Article 2 of the Treaty stipulates:

“The Federal Republic of Germany and the German Democratic Republic will be guided by the purposes and principles laid down in the United Nations Charter, especially those of the sovereign equality of all States, *respect for their independence*, autonomy and territorial integrity, the right of self-determination, the protection of human rights, and non-discrimination.”<sup>85</sup>

As underlined, the treaty meant that both states can be members of the UN as the most significant international forum, yet without mutual recognition. The Treaty was indeed a milestone in the relation between the two Germanies, as it found a legal and political solutions for mutual cooperation and development of good neighbourly relations. Nonetheless, the treaty did put an emphasis on the *each other's independence*, as the Article 6 reads as follows:

“The Federal Republic of Germany and the German Democratic Republic proceed on the principle that the sovereign jurisdiction of each of the two States is confined to its own territory. They respect each other's independence and autonomy in their internal and external affairs.”<sup>86</sup>

This could constitute the source of considerable inspiration for Serbia to

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84 The Basis of Relations Treaty, or Basic Treaty as it became known, was signed by East Germany and West Germany in December 1972. Signed at the peak of Ostpolitik, the treaty acknowledged the sovereignty of the two nations, restored diplomatic communications and paved the way for good neighbourly relations.

85 Treaty on the Basis of Relations Between the Federal Republic of Germany and the German Democratic Republic and Supplementary Documents, 21 December 1972, Article 2; emphasis added.

86 *Ibid*, Article 6

settle the deal with Kosovo, since it did not entail formal recognition. As both Germanies agreed upon, the treaty provided for the exchange of permanent missions and facilitated the communication.

Notwithstanding the possible inspiration, it has to be emphasised that this model is hardly applicable in the case of Serbia and Kosovo due to at least two reasons. Firstly, the difference in the nature of the UN and the EU is striking and their internal functioning prevents a direct transposition. Whilst the UN is the biggest world forum with differentiated membership,<sup>87</sup> the EU is a sui generis international organization with specific internal rules and functioning. These rules imply that all the member states have to recognize each other. It would thus be hardly imaginable to foresee the European Council meeting where two member states representatives do not recognize each other in full capacity. Despite the possible parallel with the numerous meetings where indeed both Serbian and Kosovar representatives take part, the EU ultimately can only take in its membership European *states*.<sup>88</sup>

Secondly, the aim of the agreement is substantially different and cannot be transposed to the Serbia-Kosovo agreement. In fact, the objective of the agreement was expressed in a rider to the treaty submitted by the West German government, which maintained its determination to work for the reunification of Germany:

“In connection with today’s signing of the Treaty concerning the Basis of Relations between the Federal Republic of Germany and the German Democratic Republic, the Government of the Federal Republic of Germany has the honour to state that this Treaty does not conflict with the political aim of the Federal Republic of Germany: to work for a state of peace in Europe in which the German nation will regain its unity through free self-determination.”<sup>89</sup>

As the historical context, ethnic situation and political complexity differ from the German case, the possibility to apply the same model of agreement to the Serbia-Kosovo process seems unlikely. It is thus evident that the difference in the nature of the UN and the EU as well as the different context and aim of the agreement prevent its replication. Yet, certain provisions can serve as the inspiration for the Serbia-Kosovo agreement. Namely, the treaty provisions

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87 For instance, the observer status as is in the case of Palestine.

88 Article 49 of the Treaty on European Union.

89 A rider to the Treaty on the Basis of Relations Between the Federal Republic of Germany and the German Democratic Republic.

on inviolability of territorial integrity, dispute resolution,<sup>90</sup> security matters,<sup>91</sup> could serve as the model provisions for the forthcoming agreement.

### 3.3.2. The 1998 Good Friday Agreement

Furthermore, inspiration could be found in the normalization agreement between the United Kingdom and the Republic of Ireland. The Belfast Agreement, also known as *Good Friday Agreement*,<sup>92</sup> was signed on 10 April 1998 between the UK and the Republic of Ireland establishing the peace after 'The Troubles' and providing for some concrete institutional solutions. As for the previous case, the Good Friday Agreement cannot be replicated in the Serbia-Kosovo case due to the specific context of Northern Ireland. Moreover, a substantial difference would lie in the very fact that the Good Friday Agreement recognizes:

“The legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland.”<sup>93</sup>

Whilst the Good Friday Agreement acknowledges the right of self-determination in its substantial part on constitutional issues, such a clause could not be included in the Serbia-Kosovo agreement as Serbia has denied Kosovo's right of self-determination from the very beginning of the process of dissolution of Yugoslavia in the 1990s. It thus remains to examine the other provisions of the agreement.

Indeed, the Good Friday Agreement can provide examples of creative institutional solutions, as well as model of constitutional amendments, minority safeguards, and human rights protection. First and foremost, the constitutional adaptations in the Irish case could be in many respects comparable with the Serbian. The 1937 Constitution of Ireland<sup>94</sup> has been substantially amended, including as regards the territory of Ireland. The pre-agreement provision read as follows: “The national territory consists

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90 *Supra* note 84, Article 3.

91 *Supra* note 84, Article 5.

92 The Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, or commonly known as the Belfast/Good Friday Agreement. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/136652/agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf), accessed on 01.11.2018.

93 *Ibid*, Article 6(1)(i).

94 Available at: <http://www.irishstatutebook.ie/eli/cons/en>, accessed on 01.11.2018.

of the whole island of Ireland, its islands and the territorial seas.”<sup>95</sup> After the approval of the agreement by referendum, Article 2 has been amended, omitting the territorial scope of the Republic of Ireland, and now reads as follows:

“It is the entitlement and birth right of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage.”<sup>96</sup>

The current provision has thus used a creative approach by relying on the affiliation to the Irish nation, broadening the scope of its application not only to the people born on the island of Ireland, but also to the numerous Irish diaspora living abroad. It has therefore preserved the national pride and the red line of the indivisibility of the island, yet reconciled with the reality on the terrain. This example could thus serve as a role model for the necessary amendment of the 2006 Serbia Constitution, namely the Preamble, Article 114 and Article 182, as argued before. Bridging the national constitutional identity requirement and the *realpolitik*, the example of Article 2 of the Irish Constitution is amongst the most suitable ones for the Serbian case. Lastly, it is a truly superb example of what in practice the legal creativity could mean.

### **3.4. Legal Recommendation for the Agreement - Legal Creativity and Procedural Manoeuvring**

The above analysis has proved that the constitutional amendments are necessary for the forthcoming adoption of a comprehensive agreement on normalization of relations between Serbia and Kosovo. It is indispensable in order to create an adequate legal framework within the Serbian legal order where that agreement could possibly fit.

Yet, the crucial question *vis-à-vis* the agreement is its substance. Despite the existence of a series of agreements signed after the launch of the Brussels dialogue in 2011, including the seminal 2013 Brussels Agreement, this one is meant to be *comprehensive*. Thus, it should in principle regulate all the unresolved issues and provide a viable solution for the potential conflicts in the interpretation of the agreement. More than the question of the form

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<sup>95</sup> *Ibid*, Article 2. before the Nineteenth amendment.

<sup>96</sup> *Ibid*, Article 2.

of the agreement, its substance raises a number of issues. What issues should be encompassed in the agreement? Is the recognition of Kosovo a prerequisite for a comprehensive solution? How to insure the implementation of the agreement, knowing that the previous ones have not been fully implemented in practice? Which authority will be in charge in case of the breach of the agreement? This sub-chapter thus looks into the possible form of the agreement, procedural requirements for the ratification, as well as offering some general guidelines and substantive recommendations for the agreement.

### 3.4.1. Form of the Agreement

When it comes to the form and wording of the agreement, the abovementioned examples prove that it should be in the form of a treaty. Furthermore, the semantic clarity and legal neatness of the agreement are of the utmost importance, in order to prevent any possible misunderstanding. Additionally, the agreement should be *comprehensive*. It might be the most difficult criterion to fulfil, as it is not clear what is meant to be the comprehensive list of areas to be covered. Yet, the authors are of opinion that it would be best to include all the substantive areas mentioned below in the agreement, so as not to leave the core problems unaddressed.

Regarding the legal framework in which the agreement could be concluded, it should not pose a problem since the signing of an agreement does not represent a recognition per se. This is proved by the agreements already signed in the scope of the Brussels dialogue. Moreover, there are already examples of certain multilateral agreements where both Serbia and Kosovo are contracting parties.<sup>97</sup> It is thus a clear-cut position for both contracting parties and the form should not raise any concern in these regards.

### 3.4.2. Adoption of the Agreement – Procedural Manoeuvring

At the outset, it should be noted that the issue of a people's vote on the agreement between Serbia and Kosovo has been discussed publicly for some time.<sup>98</sup> Although there is no legal obligation for conducting a referendum, the complexity and social embodiment of the Kosovo issue would imply that

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97 Both Republic of Serbia and Kosovo are contracting parties of CEFTA agreement, Agreement on the Establishment of the Fund for the Balkan, Agreement on the Establishment of the Regional Youth Cooperation Office, etc.

98 Both the legal experts and state officials agree on the fact that Serbia must hold a referendum on the agreement with Kosovo. See more: <http://www.balkaninsight.com/en/article/serbia-must-hold-kosovo-deal-referendum-experts-say-08-29-2018>



there must be a referendum.

The comparative experience suggests a referendum for such a crucial national question, such as the referendum in Ireland regarding the Belfast/*Good Friday Agreement* or the 2018 Macedonia referendum on the name dispute.<sup>99</sup> The latter could be a good example for the prospective referendum in Serbia, since there was no a legal obligation to conduct it. Indeed, the nature of the Macedonian referendum was *consultative*, providing a reasonably comfortable position for the government. The situation would be different if the agreement required constitutional amendments, which would make conducting a referendum a mandatory requirement.

In Serbia, pursuant to Article 203(1), a proposal to amend the constitution “may be submitted by at least one third of the total number of deputies, the President of the Republic, the Government and at least 150,000 voters”.<sup>100</sup> It leaves the possibility to a group of citizens to initiate the referendum unless the government does so. Be that as it may, referendum should be used to verify and confirm fundamental choices. A political consensus is hence a prerequisite for the smooth accomplishment of the desired results.

Regardless of the strict referendum requirements, which *inter alia* includes a minimum turnout of 50 percent, the question remains as to whether the referendum on the Kosovo agreement as such and the constitutional amendments required to attain it should be merged or split. Given the possible difficulties to reach the political consensus on the agreement with Kosovo and meet the referendum criteria, it seems practical to conduct just one referendum that would approve both the agreement and the amendments. The successful end-game can be preceded by a series of procedural manoeuvres that can be taken. Indeed, procedural creativity could be necessary to attain the desired aim. This could entail the amendment of referendum rules by lowering the turnout requirement, the extension of the referendum over two days, and the carefully chosen timing of the referendum. Thus, the pragmatic approach and reasonable solution would doubtlessly call for the undertaking of such a joint referendum.

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99 After signing the Prespa Agreement in June 2018 on the name dispute settlement, Macedonia has conducted a consultative referendum on 30 September 2018

100 Article 203(1) of the Serbian Constitution.

### 3.4.3. General Guidelines and Recommendations for Substantive Provisions of the Agreement

In the light of the foregoing analysis, there will be offered four general guidelines before putting forward five potential recommendations for the substantive provisions for the forthcoming Serbia-Kosovo comprehensive, legally binding agreement on normalization of relations. More precisely, the general guidelines will tackle the following issues: (1) **comprehensiveness and clarity of the agreement**; (2) **mechanism for dispute resolution and monitoring of the implementation**; (3) **implementation timeline**; (4) **EU values-based**.

First and foremost, despite its *comprehensiveness*, the scope and length of the agreement should not be excessive. Hence, the agreement should give the general direction, set the tone, and provide the answers for the main outstanding questions such as mutual recognition and integration in international fora. Furthermore, the agreement ought to cover all the technical specificities and particular issues, i.e. property rights, education, telecommunications, as elaborated in this analysis.

Secondly, one substantive provision shall enshrine the international guarantees that would serve as the mechanisms for dispute resolution and monitoring of the implementation of the agreement. The need for this international monitoring is twofold. Firstly, it is crucial to ensure that the new agreement is fully implemented since the previous agreements in the scope of the Brussels dialogue seemed to fail in that regard. The most striking example is the non-implementation of the seminal 2013 Brussels Agreement, which foresees the foundation of the Community/Association of the Serb majority municipalities in Kosovo. For more than five years since its entry into force, the non-implementation of this provision has caused frequent heated political debates between Serbia and Kosovo.<sup>101</sup> Secondly, the potential conflict over the interpretation of the agreement requires clear-cut guidelines on the dispute resolution mechanism. It should be thus welcomed that some kind of supranational authority oversees the process and serves as the impartial institution dealing with complaints. In that regard, the possible models could be the Office of High Representative in Bosnia and Herzegovina, or International Civilian Representative, as foreseen by the Ahtisaari Plan.<sup>102</sup>

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101 See for instance: <http://www.balkaninsight.com/en/article/vucic-asks-kfor-to-prevent-infrastructure-objects-takeover-08-03-2018>, accessed on 01.11.2018.

102 Annex IX of the Ahtisaari Plan has the title International Civilian Representative.

Thirdly, even though it would be relatively unusual for this type of international agreement, an implementation timeline should be included therein. Given the number of unimplemented measures from previous agreements in the scope of the Brussels dialogue as elaborated above, and the ineffectiveness of the European Union to execute it on the ground, the need for precise and realistic timeline is undoubted. This timeline would provide the possibility to oversee the implementation process more effectively. Furthermore, it would allow for the more merit-based assessment of the normalization of relations in the EU accession process since the progress could be more closely verified.

Lastly, the agreement should be based on the EU's fundamental values enshrined in the Treaties<sup>103</sup> and the Charter of Fundamental Rights of the European Union. It essentially presupposes that values of respect for human rights and human dignity, freedom, democracy, equality, and rule of law are amongst the foundational basis of the normalization agreement. Since no country that disrespects these rules can accede to the EU, it will certainly foster the EU integration path of both Serbia and Kosovo. Ultimately, not only will this bring both Kosovo and Serbia closer to the EU membership, but it will also create a sustainable framework for the betterment of both societies and their citizens.

Having outlined the general recommendations, it is now necessary to turn to the core of the agreement. The substantive provisions are certainly the most important part, as they will shape the future relations and pave the way for the normalization of the relations, which is the proclaimed aim of the agreement. Be that as it may, there is a need for a specific dissection of crucial provisions which will substantially contribute to the process of normalization of relations between Serbia and Kosovo. These provisions should tackle the following issues: (1) **reconciliation**; (2) **non-blocking clause**; (3) **minority safeguards**; (4) **joint institutional framework**; (5) **legal transition**. Each and every of these substantive recommendations deserves further clarifications.

Reconciliation is undoubtedly the prerequisite of the process of normalization

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103 Article 2 of the Treaty on European Union reads as follows: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail." Moreover, Article 6 TEU stipulates the binding character of various human rights instruments, namely the Charter of Fundamental Rights, European Convention for the Protection of Human Rights, and fundamental rights and freedoms as they result from the constitutional traditions common to the MS.

of relations. Since the end of the 1998-1999 war, Serbia-Kosovo relations have been marked by the high level of tensions, whilst the ethnic distance between Serbs and Albanians is growing.<sup>104</sup> The failure to bring justice to victims and the impossibility to provide a fair and impartial trial for war crimes perpetrators has led to the foundation of the Kosovo Court Specialist Chamber which is set in the Hague with the aim to bring to justice the members of Kosovo's Liberation Army.<sup>105</sup> Despite efforts of civil society, the post-Yugoslav countries still have not committed themselves to founding the REKOM<sup>106</sup> in order to make a comprehensive list of all victims and casualties during the Yugoslav wars. Furthermore, the mere fact that around 1.700 persons<sup>107</sup> are still missing is a testament to the duty incumbent on both Kosovo and Serbia vis-à-vis the victims and their families.

In addition, reconciliation is the criterion for the EU accession of the Balkan countries, spelled out in EU documents as 'good neighbourhood relations'. Indeed, in order to achieve good neighbourhood relations and mutual trust, the reconciliation appears to be the *conditio sine qua non* integration. It is therefore necessary to insert amongst the provisions the commitment to reconciliation with concrete measures to be taken, such as the establishment of REKOM, the prosecutions of war criminals, the finding of missing persons, the effectiveness of other mechanisms of transitional justice, and so forth. Not only will it facilitate the normalization of relations, but it will also surely contribute to the lasting peace between Serbia and Kosovo.

The second substantial provision is the non-blocking clause that should in essence enable the unhindered accession of Kosovo to different international fora, in particular the EU. As previously pointed out, the agreement "shall ensure that both can continue on their respective European paths, whilst

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104 The strongest level of ethnic distance in the former Yugoslavia was indeed registered in Kosovo. See more in the research of Milena Gligorijević "A Comparative Review of Past and Recent Surveys of Ethnic Distance Between Serbs and Albanians" in *Perspectives of a Multiethnic Society in Kosovo*, Youth Initiative for Human Rights, Belgrade-Pristina, 2015, pp. 271-287.

105 Kosovo Specialist Chambers were established by a Constitutional Amendment and a Law adopted by the Kosovo Assembly to conduct trials for allegations stemming from the 2011 Council of Europe report, which alleges serious violations of international law. See more at: <https://www.scp-ks.org/en>, accessed on 01.11.2018.

106 RECOM stands for the Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia from 1 January

107 Available at: <https://www.icmp.int/where-we-work/europe/western-balkans/kosovo/>, accessed on 01.11.2018.

avoiding that either can block the other in these efforts”.<sup>108</sup> This commitment was politically and legally reinforced in the scope of the Berlin Process by the signing of the Declarations of the 2015 Vienna Summit<sup>109</sup> and the 2018 London Summit.<sup>110</sup> Hence, it is a legal requirement in both the Serbian and Kosovar case for their respective EU integration processes. As a clear-cut criterion imposed by the EU, it is evident that it has to be embedded in the normalization agreement.

Furthermore, it should be a general and open clause, without the enumerative list of the potential international organizations or other fora that could be joined. In that way the provision can be generally applicable to all circumstances, whereas the particular solutions would require a new renegotiations each and every time. Since the ultimate aim is the *full normalization*, this non-blocking clause would permit further EU integration of both Serbia and Kosovo.

Third substantive provision should tackle the minority safeguards. Already the 2008 Martti Ahtisaari Plan<sup>111</sup> envisaged the broad scope of minority protection for the Kosovo Serbs. Amongst the most prominent provisions, the protection of human rights and fundamental freedoms, the non-discrimination clause, institutional mechanisms, and the rights of communities are at the very high level of protection. The Ahtisaari Plan furthermore stipulated the establishment of the decentralized Serb municipalities:

“To address the legitimate concerns of the Kosovo Serb and other Communities that are not in the majority in Kosovo and their members, encourage and ensure their active participation in public life, and strengthen good governance and the effectiveness and efficiency of public services throughout Kosovo, an enhanced and *sustainable system of local self-government in Kosovo* shall be established.”<sup>112</sup>

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108 SAA with Kosovo, *supra* note 72, Article 13(1).

109 Final Declaration by the Chair of the Vienna Western Balkans Summit on 27 August 2015. Available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/policy-highlights/regional-cooperation/20150828\\_chairmans\\_conclusions\\_western\\_balkans\\_summit.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/policy-highlights/regional-cooperation/20150828_chairmans_conclusions_western_balkans_summit.pdf), accessed on 01.11.2018.

110 Western Balkans Summit London 2018 Declaration, signed on 10 July 2018. Available at: <http://wb-csf.eu/wp-content/uploads/2018/07/Joint-Declarations-signed-at-the-Leaders-Meeting-of-the-Western-Balkans-Summit-by-Berlin-Process-participants.pdf>, accessed on 01.11.2018.

111 Comprehensive Proposal for the Kosovo Status Settlement, or colloquially known as the Ahtisaari Plan, was proposed by Martti Ahtisaari at the end of the 2006-2007 negotiations. It was later rejected by the Serbian government. Available at: <https://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf>, accessed on 01.11.2018.

112 The Ahtisaari Plan, Annex on Decentralization; emphasis added.

The 2013 Brussels Agreement has foreseen the establishment of the Community/Association of Serb majority Municipalities<sup>113</sup> as the milestone provision meant to provide further institutional protection to Kosovo Serbs. “Whilst the 2013 Brussels Agreement is in essence quite technical, the Ahtisaari Plan saw Kosovo’s future as a multi-ethnic society, governed democratically and with the full respect of the rule of law and human rights.”<sup>114</sup> It is undoubted that the Ahtisaari Plan offers a broader spectrum of institutional safeguards and minority protection clauses than the Brussels Agreement. Yet, the issue lies in the fact that neither of these two documents has been entirely implemented.

It is therefore necessary that a new, comprehensive provision contains and encompasses the minority safeguards. Depending on the political outcome of the talks, it can either result in the further reinforcement of the provision on the Serb Community/Association or the creation of an alternative framework which would round off the rights of the Serbian community in Kosovo. In either case, the minority safeguards should be a solid instrument of the institutional protection for the Serbian minority, guarantying the fundamental rights enshrined in the international human rights instruments. Lastly, these rights should be incorporated in Kosovo’s constitution as to give them a more prominent role in the Kosovar legal system.

Fourthly, the normalization agreement should include a substantive provision founding the power-sharing joint institutional structure composed of both Serbia’s and Kosovo’s representatives. A good practice in that regard can be found in the *Good Friday Agreement*, where newly founded institutions serve as a forum for dialogue on political and legal issues. A similar model could be applied in this case *mutatis mutandis*. It would essentially entail the creation of: the Community/Association of Serb majority municipalities with competences in education, culture, economy, transportation, health care, and public order; the North-South Council, which could be a platform for the cooperation between Serbia and the Community/Association in the domain of its competences; and lastly the Serbo-Kosovar Council, which would be in charge of the institutional and minority protection questions, as well as the issues of the cultural heritage in Kosovo. The composition and the

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113 Article 1 of the Brussels Agreement reads as follows: “There will be an Association/Community of Serb majority municipalities in Kosovo. Membership will be open to any other municipality provided the members are in agreement.”

114 Balkans in Europe Policy Advisory Group’ action plan on how to move towards getting an agreement between Serbia and Kosovo. Available at: <https://www.neweurope.eu/article/getting-to-an-agreement-between-serbia-and-kosovo/>, accessed on 01.11.2018.

competences of such a Council would be a matter to be agreed by both sides. Yet, if established, the Councils should certainly gather the representatives of political authorities from both Serb and Albanian communities in Kosovo, civil society representatives, as well as the Serbian and Kosovar government envoys. They would thus guarantee the inclusiveness and legitimacy by encompassing a variety of opinions and views of different segments of society.

Finally, the fifth substantive provision ought to provide for a smooth legal transition. Given the high number of already reached agreements in the scope of the Brussels dialogue, there is a need for hierarchical clarity and legal neatness. In essence, the new agreement could annul some previously agreed agreements, or declare void just certain of their provisions. It is thus of the utmost importance to identify and incorporate the list of all effective legal instruments in order to bring legal safety and assertiveness in the whole normalization process. Furthermore, the legal transition process should provide for precise and unconditional deadlines for the entering into force of the new agreement, as well as reasonable transitional periods where necessary.

#### 4. CONCLUSION AND SOME FURTHER OPEN QUESTIONS

The present analysis sought to highlight the legal and political challenges and issues of reaching a comprehensive, legally binding agreement on normalization of relations between Serbia and Kosovo. The challenges that Serbia is facing are first and foremost stemming from the strong constitutional safeguard provisions regarding Kosovo. It has been pointed out that there is a conflict between the current Serbian constitutional order and the process of European Integration. Indeed, the latter requires the adoption of the normalization agreement with Kosovo, which, in turn, presupposes introduction of constitutional amendments. The analysis has demonstrated that Serbia must tackle the key constitutional issues, namely the Kosovo provisions and safeguards on territorial integrity, in order to pursue its EU integration path. Conducting a comprehensive constitutional adaptation process which would result in the amendment of the Kosovo provisions would clear the way for EU membership and ensure an appropriate legal framework for the forthcoming normalization agreement. Since there would be a symbiotic relationship between the Kosovo amendments and the EU integration process, a joint referendum could provide a stronger momentum for the attainment of the political consensus.

Furthermore, the analysis has shown that certain comparative experiences could provide inspiration for the constitutional amendments. By assessing the Good Friday Agreement, the conclusion could be drawn it could be useful to rely on legal creativity and semantic manoeuvring are desirable in order to deal with the serious issue of the territorial scope. "This is particularly important in the region where the constitutions 'are taken seriously', in the aftermath of the painful experiences of the past".<sup>115</sup> As the Irish model suggests, the switch from the territorial to the nation-based criterion for the definition of the scope of application of the Constitution seems as an optimal solution that could be applied *mutatis mutandis* to Serbia.

Particular emphasis was put on the question of formal recognition given its great sensitivity. Indeed, it has been demonstrated that *de iure* recognition represents the most sensitive issue for the Serbian authorities vis-à-vis the conclusion of the agreement. Whilst one could argue that the agreements reached in the scope of Brussels dialogue have severely fragmented or breached the sovereignty of Serbia in Kosovo, the question of formal recognition, usually colloquially put as *a seat at the UN*, remains one of the key issues. Whilst UN membership is certainly the most powerful incentive

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115 ALBI, A, *supra* note 9, p.423.



for Kosovo to (still) negotiate with Serbia, the Serbian side clearly states that it is a *red line*.

Thus, in order to reconcile these two distant positions, the analysis has proved that, due to various reasons, neither the case of two Germanies nor the Good Friday Agreement can be applicable to the case at hand. Yet, as the agreement is intended to clear the path for both Serbia and Kosovo to the EU, it must thus contain the provision on mutual recognition. The latter could possibly suffice, without any need for formal recognition, since it would already enable the usual diplomatic exchanges and sincere cooperation. Altogether, the outcome will equally depend on the readiness of the EU to accept that kind of deal. As long as there is a possibility to come up with some sort of creative solution, such as the asterisk approach, both contracting parties can meet their objectives. This hypothesis remains in the hands of all participants in the Brussels dialogue, the EU included, and depends on the approach they will take in the final stage of the negotiation process.

Lastly, having analysed both the legal context and the EU accession criteria, this paper offers legal recommendations regarding the form and the means of adoption before putting forward four general guidelines and nine substantive recommendations for the normalization agreement between Serbia and Kosovo.

The guidelines and recommendations are meant to facilitate the forthcoming drafting of the agreement by providing a set of useful legal instructions and fundamental choices that can contribute to the process of normalization of relations between Serbia and Kosovo. The general guidelines for the agreement are the following:

- (1) **Comprehensiveness of the agreement** – the agreement should encompass all the main outstanding questions such as mutual recognition and integration in international fora, as well as technical specificities and particular issues, i.e. property issues, cultural heritage, etc; the semantic clarity and legal neatness of the agreement are of the utmost importance, in order to prevent any possible misunderstanding;
- (2) **Mechanism for dispute resolution and monitoring of the implementation** - it is crucial to ensure that the new agreement is fully implemented since the previous agreements in the scope of the Brussels dialogue seemed to fail in that regard; clear-cut provisions for the dispute resolution, with the potential establishment of a

supranational body as the mechanism;

(3) **Implementation timeline** – the timeline would provide for the efficient overseeing of the implementation of the agreement; potential use as the criterion for EU accession process to assess the improvement in the normalization of relations;

(4) **EU values-based** – presupposes that values enshrined in the EU founding treaties and the Charter are amongst the foundational basis of the normalization agreement.

The substantive recommendations deal with the content of the agreement with the aim to provide for viable solutions for the open issues between Serbia and Kosovo. The substantive recommendations are the following:

(1) **Non-blocking clause** – general provisions regulating Kosovo's access to different international fora, in particular the EU and the UN, which could be achieved with or without formal recognition

(2) **Guarantees to the Serbian community in Kosovo** – the establishment of the ASM according to the 2015 Agreement, guarantees for the existing provisions of the Kosovo laws, and guarantees for fundamental rights enshrined in the international human rights instruments. This could be possibly linked with different safeguards for the Albanian minority in Serbia as well.

(3) **Protection of the Serbian cultural heritage** – the agreement should encompass the existing provisions of the Kosovo Law on special protective zones and others, with additional guarantees for the Serbian Orthodox Church regarding UNESCO World Heritage sites.

(4) **Basis for resolving property issues** – although it is impossible for the agreement to resolve all outstanding property issues, it must provide a platform, or a set of principles, according to which these could be addressed in the future.

(5) **Provisions on security and the KSF** – the agreement should include provisions on cooperation in security affairs and address the transformation of Kosovo Security Force's mandate into Kosovo Armed Forces, possibly with temporal or troop restrictions in the transitional period.

(6) **Steps towards reconciliation** – the agreement ought to address the issue of reconciliation, preferably by containing concrete measures to be taken, such as the establishment of REKOM or other joint commissions, the prosecution of war criminals, and the finding of missing persons. Reconciliation needs to be present in the agreement at least in the form of a declaration.

(7) **Provisions on cooperation** – in order to increase mutual trust and contribute to good-neighbourly relations between Serbia and Kosovo, the agreement should include mechanisms of cooperation in different areas, such as education, culture, sports and economy.

(8) **Joint institutional framework** – the creation of the power-sharing institutional framework taking into account the experience and good practices of the Good Friday Agreement, namely the Community/ Association of Serb majority municipalities, the North-South Council, and the Serbo-Kosovar Council, where each would serve as a forum for the political and legal questions and issues.

(9) **Legal transition** – the new agreement should clearly indicate which previous agreements will be declared void (or part of them) and provide for precise deadline regarding specific provisions of the normalization agreement, including reasonable transitional periods where necessary.

Finally, this list is not exhaustive nor pretends to be all inclusive. As the process of normalization of relations between Serbia and Kosovo might raise some unforeseen issues, the list would need to be adapted. Although *Athene* sprang fully armed from the head of *Zeus*, the normalization process will not be a *fait accompli* with the comprehensive agreement. The need for further work in that direction is more than necessary in order to surmount the normalization and reach the normalness.

## BIBLIOGRAPHY

ALBI, A, *EU Enlargement and the Constitutions of Central and Eastern European States*, Cambridge University Press: Cambridge, 2005.

ALBI, A, "Europe Articles in the Constitutions of Central and Eastern European Countries", (2005) *Common Market Law Review* 42, pp.399-423.

CZUCZAI, J, "Practical Implementation by the Acceding Candidate Countries of the Constitutional Acquis of the EU Problems and Challenges", in KELLERMAN, A., DE ZWANN, J. W, CZUCZAI J. (eds.), *EU Enlargement: The Constitutional Impact at EU and National Level*, T.M.C. Asser Press: The Hague, 2001, pp.411-422.

DE WITTE, B., "Enlargement and the EU Constitution", in M. CREMONA (eds.), *The Enlargement of the European Union*, Oxford University Press: Oxford, 2003, pp.209-252.

ELSUWEGE, Van P, "Legal Creativity in EU External Relations: The Stabilization and Association Agreement Between the EU and Kosovo", *European Foreign Affairs Review*, 3/2017, pp.393-410.

GAJIĆ, A, *International legal status of Kosovo and Metohija and Serbia's accession to the EU*, Faculty of Law University of Belgrade: Belgrade, 2018.

GLIGORIJEVIĆ, M, "A Comparative Review of Past and Recent Surveys of Ethnic Distance Between Serbs and Albanians" in *Perspectives of a Multiethnic Society in Kosovo*, Youth Initiative for Human Rights: Belgrade-Pristina, 2015, pp. 271-287.

JACOBS, F, "The Constitutional Impact of the Forthcoming Enlargement of the EU: What Can Be Learnt from the Experiences of the Existing Member States", in KELLERMAN, A., DE ZWANN, J. W, CZUCZAI J. (eds.), *EU Enlargement: The Constitutional Impact at EU and National Level*, T.M.C. Asser Press: The Hague, 2001, pp.183-194.

KER-LINDSAY, J. and ECONOMIDES, S (2012), 'Standards before Status before Accession: Kosovo's European Perspective', *Journal of Balkan and Near Eastern Studies*, Vol. 14, No. 1, pp. 77-92.

KER-LINDSAY, J. and ECONOMIDES, S (2015), 'Pre-accession Europeanization': the case of Serbia and Kosovo. *JCMS: Journal of Common Market Studies*, 53 (5). pp. 1027-1044.

OBRADOVIĆ- WOCHNIK, J. and WOCHNIK, A. (2013), 'Europeanising the "Kosovo Question": Serbia's Policies in the Context of EU Integration', *West European Politics*, Vol. 35, No. 5, pp. 1158-1181.

PHINNEMORE, D. (2013), 'The Stabilisation and Association Process: A Framework for European Union Enlargement?' in Elbasani, A. (ed) *European Integration and Transformation in the Western Balkans: Europeanization or business as usual?* (London: Routledge), pp. 22-37.

STEFANOVIĆ, A, "Constitutional Reform in Serbia and the Perspective of EU Membership: Europeanization of Serbian Constitutional Law", *Journal of Transdisciplinary Studies*, Volume 9, Belgrade, 2016, pp.39-52.

Advisory Opinion of 22 July 2010, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, I.C.J. Reports 2010

First Agreement of principles governing the normalization of relations, signed in Brussels on 19 April 2013, available at: <https://www.srbija.gov.rs/cinjenice/283757>, accessed on 01.11.2018.

Joint Declaration signed at the Leaders Meeting of the 2018 London Western Balkans Summit, available at: <http://wb-csf.eu/wp-content/uploads/2018/07/Joint-Declarations-signed-at-the-Leaders-Meeting-of-the-Western-Balkans-Summit-by-Berlin-Process-participants.pdf>, accessed on 01.11.2018.

Final Declaration by the Chair of the Vienna Western Balkans, signed 27 August 2015, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/policy-highlights/regional-cooperation/20150828\\_chairmans\\_conclusions\\_western\\_balkans\\_summit.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/policy-highlights/regional-cooperation/20150828_chairmans_conclusions_western_balkans_summit.pdf), accessed on 01.11.2018.

Balkans in Europe Policy Advisory Group paper "Getting to an Agreement between Serbia and Kosovo", published on 18 October 2018, available at: <https://www.neweurope.eu/article/getting-to-an-agreement-between-serbia-and-kosovo/>, accessed on 01.11.2018.

European Council Presidency Meeting in Copenhagen – Conclusion of the Presidency, 21-22 June 1993, [1993], SN 180/1

Council Decision 2008/119/EC on principles, priorities and conditions contained in the Accession Partnership with Croatia and repealing Decision 2006/145/EC, [2008], O.J. L 42/51.

Council Decision 2008/213/EC on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by UN Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC, [2008], O.J. L 80/11.

Communication from the Commission, A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, COM(2018) 65 final, Strasbourg, 6.2.2018.

Serbia 2018 Progress Report, SWD(2018) 152 final, Strasbourg, 17.4.2018.

Stabilisation and Association Agreement between The European Communities and Their Member States Of The One Part, And The Republic Of Serbia, Of The Other Part, [2013] O.J. L 278.

Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo \*, of the other part, [2016] O.J. L 71.

The Constitution of the Republic of Serbia, Službeni Glasnik RS, No. 98/2006.

Serbian Law on Government, Službeni Glasnik RS, No. 55/2005, 71/2005 - ispr., 101/2007, 65/2008, 16/2011, 68/2012 - odluka US, 72/2012, 7/2014 - odluka US i 44/2014.

United Nations Security Council Resolution 1244 on the situation relating Kosovo, S/RES/1244 [1999] 10 June 1999, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement> accessed on 01.11.2018.



# Centre for Contemporary Politics

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The Centre for Contemporary Politics is a civil society organisation from Belgrade, founded in 2012, whose activities are focused on democratization, European integration process and regional cooperation. The main goals of the organisation are development and promotion of democracy, the support for the EU integration process and the promotion of European values, as well as regional stability and cooperation. The vision of the organisation is democratic Serbia within united Europe.

The Centre for Contemporary Politics its program goals achieves through the publishing of research and other publications, organisation of events and through other media projects, as well as through youth education. The focus of the organisation is on the research part of its work and active involvement in Serbia's European integration process.

The Centre for Contemporary Politics is a founder of the portal European Western Balkans, a regional web portal in English language, on European integration of the countries of the Western Balkans, through which it realises its media projects.



## *European Western Balkans*

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European Western Balkans is a regional web portal specialized in European integration process of the Western Balkan countries, founded in Belgrade in 2014.

Besides European integration, portal follows the topics related to a common European future of the Western Balkans, such as regional cooperation, political stability and the enactment of reforms in key areas.

European Western Balkans is entirely independent and it is established by the Centre for Contemporary Politics, think tank based in Belgrade.

# Konrad Adenauer Foundation

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Konrad Adenauer Foundation (*Konrad Adenauer Stieftung*; KAS) is a German political organisation.

KAS operates independently in the areas of political consultancy and education. Since 1964, it has carried the name of the first German Federal Chancellor, whose principles Foundation sees as obligatory. Foundation is present in many countries of the world, and it has developed a network of Education centres across Germany. Serbia and Montenegro are currently in a phase of transition. There are many economic and social challenges that each citizen of these countries, including politicians, has to overcome.

Konrad Adenauer Foundation wants to accompany these processes in a positive spirit. Our seminars, workshops and conferences aim to contribute to better understanding of EU's principles, accountability of political parties and parliaments, conceptions of the rule of law and media freedoms. We are particularly addressing young and politically involved individuals.



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1. Burazer, Nikola, 1988- [аутор]

а) Бриселски споразум 2013 - Косово б) Србија - Политички аспект - Косово - 21в с) Србија - Правни аспект - Косово - 21в

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