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PITFALLS OF THE DIALOGUE WITH SERBIA. WHY KOSOVO NEEDS A NEW NEGOTIATION STRATEGY

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PITFALLS OF THE DIALOGUE WITH SERBIA. WHY KOSOVO NEEDS A NEW NEGOTIATION STRATEGY

INTRODUCTION

Since the declaration of independence Kosovo has experienced ~~a~~ numerous ~~of~~ electoral processes and witnessed various changes of governments. Such turnover has impacted its political system, often exposed to volatility. Along with the domestic arena, the international stage has been affected by this political instability too. The Dialogue between Kosovo and Serbia, launched in 2011, is the epitome of the country's government turnovers, as well as heterogeneous and inexperienced delegations.

This ill-fated constellation caused changes in the country's negotiating teams even at the expert level. Consequently, such uncertainty has directly been reflected in a weak representation in the Dialogue. Furthermore, its structural deficiencies have unveiled the lack of a state platform as a form of consensual representation in the negotiations with Serbia. Additionally, the passive foreign policy of Kosovo, in comparison with its Serbian counterpart, has severely undermined the country's position, with the Dialogue being the cornerstone of its own foreign policy.

The recent elected government neither faces the same obstacles in terms of political instability, nor the issue of a weak representation in the negotiation. However, the Dialogue with Serbia will be determined on the approach the new government is going to embrace in the future.

I. FREQUENT GOVERNMENT TURNOVERS: A THREAT TO THE DIALOGUE

Political instability has severely impacted every sphere in Kosovo. Referring to the Dialogue, frequent elections have had multifold effects in the process. Firstly, political parties' government formation costed time with a few months in a total impasse, starting from the moment of no confidence vote. Inevitably, high turnovers in the government have negatively impacted the tempo of the Dialogue. From 2011 onwards Kosovo has witnessed six prime ministers, and six different governing coalitions in the past thirteen years.[1]

Despite being constructed as a process to normalize the relations with Serbia, the Dialogue has been a catalyst for internal disputes, and has ironically played a major role turnover in government.[2].The political fragility has also been reflected into the expectations of the EU mediators as well. From Robert Cooper in 2011 to Miroslav Lajcák in 2021, with the changes of the government the position in the Dialogue altered, subsequently the expectations of EU mediators varied. In short, Kosovo has failed to maintain a stable position and consistency in the negotiating table with Serbia, with the Dialogue becoming the epitome of domestic turbulences.

a) Weak and severely fragmented coalitions, war crime allegations, lack of socio-political consensus and a missed single institutional unit having a clear mandate – the four substantial deficits in the Dialogue

Kosovo's domestic politics has inevitably affected the course of the Dialogue and played a big role in terms of lack of stability, consistency and internal coherence of the country's delegations. These have been heterogeneous, and they have highly been impacted by domestic

[1]Sejdiu, M. 2021. The Political (In)stability and cabinet duration in Kosovo: Why are governments short lived? *Group for Legal and Political Studies.* [online] Available at: http://www.legalpoliticalstudies.org/wp-content/uploads/2021/03/GLPS_PolicyAnalysis_Institutional-Instability-in-Kosovo_2021.pdf [Accessed 10 March 2021].

[2]2021. New government old problems, three cabinets in 18 months, Kosovo-Serbia dialogue unresolved. *Euro news*, [online]. Available at: https://euronews.al/al/kosove/2021/01/07/qeveri-e-re-probleme-te-vjetra-tri-kabinete-ne-18-muaj-dialogu-kosove-serbi-i-pazgjidhur [Accessed 11 February 2021].

developments. Throughout the whole period, only former President Hashim Thaçi has constantly been engaged in the Dialogue, Thaçi's approach in the Dialogue especially from 2017 to 2020 has been characterized by the lack of transparency and often by controversy. The infamous idea of border correction, so called 'land swaps' between Kosovo and Serbia which evolved in 2018, differed President Thaçi with all other Kosovo leaders involved in the Dialogue. Yet, the delegation has been led by former Prime Minister Isa Mustafa for certain periods. However, the utmost difference between Mustafa and Thaçi was that former Prime Minister Mustafa during his time of chairing the Dialogue was not involved in scenarios like border correction as a solution for a final agreement between Kosovo and Serbia. From 2014 to 2017 Mustafa's approach in the Dialogue was completely formal, and the Parliament was informed on the topics and issues discussed. However, in terms of patterns of organization and representation in the Dialogue Mustafa's approach was not much different from Thaçi's. Despite Thaçi's regular involvement since the beginning, the governing coalitions have often been inconsistent on the Dialogue's goals.[3]

The dynamics of the talks have been impacted by the appetites of even smaller parties in the ruling coalition, and the fragility of the governments, along with the lack of a state strategy and unification, has produced inexperienced delegations.[4]The 23-party PAN coalition under Prime Minister Ramush Haradinaj, which has formed the government in 2017, has represented a fragmented system of social and political cleavages in Kosovo.[5]The 2019 Constitutional Court's verdict6, declaring the Kosovo delegation as unconstitutional, is an example of the country's inherent institutional weakness at that time. Concretely, it has argued that the team has overlapped the competences stipulated in the Constitution: "the representation of foreign policy is the responsibility of constitutional institutions of the Republic of Kosovo". Also, it has stated, that the powers to sign international agreements could have not been transferred to special mechanisms. The state delegation has been composed of eleven members from governing coalition parties and one opposition party. Former Prime Minister Ramush Haradinaj, head of government at that time, has delegated its competences to the state delegation on the Dialogue. Episodes of this sort have characterized the nature of Kosovo's delegations throughout the years.[7]

Additionally, in 2020, the negotiating team of Kosovo has been undermined by the indictments of the Special Prosecutor Office in The Hague against President Thaçi in regard to war crimes allegations. Thus, the delegation of Kosovo has once again faced unexpected changes impacting the Dialogue, and providing room for further internal struggle among the parties in the government coalition. Such fluctuating political landscape has hardly contributed to the systematization of a consolidated and experienced delegation.

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[3]Esteso Perez, A. & Fetahu, A. 2020. International competition and geopolitical stakes in the framework of the resumption of the Kosovo-Serbia Dialogue. *Group for Legal and Political Studies*, [online]. Available at: http://www.legalpoliticalstudies.org/international-competition-and-geopolitical-stakes-in-the-framework-of-the-resumption-of-the-kosovo-serbia-dialogue/ [Accessed 15 February 2021].

[4]Ibid.

[5]Fetahu, A. 2020. Choosing between too many and some ministries: Implications of Restructuring the Government of Kosovo and the rationale for reducing its organizational scope significantly. *Group for Legal and Political Studies*, [online]. Available at: http://www.legalpoliticalstudies.org/wp-content/uploads/2020/03/GLPS-Note-0120-Government-downsizing-.pdf [Accessed 22 February 2021].

[6]2019. Constitutional Court of Kosovo. *Verdict on the case no. K043/19*. [online], Available at: https://gjk-ks.org/wp-content/uploads/2019/06/ko_43_19_agj_shq.pdf [Accessed 10 February 2021].

[7]Esteso Perez, A & Fetahu, A. 2020. International competition and geopolitical stakes in the framework of the resumption of the Kosovo-Serbia Dialogue. *Group for Legal and Political Studies*, [online]. Available at: http://www.legalpoliticalstudies.org/international-competition-and-geopolitical-stakes-in-the-framework-of-the-resumption-of-the-kosovo-serbia-dialogue/ [Accessed 15 February 2021].

Additional examples of institutional weakness are the resolution on the normalization of relations between Kosovo and Serbia, passed on December 15, 2018, on the one hand. And, the Law on the duties, responsibilities and competences of the State Delegation of the Republic of Kosovo in the Dialogue process with the Republic of Serbia, voted with simple majority on February 2nd 2019, on the other hand.[8]Initially, the resolution has failed to produce a wide political and social consensus with the parliament passing it with only 59 votes out of 120.Such circumstances have reflected the governing coalition's volatility, considering that for the ratification of any international agreement the support of 2/3 or 80 votes of all members of the parliament is required.[9]The resolution has come as a result of the fragmented coalition having severe problems with the representation in the Dialogue, especially between the Prime Minister and the President. However, the document has failed to accomplish its political purpose.[10]

As far as the law on the Dialogue, often referred to as the law on the state delegation, is concerned, this has showed major shortcomings too, by looking at the state delegation as the sole and exclusive body to lead, frame and conclude the Dialogue.[11]In the practice, however, the state delegation closely had to consult with the local institutions, the President and the Prime Minister.[12] `In addition, the law has anticipated the decision-making process of the Dialogue, and it has determined that the opposition parties will have a crucial role in the delegation via active participation. However, parliamentary opposition parties' participation has had major flaws as the two largest opposition parties, LDK and LVV, have refused to participate in any delegation, and have criticized the way the Dialogue has been handled. Consequently, the 11-member state delegation has been a composition of political parties in power and a one opposition party, the PSD being a LVV's fraction. Therefore, the law on the state delegation has failed to attain its propositions, and most importantly it has missed to establish an exclusive and single institutional unit with a clear mandate.[13]

Both initiatives have reflected the Dialogue's representation problem, because of fragmented coalitions often leading to inexperienced state delegations. Additionally, due to the political actors' internal disputes, the representation of the Dialogue has often escalated into an open 'conflict' among state leaders disrupting the process in general, and the representation itself in particular. Representation's incoherence and the Dialogue's lack of substance have often produced constitutional crises, as it has been the case with the unconstitutionality of the state

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[8]2019. The Assembly adopted the Law and the Platform for Dialogue. *Radio Free Europe,* [online]. Available at: <https://www.evropaelire.org/a/projektligji-dhe-platforma-per-dialogun-/29808225.html> [Accessed 16 February 2021].

[9]Constitution of Republic of Kosovo. Article 18.1. Available at: http://www.kryeministri-ks.net/repository/docs/Cons
titution1Kosovo.pdf

[10]Kryeziu, P. 2019. Dialogue through documents: An analysis of the Resolution, Law and Platform on Kosovo – Serbia dialogue. *Group for Legal and Political Studies,* [online], Available at: http://www.legalpoliticalstudies.org
/wp-content/uploads/2019/04/FINAL_Dialogue-through-Documents.pdf> [Accessed 20 February 2021].

[11]Law on Duties, responsibilities and competences of the State Delegation of the Republic of Kosovo in the Dialogue process with the Republic of Serbia, Article 2. Available at:https://www.kuvendikosoves.org/Uploads/Data/Documents/145PLperpergjegjesitedelegacshteterorteKosoves-procesiidialogiutmeSerbine_WqT4NzhB58.pdf> [Accessed 3 April 2021].

[12]Kryeziu, P. 2019. Dialogue through documents: An analysis of the Resolution, Law and Platform on Kosovo – Serbia dialogue. *Group for Legal and Political Studies,* [online], Available at: http://www.legalpoliticalstudies.org
/wp-content/uploads/2019/04/FINAL_Dialogue-through-Documents.pdf [Accessed 25 February 2021].

[13]Ibid.

delegation mentioned in the previous pages. Also, they have been reflected into the weak position of Kosovo in the negotiating table in Brussels.

b) The lack of a state platform in the process of the Dialogue: a binary foreign policy missed

The attempts to produce a state platform in the Dialogue have not been rare in any government. Nevertheless, the failure to create a national unity and a representative state platform characterized almost every government in the process of the Dialogue with Serbia. Arguably, has been no single government or prime minister having the vast legitimacy and acceptance able to gather the entire political spectrum, while convincing their citizens on the clear path that Kosovo should follow in the Dialogue. Therefore, the state platform proposed under the PAN governing coalition failed to determine a 'mechanism responsible for establishing a wide political consensus with regards to Kosovo's negotiation position in the dialogue process.'[14]Overall, the state platform, despite debatable substantial flaws, failed to reach the acceptance of all parliamentary political parties, by reflecting the institutional weakness in the Dialogue process once again. Hence, the missed state platform on the Dialogue has been due to the political scene unable to produce a nationwide consensus, being clear about the position Kosovo should hold in the process of the Dialogue itself.

Moreover, the lack of a state platform has gone hand in hand with the incapacities of the institutions of Kosovo, and the political scene in general, to form a consensus of about what could be negotiated, and what could the consequences of those negotiations on Kosovo's statehood be. Local institutions have been incapable to conceptualize the process along those lines, and they missed to reach a unified position in that regard. By doing so the representation of Kosovo has fully been exposed to its vulnerabilities at the negotiation table. In short, because of a weak representation in the Dialogue and the consequent institutional deficiencies, Kosovo has lacked to form a binary foreign policy in comparison to its Serbian counterpart.

Serbia has had a binary system throughout the years meaning that; it has had a team, a position and a clear policy in the Dialogue, and a foreign policy related to the Dialogue itself. Yet, it has acted independently and beyond the process. Accordingly, Serbia, while being part of the normalization process, has simultaneously advocated against Kosovo's statehood in the international arena, while lobbying against Kosovo's recognition. Serbian Minister for Foreign Affairs, Ivica Dačić openly led the de-recognition campaign of Kosovo. Despite the commitment in the so-called 'Washington Agreement' to stop the de-recognition campaign of Kosovo by Serbia – the commitment has not been fulfilled. "Serbia has not stopped, nor will it stop unless everyone else stops their campaign for the recognition of so-called Kosovo," Dačić has been saying.[15]

The binary foreign policy of Serbia has been evidential in Kosovo running for membership into international organizations. Both UNESCO's and INTERPOL's Kosovo membership have, in fact, been interfered by Serbia's lobbying campaign against the country's accession to the two specialized agencies.

Kosovo, on its turn, has built its own foreign policy around the process of the Dialogue starting from 2011. The country, however, neither has had a strong hold in the Dialogue, nor it

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[14]Kryeziu, P. 2019. Dialogue through documents: An analysis of the Resolution, Law and Platform on Kosovo – Serbia dialogue. Group for Legal and Political Studies, [online], Available at: http://www.legalpoliticalstudies.org /wp-content/uploads/2019/04/FINAL_Dialogue-through-Documents.pdf [Accessed 25 February 2021].

[15]2020. 2020. Serbia vows to continue campaign revoking the recognition of Kosovo's independence. Euroactiv, [online], Available at: http://www.euractiv.com/section/all/short_news/serbia-vows-to-continue-campaign -revoking-the-recognition-of-kosovos-independence/ [Accessed 21 February 2021].

has developed a binary system as a response to Serbian foreign policy. Therefore, it has found itself in unfavorable situations in the international arena not in rare occasions, because of a weak foreign policy, mainly in the process of the Dialogue. However, a more remarkable attempt against Serbian campaign has been the 100% tariff imposed on Serbian and Bosnian goods in 2018 by the Government of Kosovo.16 The tariff has impacted the relation between Kosovo and Serbia being one of the first cases with Kosovo exercising its sovereign means as an independent state. Nevertheless, the lack of a strategy behind the tariff dispute has set Kosovo in a difficult position in the eyes of its international allies; the United States and the European Union. The pressure to uplift the tariff outweighed the purpose and the means of the tariff itself, with Serbia portraying Kosovo as a blocking part in the Dialogue. Hence, foreign policy asymmetries between the two countries, being accompanied by structural weaknesses in Kosovo, have considerably weakened the Dialogue.

II. A NEW GOVERNMENT IN POWER: WHAT'S THE WAY FORWARD?

Kosovo has held parliamentary elections on 14th of February 2021with a landslide victory for Lëvizja VETËVENDOSJE! reporting 50.28% of the votes.[17]The country has never witnessed such vast legitimacy before. This entails, therefore, larger responsibility and arguably high expectations. In regard to the Dialogue, the political stability is a good precondition for the talks to bear fruit. However, it is not the only decisive factor. Nonetheless, weaker and fragmented governing coalitions have resulted in a fragile representation of Kosovo in the Dialogue with Serbia.

Certainly, the lack of a unity and of a state platform on the Dialogue has harmed the position of Kosovo in the process. Therefore, the recent elected government is responsible to reach consensus across the entire political spectrum on the matter. Firstly, because the Dialogue is not solely an issue of the government, but it is a state duty. Secondly, despite the power of the new Government in the Assembly of the Republic of Kosovo, it must insist on cross-party cooperation by providing the necessary infrastructure for substantial involvement of the parliamentary opposition in the Dialogue process.[18]This should be done for two reasons: first, because the Dialogue is not a common political issue, but it is decisive for the future of Kosovo and the consolidation of its own statehood. Throughout the Dialogue the country may face difficult topics and demands for compromises a consensual political response. Second, it should serve as a *lesson learned* of a disrupted representation in the Dialogue in the past paving the way to worse scenarios likely to undermine the statehood of Kosovo.

Furthermore, the failure of the previous governing coalitions to craft a state platform in the Dialogue may be attributed to the lack of legitimacy in building a national consensus on the issue. The newest government may face obstacles in building this consensus for conceptualizing the state platform in the Dialogue, yet, it is imperative to do so. The vulnerabilities of years of

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[16]2018. Kosovo raises customs tariff on Serbia and Bosnia to 100 percent. Radio Free Europe, [online]. Available at: https://www.evropaelire.org/a/rritet-taksa-per-produktet-serbe-/29613129.html [Accessed 25 February 2021].

[17]2021. The result of the elections is certified, LVV over 50 percent. Radio Free Europe, [online] Available at: https://www.evropaelire.org/a/certifikimi-i-rezultatit-te-zgjedhjeve-te-14-shkurtit-/31148875.html [Accessed 7 April 2021].

[18] 2018. GLPS proposes a Minimum Policy for a Platform on the Final Phase of Dialogue between Kosovo and Serbia, Group for Legal and Political Studies. [online]. Available at: http://www.legalpoliticalstudies.org/glps[-proposes-a-minimum-policy-for-a-platform-on-the-final-phase-of-dialogue-between-kosovo-and-serbia/ [Accessed 10 April 2021].

negotiations have been due, to some extent, to the absence of a state platform laying down the principles and the objectives of the talks themselves.

Under these circumstances have ended up with the possibility of a land's swap or border correction between Kosovo and Serbia.[19]Consequently, the Government of Kosovo should develop a state platform on the Dialogue clearly setting out the principles, objectives, and the representation for the talks. In a positive scenario, this should reflect all parliamentary political parties' views, and additional consultations with other public actors (i.e., academia and civil society) might be an added value for Kosovo. Conversely, the question of *who can negotiate for Kosovo in the Dialogue with Serbia* has been answered with the verdict of the Constitutional Court of Kosovo in 2019, mentioned in the previous pages. Yet, the issue of representation does not seem to be the crucial challenge for Kosovo for the time being. The institutional cohesion between the Prime Minister, Albin Kurti, and the President of Kosovo, Vjosa Osmani-Sadriu, especially in the realm of the Dialogue is welcomed. At present state leaders have shown to share a common position on the stand of Kosovo in the Dialogue.[20] Such institutional collaboration and cohesion is mandatory in securing a sustainable representation in this format. Also, political stability and the vast legitimacy are the premises for a stronger representation of Kosovo at the negotiation table.

Despite a domestic consensus, the way forward requires transatlantic cooperation.[21] Hence, a proactive approach by involving the EU and the U.S. is needed with a view at reaching a final agreement in the process. Also, the institutional capacities and the political stability, could, in principle, secure a sustainable continuation of the talks. But the way forward remains blurry as the new appointed government has not provided a strategic document on the Dialogue yet. Nevertheless, Prime Minister Kurti has disclosed his vision on the Dialogue by stipulating four principles:"One, reality must be accepted; two, the truth must be accepted; three, to sit as equals; four, to benefit the citizens", has said Kurti.[22]

CONCLUSION

Since March 8, 2011 the EU-led Dialogue on the normalization of relations between Kosovo and Serbia has experienced its ebbs and flows. The political setting of Kosovo has often been guided by the Dialogue process and its inherent dynamics. Albeit, in principle, the Dialogue has been embraced as a national initiative to normalize the relations with Serbia, it de facto enabled the space for discrepancies and internal political disputes.

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[19].Kryeziu, P. 2019. Dialogue through documents: An analysis of the Resolution, Law and Platform on Kosovo – Serbia dialogue. Group for Legal and Political Studies, [online], Available at: http://www.legalpoliticalstudies.org /wp-content/uploads/2019/04/FINAL_Dialogue-through-Documents.pdf[Accessed 11 April 2021].

[20]2021.Kurti and Osmani, no differences / In line for dialogue with Serbia, [online], Available at:https://top-channel.tv/2021/04/07/kurti-dhe-osmani-ska-dallime-ne-nje-linje-per-dialogun-me-serbine/[Accessed 15 April 2021].

[21]Esteso Perez, A & Fetahu, A. 2020. International competition and geopolitical stakes in the framework of the resumption of the Kosovo-Serbia Dialogue. Group for Legal and Political Studies, [online]. Available at: http://www.legalpoliticalstudies.org/international-competition-and-geopolitical-stakes-in-the-framework-of-the-resumption-of-the-kosovo-serbia-dialogue/ [Accessed 11 April 2021].

[22]2021. Kurti: Four principles will guide the dialogue, not a mono-ethnic Association, Koha.net. [online]. Available at: https://www.koha.net/video/263523/kurti-kater-parime-do-ta-percjellin-dialogun-jo-asociacion-njeetnik/ [Accessed 5 April 2021].

The nature of the negotiations and the related themes has accompanied the process with tension and uncertainty in both countries. Confrontation and boycott within the political scene of Kosovo followed the process. Concretely, political parties have failed to create a consensus on the matter. Since 2011, opposition parties, and often political parties within the governing coalition, have advocated to change the course in the Dialogue, to reform the talks, and, not in rare occasions, to stall the negotiations. The domestic political tension and international pressure contradicted each other. Too often the process of the Dialogue has served as a tool for political competitiveness, rather than a means of national necessity.

Nonetheless, the issue of the representation in the Dialogue has been a major obstacle throughout this decade of negotiations. Frequent government turnovers and political instability have largely contributed for inconsistency and enabled the space for inexperienced state delegations in the Dialogue with Serbia. Additionally, weak governments' hardly attaining 61 votes in the parliament, with large and fragmented coalitions, have paved the way for minor political parties with a meager impact on the process of the Dialogue.

The recent elected government, holding the vast legitimacy and numbers in the parliament, has the chance for providing a stronger representation, a clear position in the Dialogue and a proactive approach with international partners (i.e., EU and the U.S.) Obviously, and despite the political power of the government in the Parliament, the unity and consensus across the entire political spectrum is crucial for dealing with such a complex process.

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