

## Progress Undone?

# Trading Democracy for Solving the Status Dispute in Kosovo

A DPC Policy Paper

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## TABLE OF CONTENTS

EXECUTIVE SUMMARY AND SUMMARY OF RECOMMENDATIONS .....	I
INTRODUCTION .....	1
HANDICAPPED STATEHOOD AND WESTERN PATERNALISM .....	2
THE DIALOGUE – TRADING DEMOCRACY AND THE RULE OF LAW FOR SOLVING THE STATUS ISSUE .....	5
<i>The amnesty law</i> .....	6
<i>EULEX phase-out vs. establishment of the Special Court</i> .....	7
<i>2014 government formation crisis</i> .....	9
ENDING PARALLEL STRUCTURES – THE DEMOCRACY QUESTION .....	12
<i>Bringing Serbs into state structures – the 2013-14 local and parliamentary elections</i> .....	12
<i>The Brussels Agreement and the Association/Community of Serb Municipalities</i> .....	14
TRADING DEMOCRACY FOR SOLVING THE STATUS DISPUTE – THE IMPACT .....	16
CONCLUSIONS AND RECOMMENDATIONS.....	20

## EXECUTIVE SUMMARY AND SUMMARY OF RECOMMENDATIONS

In November 2014 the West, led by Berlin and Brussels, helped broker a coalition deal between the two largest parties in Kosovo, the Democratic Party of Kosovo (PDK) and the Democratic League of Kosovo (LDK). The deal ended a five-month long stalemate that developed when the LDK broke away from the opposition coalition LAN after parliamentary elections in June. LAN had secured a parliamentary majority but was blocked from forming a government by two highly controversial decisions of Kosovo's Constitutional Court that according to all available information were taken under strong political pressure from the incumbent, PDK-led government. In spring 2011 the West, then led by the US and acting much more intrusively than in 2014, had already brokered a deal between the PDK and the LDK that ended an institutional crisis, enabling the PDK to remain in power. Under the deal a transitional compromise candidate for president, Atifete Jahjaga, was elected by parliament. But reform of the deficient electoral system and the introduction of a semi-presidential system to be followed by early parliamentary and presidential elections, also terms included in the deal, were never implemented. Both the PDK-led government and the president stayed in office for a full mandate. What links the EU and US performance in these two cases is what happened in summer 2011. Then, violent clashes erupted between Serbs, Kosovo police, and KFOR in the Serb-majority northern Kosovo. In response to the violent escalation under German leadership, and with support of the UK and the US, the EU then became a serious policy actor. The EU-mediated Belgrade-Prishtina Dialogue was the result.

Agreement reached on the normalization of relations between Kosovo and Serbia in April 2013 apparently convinced the EU and the US that the Dialogue should be top priority, turning questions of democracy and the rule of law in Kosovo into secondary matters. While it was indeed necessary to put the Dialogue first for a certain period of time to secure the full sovereignty and territorial integrity of Kosovo – a precondition for sustainable democracy and rule of law – the West has underperformed in furthering democratization and the rule of law due to a lack of strategic vision. Both the EU and the US have been consistently trading democracy and the rule of law to concentrate their efforts on solving the status dispute conflict. The US effectively abandoned its responsibility as a guarantor of the 2011 deal in the name of stability and political continuity. After supplanting the US as lead Western actor, the EU tolerated a deeply problematic 2013 amnesty law and an inconsistent approach to the rule of law when on the one hand it decided to phase out EULEX with its executive mandate and on the other it supported the formation of a Special Court. Both the EU and the US supported a grand coalition assembled in 2014 in violation of the principles of parliamentary democracy. In the ten Serb-majority municipalities, the West tolerated the conduct of local elections in November 2013 and parliamentary elections in June 2014 which were marred by massive manipulation to secure victory for the Belgrade-backed *Srpska lista*. In the six Serb-majority municipalities south of the Ibar, this enabled the return of Belgrade on the scene, the disappearance of political pluralism, and the rollback of Western-championed local self-governance reforms achieved in previous years. Local democracy in the south, already fragile, has been destroyed. Meanwhile, no progress was made in local democracy in the four northern Serb-majority municipalities. In the majority-Albanian rest of the country, democracy and the rule of law remain weak and burdened by structural problems. Kosovo's thin economic basis, largely but

unsustainably dependent on external remittances, has been threatened by a pre-election rise of public salaries of 25%. A massive increase of asylum seekers from Kosovo in EU member states in late 2014 and early 2015 was to a large degree a reaction of Kosovo citizens to the government formation: a vast majority of citizens have lost hope that the political system of their country can deliver change in the near future.

Through their single-minded focus on the Dialogue, driven by tactical, short-term and short-sighted considerations, the EU and the US have directly and consistently contributed to these worrying trends. Less than a year after the EU supported the coalition deal designed to get the Belgrade-Prishtina Dialogue back on track, Kosovo is again in the throes of an institutional crisis with recent opposition protests and blockage of the parliament's work. The irony is that the damage inflicted on Kosovo's already-fragile democracy by the EU and the US now threatens the very progress achieved in the Dialogue.

In order to prevent a further deterioration of the situation and strengthen democracy and rule of law in Kosovo, the EU and the US must undertake a number of policy adjustments:

- The EU and the US must refrain from directly intervening in government formation, instead taking a principled stance based on fundamental tenets of the rule of law and parliamentary democracy. In case these principles are again breached, the EU and the US should threaten to boycott the emerging government, to include suspension of the EU-integration process.
- The EU, supported by the US, the OSCE, and the Council of Europe, must initiate a process of reform of the electoral system in the framework of the SAA that includes the government, opposition parties, and civil society, based on existing proposals from the NGO sector.
- The EU must urgently develop a coherent strategy that makes maximum use of its various instruments to promote a strong rule of law and an independent judiciary. The strategy must primarily concentrate on empowering judges, prosecutors, and police to take on high-level cases of corruption and organized crime and on assigning an important role to local civil society organizations active in the field of rule of law promotion.
- Diplomats from the EU and its member states and the US must reach out to the opposition party Vetëvendosje despite fundamental differences over many policy issues; the US in particular must end its ban on contacts with Vetëvendosje.
- The IMF must make clear to Kosovo authorities ahead of the next elections that in the event they again increase public wages to a fiscally unsustainable degree, the consequence will be early termination of existing Standby Arrangements with no prospect for future SBAs.
- Germany, the US, and the UK must develop a master plan for solving Kosovo's status dispute and limited sovereignty through EU integration. The plan must be designed from the standpoint of the result expected – the entry of both Serbia and Kosovo into the EU as full, sovereign members that recognize each other.

- Berlin and London must reach out more pro-actively to Kosovo's citizens and its political elites to explain and lobby for their policies and to reassure them that the Dialogue and the dismantling of parallel structures will not lead to any form of territorial autonomy for Kosovo Serbs that would again curtail Kosovo's sovereignty.
- The EU and the US need to return to the frank language and messaging towards Belgrade they employed before 2014 in order to limit the Serbian government's maneuvering space for public spin on the alleged status-neutral character of the April Agreement and the Dialogue.
- The EU must insist that the Statute of the future Association/Community of Serb Municipalities be within the bounds of Kosovo law, is firmly based on the concept of pooling of municipal functions, and contains clear definitions and divisions of competences.
- The EU and the US must demand that Serbia immediately dismantle the parallel Serbian municipalities in Kosovo.
- The EU and the US must develop a strategic plan for dismantling the criminal politico-economic underground in the north as a precondition for democracy and the rule of law. This will not be achieved by integration of the Serb police and the judiciary, both of which have been effectively conditioned not to touch that issue, but rather by laying the foundations for their successful transformation. The plan must form an integral part of the future Dialogue following full implementation of the April Agreement.
- The EU needs to push for reform of party financing legislation in Kosovo with an emphasis on preventing any financing of Serb parties by Belgrade.
- The EU and other Western donors need to support NGOs, independent media and other social actors to counter political repression by municipal officials from *Srpska lista* in Serb-majority municipalities south of the Ibar and to re-establish basic preconditions for political pluralism.

## Introduction

In November 2014, the two largest parties in Kosovo's parliament, the Democratic Party of Kosovo (PDK) and the Democratic League of Kosovo (LDK), reached a deal to form a new government, ending a political stalemate that had lasted for almost half a year following early parliamentary elections held on June 8. The deal was made possible by the LDK changing sides; it left the opposition coalition LAN<sup>1</sup> and joined acting Prime Minister and Hashim Thaçi and his party, the PDK. But the deal also had a Western dimension. LDK President Isa Mustafa announced the spectacular political U-turn only after a trip to Berlin and Brussels, where he had gained support from the German Chancellor's Office, from MPs from Germany's ruling conservative party, the Christian Democratic Union (CDU), and from the leadership of the European People's Party (EPP), of which both the CDU and LDK are members.

This was the second time since Kosovo had gained independence in 2008 that the West had brokered a deal between the two largest parties in order to end an institutional and political crisis. In April 2011, Christopher Dell, the US Ambassador to Prishtina at the time, had arranged a deal among the PDK, the LDK, and the smaller New Kosovo Alliance (AKR), led by Behgjet Pacolli. The agreement ended a crisis that had developed in autumn 2010, when the LDK left the coalition following a ruling by the Constitutional Court according to which Fatmir Sejdiu, then-leader of the LDK, could not simultaneously serve as the country's president. Although an early parliamentary election held in December, and marred by large-scale fraud, saw the PDK win and form a new government with the AKR, this put no end to political instability as the Constitutional Court also annulled the election of Pacolli as the new president.<sup>2</sup> The deal had foreseen wide-ranging reforms – structural, institutional, and political – that were supposed to remove some of the key deficiencies of the existing political system which had produced permanent tensions among the key political players in Kosovo. Two commissions would lead reforms to the electoral system, including the creation of multiple electoral districts and the introduction of a semi-presidential system and the various legal and constitutional changes required for it. On the ambassador's proposal, a US-trained Kosovo police official, Atifetete Jahjaga, would serve as a bipartisan interim president and upon completion of the reforms, early presidential elections (to be direct for the first time) and early parliamentary elections would be scheduled.<sup>3</sup>

Yet these reforms were never realized. Jahjaga was elected in 2011 and the two reform commissions took up their work. But the parliamentary Committee to Reform the Law on General Elections never came to any agreement; it eventually shut down in 2013 despite another reform push by the European Union. Constitutional amendments for a semi-presidential system were never put to a vote in the Kosovo Assembly. The PDK remained in power with its smaller coalition partners for almost a full term in office until it scheduled early elections in June 2014. Jahjaga's presidency, originally intended to be transitional, turned into a regular presidency with loyalty to the PDK-led government. Ambassador Dell,

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<sup>1</sup> Named after the first letter of the three parties' names that formed the coalition – LDK (Democratic League of Kosovo) – AAK (Alliance for the Future of Kosovo) – NISMA (Initiative for Kosovo).

<sup>2</sup> *The actual causes of Kosovo's institutional crisis*, KIPRED, Prishtina, November 2010, available at: [http://www.kipred.org/repository/docs/The\\_actual\\_causes\\_of\\_Kosovo%E2%80%99s\\_institutional\\_crisis\\_350846.pdf](http://www.kipred.org/repository/docs/The_actual_causes_of_Kosovo%E2%80%99s_institutional_crisis_350846.pdf).

<sup>3</sup> Political memorandum signed by the leaders of the AKR, LDK and PDK, co-signed by US Ambassador Christopher Dell, available at: <http://www.kryeministri-ks.net/?page=2,9,1942>.

who had signed the deal as a guarantor on behalf of the US Government, stopped pushing for implementation of reforms and left Prishtina in 2012.<sup>4</sup>

In the 2014 deal, Kosovo's western backers – with Germany effectively assuming the leadership role from the US – in a similar fashion pushed aside democratic considerations when they gave their blessing to LDK leader Mustafa and his break with the LAN coalition, a move that came about only after the Constitutional Court, in two highly questionable rulings, prevented the opposition bloc from forming the government despite a solid parliamentary majority.

The two cases reveal evidence of a shift in the West's approach to consolidating democracy in Kosovo following violent unrest in Serb-majority northern Kosovo in the summer of 2011. The West's focus since then has been on resolving the status dispute between Kosovo and Serbia and on integrating the north into the Republic of Kosovo. The necessity to find a solution for the north and for Kosovo's limited sovereignty caused the US and the EU to tolerate Thaçi reneging on the 2011 deal; likewise, the West's fears for the future of the Belgrade-Prishtina Dialogue in the event that the LAN opposition forms a government<sup>5</sup> caused them to tolerate the political and legal moves that led to the formation of a grand coalition at the end of 2014.

This paper examines the manner in which the West has been trading democracy in return for solving the status dispute in Kosovo in recent years. The author does not deny that a political rationale exists for the EU and the US to have ranked the status dispute as a first priority – but only for a very limited period of time. It does, however, prompt the question which is the basis for this analysis: Is the EU and US's rationale for the marginalization of democratization a well thought-out political calculus or is it a reflection of a lack of strategic vision and a "muddling through". This question is highly relevant because Kosovo's parliamentary opposition was radicalized after being prevented from forming a government. This radicalization has in recent weeks led to the almost complete blockage of the work of the Assembly and has even escalated into violence. This analysis also asks: Is the West's approach of trading democracy for solving the status dispute creating collateral damage to Kosovo's fragile democracy to a degree that it threatens to undermine the gains achieved in solving the Kosovo-Serbia conflict?

### **Handicapped statehood and Western paternalism**

The question of how to balance the need for transforming Kosovo into a functioning democracy built on the rule of law, with a strategy to effectively solve the open status dispute has from the very outset of the post-war era created a blurred and unhealthy division of roles between the international community and domestic society.

Governed after 1999 by an external, United Nations-led administration, the UN Mission in Kosovo (UNMIK), with Serbian state institutions limited to majority-Serb areas and with Kosovo's status in

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<sup>4</sup> Interview with LDK official, Prishtina, June 2015; *Electoral Deform. Two years later, reform is back to square zero*, Institute Democracy for Development, Prishtina September 2013, available at: [http://d4d-ks.org/assets/D4D\\_Elections\\_5\\_ENG\\_WEB1.pdf](http://d4d-ks.org/assets/D4D_Elections_5_ENG_WEB1.pdf).

<sup>5</sup> Interview with German Chancellor's Office official, Berlin, November 2014.



limbo, the UN in 2003 developed the ‘Standards before Status’ approach. This approach consisted of a set of benchmarks in democracy, rule of law and economic development to be implemented in the course of a gradual shift of political responsibility from UNMIK to Provisional Institutions of Self-Government (PISG) before the country’s status would be addressed, and to pave the way for a resolution of the status dispute.<sup>6</sup> The concept of establishing democracy absent the existence of an independent state was awkward and in fact served as an alibi for the West’s lack of political resolve to address the status dispute. Predictably, the results of this transition endeavor were mixed at best. In handing over the newly-created public administration to domestic political forces, legitimized through elections held in 2001, UNMIK risked the undoing of some of the achievements in good governance made in previous years. Professionalism was gradually replaced by familiar forms of cronyism and corruption. The bloated civil service became a tool of patronage. The Ministry of Interior and other institutions were handed over to local political parties with their underground intelligence structures intact; organized crime networks were close to the government and the two main parties, the LDK and PDK. Those structures, which in the case of the PDK included the intelligence agency known as SHIK, represented a legacy of the Albanian underground structures – political, economic and military – that developed in the 1990s in response to the Serbian apartheid system established in Kosovo. The inheritance of this legacy became one of the main obstacles to the development of a democratic political system and a strong rule of law in Kosovo. As for the division of labor between international and local actors in Kosovo, the ‘Standards before Status’ approach led to the head of UNMIK regularly intervening in the political and judicial systems to preserve political stability as well as cooperation with the domestic political class – interventions that inflicted substantial damage on the principles of democracy and the rule of law.<sup>7</sup>

With the Western-sponsored declaration of independence in 2008 and the change in the role and institutional make-up of the international community under the concept of ‘supervised independence,’ the division of labor between international and local political actors and institutions became even more blurred and informal. Based on the Ahtisaari plan, the “Comprehensive Proposal for the Kosovo Status Settlement” (CSP), and on lessons learned from the international community’s engagement in post-war Bosnia and Herzegovina, an integrated set of international institutions with clearly defined mandates and an exit strategy was to be established. These international institutions were intended to support the establishment of the institutions of the independent state of Kosovo and its transformation into a democratic and multiethnic society through implementation of the Ahtisaari plan that would also lead to the integration of the Serb minority. An International Civilian Representative (ICR) and an International Civilian Office (ICO) – roughly equivalent to the High Representative and the Office of the High Representative (OHR) in Bosnia and Herzegovina – were to be established to oversee implementation of the plan’s civilian dimension, and to be given final authority in interpreting the plan. Other international institutions with an executive mandate were to be established in key areas such as the judiciary, police and customs service, and the ICR was to have the authority to coordinate all

<sup>6</sup> *Standards for Kosovo*, UNMIK/PISG, Prishtina, January 2004, available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20Standards.pdf>.

<sup>7</sup> *Kosovo: The challenge of transition*, International Crisis Group Europe Report No. 170, 17 February 2006, available at: [http://www.crisisgroup.org/~media/Files/europe/170\\_kosovo\\_\\_\\_the\\_challenge\\_of\\_transition.pdf](http://www.crisisgroup.org/~media/Files/europe/170_kosovo___the_challenge_of_transition.pdf).

international missions present in Kosovo. Clear benchmarks and timelines were to be set for this transitional function of international institutions limiting the country's sovereignty, after which full responsibility was to be transferred to local institutions with Kosovo ultimately gaining full sovereignty.<sup>8</sup>

Yet with Serbia's ally Russia blocking adoption of the Ahtisaari plan by the UN Security Council, the West took another, less clear-cut path. Based on a coalition of the willing, the Ahtisaari plan was institutionalized through the newly-adopted constitution of the independent state of Kosovo, drafted with Western legal support and guidance, making its implementation dependent on an informal alliance between the US-led Western coalition and Kosovo's political elites. The original plan got blurred by this necessity to ensure implementation through the back door, but even more so by the divisions in the West; five EU member states<sup>9</sup> refused to recognize Kosovo. This meant that the EU could not be a serious actor in implementing the plan – unless political will would lead to overcoming its internal divisions. Without a UNSC resolution, UNMIK was unable to close down and as a status-neutral mission was prevented from cooperating with the ICR. Moreover, the ICR never gained authority over the other international missions (KFOR, OSCE, EULEX) it was expected to have, with EULEX (the EU's rule of law mission) *de facto* accepting status neutrality. The EU's internal divide paralyzed the ICR, who was at the same time double-hatted as EU Special Representative (EUSR), and the EU continued to complicate the work of the ICR and the ICO after the two functions were decoupled in 2011. This hybrid institutional setting and the weak performance of international representatives on the ground gave domestic political elites and institutions more effective authority than had been foreseen. Many legislative and institutional reforms initiated by the ICO remained only formally implemented, undermined in practice by the dominant political and legal culture. On the international side, the situation pushed the US towards forceful unilateral interventions through its embassy, such as was the case with the 2011 deal brokered by Ambassador Dell. Yet while these interventions played a decisive role in stabilizing the political situation in Kosovo, they were *ad hoc* and had a questionable impact on democratization and the rule of law. And this entire international institutional set-up offered no solution either to the Serb question or to the dilemma of how to move Kosovo closer to full sovereignty.<sup>10</sup>

Following unrest in northern Kosovo and the shooting at German KFOR soldiers in the summer of 2011, German Chancellor Angela Merkel launched a bid to finally solve the status dispute between Kosovo and Serbia and to integrate Serbs in the northern enclave into the Republic of Kosovo by turning this into a key condition for Serbia's accession to the EU. Merkel gradually overcame the EU's internal divisions and moved the Union into lead position on Kosovo. This opened up the prospect of fixing the broken posture of international institutions in Kosovo and balancing the authority wielded by the various executive missions in Kosovo with the pull factor of Serbia's future EU integration – a strategic framework for the democratic transformation of Kosovo and a transition to full sovereignty.

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<sup>8</sup> *Comprehensive Proposal for the Kosovo Status Settlement*, available at: [http://www.unosek.org/docref/Comprehensive\\_proposal-english.pdf](http://www.unosek.org/docref/Comprehensive_proposal-english.pdf).

<sup>9</sup> These remain Cyprus, Greece, Romania, Slovakia, and Spain.

<sup>10</sup> Interviews with Western diplomats, Prishtina, 2012; *The unsupervised state*, KIPRED policy brief No. 1/12, August 2012, available at: [http://www.kipred.org/repository/docs/The\\_\\_Unsupervised\\_State\\_Internally\\_Divided,\\_Internationally\\_Half-Legitimate\\_408063.pdf](http://www.kipred.org/repository/docs/The__Unsupervised_State_Internally_Divided,_Internationally_Half-Legitimate_408063.pdf).

Yet instead of pursuing this goal, the West used the first limited progress on the status dispute to officially end supervised independence, terminate the ICR's mandate, and close the ICO by declaring success and initiating a process of fake transition. In January 2012, a month before Serbia finally gave in on an agreement with Kosovo within the framework of a technical dialogue between the two countries and was rewarded by the EU with candidate status, the International Steering Group (ISG) – the group of Western governments supporting and monitoring Kosovo's path to full sovereignty – announced the completion of the Comprehensive Settlement Proposal (CSP) and the closure of the ICO towards the end of that year. While the West declared that the democratic conditions for a transition of authority to local institutions and elites had essentially been met, little if any progress had been achieved since independence on aspects of good governance and the rule of law, and a third of the ICO's benchmarks remained unmet when the mission finally closed down. That the CSP, especially the part regarding integration of the Serb minority, remained far from implemented is mirrored in the ISG's statement from its final meeting in September 2012, which contains EU integration-like terminology describing the CSP as having been “substantially implemented.” In another move that implicitly acknowledged reality on the ground (as opposed to a virtual reality adjusted to the West's political decision), the EULEX mission with its executive mandate was extended, as were a couple of other international missions with executive authority.<sup>11</sup>

### **The dialogue – trading democracy and the rule of law for solving the status issue**

In parallel with the decision-making process to end Kosovo's supervised independence, parliamentary and presidential elections in Serbia brought the Serbian Progressive Party (SNS) to power in the summer of 2012. Based on clear statements from Berlin that Kosovo would never return to Serbian control and a strict political demand that acceptance of this reality would be a condition for Serbia's progress in the EU accession process, Belgrade and Prishtina began a political dialogue in October 2012 mediated by the EU. In April 2013, these talks led to a landmark agreement on the normalization of relations between Kosovo and Serbia. With these developments, the whole posture of international actors and institutions in Kosovo fundamentally changed. While civilian institutions with an executive function such as EULEX had been set on a path to phase-out, Western leadership had shifted from the US to the EU. Formal leadership in the Dialogue was designated to reside with the EU's High Representative for Foreign and Security Policy, Catherine Ashton, but real political leadership within the EU remained, half-hidden, with Germany. It was Germany that drove the process (together with the UK), while the US moved into a supporting role and did most of the arm-twisting of Prishtina and the Thaçi government. This left the shift in Western leadership less visible on the ground in Kosovo. In addition, Germany's, and with it the EU's, leverage in Kosovo was bound to an indirect mechanism: Berlin's authority rests on Serbia accepting EU accession conditionality and on the softening of the positions of the five non-recognizers among EU member states – a process that unblocks Kosovo's EU integration process but leaves the new state structurally lagging behind Serbia's accession bid. Even more important than the institutional and

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<sup>11</sup> Interviews with Western diplomats and officials, Prishtina, 2012; *The unsupervised state; Morning after: Life without supervision*, Forum 2015, Prishtina, August 2012, available at: <http://kfos.org/wp-content/uploads/2012/09/morning-after-ENG.pdf>; International Steering Group (ISG), conclusions of the 14<sup>th</sup> (January 24, 2012) and 16<sup>th</sup> (September 10, 2012) meetings.

para-institutional mechanisms of the Western approach to Kosovo, the success of the April Agreement turned the Dialogue into the uncontested top priority of the West's Kosovo policy. The democratic question since then has been subordinate to the Dialogue, especially in cases where pursuing democratization and solving the status issue pull in opposite directions.

### *The amnesty law*

In early July 2013, Kosovo's government introduced a draft amnesty law in the Assembly that represented the first clash of competing priorities in the implementation of the April Agreement. The law was part of an implementation plan agreed in May. Granting amnesty to Serb citizens in northern Kosovo for criminal offenses that were the result of their having lived under Serbian state jurisdiction was defined as a precondition for dismantling parallel structures. The judiciary and police were to be integrated into official Kosovo state institutions and municipal elections were to be held under Kosovo law. The parties to the agreement were already in breach of a June deadline because negotiations over the law had taken longer than foreseen. As a EULEX lawyer involved in the process explained: "We had the original draft law on the government side, and we had the original Belgrade proposal for wider amnesty that was acceptable to Prishtina, but also for the international community, which refused things like amnesty for attacks against internationals. We got it down to a much more limited set of criminal acts that qualified for amnesty."<sup>12</sup> But by the time the law entered parliament, it had undergone substantial changes. Justice Minister Hajrudin Kuçi, one of Hashim Thaçi's closest political allies, in a last-minute move had integrated a second, totally different law into the agreed draft law text. This part did not aim at Serbs in the north but at the rest of Kosovo territory and foresaw amnesty for almost two dozen criminal offenses. It clearly aimed at the ruling PDK's members and backers, among them nine serving mayors who were under criminal investigation, but also served similar interests in most opposition parties. As a consequence, the law gained a majority of votes, but narrowly fell short of the necessary two-thirds majority. As an MP who voted against the first draft law explained: "On the first reading, few ambassadors were there – it was weird... Most diplomats said 'we don't have a stance.' Only a few ambassadors from smaller European countries advised us to vote against."<sup>13</sup> Following the vote, part of Kosovo civil society and the opposition movement Vetëvendosje publicly mobilized against the law. Only the Dutch ambassador publicly criticized the law while the other Western diplomats opted for backroom negotiations with the government and opposition parties. A week later, an amended draft was put to a vote and gained the necessary two-thirds majority. It had undergone some changes, but the disputed provisions had largely remained intact. The same MP explained: "After the first vote, Deputy Assistant Secretary of State Phillip Reeker was here and said, 'whoever is against the amnesty law is against the US.' He made the point that 'I speak for Barack Obama.' In the second reading the vast majority of European ambassadors said they supported passage of the law though it was still problematic".<sup>14</sup> Vetëvendosje MPs challenged the law before the Constitutional Court. The Court's

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<sup>12</sup> Interview with EULEX lawyer, Prishtina, September 2013.

<sup>13</sup> Interview with opposition MP, Prishtina, September 2013.

<sup>14</sup> Ibid.

decision in early September was obviously taken under political pressure from the government: It declared that amnesty for about half of the criminal offenses listed in the law related to destruction of property, arson, and falsifying documents, were not in line with the constitution, but that the other half of the list was fine. As one of three international judges on the panel, US judge Robert Carolan noted in his dissenting opinion, the Kosovo Assembly has the constitutional authority to grant amnesty for all criminal offenses except a few restricted under international law and treaties. A EULEX judge at the time supported this opinion, explaining that “amnesty laws are political issues, not legal ones, and the Court’s decision to reject amnesty for certain criminal offenses and reject it for others is totally arbitrary.”<sup>15</sup> With its compromise decision, the Court balanced competing legal and political imperatives that served the interests of both the government and the West and put an end to an already three-month long delay in the implementation of the April Agreement. But the EU and the US had assisted the Court, the PDK-led government, and legislators in inflicting major damage to the rule of law in Kosovo.

### *EULEX phase-out vs. establishment of the Special Court*

In 2014 and 2015, the West pushed through two policy decisions in Kosovo – a new mandate for EULEX and the establishment of a Special Court – that directly contradicted one another and did additional damage to the rule of law in Kosovo and to the government’s self-declared aim to promote an independent and efficient judiciary. Shortly after the April Agreement had been signed, the EU set into motion its standard procedure to review the two-year EULEX mandate that was set to expire in July 2014, as part of the planning for a follow-on mandate.<sup>16</sup> The two main EU architects of the Dialogue, Berlin and London, pressed ahead with a joint non-paper proposing an outline for the future mandate. The non-paper proposed a continuation and strengthening of the executive mandate in northern Kosovo to support integration of parallel police and judicial structures, and a phase-out of EULEX in the rest of the country by limiting the work of international judges and prosecutors to ongoing cases only. The proposal set the direction for the European External Action Service (EEAS) strategic review of EULEX. Just as with the ICO in 2012, the key EU countries were presented an opening to fix a mission whose operations had been to a large extent hampered by the EU’s internal divide over Kosovo – structural constraints that first and foremost restricted EULEX’s ability to prosecute high-level, politically sensitive cases of organized crime and corruption. And as with the ICO, the EU under German and British leadership decided to move towards closure instead of finally securing a sustainable impact on the promotion of the rule of law – and to use parts of EULEX to support implementation of the April Agreement.

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<sup>15</sup> Constitutional Court of Kosovo, Constitutional review of the Law, No. 04/L-209, on Amnesty, available at: [http://www.gjk-ks.org/repository/docs/gjkk\\_ko\\_108\\_13\\_ang.pdf](http://www.gjk-ks.org/repository/docs/gjkk_ko_108_13_ang.pdf); Concurring and dissenting opinion of judge Robert Carolan, available at: [http://www.gjk-ks.org/repository/docs/gjkk\\_ko\\_108\\_13\\_mkm\\_1\\_ang.pdf](http://www.gjk-ks.org/repository/docs/gjkk_ko_108_13_mkm_1_ang.pdf); interview with EULEX lawyer, Prishtina, September 2013; “Civilno društvo kritikuje Zakon o amnestiji,” *Radio Slobodna Evropa*, September 4, 2013, available at: <http://www.slobodnaevropa.org/content/civilno-drustvo-kritikuje-zakon-o-amnestiji/25095721.html>.

<sup>16</sup> The following account including quotes is based on the report *EULEX – Towards an integrated exit strategy. Strengthening the rule of law through EU-integration*, Democratization Policy Council (DPC) – Group for Legal and Political Studies (GLPS), Berlin-Prishtina, April 2014, available at: [http://democratizationpolicy.org/uimages/EULEX Exit Strategy\\_DPC-GLPS Policy Report \(04-14\)\\_ENG.pdf](http://democratizationpolicy.org/uimages/EULEX%20Exit%20Strategy_DPC-GLPS%20Policy%20Report%20(04-14)_ENG.pdf); pp. 23-32.

Following this direction, the EEAS in its Strategic Review painted a picture of the state of the judiciary in Kosovo far rosier than the reality on the ground, while EULEX judges and prosecutors – without anyone in Brussels listening – warned in background conversations that their domestic colleagues were not yet ready to try sensitive cases. One of them said: “They can’t initiate high-profile cases. If we don’t initiate any new cases, no high-profile persons will ever be prosecuted again. The policy of no new cases is a total win for the government of Kosovo. All the senior guys can now feel safe.” There was criticism from within the EU, with one interlocutor referring to “priorities turned upside down, a typical EU story.” “The question whether Kosovo institutions are ready is not the starting point of the Strategic Review – that inevitably leads you to manipulate the benchmarks for closure,” the source said. But such criticism had limited effect. That the political decision behind the non-paper was, in the words of an EU diplomat, “to give something to Prishtina” in return for its constructive engagement in the Dialogue became clear when the EEAS shared the draft strategic review with the Kosovo government and thus enabled it to hand in a written position, *before* EU member states received the paper and decided on the Union’s position on the future mandate with which they would enter formal negotiations with the government – a precedent. In the end, the EU gave in far more to Prishtina’s pressure to get EULEX closed than the pressure really warranted. The decision to create a new mandate was much worse than either closing the mission completely or fixing it by phasing out its executive mandate in a meaningful way – based on real benchmarks measuring the capability of the local judiciary to take over sensitive legal cases from internationals, rather than being tied to artificial political deadlines. In addition, the EEAS fumbled the timing for a serious preparation of the new mandate and ended up in a tight race with the dissolution of the Kosovo Assembly for early elections. As a consequence, the quality of the amended laws that were adopted at one of the last parliamentary sessions in April 2014 to launch the new two-year mandate suffered to a degree that is unacceptable for a rule of law mission.

The EU’s efforts to secure a parliamentary majority for the new mandate was overshadowed by a much tougher political struggle with the Kosovo government and the opposition over the establishment of a Special Court – a move that followed a completely different assessment of the state of the judiciary and the rule of law in Kosovo. In spring 2014, the final report of the Chief Prosecutor of the Special Investigative Task Force (SITF) was nearing its completion and with it the establishment of a special court. SITF had been established by the EU in 2011 to investigate allegations compiled in a report by the Council of Europe rapporteur Dick Marty about crimes against Serbs and other minorities allegedly committed by the Kosovo Liberation Army (KLA) during and especially after the 1999 war, in particular allegations of murders for the purpose of organ harvesting and trafficking. The plan by the EU and the US to establish a court somewhere outside of Kosovo, in an EU member state, but to formally locate it within the constitutional order of the state of Kosovo turned into a tricky endeavor. The government in Prishtina turned out to be reluctant to support the Court as speculation grew about the potential list of future indictees, including Hashim Thaçi and Kadri Veseli, the former head of SHIK and PDK vice-president.

After strong pressure from the EU and especially the US, the ruling coalition, with a simple majority on April 24, 2014, ratified the agreement with the EU to set up the Special Court, in a package vote that also included the new EULEX mission. Yet in the first half of 2015, when it had to vote on a constitutional

amendment for the establishment of the Court and on a law on the Special Court, the new PDK-LDK coalition ran into more serious problems despite its two-thirds majority in the Assembly. It was only after a failed vote in June in which too many PDK MPs had voted against the amendment that the laws finally passed in August, following resubmission of the bill to the Assembly. In the end, compliance was secured through the threat of a break in relations between the West and Prishtina, coupled with a threat by US Ambassador Tracey Jacobson that the US would support the establishment of a UN Special Court with the assistance of a Russian UNSC vote as an alternative. The latter threat was an odd political maneuver given Moscow's rejection of Kosovo's independence, the geopolitical context of the Russian aggression against Ukraine, and the fact that Russia had been Serbia's main supporter of turning the organ trafficking issue into a national victimization myth way beyond the actual facts. It is unclear why the US thought it had to consider this as a way to exert pressure; the threat of a break in the US relationship with the government in Prishtina likely was not any less effective than the prospect of bringing Moscow and the UNSC into the game.

Western policy on establishing the Special Court demonstrates like nothing else the EU's inconsistency in dealing with the rule of law in Kosovo. The very decision to establish a new, separate court is an implicit recognition of the failure of both UNMIK and EULEX to investigate and try such sensitive cases. The new court seems even odder taking into account a public statement by SITF's chief prosecutor, Clint Williamson, in July 2014. In summing up the investigation's findings in the pre-court establishment phase, Williamson explained that his team found evidence for only a small number of organ trafficking cases – far fewer than suggested by the public narrative in Serbia that is to a certain degree responsible for the international attention to the issue.<sup>17</sup>

But it is the rationale for establishing a *de facto* foreign court, with foreign judges and prosecutors and court proceedings to be held largely outside Kosovo territory, that best demonstrated the EU's inconsistency. In his statement, Williamson not only implicitly admitted that Kosovo judges and prosecutors would not be able to prosecute these politically sensitive cases, but explicitly stated that with some of the potential indictees still holding senior political positions, witness protection on Kosovo soil was not feasible. This assessment of the rule of law in Kosovo was diametrically opposed to that advanced by the EU as the rationale for phasing out EULEX's executive mandate with the new mission.<sup>18</sup>

### *2014 government formation crisis*

The May 2013 implementation plan for the April Agreement set an unrealistic end-of-year timeline for dismantling the main pillars of the parallel system in northern Kosovo. 2014 began with implementation

<sup>17</sup> "Statement of the Chief Prosecutor of the Special Investigation Task Force," July 29, 2014, available at: [http://sitf.eu/images/Statement/Statement\\_of\\_the\\_Chief\\_Prosecutor\\_of\\_the\\_SITF\\_EN.pdf](http://sitf.eu/images/Statement/Statement_of_the_Chief_Prosecutor_of_the_SITF_EN.pdf).

<sup>18</sup> Interviews with Western diplomats and domestic judicial experts, Prishtina, 2014-15; *Risks for the Republic of Kosovo if parliament fails to establish the Special Court*, GLPS Opinion No. 4, Prishtina, April 2015, available at: ; "Statement of the Chief Prosecutor of the Special Investigation Task Force," July 29, 2014, available at: <http://legalpoliticalstudies.org/wp-content/uploads/2015/05/Risks-for-the-Republic-of-Kosovo-if-the-Parliament-Fails-to-Establish-the-Special-Court.pdf>; *Law on Special Chambers and Specialist Prosecutor's Office*, available at: <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-053%20a.pdf>; Andrea Lorenzo Capussela, "The six paradoxes of Kosovo's special court," available at: <http://www.balkanicaucaso.org/eng/Regions-and-countries/Kosovo/The-six-paradoxes-of-Kosovo-s-special-court-162735>.

behind schedule; early parliamentary elections in Serbia in March and in Kosovo in June, and elections to the European Parliament in May, essentially blocked the process for the whole year. The main challenge for the West during that time was a stalemate lasting five months over the formation of a new government in Kosovo.

For the first time since the declaration of independence, most of the larger parties entered the campaign for the elections on June 8 in a weakened position. The PDK, in power since 2008, became increasingly dependent on the Dialogue, as its record on domestic policy was thin. The LDK's president was substantially weakened after losing the post of mayor of the capital Prishtina in local elections in 2013. Ramush Haradinaj appeared increasingly detached from political reality after his return from the UN war crimes tribunal in The Hague, expecting the PDK to join in coalition with his smaller AAK (Alliance for the Future of Kosovo) and to offer him the Prime Minister's post based simply on his pre-ICTY charisma. Vetëvendosje, the youth movement-turned-political party, had scored a major success in winning the elections for Prishtina mayor, mostly owing to the charisma of its candidate, Shpend Ahmeti. But it had failed to expand its reach across the country as it had hoped.

In the end, the election results left the balance of power in the Assembly largely intact. The PDK with 30% came in as the strongest party with slight losses. The AAK registered slight losses as well while the LDK and Vetëvendosje scored marginal gains. Yet two factors did, in fact, alter the balance of power. First, the PDK's junior partner, the AKR, missed the threshold and in its stead NISMA, a new party formed by two senior PDK dissidents, entered the new Assembly. Second, with the decision of the LDK to join NISMA and AAK in forming a post-election alliance, LAN, to block Thaçi from a third mandate as Prime Minister, the PDK for the first time had lost the chance to secure a parliamentary majority. LAN's 47 seats in the 120-member Assembly plus a potential 16 supporters from Vetëvendosje stood against the PDK with its 38 seats. But the PDK refused to give up power, and the country was set for a political struggle that turned into a conflict fought with constitutional-legal means. Both blocs argued over the constitution's stipulation that the President "appoints the candidate for Prime Minister on proposal of the political party or coalition holding the majority in the Assembly" (Art.84.14); was the term "coalition" supposed to refer also to post-election alliances of parliamentary parties? A similar question arose over another stipulation, that "the President of the Assembly is proposed by the largest parliamentary group and is elected by a majority vote of all deputies" (art. 67.2), as the PDK questioned the legality of the election on July 17 of Isa Mustafa as Assembly Speaker with the votes of LAN, Vetëvendosje, and minority representatives in the Assembly. Both cases were brought before the Constitutional Court, and the Court supported the PDK's interpretation in two majority decisions on July 1 and August 26. In addition, with their second decision, annulling Mustafa's election as Assembly Speaker, the judges in essence offered the PDK the opportunity to block government formation forever. At the same time, they put the LAN coalition in a difficult position – as their coalition deal was based on an agreement to give Haradinaj the Prime Minister's post and Mustafa that of Speaker, they were forced to agree to a completely new coalition deal.

Based on all available sources it is evident that the Constitutional Court's decisions were politically motivated. Several domestic and foreign lawyers who participated in the drafting of Kosovo's



constitution came out in public criticizing the Court for its narrow interpretation of the constitution's wording. The ruling, they said, did not uphold the original spirit, which was to support the smooth formation and operation of the government. Curiously, the documentation from the constitutional drafting committee had disappeared from the archives at the time the constitutional court lawyers were looking into the issue, only to re-appear afterwards. The US judge on the Constitutional Court, Robert Carolan, went even further – in two dissenting opinions he explained why the legal interpretations of “coalition” and “parliamentary group” by the majority of judges were wrong.<sup>19</sup>

The prospect of an open-ended institutional crisis spurred the West into action. Western officials and diplomats were fully aware of the background of the Court's decisions. As a European Commission expert explained: “We wrote into the draft 2014 progress report that the Constitutional Court took a politically motivated decision, but the college of Commissioners threw it out arguing ‘we can't prove that.’” Both the EU and the US took a less invasive approach than they had in 2011, when former US Ambassador Dell bragged among Western colleagues that the choice of Atifetete Jahjaga as President had been his brilliant idea alone. Officials from EU member states and the US made it clear from the outset that they would not interfere in the formation of a new coalition. As a US diplomat said: “It's tough. The local leaders still come to us like in the old days saying ‘tell us what to do’ – we tell them that we don't operate this way anymore, but they simply don't believe us.” Nevertheless, various Western ambassadors did champion different options, but these are difficult to reconstruct due to competing accounts. But at least on the German side, the Chancellor's Office and the governing Christian Democrats (CDU) took a neutral stance, although they did intervene in one particular way – by making it clear to the LAN opposition leaders that Berlin would insist on the continuation of the Dialogue with Serbia and on implementation of Kosovo's commitments in the April Agreement. This position was shared by key Western allies. In that spirit, one of the architects of the Chancellor's policy on Serbia and Kosovo, CDU MP Andreas Schockenhoff, traveled to Prishtina in July where he received a promise from LAN leaders that they would not join a formal coalition with Vetëvendosje – only to learn on returning to Berlin after the summer break that they had broken their promise. With the LAN coalition unable to reach a new coalition agreement without the post of assembly speaker, Isa Mustafa – leader of the LDK, the second-largest party in parliament – traveled to Berlin in mid-November to meet with the Chancellor's Office and CDU officials, and to Brussels to meet with the leadership of the center-right European People's Party (EPP). Mustafa met twice with MP Schockenhoff, and in-between with Merkel's foreign-policy advisors. Contrary to later public accounts by Mustafa, in which he claimed that he was pushed towards a coalition with the PDK, he had already taken that decision before hitting the road and was looking for international backing for his political U-turn. An official in the Chancellor's Office

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<sup>19</sup> Nate Tabak, “Rulings deepen political crisis,” *Prishtina Insight*, September 12-25, 2014, pp. 5-9; interviews with representatives of political parties, Prishtina, 2015; Constitutional Court of Kosovo, *Judgment Concerning the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo*, July 1, 2014, available at: [http://www.gjk-ks.org/repository/docs/gjkk\\_ko\\_103\\_14\\_ang.pdf](http://www.gjk-ks.org/repository/docs/gjkk_ko_103_14_ang.pdf); *Dissenting Opinion of Judge Robert Carolan*, available at: [http://www.gjk-ks.org/repository/docs/gjkk\\_ko\\_103\\_14\\_mm\\_shq.pdf](http://www.gjk-ks.org/repository/docs/gjkk_ko_103_14_mm_shq.pdf); *Constitutional review of Decision No. 05-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo, dated 17 July 2014*, available at: [http://www.gjk-ks.org/repository/docs/gjk\\_ko\\_119\\_14\\_ang.pdf](http://www.gjk-ks.org/repository/docs/gjk_ko_119_14_ang.pdf); *Dissenting Opinion of Judge Robert Carolan*, available at: [http://www.gjk-ks.org/repository/docs/gjkk\\_ko\\_119\\_14\\_mm\\_ang.pdf](http://www.gjk-ks.org/repository/docs/gjkk_ko_119_14_mm_ang.pdf).

confirmed: “Mustafa had already shifted course and was seeking our support – we gave it to him. We explained to him that we are not genuine fans of grand coalitions, but that it seemed to be the most feasible way out of the crisis.” As for the thinking in the Chancellor’s Office, he added: “With Vetëvendosje entering the coalition and securing key responsibility for the dialogue in case of a LAN government, we seriously feared for the future of the dialogue and the integration of the north.” With the backing of Berlin and the EPP, Mustafa on his return to Prishtina declared that he would enter into a grand coalition with the PDK. The crisis ended after five months with a clear message to Kosovo’s citizens that a fundamental rule of parliamentary democracy – that the majority group of MPs forms the new government following elections – does not apply in their country.<sup>20</sup>

## Ending parallel structures – the democracy question

### *Bringing Serbs into state structures – the 2013-14 local and parliamentary elections*

As part of the dissolution of parallel structures of the Serbian state in Kosovo, especially in the north, the April Agreement prescribed municipal elections in the four majority-Serb municipalities north of the Ibar River (North Mitrovica, Zubin Potok, Leposavić, and Zvečan) be held in 2013 under Kosovo law. Prishtina decided to hold local elections in the whole of the country in November. Organizing local elections in the four municipalities and making them and their elected officials integral parts and players in the independent state of Kosovo in a way that would fulfill international democratic standards for free and fair elections proved to be a near-impossible endeavor, for several reasons.

First, Germany succeeded in shifting the EU’s course on the Kosovo-Serbia dispute by clearly telling Belgrade that the time of border changes in the Balkans was over and that in order to continue on its path towards the EU, it had to accept the fact of an independent Kosovo. However, this indirect approach of attempting to solve the status issue with the political tools of EU accession was highly sophisticated and unprecedented, and it turned out that Berlin had not developed a master plan for this long-term process. The question of whether Serbia should be required at the end of this process to formally recognize the state of Kosovo before entering the EU remained open; Germany and its Western allies left Belgrade some leeway regarding how much of the unpleasant truth it was prepared to share with its citizens, and with Kosovo Serbs. Second, this task included the challenge for Belgrade of pressing Serbs in northern Kosovo, whom it had manipulated for over three decades, to vote in Kosovo elections. Third, in the rules-free environment in northern Kosovo, in which Western institutions such as KFOR and EULEX never came close to full control, the West needed to rely on Belgrade to organize elections – thus bringing Serbia *back* into Kosovo. Fourth, the dominant member of the Serbian government, Aleksandar Vučić, delegated the job largely to Aleksandar Vulin, the head of the government office for Kosovo, who also headed a small Kosovo Serb party and pursued his own personal interests in conducting his government job.

These circumstances resulted in Belgrade (re)seizing a dominant role in Kosovo Serb politics throughout

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<sup>20</sup> Interviews with EU and US diplomats, party representatives, and analysts, Prishtina, 2014-15; interviews with German government officials and European diplomats, Berlin, November 2014.

the country, not just in northern Kosovo, and confusing Serb citizens with its pre-election political spin. Belgrade removed the mayors of the four northern municipalities due to their resistance to the April Agreement and told citizens they would be voting for Serb institutions that for the first time would gain international recognition, and that the Association/Community of Serb Municipalities (ZSO) to be established based on the April Agreement would be an autonomous entity similar to the Republika Srpska in Bosnia and Herzegovina. Belgrade put together a joint Serb candidate list, the *Srpska lista*. The West opposed Belgrade's idea that replaced the existence of multiple Serb parties; but neither Germany nor anyone else seriously sought to prevent the emergence of a *de facto* one-party Serb ethnic system. The Serb List served as a tool for Belgrade to stage a comeback in the six Serb municipalities south of the Ibar. There, citizens had adjusted to the reality of an independent Kosovo, but the parallel health-care and educational system and the Serbian municipal authorities that still operated in parallel to the Kosovo municipal authorities offered plenty of jobs in economically depressed regions. In these places, Belgrade told citizens that "Serbia is back."

On election day on November 3, the *Srpska lista* achieved sweeping success. It won all four northern municipalities after a series of bomb attacks and other incidents spread fear among citizens and prevented other Serb parties from properly campaigning, while extremists from the region and Serbia prevented many people from casting their vote. In the south, *Srpska lista* entered the race with officials from the parallel Serbian municipal institutions and won five out of six municipalities through a combination of campaigning by Serbian government officials, by threats that jobs in Serbian institutions would be lost, by winning over candidates to run on the *Srpska lista* list by offering them out-of-country votes from Serbia, and by securing a substantial number of votes from such out-of-country voters – thousands of Kosovo Serb refugees in Serbia who to a large extent still depend on social welfare from the Serbian state. Voter turnout in the four northern municipalities was between 18% and 31%. It was considerably lower when one excludes the out-of-country votes, which amounted to 10% of actual votes in some municipalities. Voting was repeated ten days later in three polling stations in Mitrovica north after masked men had stormed the stations and the OSCE had pulled out all its staff from northern Kosovo and closed all polling stations. Nevertheless, the OSCE, after the partial re-vote, declared the elections as regular, probably in order not to create further complications for the already-delayed implementation of the April Agreement. Ambassador Jean-Claude Schlumberger, Head of the OSCE Mission in Kosovo, stated that „successful elections in the north have opened the way for further democratic processes in Kosovo.“<sup>21</sup>

Kosovo's early parliamentary elections in the Serb majority municipalities on June 8, 2014, received far less attention from the international community, even though they proceeded very much in the same way as had local elections half a year earlier. Belgrade again confused Serb voters. At first, government officials supported the local mayors in advocating an election boycott, but then changed tack in a meeting between the mayors of the four northern municipalities and the director of the new Serbian

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<sup>21</sup> Interviews with Serb politicians, journalists, and analysts, Kosovo, 2013; *Not yet a done deal. Kosovo and the Prishtina-Belgrade Agreement*, DPC Policy Paper, Berlin, November 2013, pp. 3-5; Kosovo Central Election Commission (CEC) data; "OSCE successfully concludes election facilitation in four northern Kosovo municipalities," available at: <http://www.osce.org/kosovo/109098>

government office for Kosovo and Metohija, Marko Đurić, late in the campaign. Voter turnout was stable, ranging from 18% in Mitrovica north to 36% in Zubin Potok. The *Srpska lista* secured nine of ten parliamentary seats reserved for the Serb minority in the Kosovo Assembly.<sup>22</sup> This sealed the fate of the Serb Liberal Party (SLS), a Western-supported group in the south that had a dominant role in the political scene and had participated in the government since 2008. With the creation of the grand coalition in November 2014, *Srpska lista* replaced the SLS in the Kosovo Government. Reports of large-scale election manipulations on behalf of the Belgrade-backed *Srpska lista* had even less international impact than in November. As one Serb interlocutor insisted: “There were cases of manipulation with ballots in several polling stations in the north”. Another source supported this account: “Of course the elections weren’t fair, they were manipulated – they brought four, five thousand votes in envelopes from Belgrade, that was it. The West, the diplomatic corps, international organizations all looked the other way. I confronted one EU member state ambassador in a private meeting with the situation – he tacitly admitted I was right.”<sup>23</sup>

### *The Brussels Agreement and the Association/Community of Serb Municipalities*

In early 2015, with new governments in Belgrade and Kosovo in place and new EU High Representative Federica Mogherini having settled into her office, the EU could finally resume the Dialogue where it had stalled a year earlier. After finalizing an agreement on implementing the integration of the judiciary in northern Kosovo, the one main issue from the April Agreement on which there had been no movement at all came onto the agenda – the Association/Community of Serb Municipalities (ZSO). In fact, there had been an uninspired first proposal for a draft statute from the Kosovo government at the end of 2013. Belgrade had drafted a statute in early 2014 that was rejected outright by both Prishtina and the EU. The draft, *inter alia*, demanded that half of Kosovo’s property that Belgrade identified as Serbian state property should be entered into the books of the future Association/Community.<sup>24</sup>

In June 2015, when preparations for the next round of political dialogue on the ZSO in Brussels were underway, it was not clear even procedurally who should be responsible for compiling a first draft statute as a basis for negotiations. But Belgrade and the EU were under substantial pressure on account of the Vučić government’s publicly set target date of 2015 to open the first accession chapters and Berlin’s insistence that Chapter 35, which includes relations with Kosovo, should be among those chapters. A July meeting failed when the Kosovo Government refused to accept two positions advanced by Serbia – that the ZSO administrative staff have the status of civil servants and that the ZSO gain the right to own companies – arguing that this would give the ZSO executive authority. But the subsequent Dialogue round on August 25 produced a surprise agreement between Prishtina and Belgrade on the general principles and main elements of the ZSO, setting the framework for the draft statute. Yet the agreement was followed by contradictory interpretations which mirrored the pre-agreement positions of Prishtina and Belgrade. Prime Minister Vučić declared that he had succeeded in securing executive

<sup>22</sup> Kosovo Central Election Commission (CEC) data.

<sup>23</sup> Interviews with Kosovo Serb politicians and analysts, Prishtina, 2015.

<sup>24</sup> Interviews with EU officials, Belgrade and Prishtina, 2014.

authority for the ZSO, while his Kosovo counterpart Mustafa and Foreign Minister Thaçi insisted that they had defended the country's sovereignty and that the ZSO had the status of a non-governmental organization. The parliamentary opposition and elements of Kosovo's civil society accused the government of having accepted the unconstitutional creation of an autonomous entity not unlike Bosnia and Herzegovina's Republika Srpska (RS) and announced forceful political resistance to prevent implementation of the deal.<sup>25</sup>

Yet neither of these interpretations correctly reflects the agreed setting and status of the ZSO. The agreement outlines an Association/Community of Municipalities that is neither an NGO nor an RS construct – it is something unique, in-between an autonomous entity without territorial continuity and a classical form of voluntary pooling of individual functions among a number of municipalities without a third governance level between local and central state levels, as exists in many European states. Its character can best be understood in the context of the process that produced the August 25 agreement – a classical short-term EU fix aimed at reaching *any* feasible compromise, without regard for the long-term potential negative implications for democracy and the rule of law in Kosovo, including in the ten majority-Serb municipalities (albeit within certain red lines set by Berlin and Washington). According to an EU official, it was an EEAS lawyer with no expertise in local self-governance who compiled the draft that served as the basis for negotiations in Brussels. “On August 25, we had real negotiations going on,” he said. “The draft was moving back and forth across the table. So what we got is a tough compromise characterized largely by compromise wording – civil servant status – but this is not at all clear, the text only says ‘according to the Law on Civil Servants.’ [The same with] ZSO ownership of companies – again, the agreement only speaks of ‘co-ownership’. ‘Full overview’ over functions such as education and health care – this is not executive authority, nobody really knows what these vague phrases really mean. Add to this the problem that emerged afterwards: the wording in the Albanian and Serbian language versions differs from the English.” Against this background, it is clear that the ultimate shape and character of the ZSO will depend on the future statute text. But the vague wording in the agreement sets the framework for the ZSO's institutions and competencies in a way that leads to a hybrid institutional structure with blurred lines in the institutional, legal, and constitutional sense and a blurred division of competences. Given the prevailing political and legal culture, this set-up is bound to give rise to undemocratic practices.<sup>26</sup>

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<sup>25</sup> Bodo Weber, “The Association of Serb Municipalities in Kosovo: it's neither a Republika Srpska nor an NGO, but rather a classic Brussels compromise,” DPC blog post, September 1, 2015, available at: <http://democratizationpolicy.org/the-association-of-serb-municipalities-in-kosovo---it-s-neither-a-republika-srpska-nor-an-ngo--but-r>; interview with EU official, Prishtina, June 2015; see also the Vetëvendosje report “The Republic of Kosova: The Resistance Against a Semi-authoritarian Regime,” October 21, 2015, available at: [http://www.Vetëvendosje.org/wp-content/uploads/2015/10/Report-on-Kosova\\_Movement-for-SELF-DETERMINATION.pdf](http://www.Vetëvendosje.org/wp-content/uploads/2015/10/Report-on-Kosova_Movement-for-SELF-DETERMINATION.pdf).

<sup>26</sup> “Association/Community of Serb majority municipalities in Kosovo – general principles/main elements,” EEAS, August 2015, available at: [http://eeas.europa.eu/statements-eeas/docs/150825\\_02\\_association-community-of-serb-majority-municipalities-in-kosovo-general-principles-main-elements\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/150825_02_association-community-of-serb-majority-municipalities-in-kosovo-general-principles-main-elements_en.pdf); interview with EU official, Prishtina, September 2015.

## Trading democracy for solving the status dispute – the impact

With the PDK remaining in power for a seventh year in a row and the West placing the Dialogue above all other priorities in recent years, democracy and the rule of law in Kosovo have remained structurally deficient.

Despite substantially lower levels of overall fraud in the 2013 and 2014 elections compared to 2010,<sup>27</sup> no reform of the electoral system has taken place. All of the significant and substantial structural deficiencies remain in place, most notably:

- a chronically unresolved dispute between the political parties over the number of voting districts in place of the current single district, which regularly leaves whole regions unrepresented in the Assembly;
- the political composition of the Central Election Commission, dominated by the ruling parties (which now also includes a member from the *Srpska lista* loyal to Belgrade), and municipal election committees that are controlled by the parties governing in the respective municipalities;
- polling stations managed by the local school director who almost always is a political figure;
- unrevised voter lists;
- voting rights in local elections for non-resident, diaspora citizens;
- vague regulations regarding the documents required for voter identification at polling stations;
- lack of a deadline for publishing the official election results and deadlines for complaints over irregularities that are too short.

A recent initiative by the EU Delegation in Prishtina and supported by the Council of Europe and the OSCE to return to the reform of the electoral system after the Stabilization and Association Agreement with Kosovo had finally been initiated was blocked by the US.

Most of Kosovo's parliamentary parties remain authoritarian in their internal structures and hierarchies. Party financing remains non-transparent, with a large share of shadow financing; no legal rules have been introduced to guarantee transparency and to establish effective enforcement mechanisms. Despite certain improvements in the functioning of the Assembly, Kosovo's parliament exercises limited effective oversight. It generally acts as a *de facto* executing body of the government and the ruling coalition, generating a debilitatingly confrontational relationship between government and opposition. The work of the Kosovo Government is still not regulated by a law on government. Public administration remains dominated by cronyism and nepotism. Independent oversight institutions remain weak and their findings and recommendations often remain without follow-up from parliament or government.<sup>28</sup>

<sup>27</sup> "EU Statement on the Legislative Elections in Kosovo on 8 June 2014," June 12, 2014, available at: <http://www.osce.org/pc/119958?download=true>.

<sup>28</sup> For more details, see among others: *Electoral Deform. Two years later, reform is back to square zero*, Democracy for Development Institute, Prishtina, 2013; *Strengthening the statehood of Kosovo through the democratization of political parties*,

The rule of law in Kosovo remains weak. The judiciary is neither effective nor independent. Local judges and prosecutors have not developed a culture of independence that would shield them from political influence in sensitive, high-level cases of corruption or organized crime, let alone war crimes. Witness protection in such cases remains almost impossible within the country. Detained politicians have shown that they are able to create their own rules in Kosovo's detention system. The Kosovo Police (KP) has undergone substantial reform with Western support but operational autonomy *vis-à-vis* the interior minister and the political party in power has not been achieved. In the current government, the KP remains under the control of the PDK even though the interior minister, Skender Huseyni, hails from the LDK. An LDK official interviewed explained that "during the coalition negotiations it was Thaçi who insisted in talks with Mustafa that he chooses the interior minister from the LDK. Mustafa agreed, Thaçi insisted on Huseyni calculating that this choice would secure the PDK continued control over the KP." A particularly weak commercial court system means that rules in the economic sphere are essentially impossible to implement.<sup>29</sup>

The West's choice of stability and solving the status dispute over democracy and the rule of law in supporting the formation of the grand coalition has already begun to backfire. The new government was weakened from the outset by the two traditional political rivals, the PDK and the LDK, joining forces, and by a weakened Mustafa taking office as prime minister, with the domineering Thaçi acting as Foreign Minister and First Deputy Prime Minister. As a local analyst said: "Mustafa only reacts, he doesn't act. The PDK runs its ministries more efficiently, but Mustafa has picked totally anonymous, pale figures for the LDK-run ministries." At the same time, the experience with the government formation crisis has led to a re-radicalization of Vetëvendosje, which had moderated its policies and reached out to the international community during the stalemate. The AAK also has become more radical, dropping its earlier support for the Dialogue and the establishment of the Special Court. As a high-level party official explained the policy shift: "if we are forced by the international community to go down, we will at least go down uncompromisingly."

The confrontation generated by the coalition formation exercise has in the meantime escalated to an unprecedented level. Protests organized by the opposition in January 2015 as a reaction to a provocative statement by the new Minister for Return from the *Srpska lista*, Aleksandar Jablanović,<sup>30</sup> resulted in the worst violence that Kosovo experienced since the declaration of independence, with a total of 170 persons injured. Making good on its pledge to block the August 25 agreement with Serbia, the opposition MPs blocked the work of the Assembly for weeks with acts of civil disobedience. This

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KIPRED Policy Paper No. 2012/04, Prishtina, June 2012, available at: [http://www.kipred.org/repository/docs/Strengthening\\_the\\_statehood\\_of\\_Kosovo\\_through\\_the\\_democratization\\_of\\_political\\_parties\\_17969.pdf](http://www.kipred.org/repository/docs/Strengthening_the_statehood_of_Kosovo_through_the_democratization_of_political_parties_17969.pdf); *Standards on Party Financing - Coping with the shadow-financing of political parties in Kosovo*, GLPS and KFOS, June 2014, available at: ; *The state of independent institutions in Kosovo*, OSCE mission in Kosovo, July 2012, available at: <http://www.osce.org/kosovo/92050?download=true>.

<sup>29</sup> Research conducted by the author in preparation of *EULEX – Towards an integrated exit strategy. Strengthening the rule of law through EU integration*, DPC and GLPS.

<sup>30</sup> Jablanović had labelled Albanian protesters, among them family members of war victims, who had rallied against Serb pilgrims from Belgrade who tried to visit an Orthodox church in Gjakova/Djakovica as "savages;" "Kosovo Minister Urged to Quit for 'Savages' Statement," *BIRN*, January 13, 2015, available at: <http://www.balkaninsight.com/en/article/more-calls-for-minister-resignation-over-djakovica-events>.

escalated further on October 8, when former Vetëvendosje leader Albin Kurti activated a tear gas canister in parliament.<sup>31</sup> The conflict continued with more tear gas released in parliament, the arrest of Vetëvendosje members, and clashes between party activists and the police outside the Assembly building throughout October.<sup>32</sup>

Political developments in Kosovo in recent years and persistent deficiencies in democracy and rule of law have begun to threaten Kosovo's socio-economic development. Kosovo's economy has long suffered from chronic weaknesses and underdevelopment. Economic activity is largely confined to unsustainable sources of growth such as import of goods, government expenditure, and remittances from the diaspora. Its private sector is largely limited to services and trade, with very little production. This includes an underdeveloped agricultural sector, even though 60% of Kosovars depend on agriculture for their livelihood. Kosovo firms have an average of only 6.8 employees. With the youngest population in Europe, the country has an extremely low employment rate of 25%, an overall unemployment rate of 30%, and a youth unemployment rate of 55%. Some 34.5% of Kosovars live in poverty, and 12% in extreme poverty. The economy is suffering from a multitude of constraints that hinder business development and foreign direct investment, among them a dysfunctional judiciary and unfair competition which drives a large grey economy. According to surveys, tax evasion is evident in 34% of the sales of businesses, and 27% of the total labor force, which includes 70% of the agricultural workforce, does not report its income. Remittance payments, which make up around 14% of GDP and finance 40% of the country's trade deficit, play a crucial stabilizing socio-economic role, but one that is both fragile and potentially unsustainable. The country passed through the global recession fairly well due to its closed economy and remittances from Germany and Switzerland, and the overall level of public indebtedness remains low by comparison – but there are signs of growing economic instability with its origins in the political realm. Just as in the 2010 general elections, when the Thaçi government raised public sector wages by 30-50%, it again raised wages by 25% during the 2014 campaign and promised an additional 25% should it win the elections. This last raise proved fiscally unsustainable, and the Mustafa government was forced to retreat from the pre-election pledge, provoking social protests by teachers and other beneficiaries of the patronage system.<sup>33</sup>

The end of the government formation crisis coincided with a sudden explosion in the number of irregular migrants from Kosovo to Western Europe, which had already been gradually rising. Tens of thousands of Kosovars left the country, primarily bound for Germany, Switzerland, and Austria, but also

<sup>31</sup> Interview with AAK official, Prishtina, June 2015; Valerie Hopkins, "Roots of an uprising," *Prishtina Insight*, January 30-February 12, 2015, pp. 5-11; "Skupština pod blokadom opozicije," October 1, 2015, *Radio Slobodna Evropa*, available at: <http://www.slobodnaevropa.org/content/skupstina-pod-blokadom-opozicije/27281470.html>; "Oštre osude opozicionog incidenta u Skupštini Kosova," October 8, 2015, *Radio Slobodna Evropa*, available at: <http://www.slobodnaevropa.org/content/kosovo-opozicija-zvzdajlkama-blokira-rad-skupstine/27294798.html>.

<sup>32</sup> „Održana sednica Skupštine Kosova bez opozicije," *Radio Slobodna Evropa*, October 29, 2015, available at: <http://www.slobodnaevropa.org/content/opet-skupstinko-zasedanje-i-opet-suzavac/27322843.html>.

<sup>33</sup> *Business climate in Kosovo*, Riinvest, Prishtina, 2014, available at: [http://www.riinvestinstitute.org/publikimet/pdf/Business\\_Climate\\_in\\_Kosovo1421852590.pdf](http://www.riinvestinstitute.org/publikimet/pdf/Business_Climate_in_Kosovo1421852590.pdf); *To pay or not to pay. A business perspective of informality in Kosovo*; Riinvest, available at: [http://www.fes-prishtina.org/wb/media/Publications/2013/BUSINESS\\_INFORMALITY\\_ENG\\_FINAL.pdf](http://www.fes-prishtina.org/wb/media/Publications/2013/BUSINESS_INFORMALITY_ENG_FINAL.pdf); *IMF Country Report no.222*, July 2013, available at: <https://www.imf.org/external/pubs/ft/scr/2013/cr13222.pdf>; *Kosovo unlocking growth potential: strategies, policies, actions*, World Bank, April 29, 2010, available at: <http://web.worldbank.org/archive/website01352/WEB/IMAGES/KOSOVOCE.PDF>.



bound for other EU member states, even though they stood virtually no chance of being granted asylum. The migration wave started immediately after Serbia simplified travel rules in 2014 in the wake of the April Agreement, making it possible for Kosovo citizens to reach the borders of the EU via Serbian territory. The wave peaked at the end of the year. Many migrants had jobs or property in Kosovo, which pointed to another motivation – the loss of hope in the possibility of political, social and economic change. As two surveys conducted in Kosovo in early 2015 suggested, lack of hope for political improvements and mistrust in the country’s institutions were among the top motives. Two earlier surveys in 2014 had shown that only 25% of respondents were satisfied with the legislative, judicial, and executive institutions of their state and only 21% with the work of the government. In one of the 2015 polls, 88% of respondents considered the government as being most responsible for the migrant crisis.<sup>34</sup>

As a result of the West’s policy of putting solving of the status dispute first, democracy and good governance have probably suffered nowhere more than in the majority Serb municipalities, especially in those south of the Ibar. Serb-majority municipalities, and Serb politics in general, are now controlled by the *Srpska lista*. Belgrade’s authority, its role in the Dialogue, and its administrative resources in Kosovo where the Serbian state has maintained some 300 institutions now trump the will of Kosovo’s Serb citizens. The West did not demand in the April Agreement that municipal institutions of the Serbian state in Kosovo should cease to exist with the first local elections for Kosovo municipal authorities; as a result, institutional parallelism has taken on a new form. In all ten municipalities, the officially elected new mayors have been appointed by Belgrade to also serve as mayors of the parallel Serbian municipalities – a perfect breeding ground for corruption. Within the Serbian List, two political forces are competing for power: the party of the former government coordinator for Kosovo and current Serbian Minister for Social Affairs, Aleksandar Vulin, and Serbia’s ruling party, the Serb Progressive Party (SNS), acting through Marko Đurič, the current Kosovo coordinator. Vulin controls the four northern municipalities and their administrative resources while the SNS holds sway over the six Serb-majority municipalities south of the Ibar and is backed by two of the main actors of organized crime and smuggling, the Veselinov brothers, who control the real, underground economy. The struggle is purely about power and control, not about policy or the representation of residents’ interests. As one observer with insight has put it, “in the north it is less about democracy, and more about corruption.” In the south, the previously dominant party, the SLS, has evaporated with Belgrade’s return, and its backers in the West have dropped the party after half a decade of support. One Serb politician said: “South of the Ibar, a handful of SNS people rule; they are weak professionally, but strong on repression. In Gračanica alone, over 200 people were fired from public jobs for [having] the wrong party affiliation.” As a consequence, the West’s investment in building up local self-governance – through various projects to help improve municipal administration and local services – has been all but destroyed; the one exception is Štrpce, where there is political continuity in the mayor and the local assembly thanks to a strong local economic basis. Another Serb politician described the situation as follows: “Gračanica

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<sup>34</sup> *Potential Migrant’s Profile. Who are the Kosovars most willing to migrate?* Group for Legal and Political Studies, Policy Analysis No. 02/2015, available at: <http://legalpoliticalstudies.org/wp-content/uploads/2015/05/GLPS-Potential-Migrants-Profile-Who-are-the-Kosovars-most-willing-to-migrate.pdf>; *An overview of migrations of Kosovars into the EU: Migration as a Multifaceted Phenomenon*, INDEP, June 2015, available at: [http://www.indep.info/documents/5615\\_INDEP\\_An overview of migrations of Kosovars into the EU Migration as a Multifaceted Phenomenon.pdf](http://www.indep.info/documents/5615_INDEP_An%20overview%20of%20migrations%20of%20Kosovars%20into%20the%20EU%20Migration%20as%20a%20Multifaceted%20Phenomenon.pdf).

municipality is still formally functioning, but there is no follow-up on projects, no maintenance of the infrastructure. The remaining four municipalities have practically ceased to function. Municipal offices are hardly ever open, only between noon and 2 or 3pm.”<sup>35</sup>

## Conclusions and recommendations

Since those very first post-war days, Kosovo has been caught between two competing imperatives: how to achieve the transformation into a functioning democracy with good governance, a strong rule of law, and stable socio-economic conditions, and how to resolve the status dispute and secure the country’s full sovereignty. This challenge has led to an unhealthy division of labor between the international community in Kosovo and its domestic political and social forces. Kosovo has changed much since 1999 but this challenge remains. With Germany taking leadership of the EU’s Kosovo policy in 2011, the way in which the West is seeking to deal with this challenge has fundamentally changed. The EU has taken over Western leadership from the US, and political leverage has shifted to a subtler, less invasive approach based on the highly sophisticated and unprecedented endeavor to solve the Serbia-Kosovo status dispute and secure full sovereignty for Kosovo by way of Serbia’s EU accession process. No blueprint exists for this approach, and it is a hard sell to Kosovo citizens.

Since 2011, the West has put the Dialogue first in terms of importance, trading democracy for solving the status dispute at every step of the way, starting with acceptance of the PDK’s violation of the political deal that the US Government had co-signed as a guarantor, and continuing all the way to Germany’s support for the formation of a grand coalition in November 2014, which undermined the foundations of parliamentary democracy and the rule of law in Kosovo. While an objective rationale arguably existed for making the Dialogue a top Western priority in Kosovo (at least for some limited period of time), the EU and the US have done nothing since to remedy or at the very least to limit the damage inflicted on the country’s democracy and rule of law. This failure to take even basic remedial action despite the obvious need can only lead to the conclusion that the West’s trading of democracy for solving the status dispute has been the result of a classical bureaucratic muddling through; a lack of strategic thinking. German and other Western officials were so relieved and thankful to have overcome the institutional crisis in Kosovo that they did not want to consider what the political cost might be; now, less than one year later, they are confronted with the consequences; an escalating conflict between the opposition and government which threatens stability and a blockade of the parliament with no end in sight.

Furthermore, the West’s trade-off between democracy and rule of law and solving the status dispute now risks inflicting collateral damage sufficient to endanger the achievements of the Belgrade-Prishtina Dialogue, limited as they may be.

To prevent this from happening, and to put Kosovo back on track in terms of making progress toward

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<sup>35</sup> Interviews with Kosovo Serb politicians and political analysts, 2015.

democratization and the rule of law, the EU and the US should undertake a number of policy adjustments:

- The EU and the US must refrain from directly intervening in government formation, instead taking a principled stance based on fundamental tenets of the rule of law and parliamentary democracy. In case these principles are again breached, the EU and the US should threaten to boycott the emerging government, to include suspension of the EU-integration process.
- The EU, supported by the US, the OSCE, and the Council of Europe, must initiate a process of reform of the electoral system in the framework of the SAA that includes the government, opposition parties, and civil society, based on existing proposals from the NGO sector.
- The EU must urgently develop a coherent strategy that makes maximum use of its various instruments to promote a strong rule of law and an independent judiciary. The strategy must primarily concentrate on empowering judges, prosecutors, and police to take on high-level cases of corruption and organized crime and on assigning an important role to local civil society organizations active in the field of rule of law promotion.
- Diplomats from the EU and its member states, and the US must reach out to the opposition party Vetëvendosje despite fundamental differences over many policy issues; the US in particular must end its ban on contacts with Vetëvendosje.
- The IMF must make clear to Kosovo authorities ahead of the next elections that in the event they again increase public wages to a fiscally unsustainable degree, the consequence will be early termination of existing Standby Arrangements with no prospect for future SBAs.
- Germany, the US, and the UK must develop a master plan for solving Kosovo's status dispute and limited sovereignty through EU integration. The plan must be designed from the standpoint of the result expected – the entry of both Serbia and Kosovo into the EU as full, sovereign members that recognize each other.
- Berlin and London must reach out more pro-actively to Kosovo's citizens and its political elites to explain and lobby for their policies and to reassure them that the Dialogue and the dismantling of parallel structures will not lead to any form of territorial autonomy for Kosovo Serbs that would again curtail Kosovo's sovereignty.
- The EU and the US need to return to the frank language and messaging towards Belgrade they employed before 2014 in order to limit the Serbian government's maneuvering space for public spin on the alleged status-neutral character of the April Agreement and the Dialogue.
- The EU must insist that the Statute of the future Association/Community of Serb Municipalities be within the bounds of Kosovo law, is firmly based on the concept of pooling of municipal functions, and contains clear definitions and divisions of competences.
- The EU and the US must demand that Serbia immediately dismantle the parallel Serbian municipalities in Kosovo.

- The EU and the US must develop a strategic plan for dismantling the criminal politico-economic underground in the north as a precondition for democracy and the rule of law. This will not be achieved by integration of the Serb police and the judiciary, both of which have been effectively conditioned not to touch that issue, but rather by laying the foundations for their successful transformation. The plan must form an integral part of the future Dialogue following full implementation of the April Agreement.
- The EU needs to push for reform of party financing legislation in Kosovo with an emphasis on preventing any financing of Serb parties by Belgrade.
- The EU and other Western donors need to support NGOs, independent media and other social actors to counter political repression by municipal officials from *Srpska lista* in Serb-majority municipalities south of the Ibar and to re-establish basic preconditions for political pluralism.