

# BRUSSELS AGREEMENT IN THE LIGHT OF INTERNATIONAL LAW AND THE CONSTITUTION OF SERBIAN

**M.sc. Ivan PETROVIĆ**

*soko\_036@hotmail.rs*

**M.sc. Nataša PEROVIĆ**

*natasa.perovic.vb@gmail.com*

*Vrnjačka Banja, Serbia*

## **Abstract**

*The paper analyzes the legal nature of the "First agreement on the principles governing the normalization of relations" (Brussels, 19 April 2013) was initialed between the Government of the Republic of Serbia and the Provisional Institutions of Self-Government in Pristina (PIS), which is known to the public as "Brussels Agreement". In addition, the authors tried to look at the development or achievements of technical and political dialogue, through the observation stage of the interview, after the unilateral declaration of independence in 2008, through the prism of international law and the legal nature of this agreement and its place in the constitutional and legal order the Republic of Serbia. In that sense, the paper special emphasis on negotiations, which were conducted with the mediation of EU High Representative for the Common Foreign and Security Policy, Baroness Catherine Ashton (Catherine Ashton), as one in a series of attempts, which sought to engineer a resolution of the current crisis in Kosovo and Metohija and thus set the basis for the creation of a permanent and stable "foundation" final status of the southern Serbian province. In conclusion are given a certain predictions concerning possible further flow of dialogue, highlighting the potential sensitive points.*

**Keywords:** *Dialogue, the European Union, the agreement, Belgrade, Pristina, human rights, international law, the Constitution of the Republic of Serbia*

## **Introduction**

Provisional Institutions of Self-Government in Kosovo on 17 February 2008, unilaterally declared independence<sup>2</sup>, in this way, contrary to the ratified international conventions and rules of international law, although Kosovo since the conflict in this area in 1999, was under the protectorate of the United Nations, in accordance with Resolution 1244 [1], was followed by a sort of (quasi) completion of statehood this entity.

On the unilateral act of secession of Albanian institutions of self-government in Pristina, which has so far accepted 99 countries, public authorities in the Republic of Serbia, responded with immediate rejection of the null and void legal acts, with a

---

<sup>2</sup> Previously, during 2006 and 2007, between the authorities in Belgrade and Pristina negotiated, which is coordinated by the special envoy of UN Secretary General Martti Ahtisaari (Martti Ahtisaari) in connection with the determination of the final status of Kosovo. During March 2007, the Special Envoy of the UN Secretary General, Martti Ahtisaari presented the "Comprehensive Proposal for the Kosovo Status Settlement," which is de facto established basic guidelines for "supervised independence" of Kosovo, as well as the establishment of institutions and protecting the rights of ethnic communities, the regulation relations with the authorities in Belgrade and the formation of a security system. See: "Comprehensive Proposal for the Kosovo Status Settlement" UNOSEC, Vienna, 26 March 2007.

concurrent three-year interruption of any form of mutual dialogue with representatives of the Albanian authorities in Kosovo and Metohija.

Progress in establishing a dialogue attempt by the adoption of the UN General Assembly of the United Nations on 9 September 2010, which stipulates that the authorities in Belgrade and Pristina, in the context of continuing the dialogue, under the auspices of the European Union to regulate certain outstanding issues in order to improve the status of their citizens[2] and that the success of the deal will depend on their eventual accession to the European Union.

However, progress has been made in this sense was not until 8 March 2011, when it was at the insistence of the European Union started a dialogue on how to instruct technical issues, whose aim should be to improve the status of citizens to "Kosovo". The aforementioned dialogue supported by the United States.

In this manner, the European Union has succeeded in compliance with the Copenhagen criteria (1993), encourage the normalization of relations, but also to significantly influence the development of future cooperation between the authorities in Belgrade and Pristina, with the success of the above dialogue reliance on Europe Serbia's path, but also certain benefits for Kosovo.

In this sense, when with the relevant EU institutions is estimated that there has been significant progress in the dialogue between representatives of Belgrade and Pristina, Serbia is possible to obtain a date for the start of membership negotiations with the EU, while in Brussels for Kosovo announced that it will soon start negotiations on the conclusion of the Stabilisation and Association Agreement<sup>3</sup>. [3]

During the dialogue, are largely eliminated problems related to the representation of Kosovo in regional boards and initiatives, the manner of functioning of the customs system in Kosovo and integrated border management / administrative line, with efforts to thereby contribute to improving regional security. [4] Then, with the assistance of the European Union, followed the introduction of institutions located liaison officers between

---

<sup>3</sup> Although not recognized Kosovo's independence in the member states of the European Union (Slovakia, Romania, Greece, Cyprus and Spain) for him in the process of European integration used identical mechanisms as well as access to the Western Balkans. It is the Stabilisation and Association Process, which was defined in 2000 and 2003. See more at: Dragan Djukanovic, "European Union policy towards the Western Balkans", in: R. Dragan Simic (ed.), The integration of the Western Balkans into the network of global security, the Association for the Study of the United States in Serbia, Čigoja press, Belgrade, 2011, p . 225-236.

Belgrade and Pristina, as well as reaching agreement on the establishment of the Community majority Serbian municipalities and integration security and judicial structures northern parts of Kosovo and Metohija in the framework of Kosovo's legal system.

A particular issue, which has become the subject of dispute expert public in the Republic of Serbia is the mark of a legal character "Brussels Treaty", that is, whether the document on the normalization of relations, which are in Brussels, on 19 April 2013, signed by the representatives of Belgrade and Pristina, legal, or political act and is therefore the Constitutional Court responsible for the evaluation, which is the topic of discussion in the Constitutional Court of Serbia (USS), at the initiative submitted by political parties operating in the territory of the Republic of Serbia and the right orientation.

According to the views of representatives of the current government, which among other things publicly presented through media appearances by the Minister of Justice of the Republic of Serbia, Nikola Selakovic, "Brussels Agreement" is considered a political act, which is the only possible way to achieve the most cost effective dialogue between Belgrade and Pristina and which can normalize relations within the limits of the Constitution of Serbia.

On the other hand, the Serbian political options of the center-right, argue about the ulterior ratification "Brussels Treaty", which has no power sources, but only represents - a political act, which as such has no legal effect. It therefore follows that the representatives of the Serbian state that the "Brussels Agreement" initialed, accepted and approved, did not follow the constitutional obligation "to represent and protect state interests in Kosovo and Metohija in all internal and external political relations" (constitutional preamble), which are allegedly violated the principle of the rule of law, because in the process of concluding the Brussels agreement are not "complied with the Constitution" (Article 3, paragraph 2).

### **Process technical dialogue**

The conversation between the representatives of public authorities in Belgrade and the Albanian provisional institutions of self-government in Pristina, began, as already stated, on March 8, 2011, under the mediation of the European Union in

Brussels. Team of Republic of Serbia, by mid-2012, in the said dialogue was led as head of the negotiating team of the Government of the Republic of Serbia for dialogue with the authorities in Pristina, Borislav Stefanovic, while the Albanian side was represented by Edita Tahiri.

By the fourth round of talks, dialogue topics were of a general nature and did not result in concrete agreements, but it is mainly guided discussion on certain principles and standards. Only at the fifth meeting, which took place on 2 July 2011, achieved concrete agreements on freedom of movement and population registers.[5] The same agreement is determined and payment security for persons and vehicles crossing the border / administrative line, that has been established between the central part of Serbia and Kosovo and Metohija, and the recognition of identity documents issued temporary Albanian authorities in Pristina in the field below control of the authorities in Belgrade.

The said part of the agreement relating to the registers,[6] contains four articles and provides that the contracting parties undertake to establish a correct and "reliable" registers. The control of the implementation of the above, performs "tripartite committee" made up of experts in the registers on both sides and a representative of the EULEX (European Rule of Law Mission in Kosovo). The jurisdiction of this committee is to determine the possible existence of certain omissions and deficiencies in the population registers, which were conducted prior to the commencement of the armed conflict in Kosovo in 1999. In this sense, EULEX has got the authority to certify all copies of birth certificates, in certain municipalities and assumed responsibility from Kosovo to submit certain information on registers authorities in central Serbia, but it is said "upon request".

During the next meeting, representatives of the Government of Serbia and the holders of the Albanian political structure of the Kosovo and Metohija, which was held on 2 September 2011, achieved the two agreements, namely: on customs stamps and cadastre.

Agreement on customs stamps<sup>4</sup> is confirmed, previously agreed by both parties to ensure full freedom of movement of goods in accordance with the agreement CEFTA,

---

<sup>4</sup> "Customs stamp", Brussels, 2 September 2011, Integral article published in the "Report on the political and technical dialogue with the Provisional Institutions in Pristina"; op. cit.

2006.<sup>5</sup> Under the agreement stipulates that the Kosovo customs stamp stands this name, as well as the English translation - "Kosovo Customs".

By the end of 2011, achieved two more agreements. The first was agreed on 22 November, during the seventh round of negotiations, and concerned the recognition of university diplomas[7], during which it is agreed that the Conference of European academic experts, according to the decision of the European University Association, recognizes the diplomas and will thus be recognized by both sides.

Another agreement was reached on December 2, 2011. It is defined integrated border management / administrative lines,[8] which are intended to be in line with European standards implementation model of Integrated Border Management (Integrated Border Management - IBM), which is one of the basic requirements for the countries which want to join the EU, and in accordance with the Contract from Lisbon.

This agreement is determined to be that way, customs and police representatives to attend the border / boundary crossings, which are defined as part of the administrative boundary line of central Serbia and Kosovo and Metohija, which stipulates that the same are also engaged representatives of EULEX. In addition, it was determined the formation of "Tripartite Group" under the chairmanship of the EU, and to conclude a separate technical protocol on implementation. This protocol was signed in Pristina on 23 February 2013.[9]

Subsequently, on January 19, 2013, specifies the details relating to the excise tax and value added tax (VAT)[10], on goods intended for northern Kosovo-a. According to the Agreement, representatives of Belgrade and Pristina have agreed to the import of goods intended for northern Kosovo, is not paid customs duties, or to pay the excise tax and value added tax (VAT) .This relating to limit / administrative crossings Jarinje, Leposavic Municipality and Brnjak, Zubin Potok municipality, and the funds collected on these crossings should invest in the Fund for the Development of Northern Kosovo<sup>6</sup>, and four municipalities with Serbian majority (North Mitrovica, Zubin Potok, Zvecan and

---

<sup>5</sup> Kosovo is in accordance with the signature of the then Head of Mission of UNMIK member of the said arrangements.

<sup>6</sup> The Fund maintains a special committee composed of representatives of the EU, the Albanian authorities in Pristina and representatives of Serbs in northern Kosovo and Metohija

Leposavic). This fund should keep a special committee composed of representatives of the EU, the authorities in Pristina and representatives of Serbs in northern Kosovo.

To overcome the problem, which concerned the operation of regional initiatives for cooperation in the Western Balkans and Southeastern Europe, whose intention is that the so-called. Republic of Kosovo, after the unilateral declaration of independence in 2008, it is represented in their work, and it is impossible to opposition from Serbia, and other countries in the region that have not recognized Kosovo's independence (Romania, Greece, Cyprus, Bosnia and Herzegovina and Moldova) at the insistence of the European Union, on 24 February 2012, the scheduled new talks between Belgrade and Pristina.

Specified in the agreement was reached, which stipulates that Kosovo will participate in all aspects of regional cooperation, with the active participation of Serbian and Albanian authorities in Pristina plan to improve and intensify the implementation of the above.[11] In addition, it was specified that the name of the area Kosovo and Metohija during participation in regional forums and meetings using the name of Kosovo with a footnote / asterisk, which states that "this term does not prejudice the status in accordance with UN Security Council Resolution 1244 and the opinion of the International Court of Justice on Kosovo Declaration of Independence". At the same time it was emphasized that the organizer of some regional meetings, the presentation will highlight the quasi-state symbols of the so-called Republic of Kosovo, with the exception of their own and symbols of the European Union. In addition to the above modes of representation, it is recommended that the country hosts regional meeting and use the formula "Gymnich" <sup>7</sup>, which implies the absence of the name of the country / entity and / or its symbols. Also, it is possible that the representatives of the Albanian structure from Kosovo and Metohija, can not initialed certain acts in the meetings.

The above contributed to temporarily unblock the participation of representatives of the provisional institutions of Kosovo in regional meetings.

---

<sup>7</sup> It is a German castle Gymnich, where in 1974 were held meetings between representatives of the State without specifying the name of the state or the use of national symbols.

### **Political dimension of negotiations**

Continued dialogue between Belgrade and Pristina, which was temporarily interrupted due to the presidential and parliamentary elections in the Republic of Serbia began on 19 October 2012, with hitching political dimensions of the same, which moved from the technical to the political dialogue.

In accordance with the foregoing, in the continuation of talks held on 7 November 2012, arranging the appointment and the appointment of liaison officers (Arrangement devoted to issues of liaison officers).[12] According to the agreed, offices mentioned officers are provided for the formation of the Delegation of the European Union in Serbia and the EU Office in Pristina, and their task is to resolve certain outstanding issues in the implementation of agreements reached thus far between the authorities in Belgrade and Pristina.<sup>8</sup>

In late 2012 and early 2013, representatives of the government of the Republic of Serbia have taken an important foreign policy initiative for the establishment of the Union of Serbian municipalities in Kosovo, under which the issue has reached a high degree of consensus between the government and opposition parties in Serbia. Mentioned was the starting point for the further continuation of a conversation representatives of Belgrade and Pristina, and accordingly the National Assembly of the Republic of Serbia on 13 January 2013, starting with the proposal that the platform of the President of the Republic of Serbia, Tomislav Nikolic, adopted the "Resolution on the basic principles for political talks with representatives of the Provisional Institutions of Self-Government in Kosovo and Metohija." [13]

The aforementioned document, Serbia has requested to provide and guarantee the full rights of members of the Serbian community in Kosovo and Metohija-in, as well as the normalization of relations with the authorities in Pristina, without recognizing the unilaterally proclaimed independence. The same document stressed that Serbia is committed to the continuation of the dialogue tends comprehensive and mutually acceptable solution for the southern Serbian province, and to create conditions for normalization of relations between the Albanian and Serbian peoples, which would contribute to a rapid integration of the Western Balkans into the EU.

---

<sup>8</sup> Government of Serbia on 4 February 2013, appointed Dejan M. Pavićevića to this post.

In continuation of political negotiations, on 20 February 2013, representatives of the dialogue between Belgrade and Pristina, was related to the position of Serbs in northern Kosovo, where the Serbian dominated most of its population.

Then followed a very difficult round of negotiations, in which the preliminary principles for an agreement, which was presented by EU High Representative for Foreign Affairs and Security Policy, Catherine Ashton, 20 March 2013, Serbian officials have not accepted on the grounds that there is no sufficiently strong guarantees for the protection of the Serbian community. On the other side, the Albanian side, there have been significant efforts to enter into an agreement and the provision of so-called Republic of Kosovo's membership in international organizations (in particular the United Nations).

Because of the following issues, at the insistence of the representatives of Serbia, in the negotiations in April 2013, included the North Atlantic Treaty Organization, as a kind of guarantor of the agreement between Belgrade and Pristina, and to prevent potentially endangering the safety of the north.

As a result, when the dialogue was held on 19 April 2013 in Brussels, there has been "the first agreement on the principles governing the normalization of relations,"<sup>[14]</sup> which, among other things, provided for the establishment of the Community majority Serbian municipalities (eng. Association / Community of Serb majority municipalities in Kosovo), which in addition to the four municipalities in the north, and included some municipalities inhabited by Serbian population in the central parts of Kosovo and Metohija.<sup>9</sup> The same agreement also envisages that during 2013, held local elections in northern Kosovo, with the support of the Organization for Security and Cooperation in Europe (OSCE) and taking into account the provisions of the applicable legislation of Kosovo.

---

<sup>9</sup> It is envisaged that the said Board operates in accordance with its Statute and has the President, the Parliament and the Council. At the same time, it was emphasized that it will act in accordance with Kosovo's constitutional order, as well as the applicable legislation. Municipalities will also cooperate within their competence, in accordance with the European Charter of Local Self-Government of the Council of Europe, and will also have the right to control "areas of education, economic development, health, urban and rural development." The community will have a representative role in the Community Consultative Council, which works with the institution of the President of Kosovo and brings together representatives of Roma, Egyptians, Ashkali, Montenegrins, Bosnians and Serbs. Central Albanian authorities in Kosovo and Metohija, in accordance with this Agreement may transfer additional powers specified community.



In addition, the "Brussels Agreement", it was agreed that the Kosovo police only act on the territory of Kosovo and that the forces of the Ministry of Internal Affairs of the Republic of Serbia, which is currently operating in the north, will be integrated into its composition.[15] For the four municipalities of northern Kosovo is determined to set a special regional police commander from among the Serbian community, and after the appointment of the Ministry of Internal Affairs of the so-called Republic of Kosovo. The agreement also provides that the Kosovo police in this part of Kosovo Serbs constitute the dominant, in accordance with the current ethnic structure.

The inclusion of the existing judicial structures in northern Kosovo, Kosovo's judicial system is provided through the establishment of a special higher in the Appellate Court in Pristina, which will do the majority judges Serbian nationality and will be responsible for the municipalities with their ethnic majority. Thus one department of the Appellate Court in Pristina to be established in North Kosovska Mitrovica and it will constitute the dominant Serbian judges.

To avoid the efforts of the Albanian side to be in agreement on the normalization of relations admit the necessity consent Serbia's Kosovo in all international organizations, in article 14 of the agreement emphasizes the fact that both sides will not block each other on the "road to the European Union", nor affect on others to do so.

"The first agreement on the principles of normalization of relations" and predicts that up to 16 June 2013, to reach agreements and representatives of Belgrade and Pristina on energy and telecommunications. In this dialog appeared the problem of international telephone dialing code for Kosovo and work mobile phone operators from central Serbia, in the field of energy, too, appeared several important issues related to the functioning of the Electric Power Industry of Serbia and electrical network in the north of the province. All of the above is stopped due to the current crisis over the formation of the authorities in Pristina.

Meanwhile, the European Commission on 10 October 2012, published a report on Kosovo's progress in European integration ,[16] in which we stress the need to protect the rights of all ethnic communities and the need to protect their religious and cultural heritage.

In this sense, it is specifically stated that the Kosovo authorities must further engage in the protection of buildings and property of the Serbian Orthodox Church, and in the context of continuing European integration.<sup>10</sup>

Given the foregoing, as well as the "Comprehensive Plan for the Kosovo Status Settlement" special attention was paid to the protection of religious and cultural heritage. Thus its Annex V fully dedicated to the status of the Serbian Orthodox Church in Kosovo.[17] Accordingly, the Kosovo Assembly on 20 February 2008, adopted the "Law on Special Protected Zones",[18] which states the manner of implementation and monitoring of a number of solutions that are expressed in the so-called Ahtisaari's plan. Under this law defines as special protection zones around monasteries and religious complexes in which construction is prohibited industrial units, deforestation and environmental pollution.

### **Implementation of Brussels Agreement**

In the period that followed the initialling of the "Brussels Agreement," continued the dialogue, whose topics were devoted to the implementation of the agreement. In this regard, it was particularly significant harmonization of the Plan of Implementation of the Brussels agreement, which was reached in mid-June 2013.[19]

This plan provided for a phased and gradual implementation of the "Brussels agreement" and the active participation of the Parties in the implementation of specific measures and legislative procedures, within the deadline set for it.

However, when implementing agreed, there have been numerous problems, which are mainly concerned precisely the area of Kosovo and Metohija status issues and the different attitudes of officials from Belgrade and Pristina. Belgrade authorities in the implementation of the Brussels agreement insisted on his "status neutrality" while, on the other side, Pristina authorities saw in it the possibility of establishing full authority and sovereignty in the north.

---

<sup>10</sup> This caused the initiative and Kosovo Prime Minister Hashim Thaci, who is 22 November 2012 in Brussels suggested that in the Kosovo Police formed a special investigation unit for the protection of religious and cultural heritage. It would be composed of members of the Serbian community in Kosovo. Thus, it was suggested to form a special committee formed by the two ministers from the Government (Minister of Interior and Minister of Culture), representatives of the Serbian Orthodox Church and representatives appointed EULEX. However, this proposal are still not supported by the representatives of the Serbian Orthodox Church.

In addition, certain activities of the security structures Pivremenih Albanian institutions of self-government in Kosovo and Metohija<sup>11</sup>, they additionally contribute to raising tensions and hindering the implementation of agreed, as such a negative impact had a delay in the process of adopting an amnesty law in Kosovo, which has pledged Pristina side, and due to the insufficient number of votes in the Assembly of Kosovo and the willingness of local political parties that this process is successful.

As a response to the above, the representatives of the local Serbs in northern Kosovo have formed the Provisional Assembly of the Autonomous Province of Kosovo and Metohija, which was established against the recommendations of the official Belgrade. It was mid-August rejected Serb participation in local elections in Kosovo.[20] In response, the holders of political office in the Republic of Serbia are announced and conducted shifts local officials in northern Kosovo due to the rejection exiting the November local elections, conducted in 2013.

In this manner the obstruction removed the president of the northern municipalities of Kosovo to participate in local elections, with the successful seizure of power in Belgrade obligations related to the implementation of the "Brussels agreement" and thus opening the foreign policy leeway Serbia to present itself as a reliable partner of the European Union, to overcome the status quo in the north.

Continued implementation of the said agreement, as well as the final agreements on telecommunications and energy sector in Kosovo, too, have not yet been achieved, although the deadline for signature was attached to half of June of the current year. Moreover, Belgrade has offered few concrete proposals, but they are idle because, as already noted, the current parliamentary crisis in the bodies of the so-called Republic of Kosovo.

### **Assessment of the legal character of Brussels Agreement**

In its assessment of the legal nature of the "First Agreement on Principles governing the normalization of relations" and determining its role in the constitutional and legal order of the Republic of Serbia, as well as estimates from the standpoint of international law can be approached from two perspectives.

---

<sup>11</sup> Kosovo police are continuous commitment to the arrest of members of the Serbian community's administrative crossings with Serbia.

First look respects the arguments of the part of the professional public and the international community, which considers Kosovo an independent and sovereign state, and as such capable of herself and conclude international agreements and thus assume the rights and obligations arising from these contracts. This view interprets the Brussels Agreement as an ordinary international agreement concluded between two sovereign states, Serbia and Kosovo, the contents of which are actually the rights and obligations of both parties (the Serbian and Albanian) in terms of the final status of Kosovo and Metohija.

Significantly for this approach is that the Serbian signature on a document called the Brussels Agreement (which the government of the Republic of Serbia gave their consent and accepted as binding the contents of this Agreement), as interpreted by the Serbian indirectly (implicitly, by implication) de jure recognition of Kosovo's statehood. They claim that the Serbian acceptance of this agreement recognize Kosovo as a sovereign state, able to conclude international agreements alone, and thus irrevocably acknowledged her status and subject of international law, which means that such recognition Serbia can never undo it (just because it is a formal, de jure recognition).

In support of its argument, the statements and the provision of Section 14 of the Brussels agreement in which both parties "Parties" pledged not to block each other on the path of European integration. If we take into account the fact that candidates for European integration exclusively state as international legal entities (which emerges from the observation of current practice of joining the European Union and from the constituent acts of the EU, among which the most important "Contract of European Union"), then the quite clear that Serbia allow Kosovo to advance in their relations with the EU acts as a sovereign state, which is a prerequisite for Kosovo's membership in the United Nations as an umbrella organization of the state. This is for the representatives of this view the status of Kosovo and Metohija is finally resolved, because the Serbian recognition of Kosovo's borders, passports and PIS as the official central government, recognized Kosovo as an independent state.

Another view of the answer to this question is given in strict compliance with the relevant norms of customary international law, Resolution 1244 United Nations Security

Council (which is by its legal nature legally binding on all UN member states) and the applicable norms of the Constitution of the Republic of Serbia.

According to the Serbian Constitution, which, in its preamble, as well as its normative work (point 182), declares Kosovo and Metohija for integral and inalienable part of Serbia), international agreements may be entered into only the central government on behalf of the Republic of Serbia as an internationally recognized state and subject public international law, which shows Serbia's membership in the United Nations.

As such, the Republic of Serbia may enter into a treaty with only one side which also has the status of a subject of international law (not important to be a member of the UN but due to the fact that membership in the UN today a universal character, that entity that is not a member of the UN, can be very difficult called state). Kosovo, although it declared independence in 2008, is not and can not be a subject of international law, because it does not meet the criteria of statehood, as defined by international customary law.

Namely, Kosovo has no effective authority throughout its territory. Carriers executives are still bodies of certain international organizations KFOR, UNMIK and EULEX<sup>12</sup>, the very limits of "state of Kosovo" has not been defined, and also the right to self-determination of peoples, to which urges the Albanian community in Kosovo, in this case is not applicable, because the Kosovo Albanians are not really people but only one of the minorities in the Republic of Serbia<sup>13</sup>). In addition to the fact that Kosovo has no right to own statehood, speaks Resolution 1244 UN Security Council, which clearly guarantees the preservation of the territorial integrity and sovereignty of the Republic of Serbia on the territory of its southern provinces. The resolution requires a compromise solution of the final status of Kosovo that would be in the mutual benefit of both Serbs and Albanians, prohibits any unilateral action PIS in Pristina and insist on a solution that

---

<sup>12</sup> It should be noted that the legal justification for the existence of the EULEX mission, although currently operating in Kosovo and Metohija, and despite the fact that the official Serbian authorities accepted, put into question because the very mention of Resolution 1244 only UNMIK and KFOR as the international monitoring bodies in Kosovo.

<sup>13</sup> Kosovo Albanians can not be treated as a separate nation (Kosovars), because according to objective-subjective definition of the concept of the people to actually part of the Albanian people as a minority who live outside their existing and internationally recognized state of Albania.

would "allow a very high degree of autonomy of the Albanian population within the internationally recognized borders of the Republic of Serbia".

A similar interpretation of Resolution 1244 were submitted and judges of the International Court of Justice in The Hague in 2010, during the advisory opinion on Kosovo's declaration of independence.<sup>14</sup>

Thus, in his concurring opinion of Judge Koroma, Tomka and Sima clearly turned out to need after the final status of Kosovo and Metohija solely with respect to the meaning and provisions of Resolution 1244, because the act is the main authoritative and binding document on the Kosovo issue, issued by the UN Security Council as the sole authority responsible for the maintenance of peace and stability in the international community. It is precisely the meaning of the resolution (its so-called. Ratio legis) requires a compromise solution which would preserve both the fundamental rights of the Albanian minority, and the existing state border of the Republic of Serbia.

Starting from the above it is clear that Kosovo is not eligible for the status of a subject of international law, and consequently no ability to enter into agreements of international nature. Kosovo by Resolution 1244, and the Constitution of Serbia, as an entity with a certain measure of autonomy and still undefined status, may enter into agreements with the central government in Belgrade only in the capacity of local authorities, not as a sovereign central authority, as can a sovereign state.

Regarding a possible relationship between the 1244 and the Brussels Treaty is quite clear that the agreement can not have any effect on the legality of the existence of the resolution itself. Resolutions are acts issued by the United Nations as the highest judicial body in the international community and as such always take precedence over other bilateral agreements Member States. Plain political act as the Brussels Agreement, and even that would have the character of a bilateral contract, must be in accordance with the said resolution. To Brussels Agreement had a legally binding character of the state bodies of the Republic of Serbia, Serbian National Assembly should adopt constitutional law, that the content of the Brussels agreement turned into a

---

<sup>14</sup> It is important to note that mentioned the advisory opinion of the court in all its work is not legitimized Kosovo's right to secede from Serbia. The Court actually ruled only on the "bare declaration of" independence and said that as such it is not in contravention of international law, but did not rule on the effects of these declarations, ie. the existence of the right to secession of Kosovo.

binding constitutional and legal norms Serbian legal system. Until that happens (and while the people in a referendum that the law does not confirm), the Republic of Serbia has not been internationally responsible for violations of the Brussels agreement, because that document as an international contract does not exist.<sup>15</sup>

Regarding the issue of relations between Serbia and Kosovo after the Brussels negotiations, it should be noted that Serbia is not (yet) de jure recognized Kosovo's statehood, which, looking at relevant international law does not exist. Only if the Republic of Serbia publicly and formally renounced its territorial integrity of Kosovo and Metohija, it would thus fully recognized Kosovo's statehood. Brussels Agreement official Serbian authorities have not yet done this step, but are to some extent (at least as far as agreeing to negotiate at a high political level with Pristina PIS and to the mediation of foreign officials) granted Kosovo "special status with certain elements of statehood."

Such behavior Serbian authorities can be characterized as de facto recognition of the special situation in Kosovo and Metohija; recognition that, in contrast to de jure recognition, can always cancel, everything depends on the behavior of the official authorities conducting state policy.<sup>16</sup>

Although perhaps even unconscious, the Serbian authorities are least so far timely statements about it, that is for them only Brussels Agreement "means the agreement that defines the principles of political dialogue with the southern Serbian province", carried out in a way a kind of "protest" in the international community.

Thus, although indirectly and transparent, explained that they have no intention of formally recognized Kosovo's statehood. It is important to note the fact that a possible formal adherence Serbia on Kosovo's statehood meant a serious violation of the State Constitution, which would ultimately lead to the degree of criminal responsibility of the senior officials of the Constitutional Court of Serbia and where possible international agreement between Kosovo and Serbia, which would the two sides entered into with the

---

<sup>15</sup> Mention should those views, which are interpreted Brussels Agreement as a document that Serbs in Kosovo and Metohija provides some measure of autonomy within the "Kosovo institutions". Such a view is, to put it mildly, incomprehensible; If the Albanian community guaranteed autonomy within Serbia as a national state of Serbs, then why Serbs guarantee autonomy in their own country? Such unrealistic views in favor of the interpretation of the Brussels Treaty as an international treaty for Serbia are not eligible.

<sup>16</sup> It should be noted in a similar practice among some Arab countries and the state of Israel. Among them there are a multitude of agreements and contracts on an international level, but that does not mean that these Arab states recognize Israel as a state; are only recognized "the existence of certain specific circumstances in the area of the state of Israel", but not de jure statehood itself and the entities.

intention to recognize Kosovo's statehood, under Article 46 of the Vienna Convention on the Law of Treaties, was absolutely null and void.

### **Conclusion**

Starting a dialogue between Belgrade and Pristina, and particularly the achievement of the "First Agreement on Principles governing the normalization of relations" on 19 April 2013, is credited as one of the most important success of the instrument of the Common Foreign and Security Policy of the European Union and High Representative Catherine Ashton, after the adoption of the Contract of Lisbon (2007).

In this regard, it is not quite clear whether such agreement is a legal or political act, or what its legal force under applicable legal regulations of the Republic of Serbia and the generally accepted rules of international law.

Government of Serbia "Brussels Agreement" as a political act, which is the only possible way to achieve the most rational dialogue between Belgrade and Pristina, and that can normalize relations within the limits of the Constitution of Serbia, and that such agreement is only one stage in the definition of substantial autonomy in Kosovo and Metohija. In this sense, starting from the political context of the interpretation of the Constitution, Serbia's policy is "existential dialectic."

In this manner, a representative of the government of the Republic of Serbia, trying to refute the thesis about the ulterior ratification of the Brussels Treaty, referring to the resolution of the Assembly of Serbia, which is unambiguously determine the limit negotiators.

Contrary to the view represented by certain experts in constitutional and public law in the territory of the Republic of Serbia, as well as some international officials, including leading political representatives from the Russian Federation, who mentioned agreement into the category of legal acts, or in a category of international agreements, which is contrary to the Constitution of the Republic of Serbia and international legal norms.

However, despite the results shown by the dispute over the legal effects agreement, much more importantly, the political reality, the implementation of agreements reached thus far between representatives of Belgrade and Pristina, whether they are the product of a technical or political dialogue, as well as the continuation of the



same, has a very fragile basis, which is why the European perspective of the dynamics of the accession of all entities in the Western Balkans, very uncertain.

Because of the above, it can be expected that the capacity of the European Union in the framework of the policy of conditionality further growth, which may contribute to the reduction of latent tension in the Western Balkans region and prevent any form of discrimination against non-dominant ethnic groups in certain areas.

An aggravating factor is the challenges of the global economic crisis, which may result in the emergence of new forms of national, and religious extremism, particularly in the area of Kosovo and Metohija.

## REFERENCES:

- [1] Security Council Resolution 1244 (1999) of the United Nations on the situation with regard to Kosovo, S / RES / 1244 (1999), New York, June 10, in 1999.
- [2] Resolution of the General Assembly of the United Nations, New York, September 9, 2010, f.
- [3] Dragan Djukanovic, "European Union policy towards the Western Balkans", Dragan Simic R. (ed.), The integration of the Western Balkans into the network of global security, the Association for the Study of the United States in Serbia, Čigoja press, Belgrade, 2011, p. 225-236.
- [4] "The agreements reached in the dialogue with Pristina with the mediation of the European Union" - <http://www.srbija.gov.rs/kosovo-metohija/?id=164576,15/04/2013> and "Belgrade-Pristina agreement" Serbian community in Kosovo, the Helsinki Committee for Human Rights, Belgrade, 2012, str.23-27.
- [5] "Freedom of movement", Brussels, 2 July 2011, Integral article published in the "Report on the political and technical dialogue with the Provisional Institutions in Pristina"; The Government of the Republic of Serbia, Belgrade, April 24, 2013.
- [6] "Stem books", Brussels, 2 July 2011, Integral article published in the "Report on the political and technical dialogue with the Provisional Institutions in Pristina"; op. cit.
- [7] "The acceptance of university diplomas", Brussels, 22 November 2011. The full text of published in the "Report on the political and technical dialogue with the Provisional Institutions in Pristina"; op. cit.
- [8] "Agreed conclusions regarding IBM", Brussels, 30 November 2012, Integral article published in the "Report on the political and technical dialogue with the Provisional Institutions in Pristina"; op. cit.
- [9] "Report on the political and technical dialogue with the Provisional Institutions in Pristina"; op. cit.
- [10] B. Radomirović, B. Mitrinović, "Duties of the special fund for the development of the north of Kosovo and Metohija," Politika, Belgrade, 19 January 2013 Internet: <http://www.politika.rs/portage/theme-days/fee-in-special-fund-for-development-north-KiM.sr.html>, 15/06/2013.
- [11] "The agreement on regional representation and cooperation", Brussels, 24 February 2012, Integral article published in the "Report on the political and technical dialogue with the Provisional Institutions in Pristina"; op. cit.
- [12] "Report on the political and technical dialogue with the Provisional Institutions in Pristina"; The Government of the Republic of Serbia, Belgrade, April 24, 2013.
- [13] "Resolution on the basic principles for political talks with representatives of the Provisional Institutions of Self-Government in Kosovo and Metohija", the National Assembly of the Republic of Serbia, Belgrade, 13 January 2013.
- [14] "The first agreement on the principles governing the normalization of relations", Brussels, 19 April 2013.
- [15] Idem
- [16] "Communication from the European Commission to the European Parliament and the Council on Feasibility Study for Stabilization and Association Agreement between the EU and Kosovo {SWD (2012) 339 final}", Brussels, October 10, 2012,

[17] "Comprehensive Proposal for the Kosovo Status Settlement", op. cit., Annex V - Religious and Cultural Heritage.

[18] Law on Special Protected Zones ", Law no. 03 / L-039

[19] Integrated Plan of Implementation of the Brussels agreement, "New Serbian Political Thought, Belgrade, June 16, 2013

[20] "Kosovo Serbs refused to vote," Radio Television of Vojvodina, Novi Sad, August 16, 2013, Internet, [http://www.rtv.rs/sr\\_lat/politika/srbi-sa-kosova-odbili-da-izadju-s-izbore\\_414593.html](http://www.rtv.rs/sr_lat/politika/srbi-sa-kosova-odbili-da-izadju-s-izbore_414593.html), 17/08/2013.