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Hostages to dialogue The process of normalising Serbian-Kosovar relations

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In March 2011, the governments of Kosovo and Serbia started a dialogue that was intended to lead to the normalisation of mutual relations. This process, launched under the pressure of the EU, was aimed at building up confidence between the parties and resolving the everyday problems of the Serbian and Albanian communities, and as a consequence, reducing tension in the Western Balkans. The start of talks between representatives of the antagonist countries was the breakthrough that led to the Kosovo government gaining control over the whole of its territory, the establishment of a border (or 'administrative boundary line', as Belgrade calls it), and the start of the process of subordinating the Kosovo Serbian institutions to the authorities in Prishtina. Serbia also lifted its trade blockade on Kosovo, and allowed Prishtina to join the regional organisations. As a result, progress has been made in the process of integration of both states with the EU: Serbia has started accession negotiations, and Kosovo has signed a Stabilisation and Association Agreement (SAA).

Since 2013, however, no significant progress has been made in the normalisation process or in implementing the agreements. Politicians in Kosovo and Serbia see the dialogue through the prism of the benefits they can get from Brussels and the EU member states in exchange for compromises. Their aim is not so much normalisation and reconciliation in Serbian-Kosovar relations, but rather making progress with EU integration and obtaining support from the West for the ruling elites, while turning a blind eye to undemocratic practices. The talks being held at the level of the elites have not translated into rapprochement between the Serbian and Albanian communities. On the contrary, these non-transparent negotiations have actually resulted in a rise in tension and suspicion. The talks, which since 2013 have been dominated by a dispute over the status of the Association of Serbian Municipalities in Kosovo, have paradoxically led to its strong subordination to the government in Belgrade, and not to their integration into the state of Kosovo. At the same time, the talks have failed to bring any improvements to the conditions under which the Serbian minority operates; and in the Kosovo Albanians' opinion, they have not brought Kosovo the benefits they expected, as the provisions which have been agreed have still not been implemented.

Serbia managed to block Kosovo's membership in UNESCO in the autumn of 2015, which further undermined relations between Belgrade and Prishtina. The slowdown in the normalisation process is also apparent in the reduced activity by the EU, which has limited tools to put pressure on the parties. Consequently, the chances for a comprehensive arrangement of relations between Kosovo and Serbia are decreasing. The negative trends are deepening, and public opposition to the negotiations is increasing (especially in Kosovo), which may mean that the achievements concluded in the process so far could be lost.

After Kosovo's unilateral declaration of independence in February 2008, the government of Serbia took a series of actions calling its sovereignty into question and hindering its functioning¹. This diplomatic offensive was intended to limit the number of countries recognising Kosovo's independence and block its membership in international organisations. By supporting the Serbian minority in Kosovo (numbering around 130,000 people), whose institutions were financed by Belgrade, the Serbian government intended to prevent Prishtina from taking control of its entire² territory.

The dialogue led to the Kosovo government gaining control over the whole of its territory and defining its border with Serbia.

Serbia also asked the International Court of Justice to rule on whether Kosovo's declaration of independence conformed to international law. The court's decision in 2010 (which went against Serbia) led to the start of the Serbian-Kosovar dialogue, as did the application of pressure from the EU, which took advantage of the accession aspirations of both Belgrade and Prishtina. This was a breakthrough because

¹ Serbia refused contacts with the authorities in Kosovo and demanded that Prishtina be represented by the UN mission UNMIK; Serbia also blocked the flow of goods and people with Kosovo documentation, as well as air services to Kosovo over Serbian territory; it also refused to acknowledge any documents issued by the Kosovo authorities.

² The Serbian minority in Kosovo inhabits an enclave in the south of Kosovo (six municipalities with a Serb majority, totalling around 53,000 people, as well as some villages in Albanian municipalities, totalling about 28,000). The largest compact area inhabited by Serbs is made up of four municipalities in the north of Kosovo bordering Serbia (63,000 people) including the only Serbian town, Mitrovica, where the university and medical centre are located, among other facilities. This area remains outside the control of both Prishtina and Belgrade; the latter only provides funding for the activities of the municipalities. M. Perlec, n. Rashiti, Serbs Integration in Kosovo after the Brussels Agreement, <http://balkansgroup.org/wp-content/uploads/2015/03/URSerb-Integration-Kosovo-19-March-2015.pdf>, p. 5.

Belgrade had previously ruled out negotiating with the authorities in Kosovo, which it considered still belonged to Serbia. In turn, the ruling class in Kosovo adopted the position that Serbia had to accept the independence of Kosovo, and that the points of contention and the status of the Serbian minority were the internal problems of the state of Kosovo, and including them in the negotiations would be tantamount to contesting its sovereignty.

The outcome of the negotiations

The process of normalisation began with the technical negotiations (March 2011-February 2012) between special representatives of both parties, with the participation of an EU mediator. These led to the signing of seven agreements: customs documents, the mutual recognition of higher-education diplomas, the freedom of movement of persons, the representation of Kosovo at the regional level, land registries and documents on births, deaths and marriages in Kosovo, and integrated border management (IBM). The IBM agreement was of particular importance, as it allowed the authorities of Kosovo to take control over the border with Serbia³, as were the arrangements to allow representatives of Prishtina to participate in international forums and regional cooperation organisations⁴. These technical talks were accompanied by tensions, however, and in the summer of 2011 riots broke out in the Serb municipalities in the north of Kosovo, highlighting the frustration of the Serbian minority, which did not accept the government in Prishtina.

³ The agreement gave rise to particular controversy among the Kosovo Serbs, because it meant the establishment of a border between the states, making it more difficult to avoid tax and customs, as well as reaping the proceeds of smuggling.

⁴ It was agreed that Kosovo* will be the only denomination to be used, and the footnote to be applied to the asterisk will read: "This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence". Initially, Serbia pushed hard for the use of the full designation, but over time it has ceased to attach so much importance to it.

Moving the dialogue from the technical to the political level was possible only after the general and presidential elections in Serbia in spring 2012, which were won by the right-wing Serbian Progress Party (SNS) and the Socialists from the former party of Slobodan Milošević. It was only this new government, with a strong mandate and a reputation as a doughty defender of Serbian interests, which could start negotiations to subordinate the four Serb municipalities in the north of Kosovo to the authorities in Prishtina, and include the parallel Serbian institutions into the state of Kosovo⁵. The talks between the two Prime Ministers, Ivica Dačić and Hashim Thaçi, which began in October 2012 under the auspices of the EU's High Representative Catherine Ashton, led to a historic agreement in April 2013 concerning these issues.

The status of the ZSO has become the main bone of contention, and has a decisive influence on both countries' approach to the talks.

Under the agreement, Prishtina was supposed to take control of the Serbian power structures (the police and civil defence formations) and judiciary⁶. Serbia also agreed to the first local elections organised by the Kosovo authorities in the four Serb municipalities in the North Kosovo. These were held in November 2013 and, despite the very low turnout, produced new local authorities who recognised the sovereignty of

⁵ The term 'parallel institutions' is used to describe the local government authorities, the judiciary, the police and so-called civil defence, the health services, the municipal enterprises and educational units, financed by the government in Belgrade and functioning under the control of the Serbs in Kosovo. In the municipalities in southern Kosovo, these institutions operate in parallel with the institutions subordinate to Prishtina, but there were no other such institutions in the north of Kosovo before 2013.

⁶ In the case of the police and civil defence, the process can be considered completed; significant progress has also been noted in the integration of the judiciary.

the authorities in Prishtina. A concession on the part of Kosovo was the creation of the Association of Serbian Municipalities (*Zajednica Srpskih Opština*, ZSO) by 10 municipalities where the Serbs are the majority population⁷. The status and competence of this institution remains a moot point, which has dominated the negotiations and is beginning to have a decisive influence on the relations between both countries and their approach to the talks.

The Association of Serbian Municipalities: a bone of contention

Serbia and Kosovo have defined the role of the Association of Serbian Municipalities in completely different ways. Prishtina sees it as an agreement between the municipalities, which will allow the Serbian municipalities to better perform public tasks, without a separate budget or joint bodies representing the community. In this understanding, the ZSO's powers should derive from the prerogatives which the municipalities in Kosovo have. The Serbian side, meanwhile, sees the ZSO as an autonomous body, an additional unit of the administrative division, with a separate budget funded by Serbia, the local parliament and the executive government. The ZSO would enjoy much broader powers than the municipalities in Kosovo, and would have the right to represent the Serbian municipalities to the central authorities.

Because the EU made opening the negotiations with Serbia and signing the SAA with Kosovo conditional on finding a compromise on the competence of the ZSO, the agreement was signed in August 2015⁸. However, it was

⁷ First agreement of principles governing the normalisation of relations, 19 April 2013, http://www.kryeministri-ks.net/repository/docs/first_agreement_of_principles_governing_the_normalisation_of_relations,_april_19,_2013_brussels_en.pdf

⁸ Association/Community of Serb majority municipalities Kosovo – general principles/main elements, 25 August 2015, http://eeas.europa.eu/statements-eeas/docs/150825_02_association-community-of-serb-majority-municipalities-in-kosovo-general-principles-main-elements_en.pdf

greeted by protests from Albanians in Kosovo, who recognised that the ZSO in its agreed shape – like the *Republika Srpska* in Bosnia and Herzegovina – would be a tool for Belgrade’s influence, and could make Kosovo a dysfunctional state. Moreover, in December 2015 some of the arrangements were contested by Kosovo’s constitutional court. The implementation of the agreement also requires clarification and preparation of the executive acts.

Paradoxically, the dialogue, which was supposed to include the Kosovo Serbs in the structures of Kosovar statehood, has considerably strengthened Belgrade’s control over the Serb minority.

The creation of the ZSO has thus been delayed, and the dispute around the institutions cannot be said to have ended. The talks are now dominated by the issue of the ZSO, which not only blocks discussion on other issues, but also inhibits the implementation of other agreements, such as the integration of Kosovo’s institutions with the Belgrade-funded health, education and municipal services. Serbia is indeed of the opinion that this can occur only after the ZSO has been established. For Kosovo Albanians, the problem is increasingly not so much the status of the ZSO itself as the fact that Belgrade has fully subordinated the Serb minority in Kosovo to itself.

Serbia: playing the Kosovo card

Paradoxically, the process of dialogue, which was supposed to include the Kosovo Serbs in the structures of Kosovar statehood, has considerably strengthened the influence and control of Belgrade over the Serb minority. The policies of the EU and Prishtina have contributed to this by avoiding direct negotiations with the Kosovo Serbs (especially those in the north of Kosovo),

assuming that Belgrade would convince this minority to submit to the Kosovar authorities. Serbia’s policy, however, has moved in the opposite direction, in connection with the changes on the political scene in Belgrade.

One tool to control the minority in Kosovo is the Serbian List election platform (*Srpska Lista*, SL), which was established at Belgrade’s initiative before the municipal elections in 2013. It was intended to serve as a counterbalance for the local leaders in the municipalities in the north of Kosovo, who opposed the Serbian government’s policy towards Kosovo and strongly opposed their inclusion into the Kosovo state. The SL politicians were chosen on very low turnouts, and under pressure from the authorities in Belgrade, but it allowed the local authorities to be constituted in accordance with the findings of April 2013. The SL strengthened its position as the sole representative of the Kosovo Serbs after the general elections in 2014, which they won with logistic and financial support from Belgrade, by marginalising the groups who had favoured direct cooperation with the Kosovo authorities and had been popular in the Serbian enclaves. The SL’s politicians are totally dependent on support from Belgrade, which has given them control over the funding they receive from Serbia (around €250 million annually) and the distribution of jobs related to it (the Kosovo Serbs mostly work in the public sector or in state-owned enterprises financed by Belgrade). As a consequence, these politicians are primarily interested in implementing the priorities of the Serbian government, and not in defending the long-term interests of the Serbian minority in Kosovo.

This subordination by Belgrade of the Serbian community in Kosovo is associated with the political changes in Serbia itself. The difficult economic situation in Serbia, and a series of corruption scandals (which include the financing of the Serb minority in Kosovo), have translated into a drop in support among the Serbian public for getting financially involved in Kosovo.

The dominance of the SNS and Prime Minister Alexander Vučić on the political scene after their strong victory in 2014 has led to a limiting of political pluralism and the marginalisation of the extreme right. The issue of Kosovo has thus become much less important as a tool for mobilising the electorate. The Serb minority in Kosovo has lost its ability to put pressure on the government in Belgrade by appealing directly to the Serbian public. Previously, the liberal and pro-European parties governing in Serbia had courted support from the leaders of the Serbian minority in Kosovo, who had condemned some parties as ‘traitors to Serbian interests’.

The increasing concessions to Serbia and the Serbs have not, in the perception of Albanians, brought any of the expected benefits.

The right-wing SNS does not need any such legitimacy from them. In addition, the party has taken control over financial aid to the minority and has subordinated the local leaders in Kosovo to itself. This allows Vučić’s government to treat the issue of the Kosovo Serbs as a useful tool for its own ends. Belgrade is interested in strengthening its control over the minority, and supports any extension of its rights in Kosovo which would guarantee Serbia an influence on the development of the situation in Kosovo, even though this will not necessarily translate into better living conditions for the Serbian minority there⁹.

⁹ Belgrade attaches little importance to implementing the existing agreements or entering into new ones (such as the recognition of diplomas or court judgements), or to strengthening the autonomy and efficiency of the Serbian municipalities in Kosovo, which would facilitate the functioning of the Serbian community

Kosovo: drop in support for dialogue with the Serbs

Prishtina assumed that the dialogue would make it easier for the state to operate internationally and strengthen its sovereignty, in exchange for some concessions to the Serbian minority. Five years on, the increasing concessions to Serbia and the Serbs have not, in the perception of Albanians, brought any of the expected benefits. Support for the dialogue, which is seen as beneficial only for the Serbs, has fallen¹⁰. For the Kosovar Albanians, clear confirmation of this trend was the agreement in August 2015 concerning the Association of Serbian Municipalities, which from their perspective was a far-reaching concession¹¹. Soon afterwards, in the autumn of 2015, Belgrade and the Serbian Orthodox Church carried out a wide-ranging campaign that led to Kosovo’s membership in UNESCO being blocked. The results of the Serbian-Kosovar talks have had very little impact on specific benefits for the inhabitants of Kosovo – regardless of nationality – as they are being implemented far too slowly¹².

The reluctance to continue the dialogue is linked to the identification of this process with the corrupt elite, as embodied by President Hashim Thaçi of the Democratic Party of Kosovo (PDK)

¹⁰ Over 48% of Albanians believe that the dialogue has been more beneficial for Serbia, and 58% say that it has not affected the normalisation of relations between Kosovo and Serbia in any way. ‘Public Perceptions on Kosovo’s foreign policy and dialog with Serbia’, p. 29-30.

¹¹ This agreement conflicts with the existing objectives of the construction of a multi-ethnic society in Kosovo based on the so-called Ahtisaari plan, which precisely because of the dysfunctionality of Bosnia-Herzegovina, where a model of wide territorial autonomy has been applied, instituted far-reaching decentralisation and the transfer of significant powers to municipalities. This was done to guarantee minorities a wide range of self-government, but also in order to weaken ethnic divisions and force cooperation. 78% of Albanians consider the agreement to be unfavourable to Kosovo.

¹² For example, the agreement on the free movement of people in theory enabled people with Kosovo papers to travel to Serbia, but this has been hindered by numerous restrictions, and is very costly as there is no mutual acknowledgement of insurance.

and Prime Minister Isa Mustafa from the Democratic League of Kosovo (LDK). The PDK and LDK, which currently make up the so-called grand coalition (which also includes representatives of the Serb minority) have taken turns governing Kosovo since 1999, and are blamed by the public for the lack of improvement in the socio-economic situation. In the opinion of a large part of public opinion, this elite remains in power thanks to the support of the EU, which in return obtains a conciliatory position towards Serbia. Moreover, in the name of progress in the Serbian-Kosovar talks, laws are passed which do not conform to the basic law of Kosovo¹³. In this way, the EU also becomes the object of criticism, as by prioritising the dialogue between Kosovo and the Serbs, it allows actions to take place which hinder the construction of a just and democratic rule of law¹⁴.

Most Kosovo Serbs have still not accepted their new status as a minority in an Albanian-dominated state.

This social dissatisfaction is being exploited and stoked by the opposition parties *Vetëvendosje* (Self-Determination), *NISMA për Kosovën* (Initiative For Kosovo) and the Alliance for the Future of Kosovo (*AAK*), which claim that the dependence on support from the West weakens the government's position in its negotiations with Belgrade. The August 2015 agreement on the ZSO question led to the escalation of the dispute between the government and the opposition¹⁵. Parliament's work was paralysed (by some deputies regularly releasing tear gas in the chamber),

¹³ Cf. B. Weber, Awkward juggling: Constitutional insecurity, political instability and the rule of law at risk in the Kosovo-Serbia dialogue, prishtinainsight.com/wp-content/uploads/2016/04/URBIRN-Report-2016-ENG.pdf

¹⁴ The controversy concerns the presidential elections in 2011 and 2016, and the blocking of the assumption of government by the opposition in the 2014 elections by exploiting various legal loopholes.

¹⁵ They are also challenging the border agreement with Montenegro.

and reforms have been blocked (in 2015, the Kosovo parliament passed only 25% of the laws set before it). In the near future this crisis will worsen because the opposition, by resisting the Serbian-Kosovar agreements, will build up its position by effectively mobilising the public¹⁶.

The Serbs: caught between Belgrade and Prishtina

Most of the Kosovo Serbs, particularly in the north, have still not accepted the independence of Kosovo or their new status as a minority in an Albanian-dominated state which is much poorer and less efficient than Serbia. For Serbs, the biggest problem – beyond the poor economic situation and low living standards – is the uncertainty that arises from Belgrade's policy, which they find incomprehensible. On the one hand, the Serbian authorities have urged the minority to integrate with the institutions of Kosovo (e.g. by voting); on the other, they stress at every step that Kosovo is part of Serbia. Paradoxically, the lack of compromise on the ZSO question, and the same lack of agreement over which institutions are to be financed from Serbia and on what conditions, actually favours the authorities in Belgrade. Transparent regulations would stop the Serb authorities from manipulating the Kosovo minority, which fears that Belgrade's withdrawal of funding for the Serbian institutions would result in a drastic deterioration in the area's already low standard of living. In turn, dialogue in the Belgrade-Prishtina-Brussels triangle has deprived the Serb minority of any influence on a solution, and has also deepened mistrust between the Albanians and Serbs in Kosovo, where the latter are increasingly seen as Belgrade's agents acting to the detriment of the state as a whole. To make matters worse, neither Belgrade nor Prishtina are interested in building trust between the communities.

¹⁶ A petition against the August agreement on the ZSO was signed by up to 200,000 people.

The lack of EU 'carrots'

The European Union has made progress in Kosovo and Serbia's accession process conditional on the conclusion and implementation of a series of agreements, using both states' aspirations to join the EU to force them into making progress in normalising relations¹⁷. However, this policy is becoming less and less effective. The EU, which is focused on the crises on its borders and on internal issues, is less and less involved in the Serbian-Kosovar dialogue. What is more, the failure by five EU member states to recognise Kosovo's independence hinders the development of a common approach to the dialogue and the conditions for Serbia's membership (e.g. in terms of the need to recognise Kosovo's independence before it can join).

Belgrade's priority is to obtain as much influence on the situation inside Kosovo as possible.

At the current stage of both countries' accession process, the EU has few specific instruments which could encourage them to make any concessions. When Serbia opened the first negotiating chapters in December 2015, it began a period of tedious, technical talks. Similarly Kosovo, which signed the Stabilisation and Association Agreement in October 2015, has no greater hope of making rapid progress in its integration with the EU.

The normalisation of relations with Kosovo was included in a separate chapter in Serbia's accession negotiations with the EU, and these may be suspended if the process does not continue. However, it is unlikely that the EU would be willing to use this tool. The refugee crisis, and also the active policy taken by Russia in the region,

has significantly strengthened Serbia's position in its talks with the EU. On the one hand, Belgrade stresses that it is a reliable partner for the EU on the Balkan migration route, but on the other it has also hinted that it could change its geopolitical orientation and move closer to Moscow if the West's conditions are too tough.

Prospects

For Prishtina, the lack of any solutions to resolve the disputes in its relations with Serbia is a major problem. This makes the functioning of the state more difficult, and inhibits its economic development; it also blocks the state's membership of the UN and other international organisations¹⁸. The question of integrating the Serb minority is of key importance for the strengthening of the state's sovereignty. Although Belgrade has ruled out recognising the independence of Kosovo as a matter of doctrine (and it is hard to expect any change in that regard over the next few years), its disputes with Kosovo have definitely become less relevant from the perspective of Serbia's stability and efficiency, and they already cause less controversy than before on the domestic front¹⁹. Moreover, Serbia's international position has strengthened significantly – both with respect to Kosovo, which is struggling with its image as a failed state ruled by a corrupt elite; and to the EU, because Belgrade has become an important partner in solving the refugee crisis. There has been a substantial change compared with 2011, as at that time Serbia, which was very keen on

¹⁷ European Council Conclusion, 13/14 December 2012. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/134353.pdf

¹⁸ Moreover, other outstanding issues remain: the ownership of enterprises, such as the Ujman/Gazivoda hydroelectric power plant, the Trepča mining complex, the supply of drinking water and the cooling plant at Obilić on Lake Gazivoda, which lies in a Serb municipality in the north, the international telephone code of Kosovo, the use of Serbian airspace by aircraft flying to and from Kosovo, etc.

¹⁹ It cannot be ruled out that the issue of Kosovo will be used for social mobilisation, if it is helpful to the political elite, to divert attention from internal problems and the bad economic situation. The issue of Kosovo is also very well publicised in the Russian media, which are increasingly popular in Serbia.

making visible progress in its integration with the EU, was in a much weaker position with regard to Kosovo, which was then supported more strongly by the United States.

Belgrade's priority now is to obtain maximum concessions from the authorities in Prishtina, and as much influence on the situation inside Kosovo as possible, including by ensuring extensive autonomy for the Serb minority, and wielding influence on the Kosovo government's policy. The current situation is favourable for Belgrade as it strengthens its position, and can blame Kosovo for the stalemate in the dialogue process. In Serbia, stronger support for the extreme right-wing parties, which entered parliament in April 2016 as a result of the general elections, is another factor impeding compromise with Prishtina. In Kosovo itself, the political crisis and resistance to talks with Serbia will get worse. The authorities in Prishtina, fearing the loss of support from the West, cannot withdraw from this process. They will, however, try to add further points to the discussions (questions of reparations, the division of property, etc.), and to sabotage the implementation of any agreements that would favour the Serbian side, in order to strengthen their own negotiating position with regard to Belgrade. For domestic purposes, measures are already being taken which attest to Prishtina's uncompromising attitude (these include the decision in April 2016 to prohibit the entry into Kosovo of the Serbian defence and interior ministers). This significantly reduces the chances of any further agreements being made, or of any progress in the discussions.

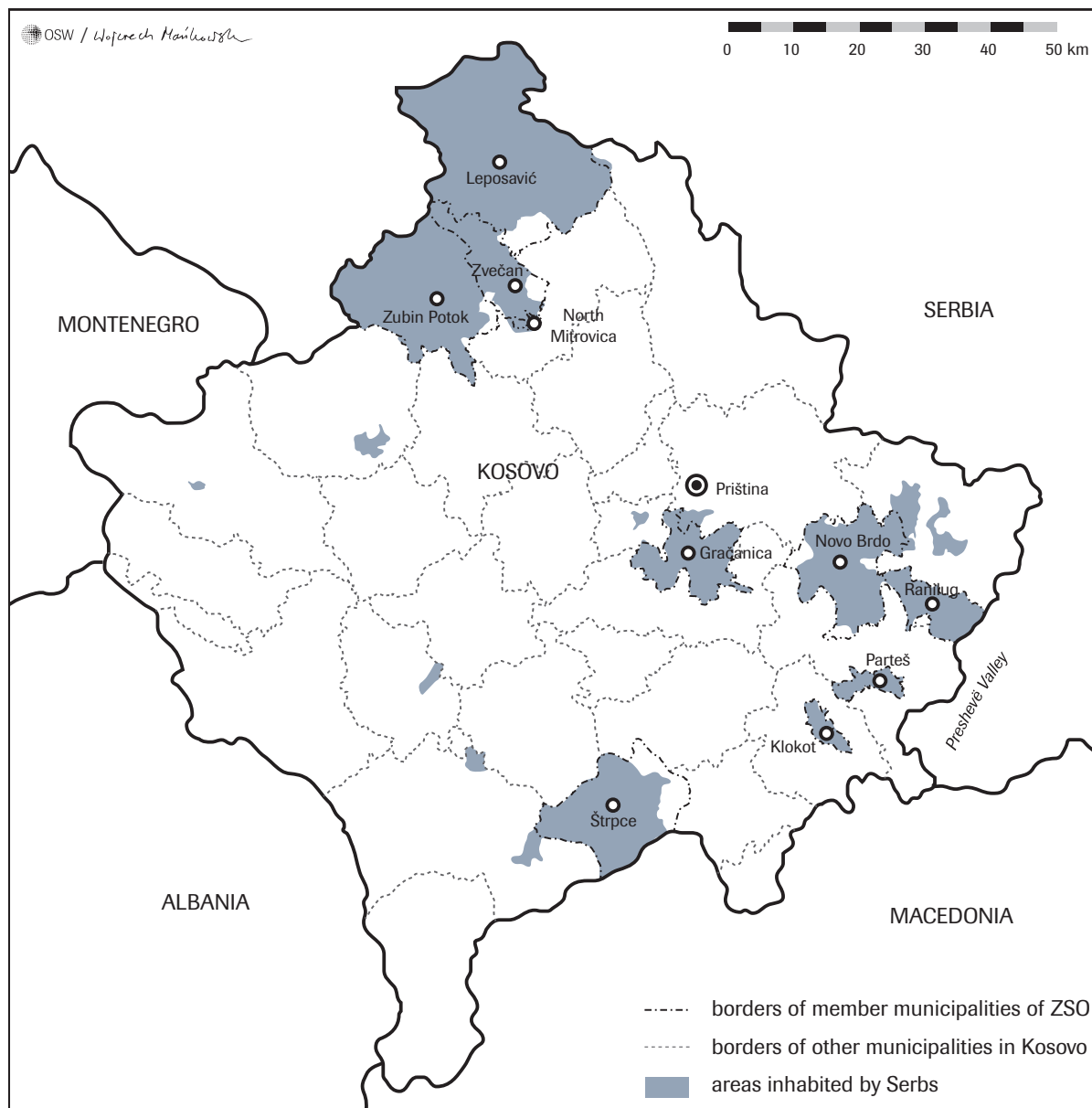
The talks started in 2011 by Serbia and Kosovo under the auspices of the EU were intended to lead to a gradual normalisation of relations (on

the model of the relationship between West and East Germany in the 1970s), without the need for Belgrade to officially recognise the independence of Kosovo. The current formula for the dialogue offers little hope of achieving this aim, the more so as the EU, which had hitherto been the main driving force behind this process, is becoming less active in this field. Since 2013, no new issues have been included in the dialogue, and the new agreements only relate to the implementation of provisions already adopted, a process which is proceeding very slowly, even with regard to very simple issues (for example, the mutual recognition of diplomas). This lack of progress is related to concessions by the EU, which by subordinating relations with Serbia and Kosovo to the dialogue process has accepted the increasing shortcomings in compliance with democratic standards by the governing elites of both countries. There is a lack of will on both sides to conclude agreements or resolve problems; in fact, they are extending their lists of disputes. Some of these are of no practical significance (such as Serbia's non-recognition of ADR certificates from Kosovo²⁰), but they put further political obstacles in the dialogue process. The Serbian-Kosovar negotiations are thus becoming a farce, which is not helping the process of normalisation, and is in fact exacerbating the antagonisms between Serbia and Kosovo, and between the Albanians and Serbs within Kosovo. Continuing these talks on the basis of the current standards may squander the achievements made so far, and lead to a deterioration of the stability of the region.

²⁰ ADR: the international convention concerning the carriage of dangerous goods and loads.

MAP

Serbian population in Kosovo, and Serbian municipalities belonging to the ZSO



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