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# **‘KOSOVO IN LIGHT OF STATUS NEGOTIATIONS’**

## **POLITICAL DEVELOPMENT AND STATUS NEGOTIATIONS**

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### **INTRODUCTION**

The outcome of the negotiations on Kosovo’s final status is closely linked to the stabilisation and democratisation not only of this country, but also of the whole region particularly Serbia, Republic of Macedonia and Bosnia-Herzegovina. Moreover, a clear political future and perspective is a crucial factor regarding the indispensable integration of the crisis-ridden country into European structures, values and norms. Seven years after the establishment of the International Community in Kosovo in 1999, the Kosovan society is in a drastic flux and is experiencing a comprehensive democratisation and transformation process. Considering the fact that Kosovo is not only a post-conflict society, but also a country in transition, its approach to the European Union is a complex endeavour. The path towards stability and democracy is fraught with obstacles and difficulties. The development process in Kosovo is also hindered by the still undetermined status of the country. Therefore the field of responsibility of the International Community, embodied by the UNMIK (United Nation Mission in Kosovo), had to be expanded from pacification and democratisation to nation and state-building. The events of 1998/99 illustrate quite clearly that other riots in the Balkans would have immediate security-political consequences for Europe. In view of this fact the successful approach to European structures including the prospect of EU-accession, which is associated with enduring stabilisation and democratisation is a key factor regarding the sustained stability of the region.

### **OBJECT OF RESEARCH AND STRUCTURE**

This paper deals with the development of Kosovo towards stabilisation and European integration and with the approach it has made so far to European structures in the light of the negotiations on its future status. The paper will be

structured as follows: at the beginning Resolution 1244—which forms the basis of the UNMIK (United Nations Mission in Kosovo)—and the Constitutional Framework will be illustrated. Subsequently the elections, including parliamentary and local elections, will be outlined as essential components of democracy. This will be followed by the analysis of the Provisional Institutions of Self-Government (PISG) and their performance. Subsequently different aspects, implications and inconsistencies of the final status of Kosovo will be examined and—last but not least—the current process of the status negotiations will be presented.

### **Resolution 1244 and the UN-Mission in Kosovo (UNMIK)**

Referring to chapter VII of the charter of the United Nations Organisation, on the 10<sup>th</sup> June 1999 the UN Security Council adopted Resolution 1244 as a legal basis for the mission in Kosovo and for the future status of the country. By emphasising the basic respect for the 'sovereignty and territorial integrity of the Republic of Yugoslavia' Resolution 1244 establishes a comprehensive self-government in Kosovo within the framework of a 'substantial autonomy'<sup>1</sup>.

In order to guarantee this form of autonomy the Resolution contains a provision for the establishment of an international provisional administration consisting of a civil and a military presence, which co-operate closely with each other.<sup>2</sup> The quintessence of Resolution 1244 is 'the definition of the objectives of the civil UN-Mission and of the international protection troops KFOR as well as their field of responsibility'.<sup>3</sup>

### **Constitutional framework**

In order to foster the gradual transfer of competences to the local institutions and to implement elections throughout Kosovo, a team consisting of international and Kosovan experts set to work on the compilation of a political and judicial framework for Kosovo. Despite some discrepancies between the Kosovo-Albanians and the Kosovo-Serbs as well as between the Internationals and the Kosovans, a compromise could be agreed<sup>4</sup>: on the 15<sup>th</sup> May, 2001 the 'Constitutional Framework for the Provisional Self-Government' of Kosovo was adopted. This framework—

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<sup>1</sup> See p. 10 of Resolution 1244: <http://www.un.int/usa/sres1244.htm>

<sup>2</sup> C. S/1999/779 Report of the Secretary-General on the UNMIK, <http://www.un.org/Docs/sc/reports/1999/sgrep99.htm>, Nr. 24 -26.

<sup>3</sup> C. Hajrullahu/Salamun, (2004) 103.

<sup>4</sup> Petritsch/Pichler, (2004) 305.

based on Resolution 1244—is the foundation for the establishment of the provisional self-government and is therefore „the most important document of the UN-transit administration in Kosovo’.<sup>5</sup> The preamble defines the form of governance as a parliamentary democracy and the economic system as a free market economy.

### **Elections**

The parliamentary elections held on 17<sup>th</sup> of November 2001 meant a step toward self-governance and the transfer of responsibilities to the local actors. The election of the members of the provisional parliament made it possible for the first time for democratically elected representatives to occupy the new Provisional Institutions of Self-Government.<sup>6</sup> This election was quite successful, also because there was a relatively high participation on the part of the Kosovo-Serbs, who were represented by a single list of candidates: ‘Coalition Return’ (‘Koalicija Povratak’).

On 26<sup>th</sup> October 2002 elections on the community level were held for the second time in Kosovo, but they did not bring about any changes regarding the allocation of power. The LDK (Democratic League of Kosovo) led by Ibrahim Rugova who deceased in the meantime could keep the majority of votes. The League attained approx. 45%, whereas the PDK (Democratic Party of Kosovo) and the AAK (Alliance for the Future of Kosovo), both under the leadership of the former UCK-representatives Hashim Thaci and Ramush Haradinaj, could attain almost 30% and 8, 8% of the votes respectively. This time merely 20% of the Serbian population of Kosovo participated in the ballot.<sup>7</sup>

The second parliamentary elections which took place on 23<sup>rd</sup> October 2004<sup>8</sup> were of great importance, as a new parliament and a new government were to be elected which had to participate in the negotiations regarding the future status. These elections were characterised by the significant involvement of the independent local organ CEC (Central Election Commission) in the preparation of the elections for the first time. The fact that the parliamentary elections of October 2004 were boycotted by the Kosovo-Serbs is unquestionably a negative aspect. On the whole, all elections were considered to be fair and free, without any complications worth mentioning.

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<sup>5</sup> ebd.

<sup>6</sup> Kramer/Dzihic, (2005) 64.

<sup>7</sup> Parliamentary elections 2004: <http://www.kosovo.undp.org/publications/ews8/ewr8eng.pdf> p. 1 and from p. 11.

<sup>8</sup> Petritsch/Pichler, (2004) 307.

However, a certain political apathy could be observed: participation in the elections decreased more and more.

### **Provisional Institutions of Self-Government (PISG)**

The Provisional Institutions of Self-Government are the following:

- the parliamentary assembly,
- the government,
- the president,
- the courts and
- the independent organs and institutions.

The constitutional framework defines the principles which serve as a basis for the PISG. The most important rules are the following: the PISG ‘should perform their official functions only in accordance with Resolution 1244 and the regulations of the constitutional framework. Secondly they should fully respect the rule of law, human rights, the democratic principles and the aim of reconciliation between the ethnic groups as well as the separation of powers.’<sup>9</sup>

Chapter 9 of the constitutional framework provides that the parliamentary assembly<sup>10</sup> is the highest representative and legislative organ of self-government. The immunity of the deputies is limited only as regards activities or statements which may evoke inter-ethnic violence. Minorities do not possess the right of veto; however, there is the possibility of an appraisal of all parliamentary decisions. The SRSG has the authority to revoke all decisions of the parliament in case they are not in accord with Resolution 1244 or if they have discriminatory features.

The president of Kosovo shall represent the unity of the nation and shall guarantee the democratic functioning of the Provisional Institutions of Self-Government. The responsibilities of the president are restricted to representative and ceremonial activities.<sup>11</sup>

The government consists of the prime minister and the ministers. ‘The Government shall exercise the executive authority and shall implement Assembly laws and other laws within the scope of responsibilities of the Provisional Institutions of Self-Government established within this Constitutional Framework.

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<sup>9</sup> Comprehensive information on the assembly: <http://www.assembly-kosova.org>

<sup>10</sup> S. Chapter 9.2 of the Constitutional Framework.

<sup>11</sup> S. Chapter 9.3.1/2 of the Constitutional Framework.

The Government may propose bills to the Assembly at its own initiative and shall do so at the request of the Assembly.<sup>12</sup>

The most important components of the judiciary are the district courts, the Supreme Court, the municipal courts and courts for minor delicts. A specially set up Chamber of the Supreme Court on Constitutional Framework Matters can examine 'the compatibility of laws with the constitutional framework, settle disputes between the PISG' and decide whether an institution of self-government has interfered unlawfully with the independent organs.<sup>13</sup>

According to the Constitutional Framework, independent organs and institutions, such as the Central Election Commission, the Kosovan Commission of the Judiciary and Public Prosecutor's Department, the Office of the General Auditor, the Agency of Monetary Transactions, the independent Media Commission and the Committee of Public Broadcasting, shall perform their activities independently from the PISG.

The Provisional Institutions of Self-Government do not dispose of absolute powers and their competences and capacity to act are still limited in certain significant areas, such as foreign affairs and defence. However, during the last years more and more responsibilities have been transferred from the UNMIK to the local authorities in Kosovo. Irrespective of their restricted competencies, the performance of the PISG can so far be assessed as rather unsatisfactory because of the historic conditions and thus the lack of experience with consensus democracy and the lack of democratic political tradition. Nonetheless some progress has been made: *'inter-party communication among the Kosovar Albanians and their understanding of parliamentary practice and rules of procedure has increased. Another positive point is that within some committees there is good co-operation between the Kosovar Albanians and Kosovar Serbs'*.<sup>14</sup>

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<sup>12</sup> Petritsch/Pichler, (2004) 315f.

<sup>13</sup> Kosovo Research and Documentation Institute (KODI): *Kosovar Assembly: For the People or for the Party?* (2003) Report Nr. 3, Pristina, 4.

<sup>14</sup> The unclear status and the unclear political future is for many, especially Serbians, displaced persons and refugees a reason for not to return in Kosovo. S. SRSG Jessen-Petersen: 'People want to know the outcome of the discussions (negotiations on the status) to know the kind of Kosovo they would be returning to.' Soren Jessen-Petersen, (2005) Status overshadows standards, in. B92

## THE ISSUE OF THE FINAL STATUS

In view of the violent riots in March 2004 which, for the first time, were addressed also against the International Administration (increasingly perceived as occupant), the International Community in Kosovo realised that the policy of the suspension of the status and the clarification of the status issue could no longer be ignored.

The unclear status has negative effects on the political, economic and social development of Kosovo: it torpedoes political and economic progress, hampers the return of the refugees, causes legal uncertainty, enforces the ethnic conflict<sup>15</sup> and paralyses the stability and democratisation process.

The problem of the still open status was first brought up in April 2002 by the German SRSG Michael Steiner, who introduced the doctrine of 'Standards before Status'. The so-called standards refer to eight criteria, such as the functioning of the democratic institutions, the rule of law, the return of displaced persons and refugees and the reconstruction of the economy, which are to be met before negotiations on the final status can be launched. This strategy proved to be inefficient, as it was blocked by the open, undetermined status: 'The issue of standards as a priority is a problem because the most important standards are clearly linked to the final status'.<sup>16</sup>

In face of this realisation the doctrine 'Standards and Status' was adopted. According to this formula the solution of the status shall be approached parallel to the implementation of the standards. In this context the Security Council of the United Nations authorised its Special Representative Kai Eide to assess thoroughly and in a comprehensive way the situation in Kosovo from June to September 2005. The decision on launching or postponing the negotiations on the status should be based on the findings of Eide's investigation.<sup>17</sup>

Despite the list of deficiencies, the Special Representative recommended the start of the status negotiations: *'There will not be any good moment for addressing Kosovo's future status. It will continue to be a highly sensitive political issue. Nevertheless, an overall assessment leads to the conclusion that the time has come to commence this process'*.<sup>18</sup>

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<sup>15</sup> Soren Jessen-Petersen, (2005) Status Overshadows Standards, in. B92.

<sup>16</sup> In August 2005 Eide expressed his disappointment about the 'insufficient progress' in Kosovo and criticised the government in Pristina as well as in Belgrade for its lack of co-operation with the PISG. Neue Zürcher Zeitung: (24.8.2005) 'Little Progress in Kosovo'.

<sup>17</sup> Eide-Report, 'A comprehensive review of the situation in Kosovo', October 2005.

<sup>18</sup> Preface of Secretary General of UN Kofi Annan in: Eide-Report, October 2005.

Referring to Eide's recommendation the UN Secretary General Kofi Annan sent a letter to the president of the Security Council on 7<sup>th</sup> October 2005, saying that in spite of the 'irregular' implementation of the standards the time has come to initiate 'the next phase of the political process'. Annan emphasised the need to continue implementing the standards 'with greater commitment and results'.<sup>19</sup> Thus, in February 2006 the complex process of the status negotiations was launched.

For the Albanians living in Kosovo the return of the control of Serbia in Kosovo is unimaginable after the incidents suffered since the abolition of autonomy in 1989. In view of the repression under Slobodan Milosevic, the mass expulsion and the considerable number of victims particularly during 1997-1999, the years of war Kosovo-Albanians are of the opinion that Serbia has lost its claim to Kosovo and deny Serbia the legitimacy of regaining control over Kosovo.<sup>20</sup>

In contrast with the political realities which have taken shape since the establishment of the International Community in Kosovo in 1999, Serbia is characterised by the prevalence of perplexity<sup>21</sup> and ambiguity regarding the further course of action.<sup>22</sup> The slogan used by the Serbian government in reference to Kosovo: 'More than autonomy, less than independence' means an extensive autonomy but leaves open the way in which this kind of autonomy could be realised in practice.<sup>23</sup> In the case of Kosovo's reintegration into Serbia 20% of the total population in Serbia would be Albanian who would make up 30% of the military forces and Albanian political parties would have to be involved in the government<sup>24</sup> which is hardly imaginable for either side.

The solution to the final status of Kosovo is a precarious challenge with violence potential requiring a high degree of political maturity from both the Kosovo-Albanian and the Serbian delegations. The International Community has the complex task of working out a compromise between two parties with 'diametrically opposed' positions.<sup>25</sup>

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<sup>19</sup> S. Bota Sot: 'Belgrade shall not interfere with the internal affairs of Kosovo', 1.8.2005.

<sup>20</sup> C. Soren Jessen-Petersen, (15.9.2005) in: B92: 'Kosovo Albanians have a clear position on what they want for the future of the province, while Belgrade has only the vague policy of 'more than autonomy, less than independence.'

<sup>21</sup> Jurekovic Predrag, (Juli 2005) „The Serbian policy in light of the unsolved status issue“: [www.europaesche-sicherheit.de/Rel/2005\\_07/03%20Kosovo/2005,07,03,01.html](http://www.europaesche-sicherheit.de/Rel/2005_07/03%20Kosovo/2005,07,03,01.html), download: 2.9.2006.

<sup>22</sup> Petritsch/Pichler, (2004), S.342.

<sup>23</sup> Dusan Reljic: (May 2006) Kosovo – a touch-stone for the EU, SWP – Stiftung Wissenschaft und Politik Berlin: [http://www.swp-berlin.org/de/common/get\\_document.php?id=1630](http://www.swp-berlin.org/de/common/get_document.php?id=1630), download: 8.10.2006.

<sup>24</sup> Der Standard, (3.11.2005) „Positions of Belgrade and Pristina diametrically opposed.

<sup>25</sup> Deutsche Welle: 'Rigid fronts at the Kosovo negotiations', <http://www.dw-world.de/dw/article/0,2144,2128815,00.html>, download: 3.10.2006.

## STATUS NEGOTIATIONS

Based on the recommendations that the Special Representative of the UN-Secretary General Kai Eide made in his report: 'Comprehensive Review of the Situation in Kosovo', the Security Council of the United Nations Organisation decided to start negotiations meant to determine the future status of Kosovo between the Kosovo-Albanians and the government in Belgrade along with representatives of the Serbs in Kosovo. The former Finnish president Martti Ahtisaari was charged with the task of the UN Special Envoy, whereas the Austrian diplomat Albert Rohan was assigned as his representative. The negotiation team UN Office of the Special Envoy of the Secretary General for the Future Status Process for Kosovo (UNOSEK) began the negotiations on 21<sup>st</sup> February 2006 in Vienna, the venue chosen for the purpose.

In the first instance certain key issues, such as the problem of decentralisation and the protection of the religious and historical sites was discussed. Decentralisation in Kosovo means the reorganisation of the structure of administration to provide the Kosovo-Serbs with the right of self-government without violating the territorial integrity of the country. Whereas the Serbian delegation demands the formation of twelve Serbian communities and a connection to Belgrade as strong as possible, the Kosovo-Albanian party fears the development of 'a kind of autonomy' and the creation of a 'parallel government system'.<sup>26</sup> As expected, the first negotiations did not produce any satisfactory results.

The definition of the Serbian population in Kosovo has been another controversial subject between the Kosovo-Albanian and Serbian negotiators. The Serbs reject the term 'minority' for the Kosovo-Serbs, because, as they stated, they 'cannot be minority in their own country' and boycotted the talks on 7<sup>th</sup> and 8<sup>th</sup> August about the protection of the ethnic minorities in Kosovo. This is the reason why the international partners now prefer to use the term 'national communities' instead of 'minorities'.

On the whole it can be stated that the previous negotiations have confirmed the apprehensions of the UNOSEK and have not been really successful. As it has already been mentioned the positions of Pristina and Belgrade diverge extremely and seem to be practically incompatible. Above 95% of the Albanians in Kosovo approve absolute independence for Kosovo and regard full sovereignty as the solely possible way towards a better future and stabilisation. The strong presence of the

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<sup>26</sup> Dusan, (2006) 6.



radical and nationalist parties in Serbia strengthens this opinion. On the other side, the Serbian government and leadership reject the idea of an independent Kosovo vehemently, arguing that Kosovo is an integral part of Serbia, which cannot accept the separation of a part of its territory and argument for autonomy. Many Serbs in Serbia and Kosovo regard Kosovo as the 'cradle of Serbianism' incited by a 'national-romantic transfiguration'<sup>27</sup> and 'historical, cultural and last but not least also political reasons'.<sup>28</sup>

As far as the final status is concerned, three possibilities are explicitly excluded: the partition of Kosovo, its unification with Albania and a return to the status before 1999. Instead, evidence suggests that a 'conditional independence' with limited power will be an alternative for the solution of the final status of Kosovo.

## CONCLUSION

'The key issue in the current final status process is the creation of a Kosovo that will have the greatest chance for lasting stability and development'.<sup>29</sup> Whatever the future status may look like, it is certain that 'entering the future status process does not mean entering the last stage, but the next stage of international presence'.<sup>30</sup> After the end of the negotiations the European Union will replace the UNMIK and will, therefore, have a decisive role in the development and democratisation of Kosovo. The transfer of know-how and capacity building will also be essential for the development of the country. The integration not only of Kosovo but of all the Western Balkan countries is a very significant factor. The decision of the European Commission to involve Kosovo in the stabilisation and association process (SAP) in the Western Balkans and to develop a mechanism which accelerates the approach of the country to the EU is a significant step toward the stabilisation of the crisis-ridden region.

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<sup>27</sup> Kramer/Dzihic, (2005) 175

<sup>28</sup> ICG: Kosovo – the challenge of transition (2006) <http://www.crisisgroup.org/home/index.cfm?id=3955&1=1> download: 8.10.2006.

<sup>29</sup> Eide-Report, (2005).