

Functionality of the Criminal Justice System in Kosovo, with Special Focus of the Northern Part of the Country, in the Light of the Agreement of Brussels of 19 April, 2013 for the Normalization of the Relations between Kosovo and Serbia

AZEM HAJDARI

Faculty of Law

“Hasan Prishtina” University of Prishtina, Prishtina

Kosovo

ALBULENA HAJDARI

Iliria College, Prishtina

Kosovo

Abstract:

Kosovo on its path of development as the state continues to be under constant supervision of the international community. Reflection of this supervision also considered the mediation in reaching Brussels Agreement to Normalize Relation Kosovo- Serbia. Through this short article has made efforts to notify the public opinion about the content and importance of this Agreement, current problems and challenges of some cases allocated between the parties, as well as challenges and problems that could monitor the functioning of the criminal justice system in Kosovo north during the next period of the concretization and implementation of this Agreement. At the end of this article are also presented some concrete conclusions. During the drafting of this article is used analysis and synthesis method comparative, historical, legal, etc.

Key words: Agreement, UNMIK, EULEX, Kosovo, Serbia, Customs, Elections

Introduction

Kosovo in its way towards development and democratization continues to face many challenges and difficulties. Immediately after the end of the armed conflict with Serbia (1998-1999), it was placed under the administration of UN - UNMIK¹, while now five years it continues to be under the monitoring of the Mission of EU – EULEX, to whose is given the mandate to supervise and exercise some executive functions in police, prosecution, judiciary and in customs². Under the administration of UNMIK and under the monitoring of EULEX, Kosovo has marked evident success in the democratization of the country and in the functioning of the criminal justice system. However, the work of both these missions was accompanied also with numerous challenges, difficulties and problems which had an irrevocable effect in the failure of the exercise of some of their responsibilities in many areas, especially in the area of self-determination, consolidation and exercise of the responsibilities of the institutions that make the basis of the criminal justice system (police, prosecution, and courts).

Kosovo, despite having many international investments, continues to be a country with many problems that have been accumulated over years. The problems that the country faces are of political and socio-economic nature and of democratization of institutional life. The sources of these problems, even though are of different natures, essentials are those that are inter-related with the presence of parallel structures of the security of the republic of Serbia in the northern part of the country and the impossibility of extending

¹ In Kosovo, since 1999, as a security mission acts also the military organization- KFOR which functions under the umbrella of NATO.

² Until one year before, this Mission exercised also executive functions in the field of Customs.

the sovereignty of the institutions of Kosovo there. The north of the country for a long time is considered as the most problematic issue that determines the instability of the country because the situation of crime there for many times continues to be out of the institutional control.

On the basis of this situation and with the aim to resolve it as soon as possible, Kosovo and Serbia under the care and supervision of the EU, in April of 2013 have reached an agreement, the bases of which stands in the Normalization of the Relations between these two countries with the intention that Kosovo in that part can return its perspective and sovereignty. The implementation of this Agreement continues to be followed with many challenges, problems and difficulties. But in its implementation have been marked also the first results that are considered as hopeful. For all of these issues, including a brief overview of the function of the criminal justice system from the period from 1999 until the signing of the Agreement of Brussels on 19 April, 2013 and also an analysis of the mentioned Agreement will be provided within this short article.

A brief overview of the functioning of the criminal justice system in Kosovo during the period 1999-2013

Immediately after the finish of the war in the second half of 1999, in Kosovo was placed UNMIK as a mission of the UN, whose task was the functionalization of institutional life of the country³. Even though, this mission in its work experienced many challenges and difficulties, it managed to achieve many successes but it experiences also many failures. "The main

³ This Mission is set with the UN Resolution adopted in the meeting of 40100 held on 06 June 1999. This Resolution ended the Serbian aggression in Kosovo and terminated the Serb tendency for ethnic cleansing in the country.

challenges and difficulties in the work of this Mission are mainly referred to the issues of; generalization of responsibilities, lack of a proper organizational structure with hierarchy and with responsibilities addressed clearly, the unsolved status of Kosovo, the existence of an unsustainable and unstable situation of security, the hard economic situation of the country, re-establishment of the justice system, inexistence of a complete criminal legislation, extremely heterogeneous composition of the Mission, etc⁴.

Even though the work of the Mission of the UN in Kosovo was highly complex, it managed to mark a set of results in the field of the management of the criminal justice system. These results refer to the field of; criminal law making (issued the Provisional Criminal Code, the Provisional Criminal Procedure Code, the Law on the Execution of Criminal Sanctions, Juvenile Justice Code, the Law for the Protection of Witnesses, etc); restart of the work of the prosecutions, courts and of the bodies for the execution of criminal sanctions; establishment of the Customs System in Kosovo; re-improvement of the facilities within the execution of penal sanctions system; establishment of the liaison offices of the courts, etc⁵.

However, the work of the Mission of UN in Kosovo was accompanied also with a considerable number of failures. The main failures of the work of this Mission are those that refer to its inability to put under the jurisdictions of the Kosovo's authority some of the zones populated with Serbian majority, including the northern part of the country, its inability to suppress the Serbian parallel structures of security and secret service and of other similar services, non professional

⁴ For this issue see: Azem Hajdari, "Certain successes and failures of the UN Mission in Kosovo in managing the criminal justice system", *Politica, Studia Universitatis- Babes-Bolyai*, No.1/2008, pg. 110 – 113.

⁵ *Ibid*, pg. 113-117.

management of some crisis that widespread in the post-war Kosovo, un-demilitarization of the country from illegal arms, etc⁶.

The many difficulties that accompanied the work of the UN Mission in Kosovo, set the necessarily to review its work⁷. As a result of this review, it was decided that the work of this Mission to be reduced massively and it was authorized to be replaced by a new Mission created by the EU- EULEX. This Mission, the largest one in the history of EU, was placed in Kosovo on 9 December, 2008, but with full operational power it was placed in the country later in April of 2009⁸. Also the work of this Mission was followed with some advantages and successes but also with many difficulties and failures.

The advantages that accompanied this Mission have to do with the existence of relevant legal provision to combat the crime in the country, the existence of KFOR as the main international security force in Kosovo, the existence of a tradition in the rule of law, but all this is also accompanied with many weaknesses and deficiencies such as the existence of technical equipments for the job placement of the members of EULEX, etc⁹. The work of this Mission was also followed with many difficulties of various natures. Such difficulties refer to the functioning of parallel structures of security, non recognition of the independence of Kosovo from five member countries of the EU, the existence of significant differences between the Albanian and Serb community, the prolonged hard economic condition of the country, missing people, etc¹⁰.

⁶ Ibid, pg. 117-122

⁷ This Mission is now totally of formal character.

⁸ EULEX is established with the act of Council of the European Union 2008/124/CFSP of date 04 February, 2008 as a Mission for the Rule of Law in Kosovo

⁹ Azem Hajdari, "Some views on the major development and operations of the European Union Rule of Law Mission in Kosovo "EULEX", *Politica, Studia Universitatis Babeş-Bolyai*, No.1/2010, pg. 70 – 71.

¹⁰ Ibid, pg. 72 – 74.

In the work of this Mission has also marked some successes. These successes refer to the extension of EULEX throughout the whole territory of Kosovo, the completion of all criminal cases inherited from UNMIK in the Supreme Court of Kosovo, the resolution of some complex criminal cases of other judicial instances, the successful arrest and punishment of some people suspected for serious crime committed during the war, conduction of some important activities in relation to the exhumation and identification of war victims, undertaking of some important activities for the placement of legality in the field of customs, the management of some visits of important Serb officials in Kosovo etc ¹¹.

The work of the Mission of EULEX in Kosovo was accompanied also with some failures. The main failures of the work of this Mission refer to its inability to suppress the parallel structures of Serbia, the inability to suppress the Serbian intelligent services and of some other similar services in Kosovo, non demilitarization of the country from illegal arms, deficiencies in the functioning of justice system in the northern part of the country, deficiencies in the full functioning of customs system at the points 1 and 31, cooperation with respective Serbian authority etc¹².

During the post-war period in Kosovo, in the field of criminal justice system have been functional also the Kosovo Police, State Prosecution and local Courts. These bodies have operated in cooperation with the prosecutor, judges, officers of customs, and policemen of EULEX¹³. Also the work of these bodies has been accompanied with evident challenges, difficulties, successes and failures. Despite this, it is valuable to mention the fact that the criminal justice system in Kosovo

¹¹ Ibid, pg. 75 -77.

¹² Ibid, pg. 77 – 79.

¹³ The work of the EULEX Mission has already entered into a second review process in order to change its mandate in the future years and to move completely to the monitoring role

continues to be highly fragile and still not fully functional to combat the increased rate of crime, especially the organized crime and corruption. As a result, more than 250 thousand cases continue to remain in the drawers of the courts, most of which continue to be transferred from year to year. In this regard, there is an immediate question to undertake appropriate actions that would put the institutional system on safe standing, capable to face the challenges ahead. In this aspect, a central place should occupy the increased level of accountability of function holder of the position of prosecutor and judges, depoliticization of this system, more determined facing with criminal elements and the greater involvement of young generation within this system with special preference to the people that have studied abroad¹⁴.

The meaning, content and the importance of the Agreement of Brussels for the Normalization of the Relations Kosovo-Serbia

The Agreement, in its general meaning, is considered to be an act that as a rule contains obligations, rights and conditions of the cooperation accepted from the interested parties¹⁵. Viewed from this aspect, the Agreement of Brussels for the Normalization of the Relations Kosovo-Serbia constitutes an act of a special kind through which both of the countries, with the mediation and supervision of the European Union, have determined a set of reciprocal obligations, rights and conditions in order to normalize the institutional life and in general of the citizens in the northern part of Kosovo, particularly in North Mitrovica, Zvecan, Zubin Potok and Leposavic.

¹⁴ Azem Hajdari, "Disa nga sfidat me të cilat aktualisht përballet sistemi i drejtësisë penale të Kosovës", *Kosova Sot Daily Newspaper*, Prishtina, 1 March, 2012, pg. 12.

¹⁵ "Fjalor i shqipes së sotme", Tirana, 1984, pg. 670.

This Agreement initially was signed with the initials of the Prime Minister of Kosovo and those of Serbia, and then they were ratified from the Assembly of Kosovo and from the Assembly of Serbia. This agreement, from the Kosovo point of view, has already been transformed into a special law- “Law on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia”¹⁶.

The text of the Agreement for the Normalization of Relations Kosovo- Serbia is concretized in fifteen points. Within these points, the involved parties agreed to establish an Associate of Municipalities in Kosovo with Serb Majority¹⁷, whose authorization will be determined from the Statute¹⁸ and through which will be offered legal guarantee in accordance with the applicable law and constitutional right (including the rule for the majority of 2/3). The municipalities that will be part of this Association, in accordance with the competences foreseen in the European Charter for Local Self-Determination and the Law of Kosovo, will have the right to cooperate in the exercise of their competences in collective manner while the Associate will have the full supervision in the fields of economic development, education, health, urban and rural planning. The Agreement provides the possibility that the Association might also exercise other additional competences, if they are delegated from the central authority. The Agreement also proved the Associate to have a representative role of the central authority, to which will be reserved a seat in Community Advisory Council and its work will be monitored.

¹⁶ See: Law No. 04/L-199. This Law entered into force on 27 June, 2013.

¹⁷ The agreement leaves open the issue of the membership also to any other municipalities, but with the condition that the members of Associations have to previously agree with this.

¹⁸ This Statute in its content should be identical to the Statute of the Associations of Municipalities of Kosovo. Thus, the created Association will have its President, Vice President, Assambly and the Council.

The Agreement foresees that in Kosovo to be only one police force (Kosovo Police) and that the police of the northern part of Kosovo will be integrated and will be part of the Kosovo Police and its members will receive salaries only from the budget of Kosovo. In addition, the Agreement foresees to offer to the members of the Serbian structures of security that are residents of Kosovo places in equivalent structures of Kosovo. The parties of the Agreement have predicted that the four Serb municipalities in the north to have one Regional Police Commander who will be a Kosovo Serb appointed from the Ministry of Internal Affairs from the list offered from the found municipality mayors who will do this in the name of the Association. Also the Agreement stipulates that the composition of the police in the north to reflect ethnic composition of the population from these four municipalities.

In regard to judiciary, the Agreement foresees the integration of judicial authorities of the northern part of the country within the legal framework of Kosovo. In this aspect, is foreseen that the Court of Appeals in Prishtina to establish a panel composed of judges of Kosovo Serb majority to deal with all the court cases from Kosovo municipalities with Serbian majority. In fact, the Agreement provides the placement of a division of the Court of Appeal in North Mitrovica, consisting of administrative staff and judges, where each panel division will consist of a majority of Kosovo Serb judges. These judges will be placed depending on the nature of the case.

The Agreement of Brussels for the Normalization of Relations Kosovo-Serbia has foreseen also the holding of local elections in the municipalities of the north. In this aspect has clearly defined the goal that the same elections to be held also in 2013, with the facilitation of the OSCE and in accordance with the law of Kosovo and international standards. These elections have already been held.

Finally, the Agreement foresees the drafting of an

implementing plan by specifying the deadline of its issuance, intensification of the discussion regarding the Energy and Telecommunication (with the aim that they to be completed until 15 June, 2013), elimination of the blockages, involving the effect on the other to not block the process of the other party in its way towards the membership in the EU, and also the establishment of joint commission (with the facilitation of the EU) that will accompany the implementation of each point of the Agreement.

The Agreement of Brussels for the Normalization of the Relations Kosovo- Serbia, is estimated to be of great importance for the parties, Balkan region, and beyond. The parties of the Agreement have the historic chance that through the constructive approach to bring to the Kosovo Albanians and to Kosovo Serbs and also to the state of Kosovo and Serbia multifunctional development perspective. Through it, the parties in accordance with the result of the election of 31 November, 2013, are required to cooperate for the establishment of the democratic institutions of local government as a guarantee for the movement towards the improvements of lives of citizens¹⁹. One of the fundamental benefits for the parties is the opening of the Euro-Atlantic integration perspective²⁰. In fact, the parties, in their future interest, will probably leave behind the painful history of wars, repression and destruction over a hundred years, and will open the paths for the rule of law and economic development, primarily in the northern part of Kosovo then in Kosovo in general but also in Serbia. In the end, this Agreement is

¹⁹ The closure of the electoral process in the north was followed also with many concrete difficulties. The elected Mayor of the North of Mitrovica, Krstimir Pantic, refused to give the oath in accordance with the laws of Kosovo and as a result sent this Municipality into re-election for new Mayor. Also, after the constitution of Assembly of the Municipality of North Mitrovica, extremists killed a newly elected municipal advisor.

expected to soften the territorial claims of Serbian Authorities for the north part of Kosovo and destructive tendencies for the exchange of territories between the two countries.

The Agreement of Brussels for the Normalization of Relations between Kosovo and Serbia is of great importance also for the region of the Balkans. This Agreement is expected to have an effect also in the relations among other nations and other territories of the Region where there still exist tensions and problems, by making also these parts to start to think and to work more for the perspective. Here is talked about the Albanian- Macedonian relations in Macedonia, the Albanian-Serbian relations in the valley of Preshevo (Serbia), etc²¹. In other words, a new spirit of cooperation is expected to have access in the normalization of the region which has already been experiencing turbulent history for many years now.

Finally, the Agreement of Brussels for the Normalization of Relations Kosovo-Serbia, is estimated to be important also for the continent of Europe and beyond. It provides the best message to leave the past behind and to start the journey towards the future (of course with no claims to forget the truth of history with tragic dimensions). Moreover, the Agreement expresses the degree of European civilization that should be used as a model for the resolution of every conflict or disputes that currently exists or that can appear in the future everywhere in the Europe²².

²⁰ Serbia has already officially started its dialogue for its integration into EU, while Kosovo in the process of Association and Stabilization

²¹ We consider that the European Union should have greater active role in solving the accumulated problems in centuries, not only in the spaces of Former Yugoslavia (although these are more disturbing) but also in the entire Balkan Peninsula and in broader European continent in order that the populations of this continent, where ever they are, to feel closer to them the freedom, democracy and development.

²² This expectation is estimated to be logical based on the fact that the European Union is the one which has set them at mutual tables and has intermediated the parties to reach the historic Agreement of Brussels for the Normalization of the Relations Kosovo- Serbia.

The problems and the challenges the parties currently face during the implementation of the Agreement of Brussels for the Normalization of Relations Kosovo-Serbia

The implementation of the Agreement of Brussels for the Normalization of the Relations Kosovo-Serbia, despite having good intentions and despite providing achievable results, continues to be accompanied with many problems and challenges. In the following part of this article, in short elaboration, will be incorporates some of these problems and challenges

The absence of the proper degree of trust between the parties of the agreement

It is known the fact that in the success of each agreement, the degree of trust that the parties have consist one of the most important element for the successful conclusion of the agreement. In the same way, is expected to happen also with the Agreement of Brussels for the Normalization of the Relations Kosovo-Serbia. Initially, the trust that existed among the parties was very little, not to say that it was absent. However, as the time passes by, this issue gradually started to be consolidated. In this regard, a particular weight had the elections for local government held in the end of last year (2013) and also to the start of the implementation of some technical agreement reached before such as the Agreement for Telecommunication, the beginning of the process of recruitment of the member of Serb community from the north of Kosovo in the Kosovo Police, etc. Despite this degree of trust between the parties of the Agreement, it continues to be challenging. In addition, in the public opinion dominates the thinking that the trust build until now has its source from the pressure that were

taking place in the European Union, conditioned by the integrating processes and very little from the will of the parties to be turned towards the future²³. Therefore, for many reasons it is illusory to expect that Kosovo and Serbia in short time may reach to have a degree of trust at desired level that would represent the European concept of thinking and acting.

Therefore, the advancement of the level of trust between the parties should be seen as a relatively long process, whose basis depends from the work that is going to take place in the field. Here, we think in the first place, in the establishment of democratic institution of local government, return of the hope for work and the revival of economy, the development of the spirit for tolerance and understanding, etc. Of course, that in this aspect we think that the commitment of the international factor is not only necessary but also indispensable²⁴.

The citizen and institutional internal pressure

The Agreement of Brussels for the Normalization of Relations Kosovo- Serbia, since its first day of arrival was subject to citizen and institutional internal pressure within the two countries. As a result, from the certain parliamentary groups, political parties and citizens it was considered an act of betray, and to the surprise it was considered as such from the both sides of the border²⁵. In fact, in this kind of pressure, among

²³ The low level of trust between the parties of negotiation has its source deep from the history, but without excluding the circumstances related to the recent past. Kosovo and Serbia before 1999 has reached an agreement regarding education but its implementation never happened in practice.

²⁴ This commitment should be reflected in addition to the opening of the integrated prospective and to various benefits from different donors whose achievements the population of the North of Kosovo will start to feel.

²⁵ The bed side of this approach has to do not much with reasonable concerns that actually exists to such groupings such as for the fact that such exposures are done more for the internal political consumptions. This is mentioned because of the fact that none from the contrary party of the Agreement has not managed until today to issue any other alternative to Normalize the Relations Kosovo-Serbia out of the dialogue.

other things, is estimated to have affected also the proper no transparency that has accompanied the process until its achievement but also to the concretization of matter agreed upon²⁶. As for the concerns that come from the inside Kosovo, it is estimated that evident weight has the worldwide view that Kosovo has entered into a dialogue process completely unprepared. In fact, when entering into major political processes, the institutional and citizen pressures have always to be looked from the positive context, as long as they characterize the constructive approach. In this context, they can dictate in the resolution of raised issues in the most rational and sustainable approach and may dictate a more serious approach for the actors involved in the Agreement. On the contrary, depending on the circumstances, they can also have negative effect on the initiated process. In this case, the developed pressure in relation to Kosovo has dictated to increase the level of transparency of Government in relation to the dialogue, and also it was managed that the issue of dialogues to be channeled totally through institutional ways. However, despite this, this kind of pressure counties to be evident even today and is expected to continue also further. This situation dictates the need to continue in maximum with transparency and extend of the concretized results of the Agreement in the field.

Pressure of the interest group

Lacking the access to the institutions for the rule of law in Kosovo in the northern part of the country for nearly fourteen year in row, it is now natural that in that part of territory to be placed anarchy and interest groups to be created, including criminal groups which are highly interested that such situation

²⁶ Consequently, until the mentioned Agreement reached the Assembly of Kosovo, except close team of Hashim Thaqi no one else knew anything for its contours.

to continue also in the future. Indeed, in that part of Kosovo throughout this period have continued to operate the Serbian parallel structures including those imposed by Serbia in every part of institutional life and also in the area of security and justice²⁷. Therefore, in this case the concept of interest groups is quite broad. They include groups resulting from the parallel structures that have operated and continue to operate in that part of the territory up to economic crime mafia groups and organized crime in general, including the public corruption. It is evident that such interest groups throughout the post-war period have managed to achieve great benefits, especially financial benefits and as a result it is expected that the pressure from their side to continue in different forms in order to prevent the establishment of law and order in that part of the territory. The forms of the pressure that are developing currently are of different nature such as threats, blackmail, murders, etc and they are mostly pointed to random citizen but also the democratic structures that are continuously raising²⁸. Although, the power of their impact has started to be reduced, it is not to be underestimated. Therefore, it is necessary that through the institutional work those groups should be identified totally, localized and should be stopped and fought because by having in their disposal considerable sum of finances, they are expected to continue to be an obstacle for the concretization of the Agreement in the field.

Other pressures

In addition to the above mentioned actors that have impacted

²⁷ These structures were directly supported by the institutions of the Republic of Serbia. They are established, controlled, supervised and continuously financed by this state.

²⁸ Case that is worthy to mention here is that of the elected Mayor of North Mitrovica, Kerstimir Pantiq (who has lost the mandate). By being a businessman (even illegal), he has become an obstacle for the integration process of this part of the country.

the Agreement of Brussels for the Normalization of the Relations Kosovo- Serbia, from time to time and in different forms the pressure has also come from civil society, religious communities, media, etc. Also in this case, the pressure has followed the lines of ethnicity to which the involved actors belong²⁹. Some of these actors, in some cases, have made public appeals asking the ignoring parties to withdrawn from the Agreement in the pretext that it betrays the national ideals in glorious period. There are numerous cases when some actors, such as in the case with the Serbian Church, have also mercy senior Serb official, have reminded the last will of their ancestors regarding Kosovo and have suggested to never give up under no circumstances from the “holy” territory, as they call Kosovo. Although, the power of the impact of these factors has not been of high intensity, they should not be ignored in any way. In this regard, it is necessary that these factors and also others to be informed, to be contacted and their opinions to be heard, to discuss with them openly for the reform processes of integration that already have included Europe and the world out of which the everyday life will be not only meaningless but also impossible.

The obstacles resulting from the field where the Agreement has an effect

Although the extend of the effect of the Agreement of Brussels for the Normalization of the Relations Kosovo- Serbia exceeds the territorial frames of the four municipalities in the northern part of Kosovo, its main effects however lie in that part of the territory. In this regard, in this territory from the interest group and certain individuals that have political, economical

²⁹For example, the Serbian Church and the Serbian media exercise pressure on the Serbian side by convincing them not to betray the people and the state of Serbia and that they should act always on the basis of this interest, an interest that characterizes Kosovo as the “Cradle of Serbia” and vice versa.

and other influences (Kosovo Serbs and those from Serbia) continuously try to instrumentalize the majority of Serb population and to keep them under pressure with the aim of maintaining the presence of the Serbian state in Kosovo. Many of these interest groups, including criminal gangs, continue to be very extreme in their actions. They are throwing explosive in certain places and commit murders in order to create panic for the life that would be if Kosovo is under sovereignty etc. In this part of the country, there still exists barricades and the willingness to remove them is almost absent. In this regard, in order for the Agreement to sound well in the ears of every citizen in the north of the country then it is necessary to organize frequent meetings with citizens so that they will clearly be informed from the opportunities offered from this Agreement, to pass in concrete implementation of the Agreement agreed until now and to establish joint working groups that will deal with its monitoring and implementation.

Some of the successes achieved in the implementation of the Agreement of Brussels for the Normalization of Relations Kosovo-Serbia that manifest the impact on the functioning of the Criminal Justice System in the north of Kosovo

Implementation of the Agreement of Brussels for the Normalization of Relations Kosovo-Serbia has started to manifest some of its first effects. These effects are expected to positively impact also other issues for which the parties have already agreed on or will agree in the following discussions. In this aspect, in the following part of this article will be presented some of the successes achieved during the implementation of the Agreement.

Functionality of the custom system at point 1 and 31

As it is known, for almost fourteen years in a row, the custom system in the country did not achieve to be functional, at least in the terms on the extend of its responsibilities at points 1 and 31 that are located at the north of the country. This situation, according to the public estimations, has cost to the state budget between 16 to 20 million Euro per year³⁰. This is because the goods that enter in that part of the country through these two custom points are not subject to custom clearing at all. Recently, regarding this issue, it is marked a functional improvement which is mostly thanks to the solution agreed between the parties of the Agreement that the money collected from these two customs points to be deposited into a special fund which will then be dedicated for the development of that part of the country. In this regard, the situation at customs point 1 and 31 despite the challenges that it faces has started to walk towards the normalization. Now, at these two customs points work together both the Serb and Albanian customs officials and also other joint teams. It seems that slowly the past is giving the floor to the future- to the integration and prosperity³¹. The functioning of the customs system at points 1 and 31 should be seen as an important contribution in the combating of the smuggling of goods in the north of the country, of other forms of smuggling and also of the organized crime which in one form or the other are related to the situation out of control of the borders in that part of the country. The first results of this effect, although modest, have already started to be manifested in the practical life of the country. Compared to

³⁰ This is highlighted in one of the reports of the Kosovo Tax Agency. The report, hold the date of 15 January, 2014. It has estimations of professional characters that this damage is several times greater and reaches up to hundreds of million Euros each year, such as that of Kosovo Chamber of Commerce, various business associations, etc.

before, the smuggling of goods seems to be reduced at satisfactory level and positive effects are considered to be marked also in the fight of other forms of smuggling.

The municipal elections of 03 November, 2013 in the whole territory of Kosovo

The municipal elections of 03 November, 2013 represent an important step towards the consolidation of democracy in Kosovo. These elections are considered as such not only because of the fact that they were described by the international observers as elections developed in accordance to the international standards³², but also for the fact that they have been held for the first time in these fourteen years in the whole territory of the country. These elections, held under the monitoring of OSBE, brought a new standard for the country. They excluded some excesses that occurred in three polling points in North Mitrovica³³, and they were considered as the most advanced elections that were held in the country since 1999. The electoral process in the north of the country is expected to result with the formation of democratic local bodies and it represents a direct attack against criminal groups and against other destabilizing elements. These elections should be considered more as a moment achievement. Through them is carried an important message also for the national elections that are going to be held during 2014 for the advancement of the Serb minority in the country level, including their active participation in the combating of all forms of criminality.

³¹ In this respect, great contribution play also the security structures of EULES and KFOR, which continue without stopping to monitor the situation of security in the customs points 1 and 31.

³² Many international observers, declared that these elections were the best one even held in Kosovo in the aftermath of war (1999)

³³ In those three polling stations, the elections were repeated and were elected municipal councillors to protect the interest of their constituents.

Recruitment of members of parallel security structures in Kosovo Police

An important achievement, in terms of the practical implementation of the Agreement of Brussels for the Normalization of the Relations Kosovo- Serbia, without any doubt represents also the beginning of the act for the suppression of the Serbian parallel structures of security and the recruitment of its members (they are mostly Kosovo Serbs) in the Kosovo's security structures. As it is already known, for the north part of the country is named a Police Commander of Serbian ethnicity as well as 216 members of former Serbian parallel structures who have been recruited in Kosovo Police³⁴. Although, this process for simple political reasons³⁵, has not followed the legal obligations of the verification of their background and neither of their training³⁶, it still is considered important for the return to normal life in that part of the country. Obviously, this started process and associated with the development of concrete analysis, should continue to its conclusion. In the terms of the functioning of the Criminal Justice System, the recruitment of the members of the Serbian parallel structures is considered to be of great importance for two reasons; firstly, for the fact that it is irrevocably inter-related with the suppression of those parallel structures and

³⁴ The Agreement reached between the parties foresees that in the north part of the country to be recruited in total 450 members from the Serb community in the Kosovo Police. This number, considering the fact that in the north live only 20 thousands inhabitants, is estimated to be beyond the standards of the EU (in accordance with these standards there should be recruited not more than 70-75 policeman). See: Koha Ditore, Daily Newspapers of date 22 January, 2014. Pg. 5.

³⁵ In this aspect, should be seen also the legal parts of the issue. Kosovo has already issues the Law of Amnesty, which in essence serves to facilitate the members of the Serbian security structures to be part of the security structures of Kosovo and also to other state structures. See: Amnesty Law-Law no. 2013/04-L209.

³⁶ These members are subject to a four day training of EULEX, which in the circumstances of Kosovo is considered to be very short.

secondly, that this security structure which previously may have been a function, even is silence, with the past crimes, are now expected to be put into function to combat them.

The problems and challenges that refer to the functioning of the Criminal Justice System in the north of Kosovo in the light of the Agreement of Brussels for the Normalizations of the Relations Kosovo- Serbia during the future period of its concretization and its implementation

Modest successes achieved during the implementation of the Agreement of Brussels for the Normalizations of the relations Kosovo- Serbia continue to be challenged in many different ways. Despite this, it is appreciated that the biggest challenges refer to the issues that will be followed in the last part of this article.

The implementation of the reached agreement

As mentioned earlier, the Agreement of Brussels for the Normalization of the relations Kosovo- Serbia includes in itself fifteen issues upon which the parties have agreed. In the success of this Agreement, each of these issues has contributed and occupies a special place. It is evident that one of these issues that strongly reflect in the result of this Agreement is the first point, the point that deals with the implementation of the reached agreements. Therefore, for each of the parties would be very de-motivating if the opposing party makes obstruction to the issues they have already reached agreements, based on the logic that the success of a complex issues heavily depends from the success of each of its parts separately. It is worthily mentioned that the parties, especially the Serbian parties has often expressed certain destructiveness in the fulfillment of the obligations from the reached

agreements, but which were luckily overcome after the European Union has been committed as an intermediary party. As a result, we may say that the agreements for telecommunication, functioning of the customs point 1 and 31, held of the local elections have already been finalized and in addition has started with the implementation of the process for the suppression of the Serbian parallel structures of security and the recruitment of its staff in the security structures of Kosovo³⁷ which continues to be one of the main challenges that deals with the implementation of the reached agreements.

Termination of the overall parallel structures of security-police, courts and other bodies of Serbia

In the north of Kosovo, almost during the whole period from 1999 and onwards, have operated the parallel structures in almost all areas of life such as in; education, health and also in police and courts. In the field of security, in the North Mitrovica, they have operated mainly as “Bridge Guards” but is evident the fact that in the whole territory of the north of the country has operated the Serbian secret service of “BIA”. Whereas, in the field of judicial system in four northern municipalities, for many years the prosecutors and courts have operated in parallel and during their work they have applied the laws of the Republic of Serbia.

Based on the fact that the repressive power the most important mechanism through which the state sovereignty is manifested, it is expected that parties of the Agreements will try that the largest obstructions to be done precisely in the issues of security and justice. This seems to be evident based on the fact that the process of suppression of the parallel structures of Serbian in these two sectors is progressing very

³⁷ In any case, it is for the members of the Serbian community living in the north but who during the entire time were part of the parallel security structures.

slowly and with great obstacles. Consequently, the freedom of movement in that part of the country continues to be pursued with great risks, especially for Albanian citizens. Therefore, the issue of suppression of the Serbian structures of security will continue to be challenging and with this the whole Agreement of Brussels, as far as the authorities of the Republic of Serbia do not feel Kosovo as a neighboring country. As a result, the suppression of these parallel structures is possible only when Serbia stops their financing as it was agreed also in the Agreement of Brussels.

Functionality of Kosovo Police, State Prosecutors and of Courts in accordance to the Kosovo's laws

Although, in the north of Kosovo is appointed one Commander and have been recruited half of the police officers from the Serb minority, there is still work to be made to fully put into function the Kosovo Police in that part of the country. This segment of the security must be profiled and must be assisted from numerous experts in order to be able to face with crime and other negative phenomena which have become part of the daily life for a long time. In addition, it is considered to be necessary the drafting of a strategy that would offer solutions for all police matters such as internal organization, current task and future tasks. The same thing has to do with the functioning of the State Prosecutor and Judiciary. These state bodies are necessary to be extended and functional as soon as possible in this part of the country. They should be established in accordance with the legislation of the country by respecting fully the organizational models in other parts of Kosovo³⁸. In this respect, a unique court system is time imperative for the country in order to avoid risks that relate to the establishment of the unstable and parallel judicial system. Within the point 10

³⁸ This issue is clearly defined also from the Agreement of Brussels for the Normalization of the Relations Kosovo-Serbia.

of the Agreement of Brussels for the Normalization of the Relations Kosovo-Serbia, as an issue that can be viewed with many reserves, is foreseen the establishment of a panel of the Court of Appeals based in North Mitrovica, because this issue in one way or the other falls outside the framework of the current judicial system, as prescribed by the Law for Courts. Leaving aside this issue, the Agreement fairly foresees that the structures of judges and prosecutors should be in accordance with multi-ethnicity composition of the population by respecting the criteria of majority and gender representation. This approach is believed to have its effects in the establishment of the bridges of communication and mutual trust among the communities living in that part of the country. Finally, it should be mentioned that the professional, efficient and within the legal framework establishment of Police, Prosecution and Judiciary will be necessity of time that is expected to bring legitimacy and consistent fight against crime in that part of the country.

The avoidance of the blockages from the Serbian side about Kosovo's membership in international organizations

The access of the authorities of the Republic of Serbia in order to disable the functioning of the state of Kosovo, in these post-war fourteen years has had multi dimensional extend. One of the forms of this issue, without any doubt has been their persistent commitment to block any initiative of the membership of Kosovo into international mechanisms. Despite this approach, Kosovo with the support of numerous international partners has managed to be member of some relevant international mechanisms. Kosovo already is member of the International Monetary Fund, World Bank, European Bank for Development and Reconstruction and has also participated in the work of various forums with regional

characters and broader. As in some international mechanism the membership has strict rules, then in the Agreement of Brussels for the Normalization of Relations Kosovo- Serbia is included also the point fourteen according to which Serbia will not blockage or to encourage other to block the membership of Kosovo into international mechanism based on economic, cultural, sporting and social goals including the membership in the OSCE. In this regard, already has been marked positive progress. Serbia, lastly, did not deter FIFA to decide that Kosovo to develop friendly matches with other countries³⁹. This is estimated to be an important step but which should be followed also with other step all pointed towards the integration of Kosovo into European family and broader.

Conclusion

The modest results of this article brought us to the following conclusions:

Kosovo as the newest country in the continent of Europe, immediately after the war (June, 1999) was placed under the UN administration - UNMIK and under the protection of KFOR (as NATO mission). The mission of UNMIK is already now very formal and invisible while the mission of KFOR, although reduced in structure, continues to exercise its mission in full capacity. Five years now, operated also the mission of EU-EULEX which is the mandate for supervision but also executive competences in the field on the rule of law (customs, police and courts). In their work, these missions have marked numerous successes but their works has marked also some failures especially in the fields of Criminal Justice System in the

³⁹ Previously it was an agreement between the parties that Kosovo can be represented in regional conferences with footnote, but did not function properly because in some of these conferences Kosovo has refused its participation only because of Kosovo

country. The crime continues to increase from year to year and numerous court cases counties not to be solved for many years.

The relations Kosovo-Serbia, since the war (1999), were very tense and lacked any kind of communications that affect their improvements. Considering this situation, on 19 April, 2013 with the mediation of the EU, these two countries have reached an agreement whose aim is to normalize the relations between them. With this agreement, they defined for each of them numerous rights and obligations. Those relate to the implementation of the agreement reached in technical dialogue, recognition of the sovereignty of Kosovo in the municipalities of North Mitrovica, Zvecan, Zubin Potol and Leposavic; formation of the Associations of these municipalities with the possibility of involving other Kosovo municipalities with Serbian majority; holding of the local elections throughout of the country; suppression of the Serbian security structures in those parts of the country; functioning of the police, state prosecutor and courts in the north of the country; no blockage of the membership of Kosovo into international mechanisms, etc.

The parties of the Agreement face many challenges and problems. These challenges and problems, firstly, deal with the lack of proper degree of trust between them, internal citizen and institutional pressure, pressure from different interest groups, obstacles from the field where the agreement has an effect etc. Each of these challenges and obstacles has its share in the success of the agreement, as a results is it required from the parties to not ignore them but to deal efficiently to overcome them, each within the scope of the agreement.

Recently, have been marked some modest results in the issues foreseen in the Agreement of Brussels for the Normalizations of the Relations Kosovo-Serbia. These successes have to do with the functioning of the customs system at the points 1 and 31 (in the north of the country); held of the local elections throughout the territory of the country, including the

Serb majority municipalities in the northern Kosovo and the recruitment of 216 members of the parallel security structures into Kosovo Police. Such results, although modest, represent a message that parties could go towards the future.

The implementation of the Agreement of Brussels for the Normalizations of the Relations Kosovo-Serbia has been accompanied also with numerous problems and difficulties that affect the functioning of the Criminal Justice System. Such are the challenges and problems regarding the implementation of the reached agreement, suppression of the security structures of Serbian in Kosovo, the functioning of the police, prosecutors and courts in the north of the country, etc. Although there have been marked the first results especially in the sector of Police, much work remains to be done in judiciary. The challenges have to do with the placement of these bodies under the institutional hierarchy of the country and the development of their activities in accordance to the laws of Kosovo. In order to know how things would go, we need to wait for the future but chances are that they will start to move towards the future and towards the integrations of that part of territory into the territorial state of Kosovo.