



27.3.2024

NOTICE TO MEMBERS

Subject: Petition No 1082/2023 by Lirie Zeneli (Belgian) signed by one other persons, on the Kosovo-Serbia dialogue and the role of the EU

1. Summary of petition

The petitioners express their concerns about the EU-led Kosovo-Serbia dialogue standstill, which they primarily attribute to the 2013 agreement on creating an Association of Serb-majority Municipalities. They outline their concerns regarding the establishment of this Association, which includes the potential violation of Kosovo's Constitution, apprehension about the potential of increased Serbian government influence, potential threats to Kosovo's central power and fears that the Association's creation could lead to Kosovo's federalization, given its small Serbian population. The petitioners express that the EU led dialogue so far has not been fair and neutral enough and they call on the EU Institutions to take the following measures: - sanction Serbia, - lift sanctions against Kosovo, - propose a fair dialogue without unilateral pressures on the government of Kosovo, - avoid linking the dialogue's success to the Association's creation, - take into consideration the six points of the Prime Minister, Albin Kurti, regarding the creation of these Associations, - propose a legally enforceable agreement regarding the normalization of relations, aligning with international law, and - propose the creation of an Association of Municipalities with Albanian Majority (and Hungarian Majority) in Serbia.

2. Admissibility

Declared admissible on 6 December 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 27 March 2024

Commission's observations

The establishment of the Association of Serb-Majority Municipalities in Kosovo (hereinafter "Association") is a long-standing obligation under international law, which stems from the Brussels Agreement of 2013. This international agreement was concluded by the parties to the EU-facilitated Dialogue, Kosovo and Serbia, and ratified in the Kosovo Assembly in June 2013. The Kosovo government has not taken any action to establish the Association since then.

Obligations under international law have to be respected. Both parties need to fully respect and implement all their pending commitments reached in the EU-facilitated Dialogue. This is therefore worrying in the context of rule of law and Kosovo's aim to join international organisations.

In 2023, the EU, together with internationally renowned experts, started to draft a statute of the Association (hereinafter "European Draft Statute"). This document fully respects the relevant international legal documents (most prominently the Brussels Agreements of 2013 and 2015, the Council of Europe European Charter of Local Self-Government and the Council of Europe Convention for the Protection of National Minorities) as well as the Kosovo legal framework. In addition, Guidelines and Recommendations issued by the OSCE High Commissioner on National Minorities, such as the Lund Recommendations on the Effective Participation of National Minorities in Public Life, the Ljubljana Guidelines on Integration of Diverse Societies and the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations were taken into consideration during the drafting process. Finally, also documents that are not legally binding but only have political status were taken into consideration (e.g. Prime Minister Kurti's "six points" mentioned by the petitioners) because they are important for Kosovo.

It is not true that the establishment of the Association would be inconsistent with the Kosovo Constitution. The Constitutional Court of Kosovo itself examined the Brussels Agreement of 2015 (one of the two international agreements that constitute the legal basis of the Association's establishment) in the context of its compatibility with the Kosovo Constitution and stated that the government had to comply with its obligations under international law, i.e. establish the Association.

The Statute, once approved by the government, would be reviewed by the Constitutional Court before the establishment of the Association. Therefore, the argument that the establishment of the Association violates the Kosovo Constitution is invalid.

It is also not true that the Association would jeopardize the executive central power of the Kosovo government. The Association, as envisaged by the EU, would not constitute an additional layer of governance. The Association would not have more competencies than its member municipalities together. The member municipalities' competencies would be "pooled" in the Association. The Association's competencies criticized by the petitioners – urban and rural planning – are foreseen by the two international agreements and cannot be modified unilaterally by Kosovo but only in agreement with Serbia.

The Association's objective is not to federalize Kosovo. The Association's main objective, as envisaged by the EU in the European Draft Statute (Article 2) is "to create in Kosovo opportunities for the Kosovo Serb community to take advantage of the specific rights and municipal competencies already included in the Constitution and other applicable law", in other words provide "a self-management framework for the Kosovo Serb community within the existing municipal level of local self-government".

Founding membership of the Association will be open to the Serb-majority municipalities in Kosovo. However, upon establishment of the Association, membership will be open to any other municipality.

Conclusion

Regarding the security situation in the north of Kosovo, it is important to understand that the Association will not have competencies in the area of public security.

In relation to the violent attack against Kosovo Police on 24 September 2023 in the north of Kosovo, the EU has condemned this attack in the strongest manner, including at the highest level as reflected in the European Council Conclusions of October 2023. As expressed in its Conclusions of 12 December 2023¹, the Council expects Serbia to fully cooperate and take all the necessary measures to apprehend and swiftly bring to justice the perpetrators of the 29 May and 24 September attacks. The Council regrets that Serbia has so far taken insufficient steps in this respect. Serbia and Kosovo must pursue sustained de-escalation efforts and refrain from unilateral and provocative actions that could lead to tensions and violence and stop divisive rhetoric. In line with the European Council Conclusions of 26-27 October 2023², failure by the parties to de-escalate tensions will have consequences.

Finally, in the line with the 3 June Statement by the High Representative on behalf of the EU³, the EU is implementing reversible measures vis-à-vis Kosovo due to the lack of decisive action to de-escalate the tensions in the north of Kosovo. The Council welcomed in its Conclusions of 12 December 2023 that Kosovo has taken steps towards meeting some of the EU's requests and stands ready to lift the measures in case of further progress in fulfilling the EU's existing request. The Council will remain seized of the matter and will revert to it on the basis of a report by the High Representative on the fulfilment of these requests.

¹ <https://data.consilium.europa.eu/doc/document/ST-16707-2023-INIT/en/pdf>

² <https://www.consilium.europa.eu/en/press/press-releases/2023/10/27/european-council-conclusions-26-and-27-october-2023/>

³ <https://www.consilium.europa.eu/en/press/press-releases/2023/06/03/statement-by-the-high-representative-on-behalf-of-the-eu-on-kosovo-and-latest-developments/>