

SERBIA AND THE EUROPEAN UNION – EVOLUTION, DISSOLUTION, OR SOMETHING THIRD?

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ABSTRACT

In this study, the author tries to define the current state of relations and the perspective between Serbia and the European Union, considering the past experience in a process that has lasted for almost a quarter of century. He asks and answers three questions: 1) Is Serbia late with the EU integration? 2) Is it possible to define the main reason for the slowness and uncertainty of the process? 3) Given the answers to the first two questions, is the European integration of Serbia a process of evolution, dissolution, or something third? Bearing in mind the current geopolitical situation, the state of the European Union and Serbia's policy, which is open to the four corners of the world, the answer seems to be self-evident.

KEYWORDS

*European integration
First Brussels Agreement
Brussels-Ohrid Agreement
European Union Enlargement Policy
reform of the European Union*

1. Introduction

To begin with, the basic meanings of the terms used in the title of the study should be explained. Evolution, if we leave out Darwin's theory on the evolution of biological species, primarily means gradual development (transition) from one state to another, development or progress. In public law, we are talking about, for example, the evolution of institutions (parliament, head of state, and government), institutional relations (between different subjects and bodies), and so on. In social sciences, dissolution represents disintegration of a society or state. For example, dissolution of parliament is one of the basic mechanisms of the parliamentary system of government.

As we show in this study, the relationship between the Republic of Serbia and the European Union (EU), or vice versa, does not represent an evolutionary process nor has

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it ever been. The eruptive quasi-democratic enthusiasm of Serbia, or rather a part of its political leadership, after the fall of Slobodan Milošević's regime in the end of 2000 and the full verbal openness of the 'medium-sized' EU during the period resulted in (il) legitimate expectations of both parties that the process would be completed in the next 10 years. However, even in that 'preparatory' phase, which ended when the official accession negotiations started in 2014, one could rather speak about some kind of formal and rather formalistic, *ad hoc* progress of Serbia on the path of European integration, but not about evolution in the sense of substantial fulfilling intra-reform conditions (democracy, rule of law, and human rights). However, the conditions set for Serbia from the very beginning were special, *sui generis*. Even the ruling structures in Serbia have not shown perseverance or the sufficient resourcefulness in the process which has been marked with high political complexity.

However, it would be wrong in today's challenging moment, when the dissolution, that is, abandoning the European path, is more seriously considered. Moreover, it would be wrong to discuss the stagnation on Serbia's European path. Perhaps the right phrase would be 'slow progress', punctuated by extremely frequent challenges to this process, both external and internal.

Therefore, in this study, we pose three questions. First, is Serbia late in joining the EU? We talk more about the reasons for that delay. Second, is the whole process based on the wrong premises, that is, is it true that without formal *de jure* recognition of Kosovo as an independent state, it is not possible to leave the 'grey zone' of European integration? Thirdly, if Serbia's European path is neither evolution nor dissolution, can it be 'something else'? In this context, one must explore which realistic options are available.

However, it is certain that almost a quarter of a century after the establishment of the first official contacts between the EU and Serbia, the 'European fate' of Serbia depends much more than at the beginning of the process on the 'European fate' of the EU, and its redefinition as a more relevant geopolitical factor in the world order.

2. Is Serbia late with the European Union integration?

| 2.1. On relations between Yugoslavia and the European Community – from the early 1930s to the beginning of the 21st century

Strong supporters of the European integration will say that Serbia is late with the EU integration process, because in the 1990s, instead of accepting becoming a stable democracy, it chose the dictatorship of Slobodan Milošević and participated in war and other conflicts in the territory of the former Yugoslavia. Zečević claims that the Kingdom of Yugoslavia was 'one of the main initiators for the creation of the EU' and that 'Serbia failed to use this historical fact in the right way and fit it into the framework of its foreign policy'.² In 1930, through the then Minister of Foreign Affairs, Aristide Briand, France submitted to the League of Nations the Memorandum on the Establishment of the European Federal Union; the document was immediately officially supported by the then Kingdom of

Yugoslavia.³ Nevertheless, it seems that the assassination of the Yugoslav King Alexander on 9 October 1934 in Marseille 'marked the end of the dreams of a federal Europe', at least before the end of World War II.⁴

The post-war socialist Yugoslavia (SFRY) established diplomatic relations with the European Economic Community (EEC) as early as the 1960s.⁵ In 1970, the EEC and SFRY concluded a concise political and economic 'trade agreement', the first of its kind that the EEC concluded with a socialist country.⁶ Yugoslavia was then a relevant international factor and a kind of link between the West and the East.⁷ Nevertheless, the country, especially since the adoption of the Constitution of SFRY in 1974, entered into serious economic and political crisis. Although just before the SFRY President Josip Broz Tito's death in 1980,⁸ another far more extensive agreement on cooperation was concluded, it was also the end of the evolution in relations between the state, which was on the verge of collapse, and the EEC, which was just beginning to expand throughout Europe.⁹ According to Vuk Drašković,¹⁰ at the beginning of 1991, there was still an opportunity for Yugoslavia to democratically reform itself, prevent a civil war, and quickly enter the EEC and the North Atlantic Treaty Organization (NATO),¹¹ but it was missed mainly because of the Croatian and Serbian political leadership. Theories of missed opportunities and claims about the sole responsibility of (small) regional political leaders seem attractive, but they do not provide real, and especially, scientifically based answers. There is a proverb: 'Where there is smoke, there is fire'. 'Smoke', however, is not the cause of 'fire'.

In fact, global geopolitical factors (the fall of the Berlin Wall, the collapse of the Soviet Union, and the end of the Cold War) had a predominant impact on the 'European division of cards' in the Balkans. What the advocates of Serbia's earlier entry into the EEC lightly pass over is that no sign of equality could be placed between Yugoslavia and Serbia. Without going into the specifics of the legal nature of the Yugoslav state and its institutional structure at this point, the fact is that that state had a very significant geopolitical position. With the disintegration of socialist Yugoslavia, the 'little' Yugoslavia (FRY), which consisted of only two member states, Serbia and Montenegro, lost the importance for the West that it had practically had throughout its existence, first as the Kingdom of Yugoslavia (1918–1941), then as socialist Yugoslavia (1945–1991). By contrast, on the ruins of the former Soviet Union, bloc states were created, turned towards themselves and their accelerated 'way to the West'.

3 | Lopandić, 2017, p. 8.

4 | Зечевић [Zečević], 2018, p. 12.

5 | The first contacts were established in 1962, and the SFRY mission in Brussels was opened in 1968 and was one of the first diplomatic missions to the EEC. Lopandić, 2017, p. 34.

6 | *Ibid.*

7 | *Ibid.*

8 | Josip Broz Tito (1892–1980), president of the SFRY for life.

9 | Lopandić, 2017, p. 34.

10 | Vuk Drašković was the most popular opposition leader in the first half of the 90s and is a significant Serbian writer.

11 | In an interview given to the news agency TANJUG, Drašković explains that after the opposition demonstrations against Slobodan Milošević's regime in Belgrade on 9 March 1991, the US Secretary of State, James Baker, came to Belgrade and made such an offer on behalf of the United States and the EEC, but that was rejected, each for their own reasons, by the then political representatives of Serbia and Croatia, Slobodan Milošević and Franjo Tuđman. Drašković, 2024.

Possibly, there were better solutions for the political leadership of Serbia in the 1990s, but there were objective circumstances (the civil war in the neighbourhood in which Serbs from those areas as well as those from the motherland participated, and international sanctions, the war in Kosovo and Metohija, the NATO aggression against Yugoslavia, that is Serbia, in 1999), which decisively influenced Serbia at the beginning of the 21st century, and only then did the European integration become a priority its political agenda. Ultimately, Serbia had first to resolve the basic issues of its sovereignty and territorial integrity, in order to create the elementary conditions for initiating the process of European integration. Those conditions were necessary, but not sufficient for the process to actually begin.

In 1991, the Italian singer-songwriter Toto Coutuno won the Eurovision Song Contest in Zagreb with the song 'Insieme: unite unite Europe'. It seemed that two simultaneous yet connected processes were taking place in Europe, the evolution of the idea of a united Europe under the new institutional auspices of the Treaty of Maastricht (1992), and the dissolution of the SFRY in form of a civil war.¹² The EU had nominally tried to mediate in the resolution of war conflicts on the territory of the former Yugoslavia.¹³ That mediation did not yield significant results.¹⁴

| 2.2. Serbia's preparatory work for the European integration – the first decade of the 21st century

Serbia regained its full sovereignty and constituted itself as an independent state after adopting its (current) constitution in 2006. The Constitution – which was amended only once in 2022, with the aim of preparing the field for reforms in the area of judiciary to speed up Serbia's European integration – rests on one apparent inconsistency. That inconsistency was not the result of a mistake or an oversight by the constitution-maker. It was purposefully incorporated into the foundations of the constitutional system. The Preamble of the Constitution, referring to the 'state tradition of the Serbian people and the equality of all citizens and ethnic communities in Serbia', gives a central place to Kosovo and Metohija 'as an integral part of the territory of Serbia that it has a status of a substantial autonomy within the sovereign state of Serbia'. This results in the 'constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations'.¹⁵ Therefore, the Preamble unequivocally defines some basic elements of the national constitutional identity. Serbia is a civil democracy, because its founding rests on the equality of all citizens and ethnic communities. However, it does not renounce the national source of its constitutionality, the tradition of the Serbian people. Accordingly, the place of Kosovo and Metohija is

12 | 'Centrifugal forces in Europe encouraged centripetal movements on its periphery. Slovenia, and then Croatia, turned their backs on their less developed southern compatriots in the belief that they could achieve their interests better in ties with the new European integration than in the Yugoslav federation'. Lopandić, 2017, p. 40.

13 | An international conference on the former Yugoslavia was organized in The Hague (chaired by Lord Carrington), then an international arbitration (Badinter Commission) under the auspices of the EU. EU declarations on the war in the former Yugoslavia were published, economic and diplomatic sanctions against Serbia were introduced, EU observation missions were sent, peace plans were proposed, and so on. See Lopandić, 2017, p. 41.

14 | Lopandić, 2017, pp. 40–41.

15 | Constitution of the Republic of Serbia, 2006, p. 2.

particularly highlighted, not only in terms of territory and citizenship, but also in terms of constitutional 'being', that is, the state and constitutional 'credo'. This apparent inconsistency is reinforced by Art. 1 of the Constitution, which reads:

Republic of Serbia is a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values.¹⁶

There is nothing in this article that would be against the basic EU principles and values. The preamble emphasizes the national constitutional identity, whereas Art. 1 emphasizes some elements of the European constitutional identity which at least should not contradict each other.¹⁷

The Constitution of 2006, with its apparent inconsistency, opened the door to the path of European integration of Serbia. Serbia constitutionally indicated the path of its European integration, dressing in the constitutional form of European principles and values its 'most expensive word' – Kosovo.

| **2.3. Half a decade between signing the Stabilization and Association Agreement and official opening the negotiation process (2008–2013)**

In 2008, Serbia and the EU concluded the basic legal document on which the entire process of Serbia's European integration is based. However, the document, Stabilization and Association Agreement (SAA), entered into force only in 2013. Serbia applied for membership in December 2009. The European Council adopted the conclusion on the granting of candidate status to Serbia in March 2012 and made the decision to open accession negotiations only in June 2013.¹⁸ Serbia officially began negotiations on EU accession in January 2014. Thus, Serbia started negotiations a quarter of a century after the fall of the Berlin Wall, almost a decade after the 'Big Bang' in 2004,¹⁹ seven years after the accession of Romania and Bulgaria, and half a year after the accession of Croatia in July 2013.

Among the countries of the Western Balkans, Northern Macedonia received candidate status in 2005 but started negotiations in 2022; Montenegro submitted a request in 2008 and started negotiations in 2012; Albania in 2009 and started negotiations in 2022; Bosnia and Herzegovina submitted its own request in 2016 and started negotiations in 2024. If the events are arranged in this way, it can be said that Serbia was rather late with the beginning of its European integration, but that it is in a more favourable situation than other countries of the Western Balkans (except Montenegro). In fact, it is wrong to talk and guess which of the mentioned countries is closer to membership, considering the time criterion of the duration of these negotiations.

The issues of the institutional reform of the EU, the possibilities and modalities of further its enlargement, the 'common destiny' of the Western Balkan states on the European path and the specific, undoubtedly completely separate issue of resolving the 'Kosovo Gordian Knot' are of such a nature and intensity that they open completely

16 | Ibid.

17 | Varga, 2020, pp. 703–716; Petrov, 2022, pp. 177–200.

18 | Lopandić, 2017, p. 112.

19 | Then the following states joined the EU: Poland, the Czech Republic, Slovakia, Hungary, Estonia, Latvia, Lithuania, Slovenia, Cyprus, and Malta.

different perspectives and extremely uncertain outcomes. The words of Slobodan Samardžić, an excellent expert on the EU and the process of European integration, said in 2015, proved to be true not only for Serbia but also for other countries of the Western Balkans.

...The process itself has become so complex and uncertain that nobody could predict its flow or its outcome. After all, in the framework document for accession, it is specifically stated that opening the talks does not guarantee either the achievement of the final goal or durability of the process. Meanwhile, both players – the EU and Serbia, but also their mutual relations – have become substantially different in comparison to the beginning of the century.²⁰

Nothing has fundamentally changed in the following 10 years. In Serbia, there is a popular folk saying that reads: 'Whoever goes first to a girl, he gets a girl to him'. However, this is not always the case. Especially, if the 'girl' is still attractive in appearance, but she has become a bit tired and does not know exactly what and whom she wants. At the same time, the 'guy' is not entirely sure whether he prefers a 'marriage' or just a kind of 'relationship'. It is, metaphorically speaking, a concise description of the relations between Serbia and the EU almost a quarter of a century since the beginning of the preparations for the European integration of Serbia.²¹

3. Is the normalisation of relations between Serbia and Kosovo the only true condition for joining the EU?

| 3.1. EU conditionality policy and its 'peak': The example of Serbia

After the fall of the Berlin Wall, the EU began to develop a policy of conditionality in relations with candidate states, close neighbours, and traditional partners of the African, Caribbean, and Pacific group of states. This conditioning is legal (the ability to assume the obligations arising from membership, i.e. the adoption of the EU acquis), economic (creating a sound economic policy and realizing economic growth), and democratic (political).²² On this basis, first in 1993, at the meeting of the European Council in Copenhagen, and then in 1995 in Madrid, three criteria (political, economic and legal) were defined in order that candidate countries must fulfil before being admitted to the EU membership. When it comes to political (democratic) conditioning, it initially referred to the stability of institutions that ensure democracy, the rule of law, respect for human and minority rights, and acceptance of the EU's political goals.

After the disintegration of Yugoslavia, new political criteria were defined for countries in the Western Balkans, among which the following are particularly important: respect for peace agreements, full cooperation with the International Criminal Court for the former Yugoslavia, and cooperation with neighbouring countries (regional

20 | Samardžić, 2015, p. 142.

21 | The first joint body of the Consultative Task Force, which had the task of preparing the European integration of Serbia, was founded in 2001.

22 | Гајић [Gajić], 2013, p. 11.

cooperation). Only Serbia got another extra condition: the normalization of relations with Kosovo.²³ This condition, although it became clear very quickly what it could mean, is characterized by nominally great vagueness and ambivalence.²⁴ It was this condition that made the European integration of Serbia a *sui generis* process. What is even more important, it completely changed the nature of that process by making it predominantly political and turning it into a political juggling for the realization of current and partial political interests. However, the process lost its strategic character.²⁵

There is a proverb that roughly says that the meaning of life is not in the achievement of the goal as such, but in the path to the goal. However, this saying is true provided there is a clearly defined goal. If this is not the case, then the road for the road's sake is undoubtedly quite pointless. We can, in doing so, change the means of transport, visit different locations on the way, but without knowing where we are really traveling and why, we will first feel boredom, then fatigue, and finally a kind of frustration due to the awareness that there is no essential progress on the way, and that so much progress has been made that return is also neither a rational option nor, in fact, possible.

Although Serbia, or rather its various political leaders to date, should not be released from responsibility for omissions, delays, and inconsistencies in the European path, it is still impossible not to notice that the policy of conditioning the EU has just reached its 'peak' on the example of Serbia. As Samardžić explains,

Serbia's steps towards 'normalisation of its relations with Kosovo has become a crucial condition... Each further step on Serbia's path to integration has been conditioned by some concrete step of the recognition of Kosovo as a new state. This means that instead of setting the goal of full membership *ex ante*, the process has been transformed into setting the key *ex post* condition of full recognition of Kosovo's independence.²⁶

| 3.2. **The First Brussels agreement and its ambivalent significance for Serbia's further European path**

Before the entry into force of the SAA, Belgrade and Pristina, with the mediation of the EU, should have started negotiations on several topics in 2010. Belgrade should have fulfilled all its obligations regarding cooperation with the Court in the Hague, and, instead of the United Nations Mission in Kosovo (UNMIK), as was foreseen by the UN Resolution 1244,²⁷ the EU-EULEX mission should have been installed. According to Resolution 64/298 of the UN General Assembly, adopted at the initiative of Serbia and the EU, the EU became an intermediary in the dialogue between the two parties whose goals would be 'promoting cooperation, achieving progress on the road to the EU and improving people's lives'.²⁸

23 | Гајић [Gajih], 2013, pp. 15–16.

24 | Axyonova and Kartsonaki, 2024, pp. 1–2.

25 | 'The case of Serbia, although it is the extreme one, is not a single one. All countries of the so called Western Balkans which intend to go the way toward the EU cannot escape this grey area of conditionality. This clearly proves our thesis that there is a mutation of the process, which is slowly but surely becoming as association/accession process without a membership perspective.' Samardžić, 2015, p. 149.

26 | Samardžić, 2015, p. 146.

27 | UN Security Council, 1999.

28 | UN General Assembly, 2010.

The peak moment of that phase was the First Brussels Agreement in April 2013,²⁹ signed between the EU and Serbia.

The ambivalent nature of this agreement was read first in its full and proper name, and not in the one by which it is known to the general public: 'The First Agreement on Principles Governing the Normalization of Relations'. 'Normalization of relations' certainly did not refer to the parties that initiated the conclusion of the agreement, the EU and Serbia, but rather concerned Serbia and Kosovo. From the point of view of the Constitution of Serbia of 2006, this meant that Serbia establishes, that is, 'normalizes' relations with itself, or rather that the state entity treats its component part as a separate and equal entity. Although the title often hides the essence of the text, it was more than clear from the title that the Agreement governs a relationship that the Constitution of Serbia does not recognize.

Another ambivalence of the Brussels Agreement was reflected in its nature. In the simplest terms, the question arose whether it is a (general) legal or political act, or this is some kind of international legal agreement, or a purely political agreement? That dilemma was officially removed by the Constitutional Court of Serbia, when, at the end of 2014, it rejected the proposal for the evaluation of the constitutionality and legality of this agreement, taking the position that this agreement is not a general legal act, and therefore the Constitutional Court is not competent to evaluate the compliance of the Agreements with the Constitution and the law.

(...) The Constitutional Court assessed that the contested First Agreement does not meet the conditions stipulated by the confirmed international conventions and valid laws of the Republic of Serbia in order to be considered an international treaty, that the contested act in itself does not represent a general legal act of internal law, but only a political basis for the adoption of appropriate general of legal acts by competent authorities and in the prescribed procedure (...) For the Constitutional Court, those expert opinions submitted as part of the public hearing in this constitutional court case, according to which the challenged First Agreement is by its nature the closest to the political *modus vivendi*, are acceptable, interim solution stipulated by the decision on the final status of Kosovo and Metohija, which, in the light of the relevant rules of international law, has no legal force, but creates a political obligation in the spirit of the so-called soft law that allows an asymmetric perception of the obligation either as a political or legal obligation by the parties in the initialed First Agreement and as such, from a legal point of view, does not close the door to any of the two opposing conceptions of the final status of Kosovo and Metohija, etc.³⁰

The key points of this agreement were the establishment of the Association of Serbian Municipalities in Kosovo (ASMK), in which Serbs are the majority population in Kosovo; the establishment of the Kosovo Police and the integration of members of the Serbia's Police from the north of Kosovo and Metohija into the Kosovo Police; and the integration of the judiciary and its further functioning within the legal system of Kosovo. It was predicted that the local elections in the northern municipalities, scheduled for 2013, would be held in accordance with Kosovo laws and international standards. In its essence, the First Brussels Agreement served as a political and legal basis for relinquishing Serbia's

29 | First agreement on principles regulating the normalisation of relations, 2013.

30 | Уставни суд Србије [Ustavni sud Srbije], 2018, p. 480.

governing powers in Kosovo, and Kosovo envisaged only one major obligation to enable the formation of the ASMK.

From the perspective of the valid constitutional law of Serbia, that agreement, deviated from the apparent inconsistency we talked about earlier.³¹ With that agreement, for the sake of nominal European values, two fundamental principles of international and internal law were deviated from, the rule of law and the inviolability of territorial integrity. From the point of view of Serbia's European path, it was an 'entrance ticket' to the process of European integration.³²

Therefore, the First Brussels Agreement had the character of a necessary and sufficient condition for Serbia to finally start the negotiations officially. Nevertheless, its ambivalence was also transferred to the further fate of the European integration process of Serbia. The further disintegration of Serbia is a necessary, but not sufficient, condition for its European integration. After all, in the Negotiating Framework for Serbia, which the EU adopted just before the opening of negotiations in early 2014, it is already stated that

This process shall ensure that both can continue on their respective European paths, while avoiding that either can block the other in these efforts. It should gradually lead to the comprehensive normalisation of relations between Serbia and Kosovo, in the form of a legally binding agreement by the end of Serbia's accession negotiations etc.³³

How much progress in the dialogue on the normalization of relations is of the greatest importance for the EU can be clearly seen from the fact that Chapter 35 foresees that a delay in this process may affect the EU making a final decision on postponing or stopping the opening of other chapters in the accession negotiations.

However, the negotiation process started very sloppily. Chapter 35 was only opened at the end of 2015, and the dialogue has not progressed substantially in the following years.

The logical question remains to be posed: how could the dialogue progress? Serbia practically fulfilled all its obligations from the First Brussels Agreements, and Kosovo did not even fulfil its only obligation, that is to form the ASMK. Over time, this enabled the almost complete withdrawal of the remnants of the actual powers of Serbia's sovereignty from the territory of Kosovo. By contrast, it enabled various Kosovo governments, especially Albin Kurti's, which came into power after the elections in February 2021, to create an environment of constant pressure on the Serbian minority on Kosovo.³⁴

One thing became certain: for the Kosovo government of Kurti, with a lukewarm approach to the EU, the ASMK is just a Brussels 'chimera'. Even bigger is the Euro-Atlantic 'chimera' about the democratic multi-ethnic state of Kosovo in which the rule of law is realized and other European values and principles are respected.³⁵

31 | Under the point 2.2.

32 | Moreover, in this document, in point 14, it is mentioned for the first time that no party will block the progress of the other party on its way to the EU.

33 | EU, 2014, p. 6.

34 | Burazer, 2024, p. 12.

35 | Burazer, 2024, p. 13.

| 3.3. Brussels-Ohrid Agreement of 2023 – a ‘dead letter’?

A decade after the signing of the First Brussels Agreement, the EU tried to ‘encourage dialogue’ with a new agreement, known as Brussels-Ohrid or Ohrid agreement.³⁶ It was an agreement proposed at the initiative of Germany and France with wording that each party to the Agreement can interpret as they see fit. On one issue, 10 years later, it was no longer necessary to use diplomatic ‘vagueness’. The official name of this agreement is ‘Agreement on the path to normalization between Kosovo and Serbia’.³⁷

On other issues, in the spirit of Anglo-Saxon political and legal methodology and phraseology, which is very well known in these areas, there is plenty of room for broader and ambivalent interpretations. Thus, Art. 2 reads:

Both parties will be guided by the aims and principles laid down in the United Nations Charter, especially those of the sovereign equality of all States, respect for their independence, autonomy and territorial integrity, the right of self-determination, the protection of human rights, and non-discrimination.

Art. 3 prescribes that ‘the parties shall settle any disputes between them in conformity with the United Nations Charter’. Although there is talk of two obviously equal parties, which are obviously states, Serbia could refer to those parts where the phraseology of ‘respecting the principles of the UN Charter’ is used. However, already in Art. 1 of the Agreement, ‘normal, good- neighbourly relations with each other on the basis of equal rights’ are mentioned.

It is really difficult to explain how two entities, one of which is a full-fledged, internationally recognized state (Serbia), and the other is not, can have good-neighbourly relations. Para. 2 of Art. 4, which binds Serbia, goes in the same sense: ‘Serbia will not object to Kosovo’s membership in any international organisation’. The strengthened and expanded Serbia’s earlier obligation not to oppose Kosovo’s European path, formulated in the First Brussels Agreement, has now been reiterated in Art. 5: ‘Neither Party will block, nor encourage others to block, the other Party’s progress in their respective EU path based on their own merits etc.’ As this could be undisputedly interpreted as Serbia’s non-opposition to Kosovo’s entry into the UN, and therefore recognition of Kosovo’s *de jure* international legal subjectivity, the President of the Republic of Serbia, Aleksandar Vučić, expressly placed a reservation on this provision of the Agreement.³⁸

The Brussels-Ohrid agreement is an act of different meaning and significance for each party, and there are at least three of them (the EU has not shown the capacity to be a moderator, but considering the new geopolitical situation after the start of the war in Ukraine, it has become the most subjectively interested party). For the EU, it is the last step on the way of reaching a comprehensive legally binding agreement on the normalization

36 | EU, 2023.

37 | Therefore, there is no longer a dilemma about who the two parties are and there is no longer a dilemma about which is given primacy: first Kosovo, then Serbia.

38 | Burazer, 2024, p.12.

of relations between Serbia and Kosovo.³⁹ Without it, Serbia's European perspective is definitely extinguished.

The EU wants to put pressure on both sides to reach the desired result, which is a *de facto* recognition of Kosovo, but it is neither allowed nor able to press harder.

...The big question is whether the European Union has the political strength to pressure both sides to implement existing agreements and achieve full normalization, as is the question of whether the integration of the Western Balkans has become as important to the European Union as its officials claim.⁴⁰

However, 'it is completely clear that there is no political will in either Belgrade or Pristina to normalize relations and that the only incentives come from the European Union itself'.⁴¹ At the centre of that process is the *de facto* and *de iure* recognition of Kosovo by Serbia, that is 'the idea of an independent multi-ethnic Kosovo, which is independent from Serbia, but which ensures adequate participation of Serbian and other minority communities and enables continuation of Belgrade's formal ties with Kosovo Serbs'.⁴² As for the Kosovar authorities, with or without Albin Kurti, things are simple. They

...do not want the creation of a multi-ethnic state in which the power of the Albanian majority would be limited by mechanisms such as the right of veto of the Serbian community, mandatory bilingualism, formal connections of Kosovo Serbs with Belgrade and other power-sharing mechanisms that are formally guaranteed by the existing Kosovo constitution and laws, and which would additionally strengthen the establishment of a community of municipalities with a Serbian majority.

As far as Serbia is concerned, things are far more complex. There are many factors that influence the fact that Serbia, not just its current government, accepts to take the next and final step, which is the *de facto* and *de iure* recognition of Kosovo's independence. The

39 | 'In light of the previously signed agreements between Belgrade and Pristina, political or technical, the implementation process of previous agreements, formulations of the APN and the AI, and statements by the negotiating parties about their will to implement the provisions of these two newest texts as well, it can be concluded, from the international legal point of view, that the APN is an international treaty between two equal sides that partially regulates specific issues of mutual interest. As such, it represents a step towards the future development of relations based on international law, UN Charter principles on good-neighborly relations, equal rights and peaceful settlements of disputes, mutual desire to accede to the EU, and the will to regulate the issue of formal recognition in the mutually acceptable manner. The critical international legal obligation of the Republic of Serbia under the APN is to abstain from preventing Kosovo from freely conducting its international relations. On the other hand, the critical international legal obligation of Kosovo is to find a solution that would enable an undefined measure of self-management for the Association of Serbian majority municipalities on its territory, based on previously accepted agreements of 2013 and 2015, which can lead either to the Kosovo's Constitution amendments or the finding of a new and creative solutions based on the decision of the Constitutional Court of Kosovo, acceptable at the same time for the Serbian party'. Vučić, Đukanović, 2024, p. 29.

40 | Burazer, 2024, p. 12.

41 | Ibid.

42 | Ibid., p. 13.

first factor is constitutional. The Constitution of Serbia of 2006 does not recognize Kosovo as an independent state, but includes Kosovo and Metohija as an autonomous province in the state structure of Serbia. This province is guaranteed substantial autonomy, regulated a law to be adopted in accordance with the procedure for the revision of the constitution. If the idea of the substantial autonomy of Kosovo and Metohija were revived at one point, that law would have to be confirmed in a referendum with an absolute majority. However, the same procedure would be necessary if Serbia were to remove the Republic of Kosovo from its constitutional preamble, and from the normative part of the constitution. That issue for the vast majority of Serbian citizens is not a question of territory but an issue of identity.

The second factor, which is partly based on the previous one, is the issue of internal politics, which would lose all legitimacy if it even tried to explain that Serbia cannot continue on the path of European integration without abandoning Kosovo.⁴³ That argument was used by certain law experts belonging to the opposition, even those who are nominally completely pro-European, attacking President Vučić for violating the constitution because of the (verbal) acceptance of the Brussels-Ohrid Agreement.⁴⁴

The third factor that also concerns internal politics is the inability of the authorities in Belgrade to agree to any next step in the direction of rounding off the sovereignty of Kosovo, because 'it would lose all mechanisms of influence and protection of the rights of Kosovo Serbs'.⁴⁵ This argument is sometimes emphasized by President Vučić himself, which was also the case after the incident in Banjska in September 2023,⁴⁶ who is trying to convince political actors in the West that it is no longer able to control the dissatisfaction, anger, and fear of the Serbian population. Serbs are increasingly organizing themselves or even acting spontaneously to protect its basic rights to life and property.

The fourth factor is related to the principles and values of the international order based on the UN Charter. Serbia constantly repeats that it is committed to respecting those principles and values.⁴⁷ At the end of the 20th century, the question of Kosovo was internationalized. After NATO aggression against FR Yugoslavia in 1999, the UN Security Council passed the Resolution 1244. Formally and legally, the resolution confirmed the sovereignty and territorial integrity of the then FR Yugoslavia. Essentially, the issue of the status of Kosovo could no longer be resolved unilaterally, solely by the sovereign will of the State of Serbia.

The fifth factor, which builds on the previous one, concerns the emergence of new geopolitical relations characterized by a network of different highly influential power centres on all four sides of the world. If it wants to survive and establish itself as one of the centres of global influence, the EU will have to reform its identity, that is in-depth, and

43 | According to some surveys, in 2022, the majority of Serbian citizens were against Serbia's entry into the EU due to the pressure exerted by the EU regarding the issue of recognizing Kosovo and the issue of imposing sanctions on Russia. Lopandić, 2023a, p. 13.

44 | Law professor says Vucic could be seen to have violated constitution, 2023. For the opposite argumentation: Petrov, 2023a.

45 | Burazer, 2024, p. 13.

46 | The conflict between a group of Serbs and Kosovo Police in the village of Banjska near Zvecan. Three Serbs lost their lives: Igor Milenovic, Bojan Mijailovic, and Stefan Nedeljkovic, and a Kosovo police officer Afrim Bunjaku. The events in Banjska in the morning of 24 September have been the subject of separate investigations in Belgrade and Pristina.

47 | National Security Council of the Republic of Serbia, 2022.

not just institutionally, that is, superficially. Over time, Kosovo will lose the importance it had during the unipolar order at the turn of two centuries. Its role has already been spent. That is why Kosovo is in a hurry, but it seems to be 'hitting a wall' when it comes to the further process of international recognition.⁴⁸

...If the proposals on the phased accession of the candidate states or the creation of several concentric circles of European integration are fully operationalized – which is part of last fall's Franco-German proposal on EU reform – there is a possibility that both Serbia and Kosovo will achieve a certain degree of integration into the structures of the European Union without full normalization. relationship. This possibility can affect the calculations of all actors.⁴⁹

That is why the political leadership of Serbia is not in a hurry. The European path is still a priority of Serbia's foreign policy, but membership is not the ultimate goal. Serbia has adapted to the nature of the process. The goal is far more complex than Serbia's membership in the EU. In the complex aspects of that goal, further strengthening of the rule of law and human rights, strengthening of economic ties with the EU, and participation in the development of modern technologies are high on the Serbian political agenda.⁵⁰

From all of the above emerges a fairly clear answer to the question from the subtitle. Even at the time when the phrase 'normalization of relations' was coined, it was not in itself a real and exclusive condition for Serbia's membership in the EU. Nevertheless, for more than a decade, it had the force of a necessary but not sufficient condition, at least from the point of view of the EU, but that was the EU before the big and consecutive internal crises (economic crisis, migration crisis, especially in 2015, Brexit in 2016, and the crisis caused by the COVID-19 pandemic) and external crises, especially since the beginning of the war in Ukraine.

However, legally, from the perspective of constitutional law and international law, it is a textbook example of an impossible condition, that is, an impossible obligation. That was perhaps inconvenient to say it in 2013 when the Brussels Agreement was signed, but the Brussels-Ohrid Agreement from 2023 showed all the senselessness of the idea of normalizing relations that would lead to the *de facto* and *de iure* recognition of Kosovo by Serbia. Moreover, a compromise is still possible, but it must be the right one. According to President Vučić, it is a compromise that would imply that it cannot happen that one side gets everything (Kosovo) and the other side (Serbia) gets nothing. It would be a solution that would imply that everyone must get something but also lose something in return.⁵¹

48 | There were announcements that Kosovo would become a member of the Council of Europe in May 2024, but the decision was postponed.

49 | Burazer, 2024, p. 13.

50 | In this sense, the considerable contribution could be given by a Memorandum of Understanding, launching a Strategic Partnership on sustainable raw materials, battery value chains, and electric vehicles, which was signed by the EU and Serbia on 19 July 2024. This partnership is in line with EU's New Growth plan for the Western Balkans. 'It represents a building bloc in advancing Serbia's integration within the EU's single market, and further boosting its economic, social and environmental convergence with the EU'. European Commission, 2024, p. 1.

51 | Vučić, 2018.

4. Other conditions on Serbia's European path

In addition to technical conditions, one of the main and priority conditions for progress on Serbia's European path is full alignment with the EU's foreign and security policy. This has become a *de facto* condition since the beginning of the war in Ukraine, because formally full harmonization is necessary immediately before admission to membership. However, geopolitical conditions are such that all countries in Europe, except Serbia and Belarus, have imposed sanctions on Russia. All countries of the Western Balkans, with the exception of Bosnia and Herzegovina and Serbia, have fully harmonized with the EU's foreign and security policy.⁵²

As a reason for avoiding full alignment with the EU's foreign and security policy, Serbian political leadership led by President Vučić cites the positions of Russia and China and other countries regarding the status of Kosovo, but a significant role is also played by the fact that a survey from the end of 2021 showed that voters of the ruling parties are more favourable to Russia and China in comparison with their inclination to Serbia's membership in the EU.⁵³ This greater affection for Russia and China has another side of the coin, and it is reflected in more or less hidden resistance to the EU accession process. Certainly, Serbia's refusal to impose sanctions on Russia produces numerous negative effects on Serbia's progress on the European path (non-participation in the EU Growth Plan for the Western Balkans, receiving other financial privileges and incentives, treating Serbia in some circles in the West as 'Little Russia').⁵⁴ In summary, there is no progress in the important chapter 31 ('Foreign policy and security'). Those who condemn the fact that Serbia recognizes Russia's aggression against Ukraine but does not impose sanctions on Russia, while providing Ukraine with humanitarian and technical aid qualify it as Vučić's balancing policy, which is still somewhat acceptable to the United States (US) and some of the EU member-states. However, the essence of such foreign policy is consistent respect for the principles of sovereignty and territorial integrity from the United Nations Charter. This is clearly stated in the concluding remarks of the paper, in which the Government of Serbia expressed its position on the situation on the territory of Ukraine, relying precisely on the principle of inviolability of the territorial integrity of the state from Art. 8 of the Constitution:

(...) 2. The Republic of Serbia is committed to respecting the principles of territorial integrity and political independence of states, as one of the basic principles of international law contained in the Charter of the United Nations and the Final Act of Helsinki (1975), which guarantees the right of states to the inviolability of borders. (...) 5. 5. In accordance with its previous policy of advocating for consistent and principled respect for the principles of international law and the

52 | Full alignment with the EU's foreign and security policy also applies to packages of measures towards some other countries (for example, China and Belarus). Out of a total of 65 declarations that the EU offered candidates, potential candidates and partner states for harmonization in 2023, Serbia agreed with 34. Cvijić, 2024, p. 5.

53 | Ibid.

54 | Cvijić, 2024, p. 5.

inviolability of borders, the Republic of Serbia provides full and principled support for respect for the principles of territorial integrity of Ukraine, etc.⁵⁵

Serbia's further European path also implies significant acceleration of the process of harmonizing legislation with the *acquis* of the EU. The Government of Serbia adopted the National Program for the Adoption of Legal Acquis (NPAA), but the implementation of the program has declined over the years. According to the report of the Ministry of European Integration, the degree of fulfilment of the NPAA, when it comes to laws and by-laws, for the second half of 2022 was 7%, and in the first quarter of 2023 it was 12%.⁵⁶

When it comes to progress in the area of the rule of law (chapters 23 – Judiciary and fundamental rights and 24 – Justice, freedom and security), the functioning of democratic institutions, public administration reforms, economic reforms and other chapters grouped from 2020 according to the new expansion methodology in Cluster 1 – Fundamentals, the progress is visible in the sphere of economic reforms.⁵⁷ In the area of the rule of law, significant progress was made with the constitutional amendments on the judiciary in 2021 and the accompanying judicial laws a year later.⁵⁸ Nevertheless, this was the main reason for the opening of Cluster 4 – Green agenda and sustainable connectivity, which was the last cluster that Serbia has opened so far. In the mentioned areas, it is necessary to work on the implementation of judicial laws in order to achieve greater independence of the judiciary and the autonomy of the public prosecution, strengthening freedom of expression (especially when it comes to the protection of journalists and media pluralism), progress in the operational autonomy of the police, better management of migration and asylum procedures, and the suppression of human trafficking, organized crime, and various forms of corruption.⁵⁹

5. Changed or 'new' EU enlargement policy and potential substantial EU reform

In addition to the mentioned conditions that Serbia needs to fulfil on its path to European integration, there is one, the new EU enlargement policy, which is equally important. It depends on one, but realistically, smaller part on the candidate countries. The essential part is that it depends on the challenges and finding adequate answers to those challenges by the EU.

Since 2008, the EU has been gripped by the biggest crisis since its foundation. This crisis, because it originates from several sources and is very complex, and none of them has been fundamentally overcome, is often called poly-crisis.⁶⁰ In principle, the sources of that crisis would be: 1) 'enlargement fatigue' – is there a sufficiently clear political will

55 | Vlada Srbije, 2022.

56 | Lopandić, 2023a, p. 11.

57 | Mihajlović, 2024, p. 3.

58 | Petrov, 2023b, pp. 233–257.

59 | Mihajlović, 2024, p. 5.

60 | Ćeranić Perišić, 2021, p. 402.

at the level of the EU, but also of some of its members, for enlargement in a foreseeable time (for example, until 2030)?; 2) economic crisis; 3) migrant crisis – the wave of migrants and refugees from the Middle East towards Europe in 2015/2016 is considered the world's biggest refugee crisis;⁶¹ 4) Brexit – after the June 2016 referendum, when citizens of the United Kingdom (UK) voted to leave the EU, the UK officially left the EU on January 31, 2020; 5) the COVID-19 pandemic (2020-2022); and 6) war in Ukraine.

Russian-Ukrainian war represents a 'watershed' in the geopolitical picture of Europe.

...The European Union found itself faced with the new challenge of reconstructing the disturbed European institutional (especially defense) architecture, and first of all with the challenge of its own adaptation to completely new international conditions marked by geopolitics and the return of bare power in international (European) relations. In this framework, the issue of the conception and strategy of EU enlargement is reopened... With the geopolitical necessity of faster integration of Ukraine and other countries of the Eastern Partnership (Moldova, Georgia) into European integration, the debate about 'unfinished business' – the inclusion of the Western Balkans in the EU - has been reopened which extended to more than two decades. Within this framework, a series of new proposals based on supplementing the new EU enlargement methodology were submitted, which consider the possibilities of phased or sectoral integration of the candidate countries into certain EU policies, as well as their partial inclusion as observers in some of the organs, i.e. working bodies of the Union.⁶²

In accordance with these events or, rather, discussions, the perspective of EU enlargement is reopened and the year 2030 is being bid. Two countries that seem to be closest to membership, no matter how objectively and subjectively they are far from it, are once again in the spotlight, Montenegro, which has formally advanced the most in the negotiations, and Serbia, which is the economically and politically central country of the Western Balkans.

With the declarative goal of overcoming the deadlock in the process of European integration of the countries of the Western Balkans, the new EU enlargement methodology was adopted at the beginning of 2020. The new methodology provided for four criteria: credibility (mutual trust of both parties in the process), stronger political guidance (both parties must show more leadership and adhere to their obligations), dynamics (regrouping of previous chapters into so-called clusters), and predictability (positive and negative conditioning). Various instruments have been determined to achieve these criteria. These are focus on basic political reforms (especially focus on fundamental rights and the rule of law), intergovernmental conferences (their regular holding with the possibility for representatives of the Western Balkan countries to participate as observers in important

61 | Ibid.

62 | Lopandić, 2023b, pp. 466–467.

European meetings on topics that are most important to them), grouping of negotiating chapters into clusters, and measures of positive and negative incentives.⁶³

Already at the very beginning, two points of view were taken on this methodology. According to the first, the new methodology will 'revive' the process of European integration. According to the second, the new methodology does not introduce new instruments, but rather old instruments in a 'new guise'.⁶⁴ The new EU enlargement methodology envisages the possibility of closer integration even without full membership in the EU, which is not essentially a new instrument, as it is recognized by Art. 20 of the EU Treaty.⁶⁵ However, the possibility of a country based on merit in the process being more closely integrated and included in certain EU policies, markets, and programs is not the best developed through appropriate mechanisms, which raises the question of whether first, is it feasible or more declarative? Second, even if it were possible, the question of introducing different categories of membership in the EU arises, that is, the question of whether closer integration is a means or an end in itself, which would be permanent and not temporary in nature. In other words, it is debatable whether such a country would ever become a full member, bearing in mind the essential reform challenges facing the EU for decades.⁶⁶

In addition to the aforementioned factors that could be not always favourable for the further process of integration, one must not lose sight of the fundamental problems that the EU has been facing practically since its beginnings, but which in later times, especially in the 21st century and today, have reached the point of escalation.

Those problems are the EU's geopolitical attachment to its democratic deficit and, in connection with that, the EU's identity crisis, which became evident with the collapse of the project of the European Constitution in 2005. This identity crisis somehow remained in the background for the past two decades compared to the multiple crises of the EU, which apparently came from the outside.

However, this crisis is fundamental and latent. It concerns the foundations of the EU and perhaps gives the right to those authors who are consistent opponents of the current form of the EU and who even 10 years ago pleaded for a 'reverse perspective' – '... the question cannot be only when the countries of the Western Balkans will enter the EU, but also what exactly will they be able to enter, i.e. what exactly will they be able to become members of'.⁶⁷ It is possible to try to give some answers to that and similar questions related to the context of potential and real substantive EU reforms only in a separate study.

63 | The grouping of the negotiating chapters in six thematic clusters (Fundamental rights; Internal market; Competitiveness and inclusive growth; Green Agenda and sustainable connectivity; Resources, agriculture, and cohesion and External relations) should bring dynamism to the accession process. Negotiations on each cluster are opened as a whole, after meeting the conditions for opening, and not on the basis of individual chapters.

64 | Ćeranić Perišić, 2020, pp. 439–440.

65 | EU, 2020.

66 | Ćeranić Perišić, 2021, p. 410.

67 | Jovanović, 2015, p. 49.

6. Conclusion: 'Something third...'

The economic and political, but above all the identity crisis of the EU strengthened the rhetoric of institutional reforms. In fact, those reforms do not exist. This, among other things, produces indecision about the enlargement policy and the modalities of its implementation. The EU must first 'look at itself in the mirror' and try to answer what it sees and what it wants to see – not in a year, but in half a century. Ad hoc pragmatic and cosmetic solutions, such as changes in the Western Balkans accession methodology, only cause greater mutual apathy and deepen uncertainty. Serious, if not tectonic, geopolitical changes in the world are also possible. They are followed by wars in Ukraine and the Middle East. At this moment, it would be pretentious to say that the unipolar world led by one superpower, the United States, is 'dead', but it is undeniable that relations at the global level are far more complex. The world is searching for a new balance. In that complex network, the EU must try to build a more autonomous position than has been the case since its creation until today. Otherwise, it may also be threatened by 'Balkanization'.

The Balkans is a melange of ethnic, religious, cultural and other ingredients that is constantly 'boiling'. That is its natural state. This situation should be monitored by a 'benevolent guardian' for the sake of world peace. However, there are always those forces in the world who are not interested in peace, and therefore, not in a peaceful Balkans. A strong Serbia is no match for those forces, because whenever Serbia was weak in the 20th century, there was war in the Balkans.

Serbia is on the European path as much as the EU allows and wants. In the meantime, it is strengthening its ties to 'all four corners of the world'. It seems that Serbia has learned to 'take blows' and not return them immediately. Its policy of patience, persistence, consistency, and argumentation explains why in May 2024 another attempt of Kosovo to enter the Council of Europe failed and the Resolution on the Genocide in Srebrenica voted by a stretched majority. In between May and October, 2024, Chinese President Xi Jinping, German Chancellor Scholz, and French President Macron visited Serbia to sign a number of important bilateral agreements in the field of economy, security, and so on; then the President of Israel, Isaac Herzog, was in on official visit to Serbia; and finally the President of the United Arab Emirates, Sheikh Mohammed Bin Zayed Al Nahyan, came to Belgrade.⁶⁸ Friendship between Hungarian Prime Minister Orban and President Vučić is unique among statesmen today.

Is Serbia on the European path or is it going in some other direction? That path was unequivocally never evolutive and most likely never will be. The nature of this process is quite different and is not easy to define. Can we expect a dissolution, or rather a definitive departure from that path? This is neither a realistic nor a wise option for Serbia, and it is not for the EU either. Perhaps the answer is known to those who are able to understand the connection between the arrival of the President of the United Arab Emirates, Sheikh Mohammed Bin Zayed Al Nahyan, and the signing of the UAE-Serbia Comprehensive Economic Partnership Agreement on 5 October, 2024, on the one hand, and the inclusion of Serbia, two days later, in the global alliance for batteries and mineral raw materials at

68 | At the time of finishing this text, the President of Turkey, Erdogan, is coming to Serbia for an official visit (October 2024).

the initiative of Germany, on the other. Nevertheless, it seems that a direct answer to the question in the title has become redundant.

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