

Isolating Kosovo? Kosovo vs Afghanistan 5:22

ESI Discussion Paper*

19 November 2009

The EU and Kosovo's isolation

In February 2008 Kosovo declared independence. France was the first EU member state to recognize the new state, followed by Germany, Great Britain, and all but five other EU member states (Cyprus, Greece, Romania, Slovakia and Spain).¹

In May 2008 the European Union launched a visa liberalisation process for the Western Balkans. It defined a list (roadmap) of almost 50 *strict* conditions – from well-secured borders to regulated asylum procedures, from forgery-proof passports to improved international police cooperation – that Albania, Bosnia Herzegovina, Macedonia, Montenegro and Serbia would have to meet in order to benefit from visa free travel.² It also created a progress assessment mechanism involving experts from the Commission and member states. The basic idea was that the liberalisation process, as long as it was *strict and fair*, would serve the interests of both the EU and the region.

In December 2008 the EU dispatched a Rule of Law Mission (EULEX) to Kosovo. It currently fields more than 1,622 EU and 1,021 local staff (total: 2,643).³ With an annual budget of over Euro 200 million it is the biggest EU mission of its kind ever launched. Its objective is to assist the development of Kosovo's security and judicial institutions. As Javier Solana put it, announcing the deployment of EULEX in December 2008:

“The EULEX mission is deployed in order to assist Kosovo in its progress towards reaching European standards in the areas of police, justice, customs and correctional services ... The mission is proof of the EU's strong commitment towards the Western Balkans and it will contribute to the enhancement of stability in the whole region.”⁴

* This paper has been produced within the framework of the ESI Balkan and enlargement project supported by Erste Foundation (www.erstestiftung.org).

¹ To date 63 UN countries have recognized Kosovo. See: <http://www.kosovothankyou.com/>.

² For more on this please see our website: www.esiweb.org/whitelistproject.

³ Human Resources, EULEX, November 2009

⁴ Council of the European Union, “Javier Solana, EU High Representative for the CFSP, announces the start of EULEX Kosovo” Brussels, 5 December 2008
http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/declarations/104524.pdf.

These three developments, which took place over the space of a few months, raised expectations in Kosovo. One hope was that the period of uncertainty and isolation which had started with the dramatic collapse of the Yugoslav Socialist Federation in 1991 was coming to an end. Another was that the enormous obstacles to free travel facing all Kosovo residents – obstacles which had been put in place in 1991 – could finally be overcome. All this would not be easy, people acknowledged. It would require institutions and reforms, just as elsewhere in the Balkans – but there would now at least be a perspective for Kosovars to rejoin the European mainstream.

The most isolated place on earth

So far, however, these hopes have not been realized. Kosovo citizens are more isolated now, in terms of visa requirements, than at any point in the last half-century. Kosovo remains one of the most isolated places on earth.

One way to measure this is by looking at the number of countries a Kosovo passport holder can travel to without a visa. The new Kosovo passport, first issued by the Kosovo Government in July 2008, is currently one of the least useful travel documents ever designed. Its holders can travel to only 5 countries visa free: neighbouring Albania, Montenegro and Macedonia, Turkey, and Haiti.⁵ Even citizens of Afghanistan – the lowest ranked country in the 2008 global Henley & Partners ‘Visa Restriction Index’ – can travel to more places without a visa.

Table: Henley & Partners ‘Visa Restriction Index’ 2008⁶

Country	No. of visa free destinations
Denmark	157
Finland	156
Serbia and Montenegro	50
Somalia	25
Afghanistan	22
Kosovo*	5

*Kosovo does not appear in the Index but has been added by ESI.

Another way to measure isolation is asking how easy it is to obtain a visa. The frustration and uncertainty that accompanies the costly process of applying for a Schengen visa is many Balkan citizens’ daily bread.⁷ In Kosovo, the situation is even worse than elsewhere in the Balkans. First, there is a limited number of consulates in Pristina: less than ten of the 27 EU member states issue visas in Kosovo. Obtaining a visa thus often requires travel abroad: to Skopje (Macedonia), Belgrade (Serbia) or Tirana (Albania). This is costly. As one Kosovo NGO found, an average visa application costs 124 Euro.⁸ This is a huge sum for a Kosovo

⁵ KosovoThanksYou, “Haiti recognizes the passport of Republic of Kosovo”, 29 January 2009, <http://www.kosovothanksyou.com/news/?p=277>.

⁶ Henley & Partners “Visa Restriction Index – Global Ranking 2008”, http://www.henleyglobal.com/fileadmin/pdfs/content/HVRI2009_GlobalRanking.pdf.

⁷ For Balkan visa frustration stories see: <http://www.esiweb.org/index.php?lang=en&id=344>.

⁸ Forum 2015, ‘Living in a Ghetto’, July 2009, p.16. The finding is based on 1,340 interviews with applicants.

household – the average monthly salary is 240 Euro. To make things worse, the money spent on applying is a risky investment, as almost half of all applications end in a refusal.⁹

Neither means nor ends

How did Kosovo come to rank below Afghanistan? Three things point us towards the answer: 1991 and the collapse of socialist Yugoslavia; 1999 and the end of the Kosovo war; and 2009 and the impact of the EU visa strategy for Serbia on Kosovo.

In 1991, following the outbreak of war in Croatia and the break-up of socialist Yugoslavia, most European countries imposed visa requirements for holders of Yugoslav passports. It is important to note that until that point Kosovars, like all citizens of the old Socialist Yugoslav Federation, could travel freely throughout Europe. After 1991 Kosovars – holding Yugoslav passports – could still travel to a few dozen countries without a visa. These included Bulgaria, Russia, Turkey and Cuba.

In 1999, following the war and the creation of a UN protectorate, Kosovars had a choice of two documents. One was an UNMIK Travel Document. This enabled Kosovars to travel to only three countries without a visa: Albania, Macedonia and Montenegro (the latter still a part of Yugoslavia at the time).¹⁰ The other was a Yugoslav (later Serbian) passport, which, after 1999, became more difficult to obtain. Most Kosovo archives, including birth certificates and marriage records, had been transferred to Serbia in 1999. As a result, Kosovars would have to travel to Serbia to get a passport, pay a middleman (up to 500 Euros) or apply through parallel institutions funded by Belgrade in Serb-populated areas of Kosovo. Many did (often, one reason was that with a Yugoslav passport they could still travel to over 40 countries in the world without a visa).¹¹

In August 2008 Serbia started issuing biometric passports, an EU roadmap requirement. A lucky 7,141 Kosovars¹² received one. (The passports will allow them to travel visa-free to the Schengen countries from 19 December 2009). But in 2009 it became difficult for any Kosovar (regardless of ethnicity) to obtain a Serbian passport. The European Commission asked Serbia to stop the issuance to Kosovars until a specific ‘Coordination Directorate’ at the Ministry of the Interior in Belgrade would be set up as the only body authorised to provide Kosovo residents with passports. Since the issuing authority is always mentioned in passports, this would make the passports of Kosovo residents distinguishable – and exclude their holders from visa free travel. As the 15 July 2009 Commission proposal put it:

“... in view of security concerns regarding in particular potential for illegal migration from persons residing in Kosovo and persons whose citizenship certificate has been issued for the territory of Kosovo under UNSCR 1244/99 ... the Commission considers

⁹ Council of the European Union, “Exchange of statistical information on uniform visas issued by Member States’ diplomatic missions and consular posts,” Brussels, 31 July 2009, <http://register.consilium.europa.eu/pdf/en/09/st12/st12493.en09.pdf>.

¹⁰ All UNMIK Travel Documents will expire by July 2010.

¹¹ The Henley Global Visa Restriction Index for 2008 puts Serbia (and Montenegro!) at 50 visa free destinations – see http://www.henleyglobal.com/fileadmin/pdfs/content/HVRI2009_GlobalRanking.pdf.

¹² European Commission, “Updated Assessment of the implementation by Serbia of the roadmaps for visa liberalization,” Brussels, 18 May 2009 <http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20Serbia%20updated%20visa%20dialogue%20assessment%2018%20May.pdf>.

that holders of Serbian passports issued by the specific Coordination Directorate (in Serbian *Koordinaciona uprava*) should be excluded from the visa free regime for Serbia.”¹³

In June 2009 Serbia thus stopped issuing biometric passports to Kosovo residents (including Kosovo Serbs). In August 2009 the Coordination Directorate in Belgrade opened its doors. No Kosovar can now obtain a Serbian passport without travelling to Belgrade. And travelling to Serbia is not easy: Serbia recognizes neither Kosovo IDs nor Kosovo passports. Everything has been done to make obtaining a Serbian passport as hard as possible.

Kosovo politicians generally welcomed this development, seeing it as a step towards cutting ties with Serbia. What they did not welcome, however, was the Commission proposal to add Kosovo to the Schengen ‘Black List’ as a territory on whose status the EU cannot yet agree (i.e. under UN Security Council resolution 1244), next to the Palestinian Authority and Taiwan. Worse yet, the Commission did not even mention the possibility of a visa liberalisation process for Kosovo.

In the meantime, the Commission has put forward a proposal to launch a “visa dialogue with the perspective of visa liberalisation” for Kosovo.¹⁴ However, it has refrained from using the same terminology as for the visa liberalisation process for the first five Western Balkan countries – for example, no visa roadmap is mentioned. This effectively means that the Kosovars – alone among the citizens of the Balkans – have no EU guarantees that they will be treated like their neighbours if and when they meet specific conditions. If the roadmap is a means, and visa liberalisation an end, the Kosovars have neither.

Kosovo vs. Taiwan

There are three plausible explanations why the European Commission has not announced the same process for Kosovo as for the first five countries.

The first involves Kosovo’s status. With five EU member states refusing to recognize Kosovo’s independence, the logic runs, no roadmap could have been offered. This, at first, seems a plausible assumption. However, as a number of legal experts – including former interior ministers of Italy (Giuliano Amato) and Otto Schily (Germany) – have pointed out, it is a wrong one.¹⁵

At this very moment, a serious visa dialogue between the European Commission and the Republic of Taiwan is under way. Taiwan has not been recognized by so much as a single EU member state. And yet, this is not seen as an obstacle. As a news report on 29 October 2009 noted:

¹³ European Commission, “Proposal for a Council Regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement,” Brussels, 15 July 2009 [http://www.esiweb.org/pdf/schengen_white_list_project_Commission%20proposal%20for%20visa-free%20travel%20\(15%20July%202009\).pdf](http://www.esiweb.org/pdf/schengen_white_list_project_Commission%20proposal%20for%20visa-free%20travel%20(15%20July%202009).pdf).

¹⁴ European Commission, “Kosovo – Fulfilling its European Perspective,” Brussels, 14 October 2009, http://ec.europa.eu/enlargement/pdf/key_documents/2009/kosovo_study_en.pdf.

¹⁵ Open Letter by the Schengen White List Project, 20 July 2009, <http://www.esiweb.org/index.php?lang=en&id=382#letter>.

“The top European Union envoy to Taiwan said Thursday that the European Commission is working hard with the Taiwanese authorities to establish visa-free privileges for Taiwanese nationals entering the Schengen area, but added that there is no timetable on the issue. Guy Ledoux, head of the Taipei-based European Economic and Trade Office, told CNA that ‘we are working towards making a proposal before the end of the year, but whether it can be done I’m not sure.’ He noted that the incumbent EU Commission’s term will expire at the end of October, with a new commission coming into office in January.”¹⁶

Britain and Ireland (EU members not part of Schengen) have already issued visa-waiver programs for Taiwanese citizens.¹⁷

In fact, responsible Commission officials told ESI that they did not see any link between Kosovo’s status and a decision to include it on the Schengen White list. This makes it all the more puzzling that the Commission has not yet made an official statement to clear up the confusion.

Another explanation for the EU’s lack of a credible strategy for Kosovo could be that it was simply an oversight on the part of the Commission and the EU member states. It is true that for a long time Kosovo politicians failed to lobby for visa liberalisation – unlike their counterparts elsewhere in the Balkans. (The Kosovo foreign minister has yet to demand that Kosovo should obtain a roadmap and be treated like every other Balkan country.) Kosovo certainly had a lot on its plate in its first year of independence – prioritizing was difficult. It is also true that EU officials informally discouraged the government from making any loud demands.

On the other hand, if this was truly an oversight, it can now be easily remedied. Some Kosovo ministers and ambassadors, as well as most representatives of civil society, have recently woken up and finally demanded fair – not special – treatment. The Kosovo government has unilaterally adopted its own roadmap (modelled after those of other regional countries), an action plan, and other specific reforms (for a detailed list, see Annex). It has also signed bilateral police cooperation and readmission agreements with various EU countries.

Finally, the European Parliament has now added its loud and influential voice to the debate. On 12 November, it adopted its opinion on the Commission visa proposal. With 550 votes in favour, 51 against and 37 abstentions, the parliament calls for “a visa dialogue with Kosovo with a view to establishing a roadmap for visa facilitation and liberalisation similar to those established with Western Balkan countries.”¹⁸

Assessing the risk

But what if the true reasons for refusing to give Kosovo a roadmap are not legal concerns or oversights but a deeper prejudice vis-à-vis Kosovo and Kosovars? The wording of the Commission proposal of 15 July 2009 suggests this third explanation. It stresses that visa free

¹⁶ Taiwan News, “EU, Taiwan working hard on visa free treatment, EU envoy,” 29 October 2009 http://www.etaiwannews.com/etn/news_content.php?id=1094466&lang=eng_news&cate_img=83.jpg&cate_rss=news_Politics_TAIWAN.

¹⁷ Ibid.

¹⁸ ESI, “The opinion of the European Parliament,” 12 November 2009, <http://www.esiweb.org/index.php?lang=en&id=403>.

travel for Kosovars constitutes an overwhelming security risk. In the words of the Commission:

“Kosovo under UNSCR 1244/99 shall be added to Annex I of Regulation so that persons residing in Kosovo shall be submitted to the visa requirement. This proposal is motivated exclusively by objectively determined security concerns regarding in particular the potential for illegal migration stemming from and transiting through Kosovo under UNSCR 1244/1999. This is without prejudice to the current status of Kosovo under UNSCR 1244/1999.”¹⁹

This ‘security risk’ idea, supported by some influential member states, would explain the Commission's insistence on withholding visa free travel even from those Kosovo citizens equipped with new biometric Serbian passports – as opposed to withholding it from holders of Serbian biometric passports from any other country in the world (such as Bosnia and Herzegovina).

But can it really be that offering visa-free travel to 2 million Kosovars – a population the size of Hamburg – is seen by some as a larger risk than opening the gates to 22 million Romanians and 8 million Bulgarians (in 2001) or to 3 million Albanians, 7.4 million Serbs, 2 million Macedonians, 4 million Bosnians and 670,000 Montenegrins?

This seems irrational for two reasons. First, the very idea of a visa roadmap is to identify and work on concrete problems that concern the EU. Giving Kosovo a roadmap does not promise Kosovars that they will get visa free travel without meeting very demanding conditions. On the contrary, it spells out the necessary changes and incentivizes the Kosovo government to implement (often costly) reforms. It provides civil society and the media with benchmarks to hold their government responsible if reforms slow down. Second, a visa roadmap would provide EULEX with a substantial increase in legitimacy by allowing it to help the Kosovo government achieve a goal that all Kosovo citizens embrace. There are already those who challenge EULEX's legitimacy.²⁰

The logic behind not giving Kosovo a normal roadmap seems to come down to this: Kosovo institutions will do everything that the EU wants without a concrete promise that it will deal with Kosovo as it has dealt with other countries in the region. The Kosovo ministry of interior will carry out reforms, accept readmission agreements, and cooperate with EULEX, even without a normal roadmap.

The looming shock of 2010

There are good reasons to assume that treating Kosovo differently from its neighbours will not work. The EU's policy, in fact, threatens to deliver a serious shock in 2010, once Kosovo citizens realize just how disadvantaged they are in comparison to their neighbours. In the spring of 2010, once Serbia, Montenegro, Bosnia, Albania, and Macedonia join Bulgaria and Romania as Balkan states whose citizens enjoy visa free travel to Europe, Kosovars will begin

¹⁹ European Commission, “Proposal for a Council Regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement,” Brussels, 15 July 2009 [http://www.esiweb.org/pdf/schengen_white_list_project_Commission%20proposal%20for%20visa-free%20travel%20\(15%20July%202009\).pdf](http://www.esiweb.org/pdf/schengen_white_list_project_Commission%20proposal%20for%20visa-free%20travel%20(15%20July%202009).pdf).

²⁰ Not long ago, radical protesters overturned a few dozen EULEX cars after it signed a police cooperation agreement with Serbia – one of the conditions of Serbia's roadmap.

asking uncomfortable questions about their leaders, about the EU and about the legitimacy of EULEX. Kosovo politicians, meanwhile, having realized that they are not treated seriously – that *strict but fair* applies to others, not to them – will be unlikely to invest in reforms that are hard and costly.

Recent experience shows that wherever a clear roadmap process has been in place, the EU's soft power has increased significantly. If the EU is interested in institutional capacity building in Kosovo, and finances the largest rule of law mission in EU history, it makes no sense at all not to employ the strongest possible conditionality.

So what is to be done? The answer is easy and to be found in the European Parliament report:

“... The Commission, within the limits of its competence and in the light of UN Security Council Resolution 1244 (1999), should start a visa dialogue with Kosovo with a view to establishing a roadmap for visa facilitation and liberalisation similar to those established with Western Balkan countries.”²¹

The EU interior ministers, meeting at the end of November to decide on the Commission visa proposal, would do well to heed it.

²¹ ESI, “The opinion of the European Parliament,” 12 November 2009, www.esiweb.org.

ANNEX: Unilateral steps taken by the Kosovo Government to meet visa requirements

Strategies:

Roadmap: the Kosovo government formally adopted its own (unilateral) roadmap modelled closely on the examples of neighbouring countries in May this year. As a follow up, a team of consultants was hired to help prepare an action plan to cost and implement the roadmap. The action plan was adopted by the government in October 2009.

Biometric Passports: the Ministry of the Interior has commissioned a feasibility study on introducing biometric passports in accordance with ICAO and EC standards. This will pave the way for biometric passports to be issued starting mid-2010 (if all goes according to plan).

Strategy and Action Plan on Migration: on 10 September, the government officially adopted and approved the new Migration Strategy and accompanying action plan. EULEX, as well as UNHCR, IOM, ICITAP (a US funded support programme working with the Ministry of Interior) have all been part of the working groups and contributed comments. They have reviewed the action plan and endorsed its final version.

Strategy and Action Plan Against Terrorism: already in May 2009, the government approved a strategy and following that an action plan to combat terrorism. Again, EULEX experts were involved in the working group.

National Anti-drug Strategy and Action Plan: finalized and approved in June 2009. With EULEX input and participation in the inter-ministerial working groups.

National Strategy and Action Plan against Organized Crime: finalized and approved in June 2009. With EULEX input and participation in the inter-ministerial working group.

Law on Integrated Management and Control of State Borders: was passed as part of the Ahtisaari Package of Laws back in May 2008 (with input from ICO/EULEX experts)

Law on Citizenship: was passed as part of the Ahtisaari Package of Laws back also in May 2008 (with input from ICO/EULEX experts). In addition, the necessary bylaws and administrative instructions have been passed and the newly established Office of Citizenship has started to issue 'Citizenship certificates' and other documents.

Strategy and Action Plan for Integrated Border Management: Finalized and approved already in April 2009. With EULEX input and participation in the inter-ministerial working group.

Strategy and Action Plan on Combating Trafficking in Human Beings: Already approved at the end of 2008. In fact, this year's Human Trafficking Report (summer 2009) issued by the US State Department has upgraded Kosovo to group 2 (tier 2) of countries – thanks to the government's efforts and only a few cases of human trafficking. Kosovo now ranks next to other NATO and EU member states.

Data Protection Law: A new Law on Data Protection was prepared with EC experts (seconded as part of the Twinning/TAIEX technical support) – and commented/reviewed by EULEX officials in the Ministry of the Interior. In September 2009, it was approved by the government and has now been sent to the parliament for endorsement.

New Asylum Law: was approved back in May 2008

Shelters (asylum, repatriation, etc.) The EC, with IPA funding, has promised to construct new shelters, but due to technical delays they will not be finalized before spring/summer next year. As an interim measure, the government decided to refurbish former TMK (military) barracks near Pristina airport (Magure) to be used as temporary shelters.

A new *National Security Strategy* is being prepared and drafted by an inter-ministerial working group, headed by the Ministry of Interior.

A *National Strategy on the Collection of Small Arms and Light Weapons* was approved in November 2009.

Bilateral agreements:

Three rounds of negotiations with Germany on a readmission agreement have been concluded. The agreement itself will be signed early next year, together with a police cooperation agreement between Kosovo and Germany. Roma are now expected to be sent back from Germany in large numbers.

Negotiations with Switzerland have also been concluded and in February next year, Kosovo will sign a so-called Migration Partnership and Readmission Agreement with Switzerland.

Negotiations for readmission have been finalized also with Norway and Belgium. The agreements will be signed soon.

A police cooperation agreement has been signed with Austria in August. Negotiations about a readmission agreement are starting now.

A police cooperation agreement has been signed with Hungary. Negotiations about a readmission agreement start now.

Kosovo has also signed a police cooperation agreement with Croatia.

A police cooperation agreement and readmission agreement with Macedonia will be signed on 1 December 2009.

Police cooperation protocols are currently being negotiated with Sweden, Slovenia, Norway, Denmark, Finland and Iceland.