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THE POSITION OF MINORITIES IN THE NEW STATE OF KOSOVO

Bashkim Rrahmani
AAB College Prishtina, Kosovo
ORCID iD: https://orcid.org/0000-0002-2251-0496
bashkim.rrahmani[at]universitetiaab.com

Abstract: *Although the Republic of Kosovo is a multi-ethnic society based on its 2008 Constitution, one particular minority is more protected and enjoys more rights compared to the others. It is the ethnic Serb community that appears to be the biggest obstacle for the future developments in Kosovo. The attitude of this ethnic community towards the state of Kosovo determines the Kosovo inner developments; it determines the relationships between Kosovo and Serbia and it could have some impact in the entire region of the Balkans. Using the combined methodology with methods of historical analysis and a method of legal analysis the author will describe and explain the position of the national communities known as minorities, including the position of Serbian minority in Kosovo according to the Kosovo legal system and the international law. Minorities enjoy constitutional protection of their rights, whereas the Serb community and its position are different compared to the other minorities. The different position of Serb minority derives in some way from the obligations Kosovo has taken from the international community, especially from the obligations that come from the Comprehensive Proposal for the Kosovo Status Settlement. This paper gives an analysis of the legal infrastructure in order to explore if the existing legal infrastructure substantially ensures the minority rights and if it ensures their protection. The conclusions of the paper aim to contribute to the academic debate and the practical work in the field.*

Keywords: *Constitution; National; Community; Minority; Kosovo; Serbs*

INTRODUCTION

The issue of the minorities is not something quite new in our world. The term minority has been used for a long time, but its meaning was different than what we understand nowadays. The term minority is a very broad notion today because it itself includes individuals who for various reasons are marginalized. They are for example: homosexuals, handicapped, etc. The term as seen could be very broad in sense of meaning, but historically and also in the political framework, the sharper problem that led to interstate conflicts is that of ethnic minorities, within which- in some cases - religious minorities are included, as well (Omari 2014, 7). Even though we find a lot about the minorities in literature, the aim of this paper is not to describe the term historically, at least the paper will not cover old or ancient times. Nonetheless, Europe could be considered as a cradle of minorities. Exactly between the powers of our continent the first treaties were signed in order to defend some populations which were still not determined as 'minorities', but they wanted to be loyal to the religious communities where their roots belonged to (Scholsem 2011).

In the European context, the paper will describe, explain, and compare the phenomenon of the minority issues in Kosovo, especially after 1999. The problem of minorities and the phenomenon of repression starts with the birth of modern states, in the period of absolutism, and this happened mainly for the religious reasons, at least at the beginning (Encyclopedia Universalis Corpus 15). Many examples could be given about how these minorities (religious) were treated. They are known as the expulsion of the Jews from Spain, the St. Bartholomew's Day Massacre, etc. These repressions and expulsions continued over the time. Ethnic clashes on the European Continent were resurrected with the demolition of the communist system in the countries of the Soviet Union and in Southern and Eastern Europe. The problems with the minorities and the use of force against them took place before, as well, during the years that followed the so-called socialist block (Omari 2014, 27). It is a well-known fact that the Republic of Bulgaria during the 1950s undertook heavy measures against the Turkish minority which was followed by the expulsion of a bigger part of Turkish minority. Relationships between Romania and Hungary were tensed because of the treatment of the big Hungarian minority on Romanian territory, etc. Fierce conflicts that could be related to the issue of minorities also took place during the dissolution process of former Yugoslavia. However, as far as Yugoslavia is concerned there are thoughts that ethnic issues didn't provoke the Yugoslav crisis: "A more compelling interpretation identifies its main reasons in the deep economic fall at the end of 1980s, strategies of new elites in Serbia and Croatia, exogenous factors as they were last repercussions of the Cold War and divergent interests as well as indecision of European powers" (Capusella 2015, 247). Yugoslavia disintegrated also due to the two main orientations that its subjects aspired: a majority that aspired decentralization and national freedom and independence against the hegemony on one side, and a minority (Serbia) that requested hegemony and domination on the other

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side. States were created during the history, borders were drawn as a result of wars or agreements, but the minorities - when they were left outside of their mother countries– were, unfortunately not consulted. So they were left in the territories they perhaps in a lot of cases (if not in all cases) did not wish to belong to the states they belonged to after the determination of the borders, etc. If asked, they surely would not agree to live in the other country as the minority. After the armed conflicts overcame, in many of these countries the minority problems remained. According to some data:

> Lithuania and especially Estonia continue to have a big russophone minority (in Lithuania 16.6% and in Estonia around 30% of the population and this percentage is high also as a result of inner migrations planned by central authorities during the communist regime). In Slovenia number of minorities achieves 17%, in Slovakia 14.2%, in Bulgaria 12.4%, in Romania 10.5%. While in Hungary in Poland and the Czech Republic the number of minorities is less than 5% (Pogacean 2014, 28).

The following citation in addition to what was given above helps further explanation. In their Eighth Assessment of the Situation of Ethnic Minorities in Kosovo, the OSCE and United Nations High Commissioner for Refugees (UNHCR) said:

> Though conscious of the growing complexity and sensitivity surrounding minority issues and cognizant of the tendency to speak of local communities as opposed to minorities, we have maintained the structure and terminology of previous reports. This is not done out of insensitivity but rather out of efficacy. Therefore, we continue to use the phrase minority and its use simply refers to any community that lives in a situation where they are a numeric minority relative to the communities surrounding them. As such, the term is as applicable to Kosovo Serbs in Gracanica/Ulpijana as it is to Kosovo Albanians in north Mitrovice/Mitrovica (Baldwin 2006).

DEFINING MINORITIES AND INTERNATIONAL PROTECTION OF MINORITIES

Even though it is difficult to find a clear definition, there are international conventions and national laws that protect the minorities and that are used to create the mechanisms of protection. The Framework Convention for the Protection of National Minorities is one of the very important conventions in Europe that protects minorities. The Convention was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and opened for signature by the member states of the Council of Europe on 1 February 1995. Non-member states may also be invited by the Committee of Ministers to become Party of this instrument (Framework Convention for the Protection of National Minorities Council of

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Europe, Strasbourg, February 1995). Based on the convention, the countries themselves will decide how to define minorities. An effort to define a minority was done by Francesco Capotoroti:

> A group numerically smaller compared to the other part of the population of a state, group that has a not ruling position, whose members are citizens of the state, but from the ethnic, religious or language viewpoint differ from the other part of the population and present in an even implicit way a feeling of solidarity with the aim of saving their culture, their religion and their language (Omari 2014, 30-31).

This definition covers objective and one subjective element, but it could not be said that it was generally accepted. Thus there is also no definition about minorities in the Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which was adopted by the UN General Assembly on December 18, 1992 (Omari 2014). Anyway, Article 2 of this Declaration makes a great resource from which definitions on minorities could be drawn. In this regard, a lot of efforts were made in order to come to a precise and generally accepted definition of a minority, but nonetheless, different states define them according to their rules. According to the article 2 of the mentioned Declaration:

> Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

In continuation of treating the problem of defining a minority, in an opinion of the Venice Commission it is said that:

> It is highlighted that in the international plane, International Covenant on Civil and Political Rights uses expression 'ethnic, religious or language minority', whereas in the national plane there are various terms: in Austria and Hungary we talk about 'ethnic groups', in Finland there are used terms 'minority' and 'racial group, group of national origin (...)' or 'religious group'. In Slovakia there are talks about 'national minorities and ethnic groups'. We should bear in minds that terms used to define minorities are synonyms. On the other side Greece talks about 'religious minorities [it could be added that it doesn't recognize existence of national minorities at all-note by Luan Omari]. In Macedonia the term *narodnost/kombesi* is used (borrowed from the former Yugoslavia terminology). This last term is adopted also by the Slovenia legislation (Omari 2014, 35).

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At present, Albania recognizes Greeks, Macedonians, Montenegrins and Serbs as national minorities whereas Vlach/Aromanian and Roma are recognized only as linguistic/cultural minorities. National minorities as well as linguistic ones are recognized by the multilateral treaty of the Council of Europe - Framework Convention for the Protection of National Minorities-which Albania ratified in 1999 (KIPRED 2014, 8).

REGULATION AND PROTECTION IN KOSOVO

Kosovo is a new independent state in the Balkans that derived from the process of dissolution of the former federation of Yugoslavia. It was one of the eight federal units and one of the seven units that became independent states from the former Yugoslav federation. (Rrahmani and Belegu 2013) Indeed:

> Kosovo is the newest state and the last one created from the process of the dissolution of former Federation of Yugoslavia. Yugoslavia was dissolute among the others, also due to the two main orientations its subjects aspired: a majority that aspired decentralization and national freedom and independence against hegemony in one side and minority (Serbia) that requested hegemony and domination, on the other side. Unfortunately, the process of dissolution of the federation was followed by wars, terror and consequences which were not seen in Europe since the World War II. Since these consequences and the terror threatened to spread outside of the territories of the former federation, the international Community engaged in various forms and with various instruments, if for nothing else, at least to localize the conflict (Rrahmani 2018).

After 78 days of NATO bombings against military and paramilitary forces, in 1999 the United Nations took over the administration of Kosovo with minority rights at the core of its mandate (Baldwin 2006). Thus, the main government authority in Kosovo has been the United Nations Mission in Kosovo, set up as the 'international civil presence' under 1244 (Baldwin 2006), which was adopted by the UN Security Council in June 10, 1999. From 1999 until 2008 Kosovo has undergone through a process of fulfilling a series of duties in order to get into a phase of so called final status talks with Serbia. The process of creation of the state of Kosovo has been a long process that reached its culmination with the Declaration of Independence which was adopted by the Kosovo Parliament on February 17, 2008 (Rrahmani 2018). Since then Kosovo has been recognized as the independent state by 116 states. Kosovo is a multi-ethnic state. The main reason for having Kosovo as a multi-ethnic state is its state-building process which is done by fulfilling a series of international obligations, beginning with those from 'Ahtisaari Plan' and continuing with obligations emerging from various international mechanisms. Negotiations for the status of Kosovo status were thus held under the shadow of ethnic issues. Independence was expected. In exchange, Belgrade would be

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offered wide protection of the Serb minority and the Serb heritage in Kosovo. The protection of minorities was also a priority for the western powers, not only for justice reasons, but also because of insulation of the multi-ethnic character of the new state, and to prevent the new wave of emigration of Serbs which would discredit the way of how Kosovo was managed (Capussela 2015, 148). It is worth emphasizing that "Kosovo is the most homogeneous state in the Balkans (Capussela 2015, 153), whereas by its constitution it is a multi-ethnic state. Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo (Communities) shall have specific rights as set forth in this Constitution in addition to the human rights and fundamental freedoms provided in chapter II of this Constitution (Article 57, Par.1 Kosovo Constitution). Actually Kosovo recognizes seven ethnic groups as official minorities: Serbs (1.5%), Bosniaks (1.6%), Turks (1.1%), Askali (0.9%), Gorani (0.6%), Egyptians (0.6%) and Roma (0.5%) (KIPRED 2014, 24).

Kosovo declared its independence on February 17, 2008 and it accepted all obligations foreseen with the 'Ahtisaari Plan' – 'Comprehensive Proposal for the Kosovo Status Settlement'. Furthermore, "Ahtisaari proposal determines broad minority rights which go beyond those covered by Framework Convention for the Protection of National Minorities. For example, Serbian is official language all over Kosovo, including zones where Serb Community is not majority" (KIPRED 2014). In Kosovo the legal infrastructure ensures rights which advance the rights of minorities respecting all international standards. Even more than that, the participation of minorities at all levels of governance is ensured, as well as their presence in all forms of governance. Thus, they are present in the Parliament as it follows: parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community shall have the total number of seats won through an open election, with a minimum of ten (10) seats guaranteed - if the number of seats won is less than ten (10) (Article 64, p.2.1., Kosovo Constitution); and parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the other Communities shall have the total number of seats won through an open election, with a minimum number of seats in the Assembly guaranteed as follows: the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosnian community, three (3) seats; the Turkish community, two (2) seats; and the Gorani community, one (1) seat if the number of seats won by each community is less than the number guaranteed (Article 64, p. 2.2., Kosovo Constitution). The position of the Serb minority is practically different from the other minorities. There are discussions and debates about this, as well as attitudes and opinions *pro et contra*. There are also efforts to politically justify the position of this minority, part of which slowly recognizes Kosovo as their country. The Serb minority is overrepresented and more emphasized in political institutions.

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Specifically they elect double more MPs *per capita* compared to the Albanian Community, and 1.2 times more than other minorities (ratios that increase 4.3 times and 2.4 times respectively, if Serbs of the North are excluded) (Capussela 2015, 150). In municipalities where at least ten per cent (10%) of the residents belong to communities that are not in the majority in those municipalities, a post of Vice President of the Municipal Assembly for Communities shall be reserved for a representative of these communities (Article 62, paragraph 1, Kosovo Constitution). Further, regarding the position of the Serb minority, their guaranteed rights are as follows: representation of communities is also guaranteed at the ministerial level. Article 96 of the constitution states that the Serb community must be represented by one minister, and that one minister must be appointed from another minority community; a third minister from a minority community can also be appointed if the Kosovo government has more than 12 ministries. The constitution also mandates the creation of Consultative Council for Communities (CCC) under the auspices of the President of Kosovo (Article 60). The duties of the CCC are as follows:

a) to assist in the organization and the articulation of the views of communities and their members in relation to legislation, public policy and programs of special relevance to them;
b) to provide a forum for coordination and consultation amongst communities, and to ensure the effective functioning of the community representative organizations according to a code of conduct to be adopted by the Community Consultative Council;
c) to provide a mechanism for regular exchange between communities and state institutions;
d) to afford the communities the opportunity to participate at an early stage on legislative or policy initiatives that may be prepared by the Government or the Assembly, to suggest such initiatives and to have their views incorporated in the relevant projects and programs, including the annual strategy and report under Article 13 of this law, in accordance with the law;
e) to fulfill requests for other mandatory consultations with regard to certain legal acts, as foreseen in the Constitution and the law;
f) to enable communities to participate in the needs assessments, design, monitoring and evaluation of programs that are aimed at their members or are of special relevance to them;
g) to make recommendations during the decision-making process concerning the apportionment of funds, both international and allocated from the budget of the Republic of Kosovo, for projects aimed at communities or their specific interests;
h) to contribute to the reporting of the government of Kosovo to international human rights mechanisms; and

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i) to raise awareness of community concerns within the Republic of Kosovo and to contribute to harmonious relations between all communities within the Republic of Kosovo (Article 12, Law No.03/L-047).

DIVISIONS AND DISAGREEMENTS

The Kosovo legal infrastructure is a good basis for protection of all minorities whereas it pays more specific attention to the Serb minority. But the Serb community is divided in regard to their attitudes regarding their future in Kosovo. A Kosovo think-tank organization, immediately after the declaration of the Kosovo independence, produced a study regarding the Serbs after the declaration of independence and the following should be of interest to be taken from the report:

> Following the declaration of independence, three distinct groups emerged among Kosovo Serbs. The first includes political leaders boycotting Kosovo institutions, but at the same time opposing Serbia's policies. The second group revolves around Kosovo Serb political parties participating in Kosovo institutions. The third group includes political and other leaders directly controlled by the Government of Serbia. These divisions have generally manifested south and north of the Ibër/Ibar river (KIPRED 2008, 6).

River Iber/Ibar is a river that divides Mitrovica, which before the Kosovo War was one of the biggest cities in Kosovo. The issue of the minority rights regarding North and South Mitrovica (and North and South of Kosovo) becomes much more political, rather than a human rights issue. Washington Post (2005) in article states:

> Once one of the wealthiest areas in the former country of Yugoslavia, the struggling city is now split in two because of ethnic tensions, political upheaval and painful memories. While South Mitrovica claims to belong to the independent state of Kosovo, North Mitrovica still vows allegiance to Serbia. The river Ibar, which runs through the center, acts both a physical and ideological barrier.

Kosovo has an adequate institutional and legal framework for the rights and the protection of the minorities, including strategies and action plans. However, implementation is weak and there is a large dependency on international donors for supporting the minority communities. The institutional set-up and mechanisms for protecting the minority communities are in place but lack coordination (EU Commission Progress Report 2018, 26). It is clear that Kosovo has an adequate institutional and legal framework also for all fields of life in Kosovo and it is clear that the implementation of laws has still various shortcomings.

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The issues of human rights and minority rights should sometimes be analyzed beyond the legal mechanisms of law implementation. This needs some explanation. Legal mechanisms ensure, as said during the article, protection of minority rights in Kosovo with the specific attention to Kosovo Serbs. And what are the categories of fundamental rights central to ensuring the effective protection of minority rights that can be established? ECMI (2013) cites Kempin Reuter .T, by presenting three categories as follows:

- The rights aiming to protect minorities from extinction and discrimination. As far as compatible with the fundamental rights and freedoms of others, minority communities shall not be denied the right to be recognized as a group, enjoy their own culture and religion, use their own language, establish their schools, and receive teaching in the language of their choice.
- The rights designed to preserve and safeguard the ethnic and cultural identity of the group. A pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop their identity.
- The rights aimed to empower minority communities. Minority communities need to have the authority to determine their own affairs and to be able to actively participate in state affairs. To put it simply, the state needs to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social, economic and public affairs, particularly on issues directly affecting them. This includes achieving proportional representation in government positions, and active and equal participation in public affairs (pp. 9-10).

These three categories are protected by the Kosovo Constitution and by the Kosovo legislation. In addition to what was elaborated it is important to specify an issue that is perhaps found only in the Kosovar legal system. Minorities in the process of legislation have in some cases the right to veto the legislation. Laws that regulate areas known as 'vital interest' cannot be passed through the normal procedure of majority votes. The following laws require for their adoption, amendment or repeal both the presence and votes of the majority of the Assembly deputies and the presence and votes of the majority of the Assembly deputies who hold seats reserved or guaranteed for representatives of Communities that are not in the majority:

1. Laws changing municipal boundaries, establishing or abolishing municipalities, defining the scope of powers of municipalities and their participation in intermunicipal and cross-border relations;
2. Laws implementing the rights of Communities and their members, other than those set forth in the Constitution;
3. Laws on the use of language;

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4. Laws on local elections;
5. Laws on protection of cultural heritage;
6. Laws on religious freedom or on agreements with religious communities;
7. Laws on education;
8. Laws on the use of symbols, including community symbols and on public holidays (Kosovo Constitution, Article 81).

Furthermore the constitution of Kosovo regulates that none of the laws of vital interest may be submitted to a referendum (Article 81, para. 2). In some situations, a neighbor state may play a positive or a negative role regarding protection or realization of human rights. Kosovo is a clear example when talking about the impact a neighbor country has. Behind the care that Serbia shows for the Serbs who live in Kosovo, the will of the state of Serbia to impose a separation of Kosovo remains sometimes clear and sometimes hidden. This is seen all the time in the field and the following is the best example to prove this. Today, the position of Kosovo Serbs is dependent on Serbia, both in terms of security and political power to oppose and boycott the institutions of Kosovo. As Serb politician Oliver Ivanovic states: "Whatever Serbia agrees, Kosovo Serbs will have to accept, or leave" (Minority Rights Group 2009, 10). This statement given by a known Kosovo Serb politician gives the most appropriate answer to the always raised question: why there are still problems with the minorities in Kosovo? Unfortunately, Oliver Ivanovic is not alive anymore. He was killed, and investigations still have not brought any information about this murder.

CONCLUSION

Kosovo is one of the countries that have given maximum rights to its minorities, which are guaranteed with the Kosovar legislation. These rights given to the minorities legally are equal for all ethnic groups, but in practice there is an ethnic minority that enjoys more rights or that is more than equal to the others. The legal infrastructure guarantees a safe environment for minority rights and this infrastructure could be considered as one of the most advanced in the region. In addition to what was presented, for one of the minorities we have to deal with the principle of positive discrimination, which was not described specifically. However, the legal infrastructure on human rights and especially on minority rights should be applied equally to all minorities. The fact that Kosovo has created a very advanced system for protecting human rights and minority rights is something to be appreciated firstly by the minorities. Mechanisms that monitor the situation with human rights in Kosovo should also appreciate this. The existing process should not be rigid as given once forever. These rights are not artificially created. They are so because it was a consensus in the society for accepting international standards on human rights. International standards are respected and the system of protecting rights is in place.

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Awareness should be raised within the minorities on exercising the rights on one side, and awareness should be raised in sense that minority rights are not to be used for threatening with creation of new mechanisms that could lead towards partition of the state or for creating states within the state. The international community should give more opportunities for local agreements and local dialogue between the communities rather than to monitor and instruct mechanically what should be done. The constitution of Kosovoand the entire legislation is in accordance with the international standards and Kosovo has shown commitment to fulfill all obligations deriving from any international documents and mechanisms. If we talk in principle about the democracy and the rule of law, it is clear that there is no strong democracy but this fragile democracy is not fragile only for the minorities. It belongs to all. As long as the dialogue between Kosovo and Serbia lasts the sound system of protecting the minority rights will not be completely be realized and fulfilled and there will be political tensions, which actually are not indigenous. They are smuggled for some other interests and not for the interests of the minorities in Kosovo. 

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