



## Minority Rights in Kosovo

**Bashkim RRAHMANI<sup>1</sup>**

**Abstract:** Among many national minorities in Kosovo, there is one that is more protected and that enjoys more rights compared to the others. According to the Kosovo Constitution, The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions. Based on this definition Kosovo is multi-ethnic which is composed of many communities but in practice one ethnic community is more equal compared to the others. It as an ethnic community appears to be the biggest obstacle for the future developments in Kosovo. The attitudes of this ethnic community for 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 method of historical analysis, method of legal analysis, method of comparison analysis, method of systemic analysis, the author will describe and explain the position of national communities known as minorities with the specific emphasis on the position of Serbian Minority in Kosovo according to the Kosovo legal system and the international law.

**Keywords:** constitution; national; community; minority; Kosovo; Serbia

### 1. Introduction

The issue of the minorities is not something very new in our world. The term minority has been used since long time ago, but the meaning of it was different from what we understand nowadays. The term minority today is a very broad notion because it itself includes individual that 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 more sharper problem and which led to interstate conflicts is that of ethnic minorities, within whom in some cases are included also religious minorities (Omari,

---

<sup>1</sup> Associate Professor, PhD, AAB College, Prishtina, Republic of Kosovo, Address: Rr. Elez Berisha, no. 56, Zona Industriale Prishtinë – Fushë Kosovë, 10000 Prishtinë, Republic of Kosovo, Tel: +38338600005, Corresponding author: bashkim.rahmani@universitetiaab.com.

2014). Even though in literature we find a lot about the minorities, it is not the aim of this paper 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 various powers of our continent there were signed (concluded) the first treaties in order to defend some populations which were still not determined as “minorities”, but they wanted to be loyal to religious communities where their roots came from (Scholsem, 2011). Under the European context, the paper will describe, explain and compare phenomenon of 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). There are examples and examples that could be given about how these minorities (religious) were treated. They are known as eviction of Jewish from Spain, night of St. Bartolomeu, etc. These repressions and evictions were followed by passing the time. Ethnic clashes in European Continent resurrected with the demolition of communist system in the countries of Soviet Union and in the Southern and Eastern Europe. Problems with the minorities and the use the force were also before, during the years that followed the so called socialist camp (Omari, 2014). It is a well-known fact that Republic of Bulgaria during the 1950s undertook heavy measure against the Turkish minority which was followed with the eviction of big number of Turk minority. Relationships between Romania and Hungary were tensed because of the treatment of a big Hungarian minority in Romania territory, etc. Fierce conflicts which could be related to the issue of minorities were also in the process of dissolution of former Yugoslavia. But regarding Yugoslavia 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 (Gladuric, 1996).

States were created during the history, borders were divided as a result of wars or agreements, but minorities when they were left outside of their mother countries were not asked, unfortunately. So they were left in the territories they perhaps in a lots of cases (if not in all cases) didn't like to belong to the states they belonged after the determination of borders, etc. If asked, surely they would not agree to live in the other country as the minority.

After the armed conflicts overcame there are again minority problems in many of these countries. 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%. (Antonella Capelle Pogacean, n.d.)

Existence of minorities not in all cases ensures multiculturalist society. In many cases their existence is a resource of the various problems and conflicts. But there are efforts in the modern world for creating means and legislations which will protect minorities.

## **2. Defining Minorities and International Protection of Minorities**

Even though it is difficult to find a clear definition there are international conventions and the national laws with what minorities are protected and by what mechanisms of protection are created. Framework Convention for the Protection of National Minorities is one of very important conventions in Europe which 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 to this instrument (Framework Convention for the Protection of National Minorities Council of Europe, Strasbourg, February 1995). Based on the convention countries themselves will decide how to define minorities. An effort to define a minority was done by Francesco Capotoroti that goes as

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 alanguage 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).

This definition covers objective and one subjective elements, 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 that belong to national or ethnic minorities, which was adopted by the UN General Assembly on December 18, 1994 (Omari, 2014).

There were efforts to come to a precise definition of a minority generally accepted but nonetheless, different states define them according to their rules. In continuation of treating the problem of defining minority, in an opinion of 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 former Yugoslavia terminology). This last term is adopted also by the Slovenia legislation (Opinion of Venice Commission, 2004).

At present, Albania recognizes as the national minorities Greeks, Macedonians, Monte Negrins and Serbs, whereas Vlach /arumun and Roma are recognized only as linguistic/cultural minorities. National minorities as well as linguistic ones are recognized by the multilateral treaty of Council of Europe - Framework Convention for the Protection of National Minorities-which Albania ratified in 1999 (World Directory of Minorities and Indigenous Peoples – Albania, Minority Rights Group International, 2007).

### **3. Regulation and Protection in Kosovo**

Kosovo is a multi-ethnic state. The main reason for having Kosovo be a multi-ethnic state is its state building process which is done fulfilling a series of international obligations, beginning those from Ahtisaari Plan and continuing with obligations coming from various international mechanisms. Negotiations for Kosovo status thus were held under the shadow of ethnic issues. Under the supposal –that had mediator and the west-result would be independence. In exchange, Belgrade would be offered wide protection of Serb minority and for the Serb heritage in Kosovo. The protection of minorities was also a priority for 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). It is worth emphasizing that “Kosovo is the most homogeneous state in the Balkans... (Capussela 2015)” 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%) ( Kosovo Agency of Statistics, 2013). 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. And,”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 (United Nations Report, 2007). In Kosovo the legal infrastructure ensures rights which advance the rights of minorities respecting all international standards. Even more than that. Participation of minorities in all levels of governance is ensured, as well as they are present in all forms of governance. Thus, they are present in the Parliament,

Parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community shall have the total number of seats won through the open election, with a minimum 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 the 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).

Minorities in Kosovo are constitutional category. Kosovo Constitution pays special attention to the minorities. Article 22 enumerates the international convenes and instruments which will be directly implemented in cases of the collision of laws. The position of Serb minority is practically different from the other minorities. There are discussion and debates about this, as well as attitudes and opinions pro and contra. There are also efforts to justify politically the position of this minority, part of which slowly recognize Kosovo as their country. Serb minority is overrepresented more emphasized in political institutions. Specifically they elect double more MPs per capita compared to Albanian Community, and 1.2 times more than other minorities (ratios that increase 4.3 times and 2.4 times respectively, if Serbs of North are excluded) (Capussela,2015). In municipalities where at least ten per cent (10%) of the residents belong to Communities 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). Whereas according to the current legislation the total estimation of the population is of 1,815,606 inhabitants. This number is shown as the final number of estimated population of Kosovo which lives in 38 Kosovo municipalities. The biggest center in Kosovo is Prishtina which is Kosovo capital city whereas the smallest municipality in Kosovo is the municipality of Partesh with the population of 1,776 total inhabitants. (Kosovo Agency of Statistics, 2013).

#### **4. Conclusions**

Kosovo is one of the countries that has given a maximum rights to the minorities which are guaranteed with the Kosovo legislation. These rights given to the minorities legally are equal for all ethnic groups but in practice, there is an ethnic minority that enjoy more rights or that is more 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 not only in the region. For one of the minorities in addition to what was presented we have to deal with the principle of the 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 Kosovo has created a very advanced system for protecting human rights and minority rights is something to be

appreciated firstly from the minorities, and the from the mechanisms that monitor the situation with human rights in Kosovo. The existing process should not be rigid as given once forever. These rights are not taken from the sky. 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. An awareness should be raised within the minorities on using the rights in one side and an awareness should be raised in sense that minority rights are not for conditioning with the creation of new mechanisms that could lead towards partition of the state or for creating states within the state.

## References

Pogacean, Antonella Capelle (2014). *Minorities e citoyennete en Europe mediane/ Minorities and citizenship in Europe Mediale*, in “Les minorities, un defi pour l’Etat/ Minorities, a challenge for the state, pg. 163, in Luan Omari, Cështja e pakicave kombëtare dhe Shqipëria/ The issue of national minorities and Albania, Dudaj, Tirana 2014, pg.28.

Capusella, L.A. (2015). *Shtet ndërtimi në Kosovë: Demokracia, Korrupsionidhe BE-ja në Ballkan/ Construction State in Kosovo: Democracy, Corruption and the EU in the Balkans*. Koha Prishtinë.

(2008). Constitution of the Republic of Kosovo.

Gladuric, The Hour of Europe dhe nga një aspekt më gazetaresk, Allan Little dhe Laura Silber, The Death of Yugoslavia (London, 1996), in, Andrea Lorenzo Capussela, Shtet ndërtimi në Kosovë: demokracia, korrupsioni dhe BE-ja në Ballkan/ *Construction State in Kosovo: Democracy, Corruption and the EU in the Balkans*. Koha, Prishtinë 2015, pg.247

KIPRED (2014). *Marrëdhëniet Ndëretmike në Ballkanin Perëndimor: Implikimet për Kosovën/ Interethnic Relations in the Western Balkans: Implications for Kosovo*, No. 6/14, Prishtinë.

Kosovo Agency of Statistics (2013). *Estimation of Kosovo Population*, Kosovo Agency of Statistics, <http://ask.rks-gov.net/media/2126/estimation-of-kosovo-population-2012.pdf> (retrieved in June 16, 2018)

Kosovo Agency of Statistics (2013), “*Estimation of Kosovo Population, (2012,)*” Press Release, Kosovo Agency of Statistics, 6 March 2013; in KIPRED, *Marrëdhëniet Ndëretmike në Ballkanin Perëndimor: implikimet për Kosovën/ Interethnic Relations in the Western Balkans: Implications for Kosovo*, No. 6/14, Prishtinë, 2014, pg. 24).

Omari, L. (2014). *Cështja e Pakicave Kombëtare dhe Shqipëria/ The issue of National Minorities and Albania*. Dudaj, Tiranë

Opinion of Venice Commission on the Project Law (review) on exercising the rights and national and ethnic minorities in Monte Negro (59 Session, June 18-19, 2004), cited by Luan Omari, Cështja e pakicave kombëtare dhe Shqipëria/ *The issue of National Minorities and Albania*, Dudaj, Tiranë 2014, pg.35.

Sergio C. (2017), CEPS (Coordinator), Brussels, Belgium Elspeth GUILD, CEPS, Brussels, Belgium Lina VOSYLIŪTĖ, CEPS, Brussels, Belgium Petra BARD, Central European University (CEU)/ELTE School of Law, Budapest, Hungary, *Towards a Comprehensive EU Protection System for Minorities, European Parliament, Policy Department C: Citizens' Rights and Constitutional Affairs European Parliament*

United Nations (2014). Report of the Special Envoy of the Secretary-General on Kosovo's Future Status, S/2007/168, in KIPRED, *Marrëdhëniet Ndëretnike në Ballkanin Perëndimor: Implikimet për Kosovën/ Interethnic Relations in the Western Balkans: Implications for Kosovo*, No. 6/14, Prishtinë.

World Directory of Minorities and Indigenous Peoples – Albania (2014). Minority Rights Group International, 2007; <http://www.refworld.org/docid/4954cdf1a.html>, in KIPRED, *Marrëdhëniet Ndëretnike në Ballkanin Perëndimor: Implikimet për Kosovën/ Interethnic Relations in the Western Balkans: Implications for Kosovo*, Nr.6/14, Prishtinë, 2014, pg. 8.