

Research Article

THE CONSTITUTIONAL AND LEGAL POSITION OF NATIONAL MINORITIES IN KOSOVO: AHTISAARI PACKAGE AND THE PRIVILEGE OF MINORITIES

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Summary: 1. Introduction. – 2. Human Rights and national minorities. – 3. Ahtisaari package is the “Achilles’ Heel” for Kosovo. – 4. Minority rights under the Constitution and laws into force in the Republic of Kosovo. – 4. 1. Serbian minority in Kosovo. – 4.2. Other non-majority communities in Kosovo. – 5. Conclusions.

Keywords: Minorities in Kosovo, Ahtisaari package, the Constitution of the Republic of Kosovo, the rights of minorities.

ABSTRACT

Background: *In this article, we address the legal and constitutional position, focusing particularly on the Serbian minority and other minorities in a broader context. We delve into their*

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rights and privileges and Kosovo institutions' obligations and responsibilities concerning national minorities.

Certainly, national minorities are an integral part of the population of Kosovo; they should enjoy rights and obligations arising from the Constitution and applicable laws.

National minorities are an added value in every society; they enrich the mosaic of the country where they live and should be respected, promoting the values they carry and represent in society.

The article pays great attention to the Serb community living in Kosovo, their rights identified by the Ahtisaari package, and the privileges that this package recognises as a minority. The Ahtisaari package acknowledges the Serbian Orthodox Church's unique status and explicitly outlines this community's representation within central institutions. This includes reserved and ensured seats in both the executive and legislative branches. At the local level, the package determines how they will be represented. Minorities are represented in the police, prosecutors' office, court, and all other public institutions. Attention has been paid towards instances of sabotage within the state and institutions of Kosovo by the Serbian community that lives in Kosovo and is influenced and directed by Serbia. Representatives of the Serbian community in Kosovo enjoy income and benefits from the state of Kosovo for the mandate they exercise. Still, their actions within the institutions tend to align with Serbia's agendas rather than addressing the concerns of the community they are supposed to represent. Despite the absence of recognition from the state of Kosovo and partial acceptance by some Serbs living in Kosovo, it is crucial to acknowledge that Kosovo is an independent state and internationally recognised by 116 democratic states of the world. Notably, the Constitution of Kosovo, as a strong constitution, guarantees double rights in favour of the Serbian community living in Kosovo even though they constitute no more than 5% of the overall population.

The research uses the descriptive analysis method, based on the precise description and in-depth analysis of the topic through gathering detailed data related to the research problem, analysing and interpreting legal texts and relevant information and privileging a certain community. These methods have been employed to compare the legislation in force with the international obligations that Kosovo has received through the comprehensive proposal for treating non-majority minorities.

Results and Conclusions: *Our research shows that national minorities in Kosovo are not treated equally. The Serbian community is constantly privileged and continues to be favoured by the international community, while other communities have substantial problems living in practical terms.*

The citizens of Kosovo understand the issue of minority rights best. Therefore, the state of Kosovo and its citizens should not allow national minorities to be discriminated against or their rights abused.

Implementing the agreements reached in the dialogue, fulfilling international obligations, and advancing the rights of minorities in Kosovo is the obligation of Kosovo and its citizens. Kosovo institutions are obligated to dialogue with the Serbian community because they are part of society and must be integrated into it.

1 INTRODUCTION

National minorities have special treatment and attention from the international community, with particular emphasis from international organisations, which have issued binding legal norms for member and non-member states. International documents that have given a new meaning to the treatment and protection of minorities are numerous UN resolutions, the Universal Declaration of Human Rights and Freedoms, the European Convention on Human Rights and Freedoms, the European Charter of Freedoms and Human Rights, etc. All these international instruments have established standards that have served and continue to serve for the dignified treatment and respect of the rights of minorities in the countries where they live.

These standards serve to democratise the country, fostering peaceful coexistence among various ethnicities, languages and peoples. They project a peaceful and common future that has undoubtedly brought good results and life in peace and harmony in most Western democracies. Undoubtedly, national minorities add value to any society and should be treated as such by the majority population and the state. Naturally, every country and society has its own differences and specifics, and in this disease in every country, their cases are treated according to special characteristics and specifics.

A section of this scientific paper will deal with the rights of national minorities in Kosovo based on international legal norms that deal with national and European minorities. Our primary focus will centre on the Comprehensive Proposal of President Ahtisari, which laid the foundation for the rules governing minority obligations in Kosovo.

To begin, we should delve deeper into the population of Kosovo, particularly the national minorities living in Kosovo.

The population of Kosovo predominantly consists of Albanians, who constitute the majority, alongside other ethnic minorities that collectively form a significant percentage. The total population of Kosovo is 1,783,531 inhabitants, according to the 2016 Census,⁵ of which 92% are Albanians and 7.1% other national minorities such as Serbs, Bosnian, Turks, Roma, Ashkali, Egyptians, Croats, Gorani and Montenegrins. It is worth noting that the Serb population in Kosovo, and especially the Serb population in Northern Kosovo, have refused to register in the census organised by Kosovo institutions. This percentage may change by approx. 2.5% in total. It is supposed that the number of Serbs in the northern part of Kosovo does not exceed 40,000.⁶

The overwhelming majority of the population is Albanians, with a high percentage compared to other communities living in Kosovo; historically, this percentage of Albanians has been almost the case in the past, despite manipulations by the Serbian state system for political purposes and ethnic agendas. The Serbian state aimed to downplay the number of Albanians in Kosovo to minimise the influence of Kosovo Albanians under the laws in force and to give as much power to Serbs residing in Kosovo.

The debate over the number of Albanians and their presence in Kosovo is premature. There have been statistics in Yugoslavia, and we will refer to this situation somewhat. According to the Yugoslav census of 1971, the population of Kosovo was 1,245,000; of this population,

5 Agjencia e Statistikave të Kosovës, Vlerësimi i Popullsisë së Kosovës për vitin 2016 (ASK 2017).

6 Agjencia e Statistikave të Kosovës, Regjistrimi i popullsisë, ekonomive familjare dhe banesave në Kosovë 2011: rezultatet përfundimtare. Popullsia: sipas gjinisë etnicitetit dhe vendbanimit (ASK 2013) vol 2.

920,000 were Albanians, constituting 74%, while 23,000 or 18% were Serbs. The remaining population belonged to the Roma, Ashkali, Turkish and Montenegrin minorities.⁷

The 1981 census recorded a population of 1,584,440, of which 1,226,736 or 77.4% were Albanians, while Serbs represented 209,497 or 13.2%, thus significantly inferior to Albanians.⁸ These data show that the Albanian element in Kosovo has always been dominant and that the efforts of the Serbian governments have failed to create a less Albanian-dominated Kosovo. The colonisation of Kosovo and the change of its ethnic composition in favour of the Serbs, despite the energetic efforts of the entire state at that time and the previous Serbian-Yugoslav regimes, did not succeed. These efforts failed, among other things, though Serbia and all Yugoslavs, pre-communist and communist, wanted both a colonised and seductive Kosovo for Serbs and an underdeveloped and European-type birth rate for Albanians. These goals, of course, did not go together.⁹

Based on the aforementioned discussion above, the Kosovo population is predominantly Albanians, encompassing an overwhelming percentage, while other minorities collectively constitute less than 9% of the total population. However, when it comes to the terminology and definition of these groups as national minorities or minorities, there is no exact scientific clarity or definition to this. Despite ongoing academic and scientific scholarly debates concerning the correct definition of the term national minority or minority, we will still give a version the International Court of Justice gave for the Greek-Bulgarian Agreement 1919. Under the Greek-Bulgarian Agreement of 19 November 1919, the International Permanent Court of Justice termed the minority as:

*'[A] group of persons living in a given country or locality having a race, religion, language and tradition in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutually assisting one another.'*¹⁰

2 HUMAN RIGHTS AND NATIONAL MINORITIES

Human rights are inalienable, undeniable and guaranteed to every individual regardless of race, religion, colour or other distinction. These rights have a universal character and have sometimes acquired an international legal character through the Universal Declaration of Human Rights and Freedoms and other subsequent documents.

But undoubtedly, the Universal Declaration represents a major turning point in the history of human rights because it sets standards and legal norms for the dignified treatment of every human being. The Declaration emphasises:

'Everyone enjoys all the rights and freedoms set forth in this Declaration without any limitations regarding race, colour, sex, language, religious belief, political or other opinion, national or social origin, wealth, birth or other. No distinction shall be made on the basis of the

7 Hivzi Islami, Demographic Studies: 100 Years of Kosova Demographic Development (Special editions 85, Section of social sciences 25, 2 edn, Kosova Academy of Sciences and Arts 2008) 202.

8 *ibid.*

9 Islami (n 7) 202.

10 Interpretation of the Convention Between Greece and Bulgaria Respecting Reciprocal Emigration, Signed at Neuilly-Sur-Seine on November 27th, 1919 (Question of the 'Communities'), Advisory Opinion (PCIJ, 31 July 1930) (1930) 17 PCIJ Series B 33.

political, legal or international status of the state or country to which any person belongs, whether the state or country is independent, under trusteeship, non-self-governing or any other conditions of the limitation of sovereignty.¹¹

This declaration represents the minimum threshold of freedoms and human rights, but states are empowered to advance beyond these minimum standards to promote greater respect for human rights and freedoms. Members of national minorities living in that country cannot and will not be excluded from this set of basic human ties.

Unlike the basic rights that every individual enjoys without distinction, states often impose restrictions on other rights, such as political or civil rights, that are reserved only for their citizens. National minorities cannot be included in this group of rights since they are part of the society of the country where they live, and their difference from the rest of the population is that they have a nationality, language, culture, different traditions, etc. Such features distinguish them from the majority population, and states are obliged to guarantee their rights through legislation and state bodies so that even national minorities can realise their rights without pressure and conditions. It is important to understand who can qualify as a national minority.

Although there is a great global debate, we will again refer to international documents issued by international organisations such as the UN or the Council of Europe. According to a definition offered in 1977 by Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, a minority is:

'A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members nationals of the State possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.'¹²

Today, this issue is regulated by various international conventions, but individual states have also issued constitutional and legal norms for the recognition and qualification of national minorities through internal legislatures. Of course, human rights and the rights of national minorities have a universal character, and their protection and respect are also the responsibility of international organisations. As outlined by the Framework Convention for the Protection of National Minorities (1995), the protection of national minorities and all obligations of freedoms that are part of their protection of minorities are part of their protection of all people and, as such, are included in the framework international cooperation (Article 1). Persons belonging to national minorities may exercise the rights and enjoy the freedoms derived from their principles in this Framework Convention individually and in community with others (Article 3).¹³

Human rights are no longer an internal issue; today, they have a universal character and transcend national borders. The protection of national minorities rests with individual states but is subject to the monitoring of foreign organisations. The protection of national minorities and the rights and freedoms of persons belonging to those minorities form an integral part

11 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) art 2 <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 15 August 2023.

12 United Nations, *Minority Rights: International Standards and Guidance for Implementation* (UN 2010) 2.

13 Framework Convention for the Protection of National Minorities (ETS No 157) (adopted 10 November 1994) <<https://www.coe.int/en/web/minorities/at-a-glance>> accessed 15 August 2023.

of the international protection of human rights and falls within the scope of international cooperation.¹⁴

States cannot claim to distance or limit the rights of national minorities because these rights are not only individual entitlements within the society they live in but also entail additional rights derived from international documents that aim to protect and respect the rights of national minorities. We usually encounter different treatments of minority rights from one country to another, so we cannot say that all countries respect the rights of national minorities in the same way. We usually find these differences in countries that have fragile democracies or in countries that have a totalitarian government system. As an example, we can cite the attitude towards national minorities in some countries of the Western Balkans, Turkey, China, the Middle East, etc.

This approach to the rights and freedoms of national minorities can be seen quite clearly in the Western Balkans countries, where not all countries treat national minorities in the same way. We have said, and we repeat again. Kosovo has been and remains a champion in recognising and respecting the rights of national minorities, unlike other countries in this region. In this region, we refer to Serbia, North Macedonia and Montenegro, where all of these countries have national minorities within their population. Still, the treatment the states have given these minorities leaves much to be desired.

3 AHTISAARI PACKAGE IS THE «ACHILLES' HEEL» FOR KOSOVO

Kosovo, after the end of the war, was placed under an international protectorate administered by the United Nations (UNMIK, according to Security Council Resolution 1244)¹⁵ for a definite period until the definitive status of Kosovo was determined. The Kosovo status settlement period was also set out in the final document of the Rambouillet Agreement, which specified that three years after this agreement's entry into force, an international meeting would convene to determine a mechanism for a final placement (settlement) for Kosovo. This would be based on the will of the people, the opinions of the relevant authorities, the efforts of each party about the implementation of this Agreement and the Final Helsinki Act¹⁶, and to undertake general assessments of the implementation of this agreement, considering the proposals from either party for additional measures.¹⁷

The process of defining Kosovo's final status began with direct talks in Vienna between representatives of Kosovo and Serbia, mediated by the United Nations Special Envoy Martti Ahtisaari. It was understood that it was impossible to find a solution between the parties as long as their diametrically opposed positions were known publicly. Kosovo aspired for in-

14 Council of Europe, Framework Convention for the Protection of National Minorities and Explanatory Report (SoE February 1995) <<https://rm.coe.int/16800c10cf>> accessed 15 August 2023; Zejnullah Gruda, Mbrotjja Ndërkombëtare e të Drejtave të Njeriut (4 ed, Universiteti i Prishtinës 2007) 478f.

15 United Nations Security Council Resolution 1244 (adopted on 10 June 1999) <[https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=S/RES/1244\(1999\)&Lang=E](https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=S/RES/1244(1999)&Lang=E)> accessed 15 August 2023.

16 OSCE, Conference on Security and Co-operation in Europe: Final Act (Helsinki, adopted on 1 August 1975) <<https://www.osce.org/helsinki-final-act>> accessed 15 August 2023.

17 Interim Agreement for Peace and Self-Government in Kosovo (Rambouillet Accords) (adopted on 23 February 1999) ch 8, art 1, para 3 <<https://peacemaker.un.org/kosovo-rambouilletagreement99>> accessed 15 August 2023.

dependence, while Serbia was determined that Kosovo's final status should be an autonomy expanded within Serbia.

At the end of the process, UN Special Envoy Martti Ahtisaari prepared a Comprehensive Proposal based on which the future state of Kosovo should be governed. On February 2 2007, Ahtisaari landed in Pristina to present the Comprehensive Proposal to Kosovo's state institutions and leaders; this document would serve as the primary basis and the greatest compromise that the people and institutions of Kosovo would make in compensation for Kosovo's independence.¹⁸

The Ahtisaari package precisely specified the rights that should be included in Kosovo's constitution and laws for communities living in Kosovo. It faced particular challenges with the Serb community and had to provide clear promises that Kosovo's future state would uphold these promises.

All of these conditions are included in the Comprehensive Proposal, which can be seen from its structure:

'Annex I — Constitutional Provisions; Annex II – The Rights of Communities and Their Members; Annex III — Decentralization 23 Attachment to Annex III — Delineation of New Municipalities; Annex IV — Judicial System; Annex V — Religious and Cultural Heritage; Annex VI – External Debt; Annex VII — Property and Archives; Annex VIII — Kosovo Security Sector; Annex IX — International Civilian Representative; Annex X — European Security and Defense Policy(ESDP) Mission; Annex XI — International Military Presence; Annex XII — Legislative Agenda.¹⁹

The Comprehensive Proposal foresees internal legal regulation in Kosovo, particularly the rights that should be recognised by national minorities and the inclusion of their rights in future legislation after the establishment of state institutions in Kosovo. The Kosovo Constitution especially had to incorporate this document in its entirety.

It was precisely the Ahtisaari package that was the cornerstone of the definition of minority rights fully integrated into the Constitution of the Republic of Kosovo.²⁰ The package became the cornerstone of the obligations of future institutions created after Kosovo declared independence. Kosovo can freely be called the Balkan champion of guaranteeing and recognising minority rights. By champion, we have in mind the position of national minorities in Kosovo and the position of national minorities in the region's countries. In this aspect, Kosovo can be compared freely with the EU countries or beyond.

Although universal rules and principles exist in every democratic country, imposing states to recognise and respect the rights of minorities, new principles and standards have been used in Kosovo. Typically, the rights and share of power are gained by the percentage of the population that comprises the national minority. Kosovo has been conditioned by the international community to recognise the non-conceivable rights of minorities in Kosovo, particularly the Serb minority, which enjoys rights within the territory of Kosovo as much as the majority population enjoys, even more in some cases, in particular, in cases of constitutional change

18 Comprehensive Proposal for the Kosovo Status Settlement (Pristina, Kosovo, 2 February 2007) <<http://pbosnia.kentlaw.edu/Comprehensive%20Proposal%20for%20the%20Kosovo%20Settlement.pdf>> accessed 15 August 2023.

19 *ibid*, table of contents.

20 *ibid* 19-20.

or cases of institutional involvement by giving reserved seats to the Kosovo Parliament and guaranteed automatic involvement in the executive.

It is understandable that Kosovo had to give international guarantees for the protection and respect of the rights of national minorities. These guarantees are based on constitutional and legal norms, which we must respect without distinction. As in any other country, in Kosovo, the rights and privileges of minorities must be in accordance with the best international practices, which guarantee dignified treatment for every member of national minorities. These minorities should not abuse their rights and privileges to sabotage the state in which they live.

No one can deny the rights of minorities, and everyone should support their rights, though it is essential to act against the over-factoring of one community by recognising their absolute rights against other minorities, as we can see in the example of the Serbian community in Kosovo.

The above-mentioned lead, among other things, that one minority is using these rights to make the state dysfunctional, as the examples described below.

The Comprehensive Proposal designed to address the final status of Kosovo was the Achilles' heel for the future state of the Kosovo state for many reasons and presented various obstacles to the state-building and functionalisation of the newly established state. In Article 10 of the General Proposal, constitutional amendments are foreseen:

'10.1 Any amendment to the constitution requires the approval of two-thirds of the deputies of the Assembly, including two-thirds of the deputies of the national minorities who have guaranteed mandates.'²¹

At this point, the state of Kosovo was tested with the creation of its armed forces. Kosovo's independence, backed by the U.S. and most EU member states, came through a bargain struck by UN Special Envoy Martti Ahtisaari, which sought to balance competing Kosovar and Serb interests. It was accompanied by several painful concessions for Kosovo, including a period of internationally supervised independence; the creation of several new Serb-majority municipalities carved out of existing Albanian-majority ones; extra powers for those Serb areas, notably over education; protections for Serbian Orthodox Church sites; parliamentary seats set aside for Serbs and other "non-majority" peoples, with a veto over legislation of vital interest.²²

In practice, additional privileges for communities only sometimes bring peace and stability to that country. In many countries, minority privileges have become a boomerang and brought about instability. Hence, it is not always the case that the rights people granted to national minorities automatically result in stable societies.

21 *ibid* 17.

22 International Crisis Group, *Relaunching the Kosovo-Serbia Dialogue: Europe Report No 262*, 25 January 2021 (Intern Crisis Group 2021) <<https://www.crisisgroup.org/europe-central-asia/balkans/kosovo-serbia/relaunching-kosovo-serbia-dialogue>> accessed 15 August 2023.

4 MINORITY RIGHTS UNDER THE CONSTITUTION AND LAWS INTO FORCE IN THE REPUBLIC OF KOSOVO

The Constitution of the Republic of Kosovo has incorporated all of Ahtisaari's recommendations, although they were, in most cases, challenging to implement. Considering the post-war scenario in Kosovo, it was difficult to envision their successful execution; however, this was deemed essential for the progression towards the country's independence.²³

The Republic of Kosovo's Constitution has provided a separate chapter on communities. Chapter 3, 'Rights of Communities and Their Members' is exclusively designed for minorities by the recommendations of the Ahtisaari package and outlines the general principles of communities residing within the territory of Kosovo.

According to article 57:

1. 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.
1. Every member of a community shall have the right to freely choose to be treated or not to be treated as such, and no discrimination shall result from this choice or from the exercise of the rights that are connected to that choice.
1. Members of Communities shall have the right to freely express, foster and develop their identity and community attributes.
1. The exercise of these rights shall carry with it duties and responsibilities to act in accordance with the law of the Republic of Kosovo and shall not violate the rights of others.²⁴

The Constitution of Kosovo obliges the relevant institutions to serve the communities and fulfil their requirements in accordance with the constitution and the laws into force on a non-discriminatory basis so that the citizens of these communities can exercise their rights as outlined.²⁵

In addition to other rights, Kosovo communities are guaranteed equitable employment representation in public institutions and agencies at all levels, especially in areas where they are the majority, particularly in the police service, while respecting the rules concerning competence and integrity.²⁶

By analysing the Ahtisaari package and the Constitution of Kosovo as the highest legal act, it becomes clear that some non-majority communities are favoured. Their rights derive from Kosovo's international agreements and the best practices of civilised nations. This is a good indicator of how minorities should be treated in any democratic country.

23 Arsim Bajrami dhe të tjerët, *Hyrje në sistemin ligjor në Kosovë* (Universiteti i Prishtinës "Hasan Prishtina", Akademia e Drejtësisë së Kosovës 2019) 27.

24 Constitution of the Republic of Kosovo of 9 April 2008, art 57 <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>> accessed 15 August 2023.

25 *ibid*, art 58, para 7.

26 *ibid*, art 61.

To uphold and protect the rights of national minorities, the Republic of Kosovo has issued a special law that originates from the Constitution, establishing and safeguarding the freedoms and rights of non-majority communities living in the country. This law ensures equality of minorities in our society, ranging from identity protection, language use, mother tongue education, culture promotion, broadcasting television in community languages by the public medium, preaching religion, health for all, participation in political life, local cooperation, etc.²⁷

If the law is well received and analysed, it can be freely stated that Kosovo communities are treated according to all international conventions and norms.

In comparison to neighbouring countries of the region, it is evident that Kosovo stands ahead in this aspect. Even though other countries in the region have a higher percentage of minority populations, they lag behind Kosovo in providing equal rights. For instance, Albanians living in the Republic of Northern Macedonia, constituting around 30% of the population²⁸, struggle to have their rights recognised by the state of Northern Macedonia under international conventions and norms. As for the Albanians living in southern Serbia, we can freely say that they are the most oppressed and tortured national minorities in Europe and beyond, with the Serbian state denying even the most fundamental rights to this community.

So, despite approximately 16% of Serbia's population belonging to ethnic minorities²⁹, their privileges in this country are not even close to international legal standards and norms. In practice, ethnic communities in Serbia are discriminated against and oppressed by state bodies. Paradoxically, Serbia specifically demands the rights of Serbs living in a Western Balkan country above all democratic norms and standards. The systematic "passivation" process (massive and selective stripping of residency) against Serbia's minority populations, as well as Albanian national minorities living in Serbia, goes against democratic norms. This practice leads to families losing their status as citizens of Serbia along with all associated civil rights, including access to benefits, insurance, pension, employment, etc. Since to lack of awareness regarding "passivation", individuals often lose the right to appeal, for which the deadline is eight days. Additionally, the Albanian minority in Serbia suffers from a lack of equitable distribution of state capital investments. This part of Serbia, where the Albanian community lives, has been overlooked, underdeveloped and consequently offers little in terms of future prospects for its residents.

In addition to the passivation of addresses, individuals are also discriminated against in other areas such as education, employment, representation in institutional and public life, use of national symbols, etc. By law, ethnic minority populations have the right to be educated in their minority language, but this right was not always respected. According to the Ministry of Education and Science, 45,683 schoolchildren in elementary and secondary schools (5.6% of all schoolchildren in the country) received education in their mother tongue. There were no textbooks in the Albanian language available for secondary school students, even though ethnic Albanians are estimated to be one of the five largest minority groups in the country.³⁰

27 Law of the Republic of Kosovo No 03/L-047a 'On the Protection and Promotion of the Rights of Communities and their Members in Kosovo' of 13 March 2008 <<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2531>> accessed 15 August 2023.

28 Apostol Simovski (red), Maqedonia e Veriut në shifra, 2023 (Enti Shtetëror i Statistikës 2023).

29 Statistical Office of the Republic of Serbia, 'First results of the 2022 Census of Population, Households and Dwellings' (Statistical Office of the Republic of Serbia, 21 December 2022) <<https://www.stat.gov.rs/en-us/vesti/statisticalrelease/?p=14061&a=31&s>> accessed 15 August 2023.

30 Bureau of Democracy, Human Rights and Labor, '2022 Country Reports on Human Rights Practices: Serbia' (US Department of State, 2023) <<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/serbia>> accessed 15 August 2023.

According to a 2021 report by the Helsinki Committee for Human Rights in Serbia, the government's disproportionate application of this law targeting Albanians amounted to 'ethnic cleansing through administrative means.' The report noted that passivized individuals cannot renew their expired identity card or passport, without which they were unable to register a car, access healthcare or social services (including pensions), buy or sell property, or vote in local or general elections.³¹

On this basis, if we compare Kosovo with other countries in the region, we can freely say that Kosovo is a step forward to a more democratic country in terms of freedoms and community leadership.

4.1 SERBIAN COMMUNITY IN KOSOVO

National minorities are national assets and should be treated as such. The treatment of national minorities must be the same, without differences, and in accordance with the best international practices. These rights and privileges are limited by constitutional and legal norms.

The practices used in the case of Kosovo regarding the rights of minorities are the highest democratic practices. Kosovo Serbs are assumed to be at most 5% of the population; this percentage may sound hypothetical due to the absence of a proper census. However, some local researchers have provided some estimates. In 1981, after the census by the institutions of former Yugoslavia, 209,497 Serbs lived in Kosovo, accounting for 13.2% of the population. In 1991, this number was reduced to 194,190 or 9.9% of the population. In the 2011 census, which was boycotted by northern Serbs, only 25,532 Serbs were recorded, representing 1.5% of the population. However, this number likely does not reflect the exact number of Serbs living in Kosovo.³²

Serbian is the official language in Kosovo alongside the Albanian language, with Serb minorities guaranteed seats in central institutions.³³ Political parties, coalitions, civic initiatives and independent candidates who claim to represent the Serbian community are allocated seats in the Assembly based on their performance in open elections, with a minimum of ten guaranteed seats if the won seats are less than ten. This representation extends to the government as well. The Kosovo Government mandates at least one minister from the Serb community and one minister from any other non-majority community. If there are more than twelve ministers, the Government will also have a third minister representing one of the non-majority communities in Kosovo.³⁴

31 *ibid.*

32 Data for 1981 and 1991 were obtained from: Islami (n 9) 202. While 2011 data were obtained from: European Center for Minority Issues Kosovo, 'Minority Communities in the 2011 Kosovo Census Results: Analysis and Recommendations' (ECM Kosovo, Policy Brief 18 December 2012) <<https://www.ecmikosovo.org/wp-content/uploads/2023/04/3engA.pdf>> accessed 15 August 2023. It is worth noting that Serbs in northern Kosovo have boycotted the 2012 census.

33 Constitution (n 24) art 5, para 1.

34 *ibid.*, art 64.

Furthermore, the government ensures representation through at least two deputy ministers from the Kosovo Serb community and two deputy ministers from other non-majority communities in Kosovo. If the number of ministers surpasses twelve, the Government will appoint a third deputy minister, including one representing the Serb community and another representing one of the other non-majority communities in Kosovo.³⁵

They are guaranteed leadership and command positions in the police, the court and the prosecutor's office. These additional benefits extend further to instances involving constitutional changes. Constitutional changes in Kosovo cannot be made unless it secures a two-thirds vote from the deputies of the Kosovo Parliament and a two-thirds vote from the minority representatives.

Any amendment requires the approval of two-thirds of all Members of the Assembly, including two-thirds of all Members of the Assembly holding reserved seats or guaranteed for representatives of communities that are not a majority in the Republic of Kosovo.

As a result of constant coordination with official Belgrade, the Serb minority exerts significant influence over Kosovo's institutions and the destiny of its citizens, effectively obstructing the establishment of the state of Kosovo, which is its constitutional right.³⁶

In the name of "positive discrimination", the Ahtisaari package offers minorities and, in particular, the Serbian minority, which entails a high degree of decision-making as well as the possibility to impede the functioning of institutions through the mechanism of "blocking" in lawmaking. Under this framework, a concept of "double voting" is foreseen in the Assembly of Kosovo, either for laws related to "vital interests of minorities" or for constitutional amendments. "Double voting" extends to two-thirds of the votes of deputies representing minorities in the Kosovo Assembly. This vote, in fact, destroys one of the great values of democracy, namely the principle of majority-minority representation based on both numerical and cultural belonging.

While this concept of decision-making is claimed to be justified by the 'Ohrid Agreement' model³⁷ in the former Yugoslav Republic of Macedonia, now the Republic of North Macedonia, the comparison does not entirely correspond to reality. The figures of Albanian participation in the overall population differ significantly between the two regions. Moreover, the extent of minority participation, including the Serb minority within the total population of Kosovo, also contrasts with the situation in the Republic of Macedonia.³⁸

As reiterated, the Serb community in Kosovo is the most privileged among other communities living in Kosovo, primarily due to the constitutional and legal rights guaranteed by the state of Kosovo. These rights are nearly on par with Albanian citizens, spanning every aspect of daily life. It is worth noting that when it comes to cultural and religious heritage, Ahtisaari's package gives the Serbian Orthodox Church a special status by recognising a certain kind of ex-territoriality, whereby designated areas around these religious facilities are safeguarded within a certain circumference:

35 *ibid*, art 96, para 3, 4.

36 *ibid*, art 144, para 3, 4.

37 Framework Agreement (concluded at Ohrid, signed at Skopje, Macedonia on 13 August 2001) <<https://www.osce.org/skopje/100622>> accessed 15 August 2023.

38 Esat Stavileci, *Një Këndvështrim për Pakon e Ahtisaarit* (Universiteti i Prishtinës 2007).

'The protected area for the following facilities will be defined in 100 meters of space around their perimeter according to the Ahtisaari package, which is part of the Constitution of the Republic of Kosovo'.³⁹

Decisions have been made for the Serbian Orthodox Church in Prizren located in Shaderan, and the church in Velika Hoca in Rahovec / Orahovac per the recommendations of the Ahtisaari Package.

Firstly, declaring them 'Serbian heritage' is unacceptable because it threatens 'the risk of Serbisation of the spaces where they are located'. Secondly, the establishment of 'protected areas' coincides directly or indirectly with Serbian pseudoscience's views of Kosovo as 'the cradle of Serbia and the Serbian state' unfounded, both historically and currently.⁴⁰

These rights and privileges do not apply to other religious facilities in Kosovo, such as mosques and Catholic churches. Based on the past and present, the Albanian people are known for inter-religious tolerance. They are not recognised for destroying cultural and religious property even in times of war, except for the March 2004 riots, which, in our opinion, were driven and orchestrated by foreign and mainly Serbian services.

Today, Serbs in Kosovo are the majority in 10 of the 38 municipalities of Kosovo and hold leadership positions in these municipalities, where most of them were created after the Kosovo War. These municipalities emerged as part of the ethnic decentralization which was preceded by the Ahtisaari package, and were included, establishing the cadastral boundaries of these municipalities. These municipalities were created precisely to empower Serbs living in Kosovo. The Ahtisaari package guarantees numerous privileges for minorities in Kosovo, placing particular emphasis on the Serbian minority. Furthermore, this package ensures the establishment of municipalities with a Serbian majority based on local self-government.⁴¹

"Additional rights" for Serbs, coupled with a high level of administration within their municipalities and broader powers than other municipalities, raises substantial challenges. With the change of the territory and its expansion, the chain links of Serbian or majority Serb municipalities and the possibilities of their special links and financing of Belgrade collectively constitute the biggest challenge in post-status Kosovo. They jeopardise not only the dysfunctionality of institutions but the exertion of influence within regions controlled by the Serb minority as well. This jeopardises the effective implementation of laws until the eventual separation and severance of links with the central government and the creation of a distinct Serb entity, which might subsequently come under institutionalisation.⁴²

The decentralisation strategy in Kosovo becomes evident through the creation of new Serb-majority municipalities and modifications in the cadastral boundaries of existing municipalities, resulting in the incorporation of entire Serb-populated villages and the majority of the population in these municipalities to be dominated by the Serb population. This happened in the case of Novo Brdo⁴³, with the creation of the Municipality of North Mitrovica. Aside from establishing Serb majority municipalities, several other municipalities with different ethnic majorities created, including a Turkish majority municipality (Mamusha / Mamuama) and two Albanian majority municipalities (Hani i Elezit and Junik).

39 Comprehensive Proposal (n 18) 39.

40 Stavileci (n 38).

41 Comprehensive Proposal (n 18) 29, 31-2.

42 Stavileci (n 38).

43 Republika e Kosoves Novobërdë <<https://kk.rks-gov.net/novoberde>> accessed 15 August 2023.

Therefore, this case best demonstrates how Kosovo's independence has been conditioned and shaped by a series of compromises that the Albanian side has agreed to in exchange for international support during the Declaration of Independence.

Regarding the Serb community in Kosovo, there are two opposing truths between themselves: Serbs living in Southern Kosovo who are fully integrated into institutional and social life, and Serbs living in Northern Kosovo who demonstrate an unwillingness to integrate into society and institutions. This dichotomy raises questions about their behaviour towards Kosovo's state institutions. How is it possible for citizens of the same community to exhibit such disparate behaviour? On one side of the country exists conscientious citizens who cooperate with Kosovo institutions, while on the other side, exists citizens who reject the rule of law in their region.⁴⁴ We believe that the Serbian citizens of the northern part of Kosovo desire integration and live as free and equal citizens, exercising their rights. However, the parallel structures maintained by Serbia prevent these citizens from integrating into Kosovar society.

The Ahtisaari package was designed to satisfy the ambitions of the Serbs in Kosovo and Serbia as their conductor.

As for the Serbian community in Kosovo, it can be concluded that they are the most privileged community within the Ahtisaari Package, the Constitution of Kosovo and the existing laws in force. This minority enjoys rights as much as 92% of the majority population in Kosovo. In this aspect, Kosovo has been forced to make the most painful compromises, from which Kosovo today bears the consequences. These compromises with this community seem not to be stopped even in the Pristina-Belgrade Dialogue in Brussels.⁴⁵

It is likely that this dialogue between Kosovo and Serbia will evolve into Ahtisaari +, culminating in the formation of an association for Serb-majority municipalities with executive powers. This arrangement could represent a kind of autonomy for the Serb minority within the territory of Kosovo. We hold concerns about the potential dangers and unacceptability of this scenario for Albanian citizens in Kosovo and beyond. Such a precedent could reverberate in other Balkan countries and potentially pose a threat to regional security within the Balkans.

In 2013, Kosovo and Serbia signed a basic agreement that included key provisions such as the establishment of an Association of Municipalities with a Serbian majority, reforms within the prosecution system, the judicial system, the removal of parallel structures and their integration into the security, energy and telecommunication structures, local elections in the northern municipalities of Kosovo with the support of the OSCE, etc.⁴⁶ This agreement was thought to be useful for the advancement and integration of the Serbian minority in the north of Kosovo and to foster improved relations between Kosovo and Serbia.

The Kosovo-Serbia dialogue still continues today. In March 2023, another agreement was signed in North Macedonia, aiming for the normalisation of relations and the implementation

44 Marko Prelec dhe Naim Rashiti, *Integrimi i Serbëve në Kosovë Pas Marrëveshjes së Brukselit (Grupi për Hulumtimin e Politikave në Ballkan (BPRG) 2015) 2.*

45 'Belgrade-Pristina Dialogue: The European Union facilitates the Dialogue on the comprehensive normalisation of relations between Kosovo and Serbia' (European External Action Service, 16 March 2022) <https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue_en> accessed 15 August 2023.

46 Law of the Republic of Kosovo No 04/L-199 'On Ratification of the First International Agreement of Principles Governing the Normalization of Relations Between the Republic of Kosovo and the Republic of Serbia' of 17 September 2013 <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=8892>> accessed 15 August 2023.

of all outstanding agreements.⁴⁷ In a dialogue between the two parties, they expressed their reservations and dissatisfaction with the content of the past agreements, like the association of municipalities with a Serbian minority, which still remains a contentious point. Serbia opposes the 2015 agreement, which states that the association of municipalities with a Serbian majority in Kosovo must be in accordance with the Constitution of Kosovo,⁴⁸ and desire an association with executive powers. However, such an arrangement is impossible because it creates an intermediary power in Kosovo and destroys the legal order of the Republic of Kosovo. The association with executive powers risks Kosovo turning into a Serbian Republic, and as such, defunctionalises the state of Kosovo and fails to create peace and stability in Kosovo and the region. Serbia wants the entity to enjoy executive powers and constitute a separate level of government between central and local authorities. Kosovars – government and opposition alike – fear that such an arrangement would open the door to the northern municipalities' secession or internal fracturing and dysfunction reminiscent of neighbouring Bosnia.⁴⁹ At this point, both the US and the EU declaratively, through their representatives, oppose such an association.⁵⁰

We believe that there is a need to exert greater pressure on Serbia, as it prevents the implementation of the agreements reached in the Brussels dialogue. Serbia portrays itself as constructive in the dialogue with Kosovo, yet its actions hinder the implementation of these agreements. The Serbian community residing in the north of Kosovo is strategically employed by Serbian politics in Belgrade. The political status of Kosovo's northern Serbs will be the toughest challenge in negotiations and poses the greatest risk of violence.

While Serbia formally continues to claim sovereign right to all of Kosovo, it has, in practice, given up trying to exercise its rights in most of Kosovo's territory. However, this does not hold true in the north. In this area, both Belgrade and Pristina hold elements of state power, and local authorities, who retain close ties to Serbia, enjoy substantial self-rule, resulting in an uneasy equilibrium.⁵¹

Even today, Serbia upholds Kosovo's status as an integral part of its constitution, as evident in the following oath:

'I do solemnly swear that I will devote all my efforts to preserve the sovereignty and integrity of the territory of the Republic of Serbia, including Kosovo and Metohija as its constituent part, as well as to provide exercise of human and minority rights and freedoms, respect and

47 'Belgrade-Pristina Dialogue: Implementation Annex to the Agreement on the Path to Normalisation of Relations between Kosovo and Serbia' (European External Action Service, 18 March 2023) <https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-implementation-annex-agreement-path-normalisation-relations-between_en> accessed 15 August 2023.

48 Kryeministri Thaçi, 'Asociacioni i komunave me shumicë serbe – plotësisht në përputhje me Kushtetutën e Kosovës, Ligjin për Vetëqeverisje Lokale, dhe Kartën Evropiane për Vetëqeverisjen Lokale: Fjala e kryeministrit të Qeverisë së Republikës së Kosovës, Hashim Thaçi në Kuvendin e Republikës së Kosovës, Prishtinë, 12 mars 2013' (Zyra e Kryeministrit të Kosovës, 12 mars 2013) <<https://kryeministri.rks-gov.net/blog/kryeministri-thaci-asociacioni-i-komunave-me-shumice-serbe-plotesisht-ne-perputhje-me-kushtetuten-e-kosoves-ligjin-per-veteqeverisje-lokale-dhe-karten-evropiane-per-veteqeverisjen-lokale>> aksesuar më 28 korrik 2023.

49 'Kosovo-Serbia: Finding a Way Forward' (International Crisis Group, 12 May 2023) <<https://www.crisisgroup.org/europe-central-asia/balkans/kosovo-serbia/kosovo-serbia-finding-way-forward>> accessed 15 August 2023.

50 G Escobar, 'Të përdorim Asociacionin për të ndaluar atë që po bën Serbia në veri të Kosovës' (YouTube, Top Channel Albania, 18 maj 2023) <<https://www.youtube.com/watch?v=UlyfDqWbpyA>> aksesuar më 15 gusht 2023.

51 Kosovo-Serbia (n 49).

protection of the constitution and laws, preservation of peace and welfare of all citizens of the Republic of Serbia and perform all my duties conscientiously and responsibly.⁵²

Such an approach, deemed unprofessional and undemocratic, was justified by the need to constitutionally preclude Kosovo's independence and entrench its position as a part of Serbia. Indeed, the statement that the province of Kosovo and Metohija is an integral part of the territory of Serbia dominates the preamble to the Constitution, where it also establishes the obligation for 'all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija'.⁵³ As a matter of fact, the Constitution only refers to the establishment of substantial autonomy for this province but leaves all details of the concept of substantial autonomy to be further defined by the legislators. This lack of substance and detail, combined with the establishment of the constitutional obligation to "protect Kosovo", had led certain critics to interpret this as an incorporation or reflection of the (mythical) "Kosovo oath" in the Constitution.⁵⁴ Such acts of the Serbian state are direct attacks against the state of Kosovo and also negatively affect the integration of the Serbian minority in institutional and public life in Kosovo.

On a contrasting note, certain groups of the Serbian community, otherwise known as parallel structures (some of which are categorized as terrorist organisations) that organise and work in Kosovo have continuously worked in full coordination with Serbia's political and security establishments to undermine and exacerbate tensions within Kosovo. It is important to note that this sabotage does not come from all the Serbs living in Kosovo but comes because of the pressure exerted by the parallel structures on their citizens. Some of the functions of many dubious businesses are owned by individuals under suspicion who have been blacklisted in the US for economic crimes, financing and supporting criminal groups.⁵⁵

Recently, there have been many incidents in those parts of the territory of Kosovo. The implementation of several agreements reached in Brussels has evoked many reactions within the Serbian community in the northern part of Kosovo. Specifically, the agreement to transition from illegal to legal license plates of the Republic of Kosovo has triggered tensions in that part of the country.⁵⁶ Serbian citizens under the pressure of parallel structures are not allowed to change their license plates. While there are a handful of citizens who have decided to change their license plates to legal ones, their cars have been targeted and burnt by parallel structures,⁵⁷ leaving them vulnerable and unprotected by Kosovo's state bodies. We assert with full accountability that it is the responsibility of the institutions of the Republic of Kosovo to protect the lives and property of Serbian citizens in those parts of the country.

52 Constitution of the Republic of Serbia of 30 September 2006 (commenced 8 November 2006) art 114 <<https://www.srbija.gov.rs/tekst/en/130144/constitution-of-serbia.php>> accessed 15 August 2023.

53 Ljubica Djordjević, *Conceptual Disputes over the Notions of Nation and National Minority in the Western Balkan Countries* (ECMI Research Paper 126, European Centre for Minority Issues 2021) 21.

54 *ibid.*

55 US Department of the Treasury, 'Treasury Targets Corruption Networks Linked to Transnational Organized Crime: Press Releases' (US Department of the Treasury, 8 December 2021) <<https://home.treasury.gov/news/press-releases/jy0519>> accessed 15 August 2023.

56 'Belgrade-Pristina Dialogue: Statement by the Spokesperson on the Latest Decision Related to License Plates' (European External Action Service, 29 October 2022) <https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-statement-spokesperson-latest-decision-related-license-plates_en> accessed 15 August 2023.

57 Xhorxhina Bami, 'Kosovo Serbs Report Arson Attacks Amid Licence Plates Dispute' (Balkan Insight, 16 November 2022) <<https://balkaninsight.com/2022/11/16/kosovo-serbs-report-arson-attacks-amid-licence-plates-dispute>> accessed 15 August 2023.

It is difficult to envisage a change in the situation in those parts of the country without Serbia's consent. Even when there was an agreement in Brussels and the separation of Serbia began, its implementation faced obstacles because of the intervention of Serbia through the parallel structures that functioned in those areas. This interference caused problems and high tensions, endangering the lives and property of Serbian citizens. Serbia's control is so extensive over the Serbs in the North of Kosovo that it affects their private and public lives in an extreme way.

Under the influence of Serbia and the parallel structures within the northern part of Kosovo, Serbian citizens were compelled to leave their public positions as police, mayors, prosecutors, judges, and more. This boycott of the attack on Kosovo by the Serbs came as a result of various tensions and pressure from Belgrade to use the opportunity for its own political and strategic objectives, capitalizing on the ongoing Russia-Ukraine war and the spread of the conflict in the Balkans as a concrete reality.⁵⁸ The series of events in the north of Kosovo, including the criminal structures of Serbia, the appearance of individuals in uniforms linked to the criminal group Wagner, the activation of the army in a state of readiness for war along the Kosovo border, the meetings involving Serbian leaders⁵⁹ (such as Aleksander Vulin⁶⁰ and Milorad Dodik⁶¹) with the Russian President Vladimir Putin, and many mobilisations strongly suggested that Serbia, influenced by Russia, also wanted to spread the conflict into the Balkans as well.

The existence of geographically concentrated areas of Serbs in Kosovo has facilitated Serbia's continued political presence in Kosovo. The Belgrade government has organised and funded parallel education, healthcare, civil services and clandestine security structures within Kosovo. Further, Serbia's political influence in Kosovo is extended through party politics. Nearly all the Serb political parties of Kosovo are branches of Serbian political parties, and their agendas are, therefore, set in Belgrade rather than Kosovo. Still, the Belgrade government has failed to impose total control over Kosovo Serbs.⁶² This narrative highlights a community that lives in the same country but has different approaches towards the state of Kosovo. Despite being the more privileged groups in their society, Serbs who live in the south of Kosovo are integrated into society. They participate in institutional life, live freely, enjoy all their legal and constitutional rights, and coexist harmoniously with Albanian residents and other communities in this part of the country.

The Serbs of northern Kosovo have not been integrated and do not want to be integrated into Kosovo society, driven by pressures and blackmail from parallel and criminal structures orchestrated by Serbia. Despite having existing rights, they pursue additional privileges, even though they do not use those they already have. Serbs in northern Kosovo, after the 1999

58 Ivana Stradner dhe Bekim Bislmi, 'Stradner: Rusia me strategji të përshkallëzimit të konfliktit Kosovë-Serbi' (Radio Evropa e Lirë, 13 dhjetor, 2022) <<https://www.evropalire.org/a/ivana-stradner-tensionet-ne-veri-te-kosoves-/32174283.html>> aksesuar më 15 gusht 2023.

59 'US and Ukraine Condemn Vulin's Participation in Moscow Conference' (EuroNews Albania, 26 May 2023) <<https://euronews.al/en/us-and-ukraine-condemn-vulins-participation-in-moscow-conference>> accessed 15 August 2023.

60 US Department of the Treasury, 'Treasury Sanctions Official Linked to Corruption in Serbia: Press Releases' (US Department of the Treasury, 11 July 2023) <<https://home.treasury.gov/news/press-releases/jy1606>> accessed 15 August 2023.

61 US Department of the Treasury, 'Treasury Sanctions Milorad Dodik and Associated Media Platform for Destabilizing and Corrupt Activity: Press Releases' (US Department of the Treasury, 5 January 2022) <<https://home.treasury.gov/news/press-releases/jy0549>> accessed 15 August 2023.

62 Denisa Kostovicova, 'Legitimacy and International Administration: The Ahtisaari Settlement for Kosovo from a Human Security Perspective' (2008) 15(5) International Peacekeeping 631, doi:10.1080/13533310802396160.

war, have refrained from paying for any services such as water, waste, energy,⁶³ and property taxes⁶⁴. All of these expenses are paid by the government of Kosovo using the funds collected through the taxes of its citizens. The Serbs in this part of Kosovo do not recognise the state of Kosovo, and practically in that part of the country, different structures of Serbia operate.

4.2 OTHER NON-MAJORITY COMMUNITIES IN KOSOVO

When considering the European mentality and democratic values, communities living in European countries are considered as an added value to society. However, this principle cannot be applied to the Balkan mentality where, in most cases, communities have frequently posed complex challenges for the countries where they reside. In many instances, minority communities have usually been manipulated by countries of origin, exploited to cause problems and undermine state institutions in the countries where they reside, thereby becoming agents of unrest (the scourge of evil).⁶⁵

In contrast, other non-majority communities living in Kosovo, such as Turks, Bosniaks, Gorani, Roma, Ashkali and Egyptians, enjoy a range of rights in the state of Kosovo that are safeguarded by the Constitution and laws in force in the Republic of Kosovo.

A comparison of the rights accorded to different communities in Kosovo reveals that the Serb community is on the top of the list of benefits guaranteed by the Ahtisaari package and the Constitution of the Republic of Kosovo.⁶⁶ On the other hand, despite having the status of the community in Kosovo and comprising a significant portion of the population, the RAE (Roma, Ashkali and Egyptian) community. This community is the most economically, socially and educationally discriminated.⁶⁷

The Turkish community in Kosovo leads a municipality (Mamusha) at the national level and is represented at the national level in Parliament. They also occupy a ministry within the Government of Kosovo, partially participate in the judicial system, and enjoy an educational system developed in their own language. They are also granted the freedom to promote their language, religion and culture.

‘In municipalities inhabited by a community whose mother tongue is not an official language and which constitutes at least 5% of the total population of that municipality, the language of that community shall have the status of an official language in that municipality and shall use equally with official languages. Despite the above, in the municipality of Prizren the Turkish language has the status of an official language.’⁶⁸

63 ‘Gjatë vitit 2021, Kosova ka paguar 41 milion euro për konsumatorët në veri’ (Kosovo.Energy, 13 Qershor 2022) <<https://kosovo.energy/gjate-vitit-2021-kosova-ka-paguar-41-milion-euro-per-konsumatoret-ne-veri>> aksesuar më 15 gusht 2023.

64 Luljeta Krasniqi-Veseli, ‘ATK: Serbët në veri iu shmangen tatimeve’ (Radio Evropa e Lirë, 18 janar, 2013) <<https://www.evropaelire.org/a/24877414.html>> aksesuar më 15 gusht 2023.

65 Orjon Ago, ‘Pakicat kombëtare dhe roli i tyre në marrëdhëniet ndërkombëtare në Ballkanin Perëndimor’ (dis, Universiteti i Tiranës 2006).

66 Constitution (n 24) ch 3.

67 Organizata për Siguri dhe Bashkëpunim në Evropë, Pasqyrë e komunitetit Rom, Ashkali dhe Egjiptian të Kosovës (OSBE 2020) <<https://www.osce.org/sq/mission-in-kosovo/443590>> aksesuar më 15 gusht 2023.

68 Law of the Republic of Kosovo No 02/L-37 ‘On the use Languages’ of 1 March 2007, art 2, para 2, 3 <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2440>> accessed 15 August 2023.

So, it can be concluded that Turks in Kosovo enjoy all their rights as a recognized community.

Other communities are also represented in parliament, government and other public institutions, except Croatian and Montenegrin citizens, who do not yet have their status recognised as a community due to their smaller population size. However, in the near future, these citizens are expected to be granted community status, allowing them to exercise their rights similar to other communities in the country.

Communities enjoying community status under the Constitution and applicable laws have guaranteed representation within public institutions. Political parties, coalitions, civic initiatives and independent candidates representing these communities are allocated seats won through the open election. A minimum number of seats are guaranteed for each community in the assembly. For example, the Roma community is guaranteed one seat, the Ashkali community is guaranteed one seat, and the Egyptian community is also guaranteed one seat. Additionally, one additional seat is awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes. The Bosnian community is guaranteed three seats, the Turkish community has two seats, and the Gorani community is allocated one seat if their respective won seats fall below the guaranteed number.⁶⁹ Furthermore, in addition to reserved seats for representation in the Assembly of Kosovo, the Constitution also mandates reserved seats for communities within the Government of the Republic of Kosovo.

Next, let us turn our focus to the RAE (Roma, Ashkali and Egyptian) community. Despite having representation in institutions, the members of these communities do not enjoy even the basic rights in Kosovo, encompassing areas such as education, socio-economic status and their overall well-being within society.

These communities mainly live in settlements populated by populations of different ethnicities, respectively, in mixed populations (Albanians, Serbs, Turks, Bosniaks, Roma, Ashkali, Egyptians, etc.). However, a significant proportion of them live in Albanian-inhabited settlements (about 26%), and a small number live in Serb-inhabited settlements (about 3%).⁷⁰ RAE students do not have the right to be educated in their own language; they are educated in Albanian or Serbian, depending on which municipality they reside in and the majority population in that municipality.

Traditionally, all three of these communities have high levels of illiteracy, but research data indicate a dire situation regarding the education level of these minority members communities. At present, the level of illiteracy is very high. All interviewees were asked to indicate how many years of schooling they had completed. 19.93% of the respondents have not completed even one year of education.⁷¹

Kosovo has taken steps towards addressing the challenges faced by the communities by drafting a National Strategy for their integration into the Kosovo society in all aspects of life. This strategy includes recommendations from the European Union, which defines four priority areas for the integration of Roma and Ashkali communities:

1. Access to Education: Ensuring all children complete at least compulsory education.

69 Constitution (n 24) art 64, para 2.

70 Kosovo Foundation for Open Society, *Pozita e pjesëtarëve të komunitetit Rom, Ashkali dhe Egjiptas në Kosovë* (Kosovo Foundation for Open Society (KFOS) 2009) 37.

71 Arsim Bajrami, *Parlamentarizmi: Aspekte krahasuese* (Universiteti I Prishtinës 2010).

2. Access to Employment: Reducing the employment gap between community members and the rest of the population.
3. Access to health care: Reducing the difference in health status between community members and the rest of the population.
4. Residential and access to essential services: Lessening the disparities in access to residential and public services (water, electricity, gas) between members of this community and the rest of the population.⁷²

We believe that these communities will remain a challenge for Kosovo's institutions in the future, but they should be given the support and attention that all communities receive regardless of their language or background.

Other communities in Kosovo are extremely integrated into society, public life, and state institutions. They are loyal to the state of Kosovo and contribute to the country's and society's development. They make up roughly equal percentages of the Serbian minority in Kosovo, but the rights and attention of the European Union, the United States and the entire international community are geared towards the Serbian minority and the privileges of the Serbs in Kosovo. Turkish, Bosnian and Gorani communities enjoy their rights and are well integrated into Kosovo society and Kosovo institutions. These communities have consistently cooperated and contributed to building and strengthening democratic institutions in Kosovo.

The discrimination faced by Roma, Ashkali and Egyptian communities in various aspects of life, including employment, education, and health, highlights a pressing need for Kosovo institutions to take these communities more seriously and invest more into improving their quality of life.

We think that with Kosovo's membership in international organisations, the advancement of minority rights will naturally advance. However, it is important to note that international organisations have an important role and function in advancing various objectives and in creating a standard in different fields such as education, health, economic development, environmental protection, human rights, humanitarian efforts, cooperation, establishing norms and principles between member states, contacts and solving intercultural conflicts.⁷³

However, it's essential to maintain a clear and critical perspective towards Kosovo's institutions because we have seen and are seeing many cases where they try to avoid implementing agreements for the rights of communities. These agreements, once ratified by the Assembly of Kosovo, have a binding character, and the government and other institutions of Kosovo must honour their international obligations.

It is the obligation for the Government of Kosovo to prioritise the rights of the Serbian community and work with them to find a solution for their integration into society. We think that this community is a victim of the politics of Belgrade and the parallel structures operating in the north of Kosovo. Therefore, they deserve to be free and use their rights that are guaranteed by the Constitution and laws. The rights of communities should be a priority of every

72 Republic of Kosovo, Strategy for Inclusion of Roma and Ashkali Communities in the Kosovo Society 2017-2021 (Office of the Prime Minister 2017) 9-10 <<https://www.refworld.org/pdfid/6012a7204.pdf>> accessed 15 August 2023.

73 Ardian Emimi and Alfred Marleku, "The Prospects of Membership in International Organizations: The Case of Kosovo" (2016) 9(2) *Acta Universitatis Danubius Relationes Internationales* 174.

state and government since these communities constitute a vital and contributing part of the population, significantly impacting the future of the country and its society.

5 CONCLUSIONS

By examining the constitutional and legal framework and various legal acts in force within the Republic of Kosovo, we can conclude that national minorities enjoy rights in accordance with European values and standards. However, not all minorities enjoy the same rights. It is clear that the Serbian minority are benefiting from greater privileges in relation to other minorities. This situation persists even though according to the last population census in 2011, 1.5% of Kosovo's total population consists of the Serbian minority. This percentage is not final because the Serbs who live in the northern part of Kosovo have boycotted participation in this census, but according to some data, Serbs make up about 5% of the population of Kosovo.

As for other minorities in Kosovo, in practical terms, we see that there are delays in the realization of their rights. The Roma, Egyptian and Ashkali communities are the most discriminated in Kosovar society in terms of education, health, social welfare, etc. These delays are the result of an absence of a comprehensive state strategy for the development and advancement of these communities. Tangible projects aimed at enhancing their well-being and raising awareness within these communities are also missing.

We think that several urgent needs must be addressed to improve their situation, including ensuring universal education for all the children of these communities, generating employment opportunities, and elevating their overall standard of living. These measures are vital for these communities to feel free and dignified within Kosovar society. However, despite these challenges, it is evident that while the Ahtisaari package was the most painful compromise for Kosovo, it has led to inequalities within both the majority population and the minority communities living in Kosovo.

The Republic of Kosovo should further enhance its efforts to strengthen the practical implementation of the rights afforded to the minorities under the existing legislation.

The institutions of Kosovo must implement the agreements reached in the Brussels dialogue with the mediation of the EU and the support of the USA because these agreements represent international obligations for Kosovo, and their proper execution is essential. The Serbian minority is an integral part of Kosovar society, and majority population should treat them equally to other citizens and in accordance with the constitutional, legal and international norms.

We hope that the neighbouring countries of the region also follow the example of Kosovo and recognise the basic rights of the national minorities living in their countries. The time has come for the countries of the Western Balkans to demonstrate their commitment to ending the mistreatment of minorities and to create an environment of inclusivity and respect.

Once again, we reiterate that national minorities are valuable and wealthy for societies, and we should consider them as such. We should not see them as foreigners or usurpers of power or material goods provided by the state. We hope that Kosovo will evolve into a country where every individual feels a sense of belonging and where they can envision their future and that of their children. In Kosovo, all individuals need to be protected and taken care of, irrespective of their ethnicity. It is the obligation and duty of the state and society of Kosovo

to preserve and further cultivate the spirit of coexistence while respecting the Constitution and the laws in force.

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