



Bachelor studies
Faculty of Law
University of Prishtina “Hasan Prishtina”

The Minority Communities Rights in the Republic of Kosovo under the EU Law

Iilir Hajraj

Abstract

This paper scrutinizes the legal rights of ethnic minorities in the Republic of Kosovo, the constitutional regime and the principles regarding minorities therein; mechanisms for the promotion and protection of minority rights in domestic order of the Republic of Kosovo on one hand, and in the European Union integration path on the other. The paper starts off with the introduction to the topic, explaining the concept of minorities and continuing to explain fundamentals of the constitutional system of Kosovo, confining to the key principles of minority rights’ protection framework. The paper proceeds to explain the institutional role and guaranteed rights for minorities in the public institutions, both central and local level. Then, it explains the relations between European Union and Kosovo determining the nature of the relations, and the obligations of Kosovo, confining to the aspect of the human rights in general, and minority rights in particular. Moreover, the paper shows the report regarding the implementation of minority rights on the ground in Kosovo, issued by the European Commission for the last years, highlighting the fields where the progress has been made, and where the improvements are required. The paper concludes that Kosovo’s legal framework broadly guarantees the protection of human and fundamental rights in line with European standards, but the implementation continues to remain challenging.

Presented at the JMU – MWP 13th Graduate Symposium, Fiesole, Italy,
7 April 2020

I. Introduction

Almost all States have one or more minority groups within their national territories, characterized by their own ethnic, linguistic or religious identity which differs from that of the majority population. Harmonious relations among minorities and between minorities and majorities and respect for each group's identity is a great asset to the multi-ethnic and multi-cultural diversity of our global society. Meeting the aspirations of national, ethnic, religious and linguistic groups and ensuring the rights of persons belonging to minorities acknowledges the dignity and equality of all individuals, furthers participatory development, and thus contributes to the lessening of tensions among groups and individuals. These factors are a major determinant of stability and peace.¹

Adopted by consensus in 1992, the United Nations Minorities Declaration² in its article 1 refers to minorities as based on national or ethnic, cultural, religious and linguistic identity, and provides that States should protect their existence. There is no internationally agreed definition as to which groups constitute minorities. It is often stressed that the existence of a minority is a question of fact and that any definition must include both objective factors (such as the existence of a shared ethnicity, language or religion) and subjective factors (including that individuals must identify themselves as members of a minority).³

In much of the political science and law literatures, the term `minority rights' is used to refer to legal provisions that have two key features: first, they are intended to recognize or accommodate the distinctive needs of non-dominant ethnic or racial groups; and second, they do so by adopting minority-specific measures, above and beyond the non-discriminatory enforcement of universal individual rights that apply regardless of group membership. In this respect, minority rights are often distinguished from anti-discrimination policies, as two distinct (but complementary) tools for protecting minorities from injustice at the hands of dominant groups. Ensuring that members of minorities have equal access as individual citizens to the ballot box is an anti-discrimination

¹ Fact Sheet No.18 (Rev.1), Minority Rights, available at <https://www.ohchr.org/Documents/Publications/FactSheet18rev.1en.pdf>

² Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Available at: <https://www.equalrightstrust.org/sites/default/files/ertdocs//Declaration%20on%20the%20rights%20of%20minorities.pdf>

³ Minority Rights: International Standards and Guidance for Implementation – UNHRC. Available at https://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf

measure; ensuring that a certain number of parliamentary seats are reserved for members of minorities, or establishing self-governing institutions within a minority's homeland, are minority rights measures. Similarly, the right to speak or publish freely in a minority language is entailed by the basic individual right of freedom of speech – to forbid speech in a minority language would constitute discrimination in the exercise of that right – but to insist that the state provide road signs, public education or tax forms in a minority's language is a minority right. Minority rights, in short, involve positive group-specific measures, not just the non-discriminatory enforcement of universal individual rights. Such minority rights may take the form of language rights, land claims, religious exemptions, guaranteed representation in legislative or advisory bodies, and various forms of territorial or cultural autonomy.

II. Minority Rights in Kosovo – Constitutional Aspects

General Principles of Minority Communities Rights according to Declaration of Independence and Constitution of Kosovo

As a key moment, the Declaration of Independence⁴ of Kosovo revealed and proclaimed a number of highly vital guarantees for ethnic minorities; it first affirmed that Kosovo remains a place of diversity, while further confirming that ethnic minorities form a part of the country. The Declaration also proclaimed the obligation to protect and integrate ethnic minorities in the political life, offering special guarantees as to their direct participation in the governance of the polity. It also assured that the special protection of ethnic minorities, as outlined in the Ahtisaari Proposal⁵, would be adopted fully.⁶ Turning to the constitutional system, article 57 of Constitution of Republic of Kosovo has enshrined some general principles of the rights of minorities and their members.⁷ The special constitutional status of non-majority communities and their position has been noted since the first paragraph of this article, which states decisively that communities enjoy special rights as defined by the Constitution, in addition to

⁴ The Declaration of Independence of Kosovo, February 17, 2008, is available at: http://www.kuvendikosoves.org/common/docs/Dek_Pav_.pdf.

⁵ Ahtisaari - Comprehensive Proposal for the Kosovo Status Settlement, available at:

<http://pbosnia.kentlaw.edu/Comprehensive%20Proposal%20for%20the%20Kosovo%20Settlement.pdf>

⁶ Korenica & Doli - The Consociational System of Democracy in Kosovo: Questioning Ethnic Minorities' Special Status in Kosovo's Constitutional Regime. available at:

[file:///C:/Users/User/Downloads/LPAD_A_773035_REVISES%20\(1\).pdf](file:///C:/Users/User/Downloads/LPAD_A_773035_REVISES%20(1).pdf)

⁷ E Drejta Kushtetuese – Arsim Bajrami & Florent Muqaj, 2018

the freedoms and human rights that the Constitution of the Republic of Kosovo has contemplated in Chapter III.⁸

For each community, whether that ethnic or religious group, elementary freedom is their identity. Communities in the Republic of Kosovo have the right to express, advance and develop their identity. The Law on the Protection and Promotion of the Rights of Communities in the Republic of Kosovo has specified in detail the elements of identity in relation to what is stated in Article 57 Paragraph 3, where the basic elements of identity, which also apply in the case of communities⁹, are:

1. Religion;
2. Language;
3. Tradition;
4. Cultural heritage.¹⁰

Non-majority communities in the Republic of Kosovo include: Serbs, Roma, Ashkali, Gorani, Bosniaks and Turks. The Republic of Kosovo's constitutional system broadly guarantees the rights of non-majority communities by guaranteeing equal rights for all communities and their members, thus incorporating the most prominent international instruments regulating the human rights. Among them is the Council of Europe Framework Convention for the Protection of National Minorities.¹¹

For members of minority and national minorities and for their representation in parliament, ensuring their organization is of the utmost political importance, because in that case, the opportunities for representation of minority interests in the representative body are greater. If one looks at the historical period to date, constitutional comparative practice was praised for great achievements in this field. Today, however, the situation is significantly different, so comparative experiences show certain regularities, so some elements of a general character can

⁸ The Constitution of the Republic of Kosovo, article 57.1

⁹ E Drejta Kushtetuese – Arsim Bajrami & Florent Muqaj, 2018

¹⁰ The Law on the Protection and Promotion of the Rights of Communities in the Republic of Kosovo, Article 2.1

¹¹ The Constitution of the Republic of Kosovo, article 22.

be identified which directly or indirectly contribute to the realization of the so important right of members of minorities and their communities in parliament.¹²

Ethnic Minorities Protection Mechanisms at the Central and Local Institutional Levels

The Constitution of the Republic of Kosovo provides a number of institutional mechanisms designed to protect ethnic minorities and to serve their political claims. The protection of ethnic minorities in Kosovo follows a two-fold approach: the first intends to protect and enhance the rights of communities and their members at the national level, while the second aims to establish sufficient functional and institutional protection at the local level. Of course, these approaches are complementary, and are intended mainly to provide sufficient protection for communities, either in terms of representation or participation in the social and political life.¹³

Minorities and their members shall be entitled to equitable representation in employment in public bodies and public enterprises at all levels, including in particular in the police service in areas inhabited by the relevant community, while respecting at the same time rules relating to the competence and integrity of public administration governance.¹⁴

Initially, at the national level, therefore, the constitution provides a special representation at central-level institutions for ethnic minorities. The constitution, in direct consideration of this issue, in Article 64 states that “twenty (20) of the one hundred twenty (120) seats are guaranteed for representation of communities that are not in the majority in Kosovo.”¹⁵ In order to address the protection of the minority interests in an adequate manner in the legislative body, the constitution provides the ‘veto’ right for the representatives of the minorities in the parliament. In this regard, the procedure for constitutional amendments is regulated as follows:

¹² KUSHTETUTA E REPUBLIKËS SË KOSOVËS - Komentar - Prof. Dr. Enver Hasani / Prof. Dr. Ivan Čukalović.

¹³ Korenica & Doli - The Consociational System of Democracy in Kosovo: Questioning Ethnic Minorities’ Special Status in Kosovo’s Constitutional Regime.

¹⁴ The Constitution of the Republic of Kosovo, article 61

¹⁵ Korenica & Doli - The Consociational System of Democracy in Kosovo: Questioning Ethnic Minorities’ Special Status in Kosovo’s Constitutional Regime. P.5

Any amendment shall require for its adoption the approval of two thirds (2/3) of all deputies of the Assembly including two thirds (2/3) of all deputies of the Assembly holding reserved or guaranteed seats for representatives of communities that are not in the majority in the Republic of Kosovo.¹⁶

As regards the structure of the government, the constitution stipulates that there must be at least two ministers from ethnic minorities within the government of Kosovo, with at least one Serbian;¹⁷ hence, ethnic minorities have two reserved seats in the government despite the fact that the governmental coalition could have no ethnic minority political party within it. This being said, this constitutional determination allows ethnic minorities' ministers to represent the interests of their communities in the government and its policy-making processes. Despite the fact that the constitution offers two reserved seats for ethnic minorities in the government, it does not grant them any power of veto, thus arguing that ethnic minority representatives could be easily overturned by the majority vote in the government.¹⁷

In addition to the government, the constitution affirms that two (of nine) members of the Constitutional Court¹⁸ of Kosovo shall belong to ethnic minorities. In addition, it goes on to guarantee 15 percent of the judges of the Supreme Court of Kosovo (or at least three) must be members of ethnic minorities. As regards representation within the judicial system, the constitution sets out that "composition of the judiciary shall reflect the ethnic diversity," and that the judges' membership of the courts "shall reflect the ethnic composition of the territorial jurisdiction of the respective court."¹⁹

Besides providing ethnic minorities with a broad level of functional autonomy, the Ahtisaari Settlement Proposal and the Constitution of Kosovo direct quite a significant degree of territorial autonomy to local ethnic communities. specific powers, all Serbian-majority municipalities have been granted with the responsibility of maintaining, organizing, and

¹⁶ Constitution of the Republic of Kosovo, 2008, Art 144. para. 1.

¹⁷ Korenica & Doli - The Consociational System of Democracy in Kosovo: Questioning Ethnic Minorities' Special Status in Kosovo's Constitutional Regime. P.6

¹⁸ The Constitutional Court of the Republic of Kosovo has played a significant role in the protection and the promotion of the minorities rights. See inter alia: Constitutional Court of Kosovo, Case No. KO 01/09, Cemal Kurtisi and The Municipal Assembly of Prizren, available at: http://www.gjks.org/repository/docs/ko_01_09_Ven_ang.pdf.

¹⁹ Korenica & Doli - The Consociational System of Democracy in Kosovo: Questioning Ethnic Minorities' Special Status in Kosovo's Constitutional Regime. P.6

running the cultural policy of the Serbian community, thus enjoying full autonomy from the central institutions vis-à-vis this policy area.²⁰

This model of governance, wherein ethnic communities are granted special protectionist mechanisms, certainly intends to accommodate ethnic communities into the state's political identity, therefore contributing to the unitary nature of the state.²¹

III. Kosovo's Relations with the EU

Kosovo's Relations with EU

The EU has developed a policy to support the gradual integration of the Western Balkan countries with the Union. On 1 July 2013, Croatia became the first of the seven countries to join, and Montenegro, Serbia, the Republic of North Macedonia and Albania are official candidates. Accession negotiations and chapters have been opened with Montenegro and Serbia, and Bosnia and Herzegovina and Kosovo are potential candidate countries.²²

In 2008 the EU repeated its willingness to assist the economic and political development of Kosovo through a clear European perspective. The EU helps contribute to stability in Kosovo through the EULEX rule of law mission in Kosovo and Special representative in Kosovo.²³ Kosovo's interest to be part of the Union was shown since the early 2000's. Prior to independence and statehood, Kosovo's objective was to integrate with the EU.²⁴

Kosovo is a potential candidate for EU accession. It unilaterally declared its independence in February 2008. All but five Member States (Cyprus, Greece, Romania, Slovakia and Spain) have recognized Kosovo's independence. In the region, Serbia and Bosnia and Herzegovina have not recognized Kosovo. A Visa Liberalization Roadmap was issued in June 2012. In July 2018, the Commission confirmed that Kosovo had fulfilled the last criterion. In September 2018, the European Parliament followed suit and decided to enter into inter-

²⁰ Ibid. P9

²¹ Ibid

²² European Parliament Fact Sheets on the European Union. Available at

<https://www.europarl.europa.eu/factsheets/en/sheet/168/the-western-balkans>

²³ https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/kosovo_en

²⁴ ²⁴ Kosovo – EU Relations: The History of Unfulfilled Aspirations(KFOS,2013). Available at <https://kfos.org/wp-content/uploads/2013/04/Kosovo-EU-Relations-The-History-of-Unfulfilled-Aspirations.pdf>

institutional negotiations, which are ongoing. After a landmark agreement on normalizing relations (the ‘Brussels Agreement’) was reached in April 2013 by Belgrade and Pristina, the European Council decided to open negotiations on an SAA with Kosovo in June 2013. The SAA entered into force on 1 April 2016. Kosovo’s future EU integration — like Serbia’s — remains closely linked to the EU-facilitated high-level dialogue between Kosovo and Serbia, which should lead to a legally binding comprehensive agreement on the normalization of their relations.²⁵

The Stabilization and Association Process (SAP) is the European policy framework for relations between the EU and the Western Balkan countries, all the way to their eventual accession to the Union. The partnership between the EU and the Western Balkans is in the interest of all sides, promoting peace, stability, freedom, security and justice, prosperity and quality of life. The SAP promotes stabilization and the transition to a market economy, regional cooperation and preparation for EU accession.²⁶

The EU has conducted regular meetings with the Kosovar authorities as part of the Stabilization and Association Process Dialogue (SAPD). This monitors progress in the EU enlargement process, following a "carrots and sticks" approach (see the Economic Relations section below). With the entry into force of the Stabilization and Association Agreement (SAA) between the EU and Kosovo on 1 April 2016, the dialogue framework will be reformed – discussions will take place within the SAA framework, in sub-committees.²⁷

The EU and the Kosovar authorities are discussing a wide range of policy issues and agreeing on follow-up actions in meeting conclusions. Plenary meetings are held once a year. Prior to each SAP Dialogue, the EU discusses the same issues with local civil society. Annual Country Reports assess the readiness of the Western Balkan countries to move closer to the EU.²⁸

Specific sectoral meetings have been set up for technical discussions in the following areas: justice, freedom and security; innovation, information society and social policy; agriculture, fisheries, forestry and food safety; internal market, competition and consumer/health

²⁵ European Parliament Fact Sheets on the European Union. Available at <https://www.europarl.europa.eu/factsheets/en/sheet/168/the-western-balkans>

²⁶ https://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-eu_en

²⁷ https://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-eu_en

²⁸ https://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-eu_en

protection; trade, industry, customs and taxation; transport, energy, environment and regional development; and economic and fiscal matters. Sectoral meetings take place once a year.²⁹

IV. Kosovo's Obligations on Minority Rights towards EU Integration Path

On the issue of minority rights in Kosovo, the Stabilization and Association Agreement lays down contractual obligations between the European Union and Kosovo. The issue of guaranteeing the promotion and protection of human rights with the SAA constitutes a key principle on the basis of which this agreement is also built.

In the “preamble” of the Stabilization Association Agreement where the principles of the agreement are mentioned, it is stated that: “CONSIDERING the commitment of the Parties to increasing political and economic freedoms as the very basis of this Agreement, as well as their commitment to respect human rights, including the rights of persons belonging to minorities and vulnerable groups”. Then: “REAFFIRMING the attachment of the Parties to the implementation of international obligations, in particular but not only, related to the protection of human rights and the protection of persons belonging to minorities and vulnerable groups and in this respect noting the commitment of Kosovo to abide by the relevant international instruments”.³⁰

From the content of the principles embedded in the SAA “Preamble”, it is implied that the importance of the minority rights in Kosovo is very large, and the European Union attaches a special treatment for the minorities. It is understandable that the minorities in Kosovo needed a policy like this in order to protect them and their identities, their interests and other values, due to the political situation in Kosovo, in the aftermath of the war, and during the transition period.

The Article 4 of SAA, sets the very first Kosovo's contractual obligation towards the human rights in general, and the minority rights in particular. According to Article 4, Kosovo commits to abide by international law and instruments, in particular, but not only, related to the

²⁹ https://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-eu_en

³⁰ Stabilization and Association agreement between the European Union and Kosovo. Available at <file:///C:/Users/User/Desktop/EU%20research%20paper%20-%20Firence%20Conference/SAA%20-%20Kosovo.pdf>

protection of human and fundamental rights, to the protection of persons belonging to minorities, and without discrimination on any ground.³¹. Furthermore, the Article 7 of the Agreement sets the obligations of respect to minorities in the perspective of development.

The aspect of the social cooperation, is regulated within the agreement, respectively, with the Article 106 that stresses that: The Parties shall cooperate to facilitate the reform of employment policy in Kosovo, in the context of strengthened economic reform and integration, and with a view to supporting inclusive growth. Cooperation shall also seek to promote social dialogue as well as gradual legal approximation of Kosovo legislation on labour, health, safety at work and equal opportunities for women and men, for persons with disabilities and for persons belonging to minorities and other vulnerable groups to the EU acquis, taking as a reference the level of protection existing in the EU. This may also include Kosovo's alignment with the EU acquis in the field of labor law and regarding women's working conditions. Cooperation shall also promote the adoption of comprehensive social inclusion and anti-discrimination policies in Kosovo. Cooperation shall also include establishing a social protection system in Kosovo able to support employment and inclusive growth.³²

To conclude with the contractual agreement, respectively, the Stabilization Association Agreement, the Article 108 determines the cultural cooperation. According to this article, The Parties undertake to promote cultural cooperation. This cooperation shall serve to strengthen the cultural policy capacity of Kosovo, reinforce the capacity of cultural operators and increase mutual understanding between individuals, minorities and peoples. Cooperation shall also support institutional reforms to promote cultural diversity in Kosovo, including on the basis of principles enshrined in the UNESCO Convention on the protection and the promotion of the diversity of cultural expressions, adopted in Paris on 20 October 2005³³.

V. The Implementation in Practice of Minority Rights in Kosovo

³¹ Stabilisation and Association Agreement between the European Union and Kosovo, Article 4. Available at <file:///C:/Users/User/Desktop/EU%20research%20paper%20-%20Firence%20Conference/SAA%20-%20Kosovo.pdf>

³² Therein Article 106.

³³ The Convention available at: <https://www.arts.gov.au/unesco-convention-cultural-diversity>

The entire legislative nomenclature and the legal system for guaranteeing the rights of minorities aim to accommodate the interests of minorities in Kosovo society. But the realization of these rights requires a proper implementation in practice, as defined by all instruments, including the Stabilization and Association Agreement. We will now look at some parts of the Progress Report³⁴ that reflect the practical realization of minority rights in recent years in Kosovo.

Kosovo* 2016 Report

Implementation of the legal framework on minorities continued to be challenging. The institutional set-up and mechanisms for protecting minority communities are in place at central and local level. In the north, Municipal Offices for Communities and Return and Community Committees have been established and have started to work. Municipal Safety Councils, introduced in 2009 to improve community safety and stability, also need to be established in the north to further strengthen the protection of minority communities. Kosovo institutions must assume ownership and focus more on implementation by increasing interaction between the Kosovo central and local institutions and minority communities. The Office of Community Affairs needs to be fully involved in developing and taking forward policy-making on the protection of national minorities.³⁵

In March 2016 the second round of an internship program for minority communities in public institutions was implemented. However, the employment of members of minority communities in the civil service and public enterprises remains very challenging. Progress was made with a regulation enabling graduates of the University of Mitrovicë/Mitrovica to have their diplomas certified for the purposes of employment, professional licensing and admission to professional exams in Kosovo institutions. As a result of affirmative measures and quotas, more students

³⁴ The Progress Report is an instrument by which the European Commission senses the progress of a country in meeting the European agenda within the calendar year. This report is published once a year, early October of each year.

³⁵ COMMISSION STAFF WORKING DOCUMENT Kosovo* 2016 Report. Available at https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/key_documents/2016/20161109_report_kosovo.pdf

from minority communities were able to enroll in public universities. This represents a positive step towards effective inclusion of minority communities in Kosovo.³⁶

The overall security situation for minority communities remains relatively stable and largely unchanged. However, there are recurring incidents of property theft, damage and related crimes targeting Kosovo Serb returnees and other members of minority communities. Such incidents increase the feeling of insecurity, negatively impact on their livelihood and society as a whole, and deter other potential returnees. Law enforcement and judicial authorities should make every effort to bring the perpetrators to justice and counter a perception of impunity in order to restore confidence among victims and in society as a whole. Hate crimes targeting minority communities need to be more resolutely dealt with. Further work is required to take account of Article 147 and 74 § 2.12 of the Criminal Code. Additional recruitment of police officers from minority communities in affected areas, in particular in the west of Kosovo, is needed.³⁷

The situation of the Roma, Ashkali and Egyptian communities remains challenging. Following up on the 2009-2015 strategy, the government aims at finalizing the new policy commitments, focused on the inclusion of these communities in society, before the end of 2016. While the consultation process was inclusive, only some recommendations by civil society and international organizations were taken on board. Municipalities are encouraged to renew, approve and implement Local Action Plans. Recommendations from the November seminar on Roma, Ashkali and Egyptian Communities need to be implemented.³⁸

Kosovo* 2018 Report

The legal framework broadly guarantees the protection of human and fundamental rights in line with European standards. However, additional efforts are needed regarding enforcement. Implementation of human rights strategies and legislation is often undermined by inadequate financial and other resources, particularly at local level, limited political prioritization and lack of coordination. More needs to be done to effectively guarantee the rights of persons belonging to minorities, including Roma and Ashkali² and displaced persons, to ensure gender equality

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

in practice, to set up an integrated child protection system and to advance the protection of cultural heritage. Kosovo has some level of preparation in the area of freedom of expression, which is enshrined in the constitution. Kosovo benefits from a pluralistic and lively media environment. However, threats and attacks against journalists have continued. The Assembly showed limited commitment to finding a solution for sustainable funding of the public broadcaster, leaving it vulnerable to political pressure.³⁹

In the reporting period, a number of personnel changes took place in government. Of 21 ministers, 19 are men. Five ministerial posts continue to be held by minority representatives, 9 but the ministers belonging to Srpska Lista do not participate in government meetings and decision-making.⁴⁰

Much more needs to be done to address the recommendations of the 2018 report, which remain valid. In the coming year, Kosovo should in particular: → reassess and strengthen the efficiency and effectiveness of the mechanisms for the coordination and implementation of human rights, including the rights of persons belonging to minorities and displaced persons.⁴¹

Kosovo has an adequate institutional and legal framework for the rights and protection of minorities, including relevant strategies and action plans, but implementation remains weak. Greater coordination is needed at both central and local levels in support of minority communities. In order to promote a lasting inter-ethnic co-existence, the government needs to step up its efforts to create the conditions for minority communities fully to exercise their rights. They continue to face challenges regarding a secure environment, regaining and accessing property, civil registration, being able to use their own language, adequate provisions for education, employment opportunities and social welfare.⁴²

The Office for Community Affairs under the Prime Minister's Office focuses in practice on implementing projects for minority communities, while its actual mandate is much broader, including in-depth involvement in policy-making regarding communities' rights and interests. The budget of the Consultative Council for Communities in the President's Office was

³⁹ COMMISSION STAFF WORKING DOCUMENT Kosovo* 2018 Report. Available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

increased in the reporting period. More use should be made of the Council's expertise when it comes to formulating policy. The technical working group set up to implement recommendations based on the Council of Europe's Framework Convention for National Minorities met once in the reporting period. Implementation of the recommendations remains limited.⁴³

The overall security situation for minority communities remains stable. However, there are recurring incidents of property and livestock theft, which frequently affect Kosovo Serbs, as well as other minority communities. Such incidents, even when they are not clearly ethnically biased, negatively influence the security perceptions of the affected community. In addition, cases hindering freedom of movement have affected displaced Kosovo Serbs visiting religious sites. Security incidents have also affected non-Serb communities in the north of Kosovo. Increased follow-up by judicial authorities is required in order to bring the perpetrators of such incidents to justice. Relevant institutions should increase their efforts to record accurately and investigate all potential ethnically motivated incidents. Increased recruitment of minority police officers would contribute to an enhanced sense of security among the affected communities.⁴⁴

The situation of the Roma and Ashkali communities remains challenging and, in spite of efforts, they still suffer from marginalization and discrimination, with women particularly affected. The poverty levels of these communities remain high compared to other communities in Kosovo. Implementation of the 2017-2021 strategy and action plan for the inclusion of the Roma and Ashkali communities in Kosovo society remains weak and policy interventions are not systematically evaluated. The coordination of government and donor assistance needs to be improved.⁴⁵

Some improvements can be noted in the field of education. The enrolment rate at all levels is increasing, although it is still significantly below the average and many young Roma and Ashkali do not reach higher levels of education. The Ministry of Education, Science and Technology has increased the number of scholarships for Roma, Ashkali (and Egyptian)

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid

students from 500 to 600 in the current academic year and has allocated funds to the so far mainly donor-funded learning centers.⁴⁶

Kosovo made some progress in improving the business environment. While it made some improvements as regards registering a business and getting a loan, its overall ranking in the World Bank's Doing Business report fell to 44th in 2018 from 40th a year earlier. Legislative changes contributed to a more favorable business environment. The new Law on business organizations (adopted in May 2018) improved the provisions on the registration of business organizations and corporate governance, and strengthened the rights of minority shareholders. A revamped electronic platform should speed up business registrations. The new Law on accounting, audit and financial reporting (adopted in April 2018) streamlines reporting requirements for companies and defines the interest of public entities in line with the acquis.⁴⁷

Kosovo* 2019 Report

The legal framework broadly guarantees the protection of human and fundamental rights in line with European standards. However, the implementation of human rights legislation and strategies is often undermined by inadequate financial and other resources, particularly at local level, limited political prioritization and lack of coordination. The existing mechanisms for coordination and implementation of human rights are ineffective. The large dependence on foreign donors remains. More needs to be done to effectively guarantee the rights of persons belonging to minorities, including Roma and Ashkali² and displaced persons, to ensure gender equality in practice, to set up an integrated child protection system and to advance the protection of cultural heritage. Kosovo has some level of preparation regarding freedom of expression, which is enshrined in the Constitution. Kosovo benefits from a pluralistic and lively media environment. Rule of law institutions increasingly follow up on threats and attacks against journalists and there is a decrease in the number of incidents. A sustainable

⁴⁶ Ibid

⁴⁷ Ibid

solution for the funding of the public broadcaster remains to be adopted. The broadcaster remains vulnerable to political pressure and influence⁴⁸.

Much more needs to be done to address the recommendations of the 2018 report, which remain valid. In the coming year, Kosovo should in particular:

ensure the solid implementation of the strategy and action plan for the inclusion of Roma and Ashkali communities, including the allocated funding⁴⁹.

The Office for Community Affairs under the Prime Minister's Office focuses in practice on implementing projects for minority communities, while its actual mandate is much broader, including in-depth involvement in policy-making regarding communities' rights and interests. The budget of the Consultative Council for Communities in the President's Office was increased in the reporting period. More use should be made of the Council's expertise when it comes to formulating policy. The technical working group set up to implement recommendations based on the Council of Europe's Framework Convention for National Minorities met once in the reporting period. Implementation of the recommendations remains limited.⁵⁰

The fact that the legal criteria required from the Stabilization Association Agreement, as consistently repeated by the Progress Report during the last years, is quite well fulfilled, in terms of harmonization of the domestic legislation with *acquis communautaire*. Turning to the political criteria, the Republic of Kosovo still 'stuffers' when it comes to creating genuine and constructive strategies in order to fully accommodate the ethnic diversity, as the reports stated. Since the Serbian Community mainly faces problems of political nature in the representation, the problem of marginalization and discrimination of the Roma and Ashkali communities remains a challenging and it is stressed out repeatedly in the reports last years. The 2017 – 2021 inclusion plan mentioned needs to be stronger and implemented in different means to be successfully effective. Some progress has been made in the field of education, but the number of uneducated members of Roma and Ashkali Communities remain high, and this is a

⁴⁸ COMMISSION STAFF WORKING DOCUMENT Kosovo* 2019 Report. Available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>

⁴⁹ Ibid

⁵⁰ Ibid

dangerous obstacle for these communities to be accommodated. In the economic aspect, as prescribed in the reports, some progress has also been achieved in the field business.

Conclusion

The purpose of this study, was to treat some of the key issues regarding the rights of minority communities, with a special focus on the international obligations of the Republic of Kosovo towards the EU Integration Path regarding minority rights. The minority rights realization and implementation is not only an obligation under the EU for the Republic of Kosovo, but also from the unilateral obligations that the Republic of Kosovo has taken by incorporating the most pertinent international legal instruments in its constitutional system. Kosovo's status in the EU integration is currently Potential Candidate, which means that the Republic of Kosovo is in the right path of the EU Integration. The fields of the common policies of the EU, also includes the Human Rights field, particularly the rights of minority communities. The subject to this study was the legal framework of the Republic of Kosovo, and its implementation. As we already accomplished, Kosovo has an adequate institutional and legal framework for the rights and protection of minorities, but the biggest challenge for the authorities of the Republic of Kosovo remains the implementation of the rights contemplated in the legal framework. During the last years, some progress has been made in the field of education and in improving the business environment, but the situation of minority communities remains challenging, they still suffer from marginalization and discrimination.

References

- Fact Sheet No.18 (Rev.1), Minority Rights, available at:
<https://www.ohchr.org/Documents/Publications/FactSheet18rev.1en.pdf>
- The Declaration of Independence of Kosovo, February 17, 2008, is available at:
http://www.kuvendikosoves.org/common/docs/Dek_Pav_.pdf.

- Ahtisaari - Comprehensive Proposal for the Kosovo Status Settlement, available at: <http://pbosnia.kentlaw.edu/Comprehensive%20Proposal%20for%20the%20Kosovo%20Settlement.pdf>
- Korenica & Doli - The Consociational System of Democracy in Kosovo: Questioning Ethnic Minorities' Special Status in Kosovo's Constitutional Regime. available at: [file:///C:/Users/User/Downloads/LPAD_A_773035_REVISES%20\(1\).pdf](file:///C:/Users/User/Downloads/LPAD_A_773035_REVISES%20(1).pdf)
-
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, available at <https://www.equalrightstrust.org/sites/default/files/ertdocs//Declaration%20on%20the%20rights%20of%20minorities.pdf>
- Minority Rights: International Standards and Guidance for Implementation – UNHRC. Available at https://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf
- Anaya, S. James, 2004. *Indigenous Peoples in International Law*. New York: Oxford University Press.
- The Penguin Dictionary of Philosophy, Penguin Books, London, 1997.
- Will Kymlicka, *Multicultural Citizenship, A liberal Theory of Minority Rights*, Clarendon Press, Oxford, 1995, p.117 ff.
- Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, Oxford University Press, Oxford, 2001, p.55.
- See *Multicultural Citizenship* pp.121-123.
- E Drejta Kushtetuese – Arsim Bajrami & Florent Muqaj, 2018.
- The Constitution of the Republic of Kosovo, article 57.1.z
- The Law on the Protection and Promotion of the Rights of Communities in the Republic of Kosovo.
- KUSHTETUTA E REPUBLIKËS SË KOSOVËS - Komentar - Prof. Dr. Enver Hasani / Prof. Dr. Ivan Čukalović.
- https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/kosovo_en
- ¹Kosovo – EU Relations: The History of Unfulfilled Aspirations(KFOS,2013). Available at <https://kfos.org/wp-content/uploads/2013/04/Kosovo-EU-Relations-The-History-of-Unfulfilled-Aspirations.pdf>
https://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-eu_en
- European Parliament Fact Sheets on the European Union. Available at <https://www.europarl.europa.eu/factsheets/en/sheet/168/the-western-balkans>

- Stabilisation and Association agreement between the European Union and Kosovo. Available at <file:///C:/Users/User/Desktop/EU%20research%20paper%20-%20Firence%20Conference/SAA%20-%20Kosovo.pdf>
- COMMISSION STAFF WORKING DOCUMENT Kosovo* 2016 Report. Available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_kosovo.pdf
- COMMISSION STAFF WORKING DOCUMENT Kosovo* 2018 Report. Available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>
- COMMISSION STAFF WORKING DOCUMENT Kosovo* 2019 Report. Available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>