

LINGUISTIC, CULTURAL, AND EDUCATIONAL RIGHTS OF MINORITIES MEDIATING INTER-ETHNIC RECONCILIATION AND PROMOTING INCLUSIVENESS: THE CASE OF KOSOVO

Avdi SMAJLJAJ*¹

Abstract: *Multiethnicity is one of the fundamental conditions of Kosovo's statehood. It constituted the backbone of Ahtisaari's final status settlement proposal, internalized within the constitution and institutional structure. Linguistic, cultural, educational, and political rights are granted by the constitution and laws referring to minorities. However, despite the legal and institutional foundations of minority rights, on the terrain, there seem to be still challenges in implementing and enjoying those rights by minorities. Thus, the paper aims to look at the extent to which linguistic, cultural, and educational rights are being implemented and enjoyed by minorities, from their establishment up to the present, through exploring a number of research questions. What are the challenges and obstacles to the implementation of those rights? How these challenges are reflected in inclusiveness and interethnic reconciliation? The paper is based on legal documents, statistical data, reports, and studies on minority rights in Kosovo.*

Keywords: *minority, minority rights, inclusiveness, interethnic relation, Kosovo*

UDC: 323.15:342.724(497.115]

JEL Code: N40

Introduction

Ethnicity is the main feature of the Balkan peninsula, including the western Balkans. Due to its context, throughout history, ethnicity in the western Balkans was the primary driver of politics. In this regard, at times the multiethnicity as a socio-political setting formula proved very successful in addressing and accommodating the co-existence of various ethnicities within the political systems. Different from former versions of multiethnicity, such as the previous one within the communist system, the current model of multiethnicity is structured along liberal democratic lines. A multiethnic setting within a liberal democratic system is supposed to have better chances to be effective. It provides a broader spectrum of support for such a setting from all the parties involved, respectively all ethnicities. Furthermore, a liberal democratic model of multiethnicity offers space and opportunity to all the ethnicities to actualize themselves, which is necessary for its bright prospects.

Kosovo, as the case study of this paper, has managed to establish a very multiethnic political system, guaranteed on very liberal democratic principles. Multiethnicity constitutes the backbone of Kosovo political system. It is institutionalized at the constitution, law, and institutional level, as foreseen by the Ahtisaari's proposal. This is one of the main features that make Kosovo state very much know as an Ahtisaarian state.

The Kosovo multiethnicity symbolically is manifested in the state symbols. Institutionally, it is well structured from the local government through decentralization, up to the central government through veto decision making power, reserved seats in the parliament, and reserved

*¹ Avdi Smajljaj, PhD in Political Sciences, Lecturer at the Department of Political Science and International Relations - Epoka University, asmajljaj@epoka.edu.al, ORCID: 0000-0003-0540-5149

positions at central government institutions. Furthermore, cultural, linguistic, and educational rights are explicitly regulated through constitutional settings, laws, and other sublegal acts.

However, there is still a gap between the institutionalized legal and political guarantees, on one side, and the implementation of those cultural, linguistic, and educational rights on terrain, at the level of citizens, on the other side. Moreover, the fruits of the multiethnic settings in terms of inclusiveness and inter-ethnic reconciliation are far from the initial idealized expectations.

After explaining the legal and institutional settings of cultural, linguistic and educational rights, the paper aims to evaluate of the up to date implementation, opportunities and obstacles associated with it, and their impact on the inclusiveness of ethnic minorities and inter-ethnic reconciliation.

The issue of linguistic, cultural, educational, and political rights of minorities, especially the difficulties accompanying the implementation, remains rather understudied. The legal dimension is considerably explored. Therefore, the paper aims to assess the failures of implementation of these rights and the consequences of the gap between the written and actual rights of minorities, in particular the way the failure of implementation impacts inclusiveness and inter ethnic reconciliation prospects.

The paper is based on the exploratory research methodology, to investigate the gap between the legal written rights of minorities, and the actual rights of minorities, which might be different. The paper is based mostly on secondary data, books, articles, data, statistics, and reports.

Multiethnic composition of Kosovo

By the constitution, Kosovo is set as a multiethnic state and society. The multiethnic composition of society during history is recently institutionalized as a multiethnic state, on liberal democratic principles, different from past experiences. As such, the ethnic composition of Kosovo is comprised of a number of ethnicities. The ethnic Albanians constitute the majority in terms of numbers. In the last census of 2011 (Agjencia e Statistikave të Kosovës, 2011 Census Results, Pristina 2012, including the explanation that the municipalities in the northern part did not participate), ethnic Albanians covered around 92% of the population, Bosniaks 1.6%, Turks 1.1%, Ashkali 0.9%, Egyptian 0.7%, Gorani 0.6% and Roma 0.5%. The rest include ethnic Serbs, estimated around 5%, but due to their decision that the Serbs of the northern municipalities, not to participate in the last census, it is impossible to speak with accuracy. In terms of ethnic features and differences, the Ashkali and Egyptian communities have cultural similarities to the Roma, but they differ in their origins, while in terms of religion, they are Muslims and speak Albanian language. The Roma, Ashkali, and Egyptian communities are often known as RAE community. However, aside from the above mentioned minority communities, later the amended Law on the Protection and Promotion of Minorities recognized two more communities, the Montenegrin and the Croatian minorities that constitute under 1% of the population (Law no. 04/1-020 on amending and supplementing of the law no.03/1-047 on the protection and promotion of the rights of communities and their members in Republic of Kosovo, 2011, Art. 1).

The Ahtisaari state

Kosovo state is also known as an Ahtisaari state. The comprehensive proposal provided by Mr. Marti Ahtisaari for the final status settlement, after a negotiation process, laid down the foundation of the multiethnic state and it is integrated within the constitution,

to the level of overruling it in case of an eventual contradiction between the constitution and the comprehensive proposal. The main concern of the proposal seems to have been to find a workable solution for the final status settlement that would accommodate minorities by providing safeguards to minority community rights. In a post conflict society these arrangements appear to have been necessary, at least for some time in transitory period, until mechanisms of inter ethnic trust development start to give the results. Since the comprehensive proposal became part of the state constitutions after the independence, it made Kosovo constitutionally a 'multi ethnic society consisting of Albanians and other communities' as the Constitution of the Republic of Kosovo specified (Art. 3.1).

The constitution has established the rights of minority communities in several directions. It is important to emphasize that the constitution itself tries to avoid the very phrase, the minority, thus referring to the minorities as communities. This reflects a sense of positive approach and spirit towards minorities. Among the main major rights provided to communities is the right to the native language. In this respect, Kosovo is also multilingual society at the municipality level, and bilingual at the national level. The constitution of the Republic of Kosovo (Art. 5) makes the Albanian and Serbian languages official languages at the national level, while Turkish, Bosnian, and Roma official languages at the municipality level. Furthermore, since the Kosovo constitution is an open constitution in terms of the applicability of international conventions, including those related to the rights of minorities, it constitutes an additional empowerment beyond the legal protection of minorities by the national constitution. Among others, the Convention on the Protection of National Minorities of the Council of Europe adds to the principles and settings related to safeguarding the rights of minorities (The Constitution of the Republic of Kosovo, Art. 22).

Moreover, considerable constitutional measures referring to the rights of communities are explicitly codified, such as: the rights for communities to foster and develop their identity; the state's responsibility to create the conditions for them to do so; specific rights of communities to maintain their own identity, religion, language, traditions, culture, education, alphabet, community, symbols, personal names, local names, media, and organizations; the establishment of a Consultative Council for Communities; the right of minorities to be employed in public service; and guarantees of minority representation in local government (The Constitution of the Republic of Kosovo, Arts. 57-62).

The rights of communities are also guaranteed through the space and power provided at the representation institutions. Communities have a guaranteed number of seats in the parliament (Art. 64). The Kosovo parliament is comprised of 120 seats. Aside from 100 seats elected directly, 20 seats are reserved for minorities, increasing and improving their representation chances. The presidency of the parliament should include one member from the Serb minority and another one other from other minorities. Moreover, the Parliamentary Committee on Rights and Interests of Communities should have members as follows, one third from the Serb community, one third from other minorities, and one third from majority community. Further than that, to ensure that constitutional rights to communities cannot be taken away, there have been set safeguards in terms of the requirements for constitutional changes. For the amendment of the constitution, it is required a double majority, a two-thirds majority of the majority community and two thirds majority from minority communities holding reserved seats. In this direction, also the legislation and amendment process of laws considered of vital interest needs a double majority (Arts. 65, 67, 77, 78, 81). At the executive level, there are institutional arrangements to ensure better participation of communities at the executive institutions. It requires at least one minister from the Serb community and one from other community minorities. These arrangements include provision

for at least one Serb and one other minority minister, and two Serb and two other minority deputy ministers (Art. 96). While at the judiciary branch there is regulated that at least 15% of judges should be from minority communities, places on the Judicial Council for minorities are reserved (Arts. 103, 108), and the deputy Ombudsperson and the vice chair of the Central Election Committee should be from minority communities (Arts. 122-133,139).

On the other side, the community rights arrangements are structured also at the level of local government (The Constitution of Kosovo, Chapter X) extending a high degree of self-government provisions for minority communities. At the local level, the rights of minority communities are ensured through a decentralization process, done on ethnic lines, resulting mostly in new municipalities based on which the Serbs are located (Robert D. Ebel & Gábor Péteri, 2007; Loew, 2019). In post conflict developments, the walls of the ethnic division took place in peaceful way, attained through a decentralization process, creating pure ethnic municipalities based on ethnic cleavages. The decentralization process so far has proved to have obstructed interethnic relations and reconciliation prospects, and ethnic integration incentives set at representation and executive institutions at the central government level. The decentralization in broad terms is defined by the comprehensive proposal (Annex 1, Art. 8), while specifications are laid down on the law on decentralization and the law on local government. The main principles of decentralization structure local government along ethnic lines, producing purely ethnic municipalities. The municipalities in Kosovo with Serbian minorities, excluding municipalities in northern part, have to some extent recognized the statehood in Kosovo, though they remain divided along ethnic lines. As such, the decentralization provided is not suitable for inter-ethnic reconciliation. Yet, in the problematic northern part of Kosovo, the Serbs are less integrated. They do not recognize fully the statehood of Kosovo and lack loyalty, which serves as a source of frozen inter ethnic conflict.

Cultural Rights

Cultural rights of communities were established initially by the Ahtisaari comprehensive proposal (Art. 3.1.a), as individuals and as community members to: “Express, maintain and develop their culture and preserve the essential elements of their identity, namely their religion, language, traditions and culture”. This disposition has become part of the Constitution (Art. 59. 1), since according to the constitution “The provisions of the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 shall take precedence over all other legal provisions in Kosovo” (Art. 143.2). The comprehensive proposal explicitly obliges Kosovo to make sure the community rights are achieved and fulfilled, stating that “Kosovo shall promote the preservation of the cultural and religious heritage of all Communities as an integral part of the heritage of Kosovo” (Art.2, 2.5). The cultural and religious sites of the Serb Community are regulated by the comprehensive proposal (Annex V), establishing the protection and enjoyment of its rights, privileges, and immunities. Moreover, the comprehensive proposal lists the Law on Cultural Heritage, under the laws that need a double majority, including two thirds of minorities, for the legislation and amendment (Art.3.7.e), now also part of the constitution (Art. 81.1.5). In addition, the law on cultural heritage has been passed in this regard, along with other measures that Kosovo government has taken to fulfill those obligations related to preserving the cultural rights. However, many challenges remain. Recently, the government adopted the strategy for cultural heritage protection 2017 – 2027, to address the pertaining challenges, to protect the cultural heritage of all communities, and empower the legal and institutional framework,

including the promotion of the preservation of the cultural heritage through participation and education (The Strategy for cultural heritage protection, 2017-2017).

Moreover, in 2018 the Ministry of Culture, Youth and Sports established the Cultural Heritage Inspectorate, foreseen by the Law on Cultural Heritage that has already been passed. Yet, the insufficient number of inspectors currently deployed is challenging. However, the passing of laws on the Historic Center of Prizren and the Village of Hoçë e Madhe increase the prospects of the implementation of the Law on Cultural Heritage, though the latter was encountered with protests from the Albanian community.

Furthermore, the Implementation and Monitoring Council as an organ to settle issues between the Serbian Orthodox Church and Kosovo institutions, started to meet regularly in 2018 after some time of inactivity, to improve the process, especially to deal with issues related to the Special Protective Zones. In the recent contest between the municipality of Decan and Decani Monastery Special Protective Zone over a road building, the constitutional court ruled in favor of the Decani Monastery. Yet, the decision was not easy to implement (Saga juridike e Manastirit të Decanit). Recently, the government agreed to recognize the lands of Monastery (24 hektarët përreth Manastirit të Deçanit). In other municipalities, where the Serbian Orthodox Church was consulted on time the issues were settled more easily. As the OSCE report specifies (Community Rights Assessment Report 5th Edition, OSCE Mission in Kosovo, June 2021) municipal and government institutions should continue to effectively communicate with the Serbian Orthodox Church before undertaking any public work within the Special Protective Zones, and also institutions should do more on monitoring the sites and take measures for the deficiencies, including the judicial system to fulfill its duties. This would ensure better protection of cultural heritage.

Linguistic rights

The issue of the official languages, as stated earlier in this paper, has been set initially by the comprehensive proposal (Art. 1.6), then later internalized within the constitution: “1. The official languages in the Republic of Kosovo are Albanian and Serbian” (Art. 5.1). “2. Turkish, Bosnian and Roma languages have the status of official languages at the municipal level or will be in official use at all levels as provided by law” (Art. 5.2). The Law on the Use of Languages (Law No. 02/L-037) further regulates the issue of languages also at municipalities level. In this respect, in 2012 the office of the language commissioner to oversee the implementation of the law was established, with two supportive mechanisms, the language policy board and language policy network. Yet, no national strategy for the promotion and protection of language rights has been adopted. Such a strategy could have created better conditions and coordination to implement the law and ensure the language rights of the communities.

Nonetheless, the implementation of the law as well is not going as expected. At the institutional level, the legislative process often does not follow the obligation of bilingualism as required. There is no regular involvement of lawyers in the process of finalizing the two official language versions. The responsibilities of the government and the parliament to follow bilingualism need to be further clarified and implemented. Deficiencies at the government level include the lack of capacity, resources, and training of existing translators, and the inefficient distribution of those translators throughout the government as a major impediment to achieving correct translations (Office of the Language Commissioner, Annual Report on Language Compliance in Municipalities, March 2019). At the government level, it is found that often there are deficiencies in terms of respecting official languages. The

majority of ministries do not send out announcements in Serbian language (<https://kossev.info/law-on-the-use-of-languages-in-kosovo-is-a-dead-letter-on-paper/>, news of date 29 February 2020 01.03.2022).

In the judicial system also there are deficiencies in practical terms on following the duties regarding bilingualism. In September 2019, the Kosovo Judicial Council adopted the Regulation on the certification of court interpreters and translators (Rregullore NR.27/2019) thus ensuring that court translators and interpreters for official languages and other languages would be certified by the Kosovo Judicial Council. The trial cases also show deficiencies in the provision of competent and professional translation services in the prosecutorial and judicial systems. Parties from non-Albanian communities received notices, summonses, minutes of hearings, and judgments only in the Albanian language. Public notice boards and case calendars within courts were not always posted in all required languages, as well as improper recording of trial hearings is another language related concern. Likewise, at the Kosovo Police it is found that the law on the use of languages is still not fully implemented (OSCE Mission in Kosovo, Language Compliance in Kosovo Police, September 2018).

In terms of the usage of the language in public media, Radio Television of Kosovo, the public television, broadcasts community programs for the following communities: Kosovo Serbs, Kosovo Bosniaks, Kosovo Turks, Kosovo Roma, Kosovo Ashkali, Kosovo Egyptians and Kosovo Gorani. The Serbian, Bosnian, Romani, and Turkish language desk also broadcasts a daily 15-minute news cast. While RTK 2 is a whole day program in Serbian language. Regarding the official languages at the municipality level regulated by the constitution and the law on the use of languages, there are important steps been taken. However, in practical terms, there seem to be difficulties. Albanian and Serbian languages are set at all municipalities; Turkish in Prizren, Mamushë, Southern Mitrovicë, Prishtinë, Vushtrri and Gjilan; Bosnian in Prizren, Dragash, Pejë, Istog. Yet, Roma communities have traditionally spoken their language in the municipalities where they have been living. Most municipalities do not organize public discussions on language rights before or after the endorsement of municipal regulations to familiarize the population with the legal framework.

Educational rights

Educational rights for the communities are granted by the comprehensive proposal (Art. 3.1.b, 4.1.1, 7) and by the constitution (Art. 59, 81). Aside from the legal and institutional provisions on regulating the issue of education in Kosovo, including the education of minority communities, in practical terms, the education system in the Serbian language, especially among the Serbian community, resembles a parallel system of education. The curriculum of Kosovo schools in the Albanian, Bosnian, and Turkish languages is set by the Ministry of Education of Kosovo. The curriculum of schools in the Serbian language in Kosovo is adopted by Serbian Ministry of Education. There are about 130 schools in Serbian language in 24 municipalities in Kosovo (OSCE Mission in Kosovo, Communities' Access to Pre-University Education in Kosovo, December 2018). Yet, in practical terms, the majority of municipalities to some extent support the schools in the Serbian language, with logistics and technical support (Education in Serbian language and diploma verification in Kosovo, May 2018).

The issue of curricula in Serbian language which is not in line with the comprehensive proposal (Art. 7.1.1) that requires notification to the Ministry of Education in Kosovo, which is not actually happening, so far has not been part of the dialogue between Kosovo and Serbia. But also, the Ministry of Education in Kosovo has not taken steps to develop a curriculum on the Serbian language. Nonetheless, there are 14 schools hosting both Kosovo and Serbian

curricula under one roof in 9 municipalities. Even in those schools, interaction between students and staff is limited. Initiatives to bring them together have only been taken on extracurricular activities.

Moreover, the Albanian language is not taught in the schools of the Serbian community, and the Serbian language is not taught at Albanian schools as well. Most of the struggle to increase cooperation is done by international organizations, and that seems not sufficient, due to the lack of cooperation of domestic actors. The textbooks and courses include very much content against each other ethnicities.

Education in the languages of other communities in Kosovo is available among the Bosnian and Turkish communities, despite problems faced in terms of the availability of textbooks in the two languages, substituting them through imported textbooks from Bosnia and Herzegovina and Turkey. Though the Albanian language is taught at these schools, no textbooks on Albanian language as an official language have been provided so far. Higher education is not provided in minority communities languages, except at the University of Northern Mitrovica that is totally outside the regulation of the Kosovo authorities. The other communities have no organized schools in their languages. And their enrollment at schools remains very low (ROMACTED at a Glance in Kosovo, 2020). Romani language, culture, and history classes have been offered in schools in Prizren since 2011, with measures taken by the ministry to provide them to other municipalities, but it is not very successful due to a lack of funds.

Conclusion

The extension, implementation, and guaranteed cultural, linguistic, and educational rights provided by the comprehensive proposal, the constitution, laws, and regulations, do not appear to have sufficiently helped to improve interethnic reconciliation and inclusion of minority ethnicities into the institutions and society in Kosovo. The legal acts have passed quite easily, due to the influence of the international actors. Yet, when it comes to implementation the will of all sides is necessary. If we look at interethnic reconciliation as a process then it can be concluded that it is a very time consuming and much demanding process. If we look at it from the perspective of the achievements so far, there seems a stalemate. The Serbs at the municipalities below the Northern part of Kosovo, seem to have moved forward in terms of reconciliation, inclusion, and integration. While the municipalities in the North appear to have been frozen in terms of making progress. On the contrary, they give the impression of steps back. National authorities have limited access and govern very little in this part, and the issue appears that is waiting for the dialogue to move on, that no one know of its prospects.

The integration of the Serb community is the biggest challenge for Kosovo. Research carried out with the Serb community in northern Kosovo in 2011 found that Kosovo Serbs were concerned about protecting their language, cultural heritage, and identity (Fearon, 2012). The integration of the other communities is less politicized and therefore shows more progress, but challenges still pertain. It is more an issue of resources and the will of all sides that determines inclusiveness and ethnic reconciliation, rather than politics and the bitter near past during the war, that created unbridgeable ethnic cleavages. Compared to the very aftermath of the war, there is significant progress in implementation of the cultural, language, and educational rights. However, still more to go. Legally and institutionally, there is higher progress, but the terrain especially at the northern part is very challenging. As Lijphart said, it is not difficult to write constitutions of a consociational nature, but the most difficult part is to bring them into life (Lijphart, 1999).

The paper brings to light the legal and political dimensions of the rights of minorities in Kosovo. Yet, taking into account very dynamic developments in the Northern part of Kosovo, and the geopolitical implications of the war in Ukraine, the future state of affairs is very unpredictable. This constitutes the limitations of the study as well, decreasing the possibility of inferential conclusions and minimizing the accuracy of the recommendations.

References

- Annual Report on Language Compliance in Municipalities. Office of the Language Commissioner. (March 2019). Retrieved January 07, 2022, from http://www.komisioneri-ks.org/repository/docs/ENG-MT_Raport-Municipalities.pdf
- Loew. D. (2019). *Decentralization as a Model for Conflict Transformation: The Case of Kosovo*. Philipps-Universität: Marburg.
- Ebel, R. D. & Péteri, G. (2007). *The Kosovo Decentralization*. Open Society Institute: Budapest.
- Ecmikosovo. (May 2018). *Education in Serbian language and diploma verification in Kosovo* European center for minority issues. Retrieved June 05, 2022 from https://www.ecmikosovo.org/uploads/Brochure_Diploma_Verification_ENGs.pdf
- Fearon, K. (2012). *Guests in Our Own House. The Comprehensive Settlement Proposal and the Serb Community in Northern Kosovo Mitrovica*. ICO and FDFA.
- Lijphart, A. (1999). *Patterns of Democracy*. New Heaven and London: Yale University Press.
- OSCE Mission in Kosovo. (September 2018). *Language Compliance in Kosovo Police*. Retrieved January 10, 2022, from <https://www.osce.org/mission-in-kosovo/396821?download=true>
- OSCE Mission in Kosovo. (December 2018). *Communities' Access to Pre-University Education in Kosovo*. Retrieved January, 15, 2022, from <https://www.osce.org/mission-in-kosovo/406952?download=true>
- OSCE Mission in Kosovo. (June 2021). *Community Rights Assessment Report*. Retrieved February 05, 2022, from <https://www.osce.org/mission-in-kosovo/493675>
- ROMACTED at a Glance in Kosovo. Retrieved February 01, 2022, from <https://rm.coe.int/romacted-at-a-glance-kosovo-january-2020/16809991a9>
- Rregullore Nr.27/2019, per certifikimin dhe interpretimin e perkthyesve gjyqesor. Retrieved February 23, 2022, from https://www.gjyqesori-rks.org/wp-content/uploads/lgs/58686_Rregullore_Nr_07_2019_per_certifikimin_interpreteve_dhe_perkthyesve_gjyqesor_Kodi_i_etikes_SRB.pdf
- The Law on the Use of Languages, Law No. 02/L-037. Retrieved February 10, 2022, from <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2440>
- Law no. 04/l-020 on amending and supplementing of the law no.03/l-047 on the protection and promotion of the rights of communities and their members in Republic of Kosovo, 2011, Art. 1. Retrieved February 11, 2022, from [Republic of Kosovo - Assembly - Laws by Name](#)
- Saga juridike e Manastirit te Decanit. Retrieved February 19, 2022, from <https://www.evropaelire.org/a/saga-e-manastirit-decanit/31541823.html>
- The Comprehensive Proposal for Kosovo Status Settlement. (2 February 2007). Retrieved January, 07, 2022, from <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kosovo%20S2007%20168.pdf>

- The Constitution of the Republic of Kosovo. https://mapl.rks-gov.net/wp-content/uploads/2017/10/1.CONSTITUTION_OF_THE_REPUBLIC_OF_KOSOVO.pdf
- The Strategy for cultural heritage protection 2017 – 2027. Retrieved February, 15, 2022, from https://mkrs-ks.org/repository/docs/eng_strategy_for_heritage.pdf
- 24 hektarët përreth Manastirit të Deçanit. Retrieved November 20, 2024, from <https://reporteri.net/lajme/24-hektaret-perreth-manastirit-te-decanit-kush-e-duartrokite-dhe-kush-e-kritikoi-vendimin-e-qeverise-se-kosoves/>