



**Europa-Universität
Flensburg**

Europa Universität Flensburg (EUF) Seminar für Soziologie

**PhD Research Proposal Doctoral Program in Human
Rights / Area of PhD Research Proposal in Minority
Issues**

**Implementation of National Legislation with European
Standards in Minority Rights Issues - Special Focus in
Kosovo**

Supervisor: Prof. dr. Hauke Brunkhorst

PhD candidate: Nuhi Osmani

Flensburg, 2021

Table of Contents

.....	1
The University - Europa-Universität Flensburg(EUF) Seminar für Soziologie	1
List of Figures and tables	6
List of Abbreviations.....	7
ABSTRACT.....	10
KEYWORDS.....	11
INTRODUCTION	11
Dedication	12
CHAPTER I.....	13
HUMAN RIGHTS IN THE CONTEMPORARY WORLD	13
1. Human Rights and Legal Norms	13
2. Imperialism and Human Rights.....	15
3. Human Rights – Minority Rights in the European Construction.....	19
4. Cases of Serious Conflicts.....	20
4.1. The conflict in Croatia 1991-1995	21
4.2. Bosnia and Herzegovina 1992-1995	21
4.3. The conflict in Serbia’s Presheva Valley	22
4.4. The conflict in the Republic of North Macedonia	23
6. Conclusions.....	25
CHAPTER II	28
WHAT ARE MINORITIES-INTERNATIONAL DEFINITION FOR MINORITIES.....	28
1. Definition of Minority	28
1.1. Definition for Minorities in Germany	33
1.2. Definition for Minorities in Latvia	33
1.3. Balkan ethnic minorities.....	33
1.4. The Definition of Minorities in Kosovo	34
2. The Ethnic Structure of the Population in Kosovo	34
2.1 Albanian Community in Kosovo.....	35
2.2. Serb Community in Kosovo	35
2.3. Bosnian Community in Kosovo	35
2.4. Turkish Community in Kosovo	36
2.5. Roma Community in Kosovo.....	36
2.6. Ashkali Community in Kosovo	37
2.7. Egyptian Community in Kosovo	38
2.8. Gorani Community in Kosovo	38
2.9. Montenegrin Community in Kosovo	39
2.10. Croat Community in Kosovo	39
3. Conclusion	39
CHAPTER III	41

PROCEDURE OF APPROXIMATION WITH EUROPEAN STANDARDS AND NATIONAL LEGISLATION FOR MINORITIES IN KOSOVO	41
1. Procedure of Approximation of the National Legislation in Kosovo	41
2. Legal Framework for Approximation	42
3. Determining the approximation of national legislation in European countries and comparing with the Kosovo procedure.....	45
4. Preparation of legislation related to procedures in the Ministry.....	47
5. The role of Legal Office of the Prime Minister 's Office of the Ministries' Legal Departments and Department of Law of the EU	49
6. Assembly proceedings.....	56
7. National Program for Implementation of the Stabilization and Association Agreement (NPISAA) 2017 – 2021.....	59
8. Acquis Chapter 23: Judiciary and Fundamental Rights - Legal framework in the area of protection of minorities and cultural heritage	60
9. The role of the Ministry of European Integration and the Line Ministries	62
10. Legislation Rights of Communities in Kosovo	64
11. Legislation of Vital Interest for Non-Majority Communities.....	67
12. Conclusions	68
CHAPTER IV	70
LEGISLATION RIGHTS OF COMMUNITIES IN EUROPE.....	70
1. Treatment of minority rights by the European Union and the Council of Europe.....	70
2. Legislation on Minority Rights in Estonia, Latvia, Lithuania, Romania and some European Countries - Comparative Aspects - Their Institution and Legal With Kosovo.....	76
3. Legislation on Minority Rights in Estonia	77
4. Community Legislation in Latvia.....	80
5. International Instruments and Domestic Legislation in Latvia.....	83
6. Comparative Aspects of Institutional and Legal Rights	85
7. Legislation on the Rights of Minorities / Ethnic Groups in Lithuania	87
8. Legislation on Community Rights in Romania	93
9. Minority Rights Law in Moldova and Poland	96
10. The language rights in Union European	99
11. Language Rights in Estonia.....	100
12. Linguistic rights of ethnic and cultural groups in Latvia.....	108
13. Language Rights in Lithuania	110
14. Language Rights in Moldova, Romania and Poland	112
14.1. Moldova	112
14.2 Language Rights in Romania	113
14.3 Language Rights in Poland.....	115
15. Ethnic Composition.....	116
15.1. Ethnic composition of Lithuanian	116
15.2. Ethnic Composition in Estonia.....	117
15. 3. Ethnic Composition in Latvia.....	119
15.4. Ethnic Composition in the Baltic States	119

16. Legislation Rights of Communities in the Region	120
16.1. Minority rights in Serbia	120
16.2. Minority rights in Montenegro	120
16.3. Minority rights in Albania	121
16.4. Minority rights in North Macedonia	121
17. Conclusions	122
CHAPTER V	124
RETURN OF DISPLACED PERSONS TO KOSOVO BY REGION AND COUNTRY	124
1. The Effects of Displacement	124
2. Categorization of Displaced Persons - Difference between Internally Displaced Persons and Refugees	127
3. The Return Process to Displaced Persons in the Region and within the Country	132
4. Spontaneous Return	137
5. Interview with the Director of Department for Project Management and Monitoring, former Department of Returns Mr. Albert Zeqa	139
6. Return obstacles in the northern part of Kosovo	142
6.1. Responses from the first respondent - Nebih Seferi	144
6.2. Responses from the second respondent - Bashkim Selmani	144
6.3. Responses from the third respondent - Sokol Halili	145
7. Inter-Institutional Coordination within Kosovo and Regional Coordination between the Countries of the Region Relating to the Return Process of Displaced Persons Institutional cooperation at the level within Kosovo	147
8. Profiling of Internally Displaced Persons	149
9. Inter-institutional Initiative on Durable Solutions for Displaced Persons from the Kosovo-Skopje process	153
10. Conclusions	158
CHAPTER VI	164
INTER AND TRANSNATIONAL LEGAL NORMS AND HUMAN RIGHTS VALID TODAY'S IN KOSOVO	164
1. Violation of human rights in new history of Kosovo	164
2. Administration of Kosovo after the conflict	166
3. Legal acts on Human Rights	168
4. Challenges and difficulties for not complying the law on human rights	171
5. Implementation of human rights in low level of Judiciary	173
6. Functioning of Judiciary system in Kosovo after declaration of independence	175
7. Challenges, obstacles and the difficulties of implementing the law on the Kosovo judiciary	179
8. Detention	184
9. Blockage of cases in the Court matters and the failure to solve them	187
10. Implementation of human rights in the administrative level	192
11. Employment of Minorities	195
12. Gender employment at local level	197
13. Language rights	199
14. Implementation of human rights in Police level	201

15. Police in Community	203
16. Ineffective instrument of the human rights regime of Kosovo	206
16.1. Ineffective instruments to exercise the state sovereignty	206
16.2. Ineffective instruments related to non-realization of female property.....	211
16.3. Continuation of the situation of marginalization in education, employment of RAE	212
16.4. Ineffective instrument of the freedom and protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo	214
17. Conclusions.....	215
CHAPTER VII.....	218
REGULATORY AND INSTITUTIONAL FRAMEWORK IN KOSOVO ON MINORITY RIGHTS ISSUES	218
1. The Assembly of the Republic of Kosovo	218
1.1. The Committee on Rights Interests of Communities Returns	220
2. The Presidency of Kosovo	220
2.1. The Community Consultative Council.....	221
3. The Government of Kosovo	222
3.1. Office of the Language Commissioner.....	223
3.2. Office for Community Affairs in the Office of Prime Minister	223
3.3. Office of Good Governance human rights equal opportunities and gender issues	224
3.4. Ministry of Communities and Returns	224
4. The Ombudsperson	225
5. Local Institutions.....	226
5.1. Municipal Offices for Communities and Return	227
5.2. Municipal Unit for Human Rights.....	227
6. Conclusions	228
CHAPTER VIII.....	231
IMPACT OF COMPREHENSIVE PROPOSAL FOR THE KOSOVO STATUS SETTLEMENT IN THE KOSOVO CONSTITUTION AND LEGISLATION.....	231
1. Rights of Communities and their members based on Comprehensive Proposal for the Kosovo Status Settlement in Kosovo	231
2. The Security and Freedom of Movement	232
3. Access to public services, Justice and participation in public affairs	234
4. Cultural Heritage and Special Protected Zones	235
5. Conclusion.....	235
1. Research Purpose	237
2. Research tasks	237
3. Research Objectives	237
4. Research Hypothesis	238
5. Independent variables are	238
6. Research methodology	238
7. Content Analysis Method.....	239
8. Legal Methods.....	239

9.Comparison method	239
10. Statistical Method.....	239
11. Philosophical Method.....	239
12. Descriptive method	240
13. Qualitative research.....	240
14. Instruments – Interview	240
15. Research Technique	240
16. Challenges from Research.....	241
17. Interpretation of results	241
18. Interviews conducted through a questionnaire interview method, according to the "closed" question method	242
19. II. Interviews conducted through a questionnaire interview method, according to the "open" question method	262
General conclusions.....	275
General Recommendations	278
Literature and other Sources	281
Legal sources.....	297
Website.....	305

List of Figures and tables

Table 1 the legal approximation process	56
Table 2 Dynamics of the ethnic composition of the Lithuania's population in 1989 -2011 Ethnicity.	117
Table 3 Largest Ethnic Groups in Estonia.....	118
Table 4 Residents of Latvia by ethnicity and citizenship in 2001	119
Table 5 Ethnic composition in the Baltics in 1989-2011 (in thousand)	120
Table 6- The number of voluntary returnees year 2004 until 2018	138
Table 7 about the progress and effectiveness of institutions in the implementation of the legislation	172
Table 8 Branches of the Basic Courts in Kosovo	178
Table 9 data for sentenced people by Hauge Tribunal	182
Table 10 the Court cases in Kosovo Courts collected from 1999 until the date 30.09.2016.....	189
Table 11 the percentage of representation of communities in employment at various levels	197
Table 12 numbers of employees at the municipality by sex.....	199
Table 13 total number of employees in the municipalitis	199
Table 14 official language in municipally level	201
Table 15 research technique	241
Table 16 annex 1 interview	272
Figure 1 Table of compliance.....	52
Figure 2 Opinion on compliance with the EU Acquis.....	54

Figure 3 Statement of Compliance of Legislation of the Republic of Kosovo with the EU acquis	55
Figure 4 - The number of voluntary returnees year 2000 until 2018 according to the UN Refugee Agency Office of the Chief of Mission Pristina	139
Figure 5 Overview of surveyed households	152
Figure 6 Basic Courts in Kosovo	177
Figure 7 graph no.1	245
Figure 8 graph.no.2	248
Figure 9 graph no. 3	250
Figure 10 graph no.4	252
Figure 11 graph no.5	253
Figure 12 graph no.6	255
Figure 13 graph no.7	257
Figure 14 graph no.8	259
Figure 15 graph no.9	260
Figure 16 graph no.10	262

List of Abbreviations

AD - *Archaeological Decide*

ACFC - *Advisory Committee on the Framework Convention*

AWPG - *Annual Work Plan of the Government*

ASD - *American State Department*

BIRN - *Balkan Investigative Reporting Network*

BP- *Program for Border*

COE - *Council of Europe Office*

CT - *Compliance Tables*

CEI- *Committee for European Integration*

CEE- *Central and East European*

CFR- *Charter of Fundamental Rights*

CSDP - *Common Security and Defence Policy*

CEDAW- *Convention on the Elimination of All Forms of Discrimination against Women*

DRC- *Danish Refugee Council*

EU - *European Union*

ECHR- *European Convention on Human Rights and Fundamental Freedoms*

ECMI- *European Centre for Minority Issues*

ECRML- *European Charter for Regional or Minority Languages*
EC- *European Commission*
EEC- *European Economic Community*
EULEX- *European Union Rule of Law Mission in the Republic of Kosovo*
FCNM- *Framework Convention for the Protection of National Minorities*
GATT- *General Agreement on Tariffs and Trade*
HHs -*Overview of surveyed households*
ICCPR-*International Covenant on Civil and Political Rights*
IUC- *Inter University Center*
ICJ- *International Court of Justice*
IPA- *Instrument for Pre-accession Assistance*
IOM- *International Organization for Migration*
IDP- *Internally Displaced Person*
ISIL- *Islamic State of Iraq and the Levant*
INPO- *Initiative for Progress Organization*
JNA- *Yugoslav National Army*
JIPS- *Joint Internal Displace Person Profiling Service*
JPLK- *Juvenile Penal Law of Kosovo*
KFOR- *The Kosovo Force*
KAS- *Kosovo Agency for Statistics*
KCSF- *Kosovar Civil Society Foundation*
KIRS- *Commissariat for Refugees and Migration of the Republic of Serbia*
KJSP- *Kosovo Justice Support Program*
KLA - *Kosovo Liberation Army*
KJC- *Kosovo Judicial Council*
KP- *Kosovo police*
LGBT- *Lesbian, Gay, Bisexual and Transgender*
MEI- *Ministry of European Integration*
MEST- *Ministry of Education, Science and Technology*
MCR- *Ministry for Communities and Return*
NPISAA- *National Program for Implementation of the Stabilization and Association Agreement*
NATO- *North Atlantic Treaty Organization*

***NGO**-Non-Governmental Organization*

***NCSC**- National Centre for State Courts*

***OSCE**- Organisation for Security and Co-operation in Europe*

***OPM**- Office of the Prime Minister*

***PSC**-Philosophy and Social Criticism*

***PMBLA**- Presheva, Medvegja and Bujanoc Liberation Army*

***PCSA**- Parliamentary Committee for Stabilization-Association*

***PSGIK**- Provisory Self-Government Institutions of Kosovo*

***PMG**- The Profiling Management Group*

***PWG**- The Profiling Working Group*

***PISG** - Provisional Institutions of Self-Government*

***PIK**- The Police Inspectorate of Kosovo*

***RAE**- Roma, Ashkali and Egyptian*

***SAA**- Stabilization and Association Agreement*

***SC**- Statement of Compliance*

***SSR**- Soviet Socialist Republic*

***SCJK**- Secretariat of Council of Justice of Kosovo*

***SOC**- The Serbian Orthodox Church*

***TEU**- Treaty on European Union*

***TFEU**- Treaty on the Functioning of the European Union*

***US** -United States*

***UN**- United Nations*

***UNMIK**- United Nations Interim Administration Mission in Kosovo*

***UNSCR**-United Nations Security Council Resolutions*

***USSR**- The Union of Soviet Socialist Republics*

***UNICEF**-United Nations International Children's Emergency Fund*

***UNDP**- United Nations Development Programme*

***UNFPA**- United Nations Fund for Population Activities*

***USAID**- The United States Agency for International Development*

***UNO**- United Nations Organizations*

***WTO**- World Trade Organization*

ABSTRACT

Kosovo has signed the Stabilization and Association Agreement with the EU which is binding to approximate its rules with the EU Acquis. The Lisbon Treaty now contains explicit references to minority rights in Article 2 TEU and Article 21 of the 'Charter of Fundamental Rights', combined with other EU norms on non-discrimination on the grounds of race or ethnic origin, and policies on culture and education. These references may be regarded as providing the preconditions for an EU regime of minority protection.

This thesis proposal aims to analyze the regulatory and institutional framework of Kosovo as regards to implementation of measures required by the European Integration process in protecting minorities. This research question is addressed through four various aspects of minority protection, i.e. (1) the right to political participation, (2) the right of using language, (3) The security and freedom of movement, (4) returns and reintegration and access to public services, justice and participation in public affairs. The case studies based on examples to the minority rights communities in Kosovo, highlights that, Kosovo could undoubtedly play a greater role in minority protection. However, instead of enacting its own rules on their protection, a more practical way forward could be for Kosovo to support implementation of the Council of Europe's Framework Convention for the Protection of National Minorities.

Hence, a very important issue in this regard is the treatment of minorities in the EU, the aspect of comparing these rights of minorities or ethnic groups in the EU with those of Kosovo. A particular attention has been paid to some of the exclusive rights that guarantee Kosovo's legislation. In addition, during this paper, a range of human rights are treated as a historical aspect of these rights, especially when Kosovo was occupied by Serbia as well as part when Kosovo became independent. Furthermore, this paper also addresses some effective instruments for the implementation of laws in the Republic of Kosovo.

All of these aspects of the treatment in this paper are dealt based on some of the influences that the international factor has had in their realization

KEYWORDS

Human rights, minority rights and democracy, fundamental rights, security and freedom of movement and access to public services, justice and participation in public affairs and legislation for community rights in Europe, Approximation of the legislation, Regulatory and Institutional Framework in Kosovo on Minority Rights Issues, Inter and Transnational Legal Norms and Human Rights.

INTRODUCTION

Respecting the rights of ethnic communities is an important value to maintaining peace and stability. These rights include the effective participation in public life, in particular in those matters which directly affect them. This requires both a deep understanding into the needs of different ethnic communities and the political will to include them in decision-making processes.

The term ‘community’ operates on two levels in Kosovo. In the first place, it has the standard meaning of a group of people who share common characteristics, for example, ethnicity, language or religion. In this sense, it can be used to refer to all groups in Kosovo, regardless of whether they are in numerical minority or majority in a given area. However, it is also used to refer to Kosovo’s minority groups, which include members of the majority (Albanian) community who are in a minority in a given municipality. Together with other rights relating to individuals belonging to ethnic communities such as the right to mother-tongue education, and certain linguistic rights, the right to effective participation in cultural, social and economic life and public affairs constitutes the very basis for the protection, maintenance and promotion of their identity. At the same time, effective participation calls for ethnic communities to seek redress for their concerns through an integrative approach.

Moreover, the rights of communities dealt with in this paper include political rights, rights to education and rights of participation in public and institutional life of minorities for more: The Republic of Kosovo shall guarantee full and effective

equality for all people of Kosovo.¹ Kosovo regards its national, ethnic, linguistic and religious diversity as a source of strength and richness in the further development of a democratic society based on the rule of law. In the development of the Republic of Kosovo, the active contributions of all persons belonging to communities is encouraged and cherished.²

Additionally, this work intends to treat the Human Rights in the Contemporary World including the Human Rights in the European Construction as well as Cases of Serious Conflict in the Balkans. Secondly, the National legislation with European Standards in Minority Rights Issues and Legislation Rights in Communities in Europe, Displace Persons, Inter and Transnational Legal Norms and Human Rights Valid today in Kosovo as well as the Impact of Comprehensive Proposal for the Kosovo Status Settlement in Kosovo Constitution and Legislation. At the end of this PhD thesis, several interviews are conducted.

Dedication

I would like to dedicate this work to my father who is a martyr of nation, my son who proudly bears his name, my mother, my wife and to my two wonderful daughters.

¹ Article 1 of Law no. 03 / L-047, on the Protection and Promotion of the Rights of Communities, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2531>, accessed on 6 th of April, 2016.

² Ibid.

CHAPTER I

HUMAN RIGHTS IN THE CONTEMPORARY WORLD

1. Human Rights and Legal Norms

Human Rights are universal, civil, political, economic, social and cultural rights which belong to all human beings, including members of ethnic minority groups.³ Members of ethnic minorities are entitled to the realization of all human rights and fundamental freedoms on equal terms with others in society, without discrimination of any kind.⁴ Ethnic minorities both the individuals belonging to ethnic minorities and ethnic minorities as groups also enjoy certain human rights specifically linked to their ethnic status, including their right to maintain and enjoy their culture, religion, and language free from discrimination.⁵

Human rights are norms that help to protect all people everywhere from severe political, legal, and social abuses.⁶ Examples of human rights are the right to freedom of religion, the right to a fair trial when charged with a crime, the right not to be tortured, and the right to engage in political activity.⁷

These rights exist in morality and in law at the national and international levels. Historical sources for bills of rights include the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration of the Rights of Man and the Citizen (1789), and the Bill of Rights in the United States Constitution (1791). Early philosophical sources of the idea of human rights include Francisco Suarez (1548–1617), ‘Francisco de Vitoria, the colonial origins of international law, Antony Anghie, Imperialism, Sovereignty and the Making of International Law, Hugo Grotius (1583–1645), Samuel Pufendorf (1632–1694), John Locke (1632–1704), and Immanuel Kant (1724–1804).⁸

³ <http://www.pdhre.org/rights/ethnicity.html>, accessed on 7th of April, 2016.

⁴ Ibid.

⁵ Ibid.

⁶ <https://plato.stanford.edu/entries/rights-human/>, page 1, accessed on 28th of April, 2016.

⁷ Ibid.

⁸ Ibid.

Below, I am presenting some ideas on how the human rights have evolved from evolution of their history, as social reasons of the rule of law from natural law to modern law.

According to the James Tully right and two duties, in their many formulations from Francisco de Vitoria through Locke and Kant to the GATT/WTO and the restructuring policies of the World Bank and the norm of democratization under international law-serve to legitimate the coercive imposition and protection of the legal and political conditions of western imperialism on the non-West. He called the right and two duties the "imperial right"⁹.

Positivist jurists generally commenced their campaign of articulating their new, distinctive versions of international law by employing the very traditional technique of sketching the histories of their discipline up to their own time, this as a means of distinguishing themselves from their naturalist predecessors. Early jurists such as Francisco de Vitoria made a distinction between 'natural law' and 'human law'. In broad terms, natural law consisted of a set of transcendental principles which could be identified through the use of reason. Human law, on the other hand, as the term suggests, was created by secular political authorities, and positivism was an extended elaboration of this framework.¹⁰

For the US-Constitution, the Treaty of Lisbon constitutes a transnational democratic community. However, at the centre of European constitutional law is not the system of democratic legitimization, rights and check and balances, but, the system of competition law.¹¹ The main sources of the contemporary conception of human rights are the Universal Declaration of Human Rights (United Nations, 1948b) and the many human rights documents and treaties that followed in international organizations such as the United Nations, the Council of Europe, the Organization of

⁹ James Tully , Modern Constitutional Democracy and Imperialism, the Imperial Roles of Modern Constitutional Democracy, Osgoode Hall Law Journal, pg. 480.

¹⁰ Antony Anghie, Imperialism Sovereignty and the Making of International Law Positivism and the shift from natural law, pg.41, 2004, Cambridge.

¹¹ See Hauke Brunkhorst, European dual state, The double structural transformation of the public sphere and the need for re-politization pg 21.

American States, and the African Union (on the early history of human rights see Tierney 2001 and Griffin 2008; for the history of the Universal Declaration see Glendon 2001, Lauren 1998, and Morsink 1999; and for the recent history of international human rights see Moyn 2010 and Jean Cohen 2012), Martti Koskenniemi, (Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization”, in: Theoretical Inquiries in Law, 2006). Koskenniemi considers that we Europeans share this intuition: the international world will be how we are. And we read international law in the image of our domestic legalism: multilateral treaties as legislation, international courts as an independent judiciary, the Security Council as the police. Today, that tradition is most visibly articulated in the debate – especially vocal in Germany – about the constitutionalization of international law under the UN Charter.¹²

Hauke Brunkhorst in his part of Special section on Hauke Brunkhorst Reply to critics of Philosophy and Social Criticism has elaborated this, asking questions why ‘law’ (probably the most Eurocentric medium) whose ‘rule’ – paradigmatically in the European Union – is ‘amalgamated ... with order and welfare’ to a ‘conceptual Frankenstein’ that ‘drives’ ‘the weak to the wall’, why law that (not only since the global establishment of ‘law and economics’ as an academic discipline in the 1970s and 1980s) is the ‘professional culture of privilege and hierarchy’, because modern law as well as modern art is a bearer of a revolutionary negativity that is due to its formalism: ‘The force of positive law is the force of the sharp lines that rules draw in a fluid world of opportunity.’¹³

2. Imperialism and Human Rights

Before addressing the aspects of imperialism and human rights, first we will elaborate their constitutional and legal terms by which the human rights are limited

¹² Martti Koskenniemi, the European Journal of International Law Vol. 16 no.1 © EJIL 2005; all rights reserved EJIL (2005), Vol. 16 No. 1, 113–124 doi: 10.1093/ejil/chi105. International Law in Europe: Between Tradition and Renewal pg 117.

¹³ Hauke Brunkhorst, Special Section on Hauke Brunkhorst Reply to Critics Hauke Brunkhorst Europa-Universität Flensburg Institut für Soziologie, Flensburg, Schleswig-Holstein, Germany Philosophy and Social Criticism 2015, Vol. 41(10) 1053–1067

^a The Author(s) 2015 Reprints and permission: sagepub.co.uk/journalsPermissions.nav DOI: 10.1177/0191453715609857 psc.sagepub.com page 1062.

and by constitutional restrictions, the power of state to the individual is limited, so, initially, the constitutional definition will be elaborated.¹⁴

The term ‘constitution’ means the highest legal and political act wherein are defined and protected the fundamental values of a state, as well the constitution can be understood in some aspects of its handling: political, legal, political-legal, sociological and philosophical aspects.¹⁵

The definition ‘political constitution’ takes into account the fact that, the constitution is an act of restriction of power, set it in the framework of constitutional behavior and institutionalization of all forms of manifestation of state power.¹⁶ ‘Constitutionality’ is an objective process which is in a certain degree of development of the society and it exists today in all democratic countries, genesis or its beginnings are found in England.¹⁷ The word constitution is derived from the word constitutionalism and is the negation of absolutism and arbitrariness.¹⁸

The idea of constitutionalism requires limitation on government power and authority established by constitutional law, but according to most constitutional scholars, there is more to a constitution than constitutional law.¹⁹ Many people will find this suggestion puzzling, believing their constitution to be nothing more (and nothing less) than (usually) a formal, written document, possibly adopted at a special constitutional assembly, which contains the nation's supreme, fundamental law.²⁰

The author James Tully in the elaboration of “Other Worlds are Actual” has elaborated six cases of constitutions addressing the topic: “The Imperial Roles of Modern Constitutional Democracy” whereon has rightly pointed that in “The Imperial Roles of Modern Constitutional Democracy”. Tully expands beyond his previous work on some of the most striking implications of his “Wittgensteinian” approach to freedom and constitutionalism.²¹ For instance, once constitutions are

¹⁴ Prof.Dr.Sc.Arsim Bajrami dhe Mr.Sc. Xhavit Shala, doracaku për përgatitjen e provimit të jurisprudence botuar nga Ministria e Drejtësisë Prishtinë, gushtë Sistemi Kushtetues dhe organizimi i jurisprudence. faqe 1.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Prof. Dr. Arsim Bajrami, e Drejta e Kosovës në tranzicion, Prishtinë faqe 221.

¹⁸ Ibid.

¹⁹ <https://plato.stanford.edu/entries/constitutionalism>, accessed on 13th of July, 2016.

²⁰ Ibid.

²¹ Michael Simpson, "Other Worlds are Actual": Tully on the Imperial Roles of Modern Constitutional Democracy, Osgoode Hall Law Journal, page 524.

broadly understood as the fluidly changing relational fabrics in which we are always engaged, it becomes clear that the modern constitutional project is one that strives to place these ever-shifting forms into the closed structures of an abstracted model.²² In other words, the theoretically-abstracted molds of modernity are imposed upon the fluid world of customary practices that they seek to juridically contain but can never fully capture.²³

Before elaborating the rights in aspect of human rights, we will elaborate some definitions of 'Imperialism' first. The word 'imperialism' derives from a Latin word which means "dominion". It means one country that requires to spread its political and economic power. Nowadays, the imperialism is often in connection with colonialism (maybe because it occurred in the same phase), but this changes in the meaning of both words.²⁴

By 'imperialism' I mean the process whereby the dominant politico-economic interests of one nation expropriate for their own enrichment the land, labor, raw materials, and markets of another people.²⁵

Antony Anghie in his book "Imperialism, Sovereignty and the Making of International Law" provides a new approach to the history of international law, illuminating the imperial character of the discipline and its enduring significance for people of the Third World. Among others, he makes another definition of the imperialism wherein he got a conclusion by pointing out that we have the war on terrorism, a new form of branding of a significant fraction of the world, in particular the "Muslim world", as barbarian and as enemy. In Dr. Anghie's words, 'law in the name of security, reproduces a new form of imperialism.' Moreover, it is a new imperialism in which neo-conservatism vies with neo-liberalism in the assertion of control.²⁶

²² Idid.

²³ Ibid.

²⁴ <http://skolarbete.nu/sq/skolarbeten/imperialsmen-japan>, accessed on 25th of July, 2016.

²⁵ <http://www.michaelparenti.org/Imperialism101.html> accessed on 26th of July, 2016.

²⁶ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* Positivism and the shift from natural law 2004 Cambridge foreword xii.

When speaking about the author Antony Anghie, it is considered that the terrorism of any form presents a danger to society in general despite forms and religious beliefs, whereas, pursuant to the Penal Code of Kosova, by terrorism it is meant terrorist act or terrorism act, the performance of one or more offenses with serious intimidation of the population order, the liability without right to a public body, government or international organization to perform or not to perform an action or to seriously destabilize or destroy the fundamental political structures, constitutional or economic of the Republic of Kosovo, of another country or International Organization.²⁷ In his book “Imperialism, Sovereignty and the Making of International Law”, positivism and the shift from natural law, Antony Anghie elaborates the issues Francisco de Vitoria and the colonial origins of international law, who at the very beginning talked about European Colonies in non-European Countries by pointing out that Vitoria is an extremely complex figure, as well champion of generosity and equality language.

28

On the other hand, professor Hauke Brunkhorst in his book “Critical Theory of Legal Revolutions” has dealt with the struggle of human rights, which rights were more advanced. He, by elaborating ‘great revolution’ in chapter four of his book, wherein he elaborated “Egalitaria World Revolution” and pointed out that “great revolution usually began as a struggle for a kind of universal right, caused by serious rights violations which arouse our sense of injustice.”²⁹

The author presented that Saman tha Besson, has convincingly reconstructed Arendt's idea of a right to have rights as a two-level evolutionary process that distinguishes it categorically from older concepts of a natural or rational right to have rights, as in Vitoria's or Fichte's reading of the right.³⁰

He has also dedicated a great importance Japanese fascism and Chinese communism. In the course of the 1930s, crumbling regime of informal empire was replaced by fascist Japanese colonization, which was much worse than the Western one had been,

²⁷ Code nr. 04/L-082 Panal Code Republic of Kosova article 135,
<http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf>, accessed on 6th of September, 2016.

²⁸ Ibid page 31.

²⁹ Hauke Brunkhorst, Critical Theory of Legal Revolutions Evolutionary perspectives, BLOOMSBURY NEW YORK LONDON NEW DELHI SYDNEY, 2014, page 382.

³⁰ Ibid page 383-384.

comparable only with the imperialism of the Nazi-Regime³¹ while imperialism came to an end in China. However, under the reformed dictatorship of the Communist Party, which today is completely in accord with the economically ruling class of capitalists, an appeal to the rights of the Chinese constitution is not worthless.³² Even if a written constitutional has no legal force, at least it may have some symbolic value.³³

34

3. Human Rights - Minority Rights in the European Construction

EU law does not contain a definition of ‘minority’.³⁵ More importantly, nor does the EU have a clear legal basis or a competence in minority rights.³⁶ Given that, despite numerous attempts, the international community has failed to reach a consensus on a definition of ‘minority’, this discussion does not aim enter into yet another quest to define the term. Instead, the focus is on highlighting the diversity of minority situations across the EU, and identifying a working definition of ‘minority’.³⁷

Before the term is defined, however, it may be useful to enquire whether various adjectives preceding the term ‘minority’ may impact the content of this term. Therefore sub-section 3.1 overviews some aspects of defining ‘national’, ‘indigenous’, ‘new’, ‘racial’, ‘ethnic’, ‘religious’, ‘linguistic’ and ‘territorial’ minorities.³⁸ The discussion aims to establish how these labels affect the content and scope of the definition.³⁹

The Declarations on Human Rights adopted by the Luxembourg Summit in June 1991 signaled quite clearly the new attitude.⁴⁰ Unlike its 1986 predecessor, such a

³¹ Ibid page 388.

³² Ibid 389.

³³ Ibid.

³⁴ Ibid.

³⁵ BY GULARA GULIYEVA, THE RIGHTS OF MINORITIES IN THE EUROPEAN UNION. A thesis submitted to The University of Birmingham For the degree of DOCTOR OF PHILOSOPHY Birmingham Law School College of Arts and Law The University of Birmingham, 15 July 2010, page 127.

³⁶ Ibid , page 128.

³⁷ Ibid.

³⁸ Ibid,page 129.

³⁹ Ibid.

⁴⁰ Gaetano Pentassuglia, the EU and the Protection of Minorities:The Case of Eastern Europe, EJIL 2001, page 8.

<https://pdfs.semanticscholar.org/b0a5/ef0650e16ec972add890b79f46c1633f8c07.pdf>, accessed on 18th of October, 2016.

declaration devoted an entire paragraph to minority protection: The protection of minorities is ensured in the first place by the effective establishment of democracy.⁴¹ The European Council recalls the fundamental nature of the principle of non-discrimination.⁴² It stresses the need to protect human rights whether or not the persons concerned belong to minorities.⁴³ The European Council reiterates the importance of respecting the cultural identity as well as rights enjoyed by members of minorities which such persons should be able to exercise in common with other members of their group.⁴⁴ Respect for this principle will favor political, social and economic development.⁴⁵

4. Cases of Serious Conflicts

This chapter elaborates the human rights in contemporary world wherein will be presented the flow of factors of rule of law for human rights in cases of conflicts and it will be given a brief justification in analyzing success or non-success in relation to the protection of human rights in these cases. If it will be considered during their flow the reasons of conflicts were various as ideological, religious, traditional, ethnic or economic, such causes or reasons are determining factors for the emergence of conflicts which have consequences of serious infringement and violation of human rights.

According to an American author K.J. Holsti the notion of conflict is: “Conflict is a phenomenon that leads to organized violence caused by involvement of the parties, having compatible positions on issues of compartmentalization, they have hostile and certain forms of diplomatic and military action”.⁴⁶

Historically, conflicts are reactions of violations of human rights by different powers for territorial and other purposes, the development of these situations produce a negative effect on the rule of law and creates fatal consequences in matters of

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Prof.Dr Lisen Bashkurti, autor i Libri Krizat ndërkombëtare/President i Akademisë Diplomatike Shqiptare, faqe 236 Tiranë 2008.

protection of human rights. International conflicts with such consequences have been around the globe after World War II as: the conflict in ex-Soviet Union, Baltic Republics, Estonia, Lithuania, Latvia then Cyprus and many other conflicts in Southern Asia and East-southern Asia –Taiwan, Tibet, Republic of China, then in Palestine and recently in Syria. All these Conflicts cause numerous consequences in the rule of law and violations of human rights.

Since this topic has to do with legal aspect of the communities' rights, hereby will be elaborated briefly five cases of conflicts which occur in ex-Yugoslavia as follows: Bosnia, Croatia, Macedonia, Serbia and Kosovo. Such conflicts were of ethnicity nature and they have similarities and combination or connection with each other.

4.1. The conflict in Croatia 1991-1995

Croatia declared independence on the same day with Slovenia. But while the separation of Slovenia from the Yugoslav Federation passed relatively bloodless, the separation of Croatia was not the same. Croatian Serbs rebelled, and with the help of the Yugoslav Army and Serbia declared their independent state in about a third of Croatian territory which they called Serbian Republic of Krajina whereas the Croatian and other non-Serbian nationalities were expelled from the area with a violent campaign of ethnic cleansing.⁴⁷ According to a number of independent assessments, between 21,000 and 23,000 people were killed or disappeared during the conflict in Croatia.⁴⁸ That number includes 14,000 -16,000 (largely) ethnic Croatian civilians and members of Croatian Armed Forces, and approximately 7,000 ethnic Serb civilians and members of armed forces (members of the former JNA and the armed forces of the Republic of Srpska Krajina, most of whom were ethnic Serbs), who were living in Croatia during the war.⁴⁹

4.2. Bosnia and Herzegovina 1992-1995

The conflict in Bosnia and Herzegovina caused tragedy, sufferings and genocide and it was a conflict with very serious consequences in relation to other conflicts in the dissolution of the Yugoslav federation. It is estimated that over 200.000 people were

⁴⁷ Veton Zejnullahi ,Universiteti i Tiranës Instituti i Studimeve Evropiane Tema: “Zgjidhja paqësore e konflikteve” Tiranë 2013,faqe 49.

⁴⁸ Humanitarian Law Center, <http://www.hlc-rdc.org/?p=21169&lang=de> , accessed on 21st of December, 2016.

⁴⁹ Ibid.

killed and two million people, or more than half of the population, were obliged to leave their houses because of the war that lasted from April 1992 till November 1995, when is signed Dayton peace agreement. Rudolph Perina chief of diplomatic Mission in Belgrade, participant of Dayton peace agreement for Bosnia was very clear in his statement: “in Dayton are invited those who fought”.⁵⁰

4.3. The conflict in Serbia's Presheva Valley

Regarding the geographical scope, the region of Presheva Valley is actually under Serbia along the border with Kosovo, according to the estimation of registration in 1991 in Municipalities with majority of Albanian inhabitants: Preshevë, Bujanoc and Medvegja, lived there over 100,000 inhabitants from them 67% Albanians.⁵¹ Whereas according to the registration of 2002 in this region live 90.000 inhabitants, 65% of them are Albanians. Presheva is the town with mostly the Albanian population in Serbia.⁵² This territory inhabited with Albanians and the implications that had a part of population who were included in KLA, there were ideas for mobilization of this area where there were violation of human rights. Therefore the KLA members of Presheva Valley organized another new guerila-Presheva, Medvegja and Bujanoc Liberation Army (PMBLA) - that started the armed conflict with Serbia. PMBLA applied the same tactic as KLA of “the liberated territories” and filed requirements for territorial autonomy of Presheva Valley in frame of Serbia.⁵³ The conflict in the Valley was over with an agreement of both parties in May 2001, facilitated by a strong mediation of NATO , PMBLA and Government of Serbia signed so called “the agreement of Konqul” in order to end the conflict.⁵⁴ At the end the number of killed people was less than 100 whereas 14,000 refugees left the Valley and went to Kosova.⁵⁵

⁵⁰ Blerim Shala, Vitet e Kosovës 1998 – 1999, Prishtinë, 2001, faqe. 22.

⁵¹ Veton Zejnullahi Universiteti i Tiranës Instituti i Studimeve Evropiane Tema: “Zgjidhja paqësore e konflikteve” Tiranë 2013 faqe 50.

⁵² <http://www.kt.gov.rs/lt/articles/presheva/> , accessed on 27th of December, 2016.

⁵³ Agon Demjaha - Lulzim Peci& Albrecht Schnabel-Rohan Gunaratna , work of politics nr. 6/14 – December 2014 Inter Ethnic Relations in West Balcan: implication for Kosova edited by Kosovar Institute for Researches and Development of Politics page 30 based in a detailed review of PMBLA, see Agon Demjaha and Lulzim Peci, “Insurgencies in the Balkans: Albanian Liberation Armies,” Albrecht Schnabel and Rohan Gunaratna red. Wars from Within: Understanding and Managing Insurgent Movements, London: Imperial College Press, 2015.

⁵⁴ Ibid.

⁵⁵ Ibid.

4.4. The conflict in the Republic of North Macedonia

After the independence of North Macedonia from Yugoslavia, the Albanian population required autonomy within North Macedonia, when such a formula was accepted in the Preamble of the Constitution of 1991. Albanian political elites protested again against such developments and required that Albanians to give the status the state-forming nation.⁵⁶ North Macedonia which consists of Macedonians, Albanians and some other minorities, witnessed peace during the Yugoslav wars in the 90s. Nevertheless, at the very beginning of 2001 National Liberation Army (NLA) of Albanian ethnicity was confronted with security forces by requiring Autonomy or Independence for zones inhabited with Albanians in this country. The armed conflict was developed sporadically for some months in 2001 and was over with a peace agreement, the 'Ohrid Framework Agreement', which provided power-sharing, disarmament of Albanian warriors, and dislocation of a supervising Force of NATO.⁵⁷ This conflict was over with mediation of International Union with Ohrid Agreement on 13.08.2001. Whereas the armed conflict in Kosova, aspects of which I elaborated by Inter and transnational legal norms and human rights valid today's in Kosovo.

Analysis of the factors of success or failure of the rule of law for human rights in cases of conflict were elaborated well. Regarding the issue of protecting human rights, conflicts create trauma, consequences, violation of human rights, as it was in conflicts caused in ex-Yugoslavia non function of rule of law and consequences of destruction of human life, sufferings, rapes persecution and various maltreating. The conflicts could be interpersonal (between individuals), inter groups (between groups) and within groups. The elaborated conflicts are part of group conflicts. Therefore, it is not logical to occur conflicts which destroy human welfare, no matter for what kind of interests it happens, because people are more valuable than those properties, if the property, democracy and peace are together then there are less causes to have conflicts, war will not happen and military-police repressive forces will be unimportant.

⁵⁶ Agon Demjaha and Lulzim Peci, Policy paper no. 6/14 - December 2014 inter-ethnic relations in the Western Balkans: Kosovo implications published by Kosovar Institute for Policy Research and Development, page 29.

⁵⁷ Veton Zejnullahi, Universiteti i Tiranës Instituti i Studimeve Evropiane Tema: "Zgjidhja paqësore e konflikteve", Tiranë 2013, faqe 51.

Even nowadays, when we discuss about freedom, hate and violation, it is worth to mention the message of Martin Luther King from the USA, the leader of the movement for rights and freedom of black citizens who stated that: "Hate affects the man that hates in the same measure that affects the tone that is hated...." When the analysis are done for various trauma, psychological phenomena, violation of human rights, as a consequence of 2001 conflict in North Macedonia without any doubt, the end of the conflict does not mean the entire finish, or the end of problems, which were caused because of the war or a great number of problems that citizens had before the war in North Macedonia, especially those regions that were affected by the war, but many more.⁵⁸ Subsequently, it can be concluded that conflicts cause consequences, trauma and interruption of vital streams. In the conflicts of ex-Yugoslavia, there were unjustified consequences where many innocent people were killed. Those conflicts are considered quite negative, non-successful and with real negative effects in the society.

It could be stated that such conflicts are a sacrifice for majority of people, since if there is a comparison before the conflicts, nowadays many people of ex-Yugoslavia enjoy their human rights. For instance, Kosovo is an independent country where the human rights are guaranteed, then Bosnia which undergoes worse and finally, the rights of Albanians in the North Macedonia and Serbia which are much more advanced that they enjoy their rights congruent to international standards, for instance Presheva Valley as an issue of European and International standards for protection of human rights and non-majority groups, thus except the recognition of collective self-determination, International Covenant on Civil and Political Rights contains provisions that refers to the protection of ethnic, religious or linguistic minorities.⁵⁹ Kosovo has also advanced with a modern legislation which is present in some parts of this paper. Croatia is a country in the EU so it can be concluded that, regardless of the consequences, the application of instruments for human rights right

⁵⁸ Nazmi Malichi, Debat shkencor Traumat dhe dukuritë psikologjike si pasojë e konfliktit dhe të drejtat e njeriut, faqe 16

⁵⁹ Konferenca/Shqyrtimi dhe trajtimi shkencor si dhe riaktualizimi i Çështjes së Luginës së Preshevës në dimensionin rajonal ndërkombëtar <http://www.nacionalalbania.al/2016/10/Konferenca/>, accessed on 8th of January, 2017.

now in some countries can be considered as successful and with an effective influence for realization of human rights.

5. Conclusions

To summarise, the human rights in the contemporary world are universal, civil, political, economic, social and cultural rights belong to all human beings. The fundamental human rights and freedoms are indivisible, inalienable, and inviolable and stand at the base of the entire juridical order.⁶⁰ The organs of public power, in fulfilling their duties, shall respect the fundamental rights and freedoms, as well as contribute to their realization.⁶¹ The human rights are also the rights to freedom of religion, the right to a fair trial when charged with a crime etc.

The advancement of the human rights happened through some revolutions as mentioned in the debate part between Hauke Brunkhorst and Thore Prien on Anghie, Such as the Haitian revolution then the Atlantic Revolution, the French Revolution as well as through the advancement of the International Law and Constitutions. As also mentioned above in this chapter, the human rights have preceded some declarations and ideas as follow: the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration of the Rights of Man and the Citizen (1789), and the Bill of Rights in the United States Constitution (1791). Early philosophical sources of the idea of human rights include Francisco Suarez (1548–1617), ‘Francisco de Vitoria, the colonial origins of international law, Antony Anghie, Imperialism, Sovereignty and the Making of International Law, Hugo Grotius (1583–1645), Samuel Pufendorf (1632–1694), John Locke (1632–1704), and Immanuel Kant (1724–1804).

According to the Republic of Kosovo Constitution, the main categories of human rights are: Human dignity, equality before the law, right to life, right to personal integrity, prohibition of torture, cruel, inhuman or degrading treatment, prohibition of slavery and forced labor, right to liberty and security, rights of the accused, right to fair and impartial trial, right to legal remedies, the principle of Legality and

⁶⁰ Albanian Constitution Approved by the Albanian Parliament on 21 October 1998, Article 15 , <https://www.wipo.int/edocs/lexdocs/laws/en/al/al057en.pdf>, accessed on 9th of January, 2017.

⁶¹ Ibid

Proportionality in Criminal Cases, Right not to be Tried Twice for the Same Criminal Act, Freedom of Movement, Right to Marriage and Family, Freedom of Belief, Conscience and Religion, Religious Denominations, Freedom of Expression, Right of Access to Public Documents, Freedom of Media, Freedom of Gathering, Protection of Property, Right to Education, Rights of Children, Health and Social Protection, Judicial Protection of Rights, ect.⁶² The minority rights are included in the human rights categories but the minority rights in some states are separated and unique, for example, in Kosovo.

Human rights can often be violated as mentioned in the part of the Cases of Serious Conflicts. This violation of the human rights as well as minority rights comes as a result of disrespect of the human rights itself from the state. These violations have happened and continue to happen in many countries. This chapter treats some violations which happen as a result of a conflict. Some states did not respect the minority rights, notably the Serbian state. As a result of this disrespect, the war took place between Albanians and Serbs, where the Serbian state committed many massacres and evicted people from their homes.

Hence, violations of this kind happened not only in Kosovo but also in many states of the region like in Croatia, Macedonia, Bosnia, again as a result of disrespect of the human rights by Serbia. Having said this, we can conclude that conflicts cause consequences, trauma and interruption of vital streams. In conflicts in ex-Yugoslavia, there were unjustified consequences where many innocent people were killed. These conflicts are considered quite negative, non successful and with real negative effects in society, as a result of violating of the human rights order. Today though, the human rights are fully respected by states as Kosovo, Croatia and Bosnia, as well as minority rights are more advanced than ever. As elaborated in many chapters of this paper, chapter III of the Kosovo's Constitution foresees that 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

⁶² Chapter II Fundamental Rights and Freedoms, of the Constitutions of Kosovo <http://www.kryeministri-ks.net/repository/docs/ConstitutionIKosovo.pdf> accessed on 9th of January, 2017.

forth in this Constitution, in addition to the human rights and fundamental freedoms provided in chapter II of this Constitution.⁶³

As a final point, we can summarise that the human rights now are more advanced than ever before and their implementation is on a satisfactory level.

⁶³ Chapter III Rights of Communities and Their Members <http://www.kryeministri-ks.net/repository/docs/ConstitutionIKosovo.pdf> ,accessed on 9th of January, 2017.

CHAPTER II

WHAT ARE MINORITIES-INTERNATIONAL DEFINITION FOR MINORITIES

1. Definition of Minority

According to Kurt Hamer, non-majority communities, or other minorities are "ethnic, racial, religious or linguistic groups, whose status as minorities is recognized by national law or by various international declarations, and communities which organize and define themselves as such".⁶⁴

To determine the legal term for minorities, it has been historically quite difficult based on many interests. One of the stated reasons of states hesitating to define the term "minority" was the fear of internal problems that may be caused or of ideas for separatist movements that may occur.⁶⁵ Also, the name for "minority" as the terminology differs in the various states, but with all differences specified in the general definition of minorities in those countries where there is willingness for their acceptance, there have not been any obstacles to correctly determine their existence as a minority.⁶⁶

Different countries use different terms for minorities. These terms are generally associated with ethnic groups, not excluding religious and linguistic groups. Austria and Hungary use the term "ethnic Groups", in Finland the terms "minority" and "racial" groups, "group of national origin" or "religious group" are used. Slovakia also talks about "national minorities and ethnic groups". Greece uses the word religious minority, Kingdom of Serbia, Croatia and Slovenia the term "national Minority" was used, whereas with the 1963 Constitution of the former Socialist Republic of Yugoslavia the term "nationality" (narodnost) was used.⁶⁷

⁶⁴ Kurt Hamer, appointed for inter-border issues (Grenzlandbeauftragter) of the Land Schleswig-Holstein, the former Vice President of Land S-H, and one of the founders of Europe Centre for Minority Issues Kosovo, Communities in Kosovo, Guide for professionals working with communities in Kosovo, Pristina, December 2013.

⁶⁵ Luan Omari, the question of national minorities and Albania, Tirana 2014, page 32.

⁶⁶ Florence Benoit Rohmer, The Minority question in Europe, Tirana 1996, page 16.

⁶⁷ Ibid page 35.

Minority was defined as a group of persons in principle permanently resident in the territory of a state, constituting less than half of its population, bearing distinct national or ethnic, religious and linguistic characteristics, displaying a will to preserve the existence and identity of the group.⁶⁸ The Sub-Commission on the Prevention of Discrimination and Protection of Minorities suggested the following definition in 1954: The term minority shall include only those non-dominant groups in a population which possess and wish to preserve ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population.⁶⁹

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 being 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”.⁷⁰

Capotorti found that the Roma are rarely recognized by states as being a legal minority targeted with special measures aimed at equality and non-discrimination: It is important to remember that in most cases the groups recognized as ‘minorities’ or as communities which are to benefit from special treatment are well-defined groups.⁷¹ Certain groups, including those which are scattered throughout the territory of a country, seldom appear among those forming the subject of recognition by the State with legal effect.⁷² Such is the situation, for instance, of the groups described as ‘Gypsies’ in a large number of European countries.⁷³ Beyond Capotorti’s definition, we have one definition by Jules Deschenes: A group of citizens of a state,

⁶⁸KRISTIN HENRARD AND ROBERT DUNBAR-SYNERGIES, IN MINORITYPROTECTION European and International Law Perspectives, Edited Cambridge University Press 2008, page 60.

⁶⁹ UN, Report of the 10th Session of the Commission on Human Rights, 18 ESCOR Supp. 7, UN Doc E/2573 at 48–9 (1954).

⁷⁰ Minority Rights International Standards and Guidance for Implementation, United Nations New York and Geneva, 2010 & United Nations Human Rights Office of High Commissioner page 2, https://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf, accessed on 10th of January, 2017. **Uions New YoOffice of High Commissioner ew York and Geneva, 2010**

⁷¹ HELEN O’NIONS Minority Rights Protection in International Law The Roma of Europe *University of Lincoln, UK*, page 185.

⁷² Ibid.

⁷³ Ibid.

constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim to achieve equality with the majority in fact and in law.⁷⁴

European Convention on Human Rights and Fundamental Freedoms (ECHR). In fact, the Preamble of the Protocol refers to the general obligation to protect the rights of national minorities and Article 1 of the same Protocol provides a rather ambiguous definition of the concept of minority in that the expression ‘national minority’ is said to refer to a group of persons in a state who:

- (a) reside on the territory of that state and are citizens thereof;
- (b) maintain long-standing, firm and lasting ties with that state;
- (c) display distinctive ethnic, cultural, religious or linguistic characteristics;
- (d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; and
- (e) are motivated by a common concern to preserve that which constitutes their common identity, including their culture, their traditions, their religion or their language.⁷⁵

The term ‘national minorities’ consists of two explanatory elements: the noun ‘minorities’ and the adjective ‘national’.⁷⁶ The circumstances of groups considered to be ‘minorities’ differ greatly from one state to another, and it is therefore difficult to create a definition that encompasses all categories of minorities.⁷⁷ The most controversial points are the minimum size of the minority group and the need for a subjective feeling of solidarity, the situation became even more complicated when some states – such as France and Turkey – denied the existence of minorities in the name of national unity, such states fear that the existence of a commonly agreed definition of a minority supports the regional claims and secessionist movements which they have long resisted.⁷⁸ The fear of

⁷⁴ Steven Wheatley, *Democracy, Minorities and International Law* University of Leeds C A M B R I D G E U N I V E R S I T Y P R E S S, page 18.

⁷⁵ Edited by Denika Blacklock and Katherine Nobbs, *the Protection of Minorities in the Wider Europe*, page 44.

⁷⁶ Edited by Denika Blacklock and Katherine Nobbs, *the Protection of Minorities in the Wider Europe*, page 45.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

secessionist movements largely explains the reluctance of many states to reach a consensus on the general definition of the term ‘minority’.⁷⁹ Due to the lack of a general definition, international instruments have confined their scope of applicability to certain types of minorities, for example, ethnic, linguistic or religious minorities.⁸⁰

High Commissioner on National Minorities has declined to provide a definition of national minorities.⁸¹ Accordingly, legal protection that does not include a legal definition of the ‘object’ of protection does not necessarily require a ‘definition’ as can also be seen in the work of the Advisory Committee under the Framework Convention for the Protection of National Minorities but only a decision on who has legal standing before a court and what sort of claim is possible.⁸² In this respect, the binary code and dichotomy created between individual and group rights, in particular in the scientific discourse in public international law, must also be deconstructed, this dichotomy is false and based only on ideological assumptions.⁸³

The Council of Europe (COE), describes Roma people as a distinct minority with a unique and rich language and culture. In a 1993 recommendation that was said to have “paved the way towards a new phase in the activity the Council of Europe” (*Legal Situation of the Roma in Europe* 2002: paras I/1, II/1), this approach was clearly set out: “A special place among the minorities is reserved for Gypsies.⁸⁴ Living scattered all over Europe, not having a country to call their own, they are a true European minority, but one that does not fit into the definitions of national or linguistic minorities.⁸⁵ As a non-territorial minority, Gypsies greatly contribute to the cultural diversity of Europe. In different parts of Europe they contribute in different

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Arie Bloed, Rainer Hofmann, Joseph Marko, James Mayall, John Packer, Marc Weller. *Managing Editors*: Emma Lantschner, Jonathan Wheatley. *Assistant Editors*: Alice Engl, Vladislav Michalcik, Gabriel N. Toggenburg, Matthew Ward. *General Editors* /European Yearbook of Minority Issues: VOLUME 5, EURAC research Europäische Accademi Bozen – Bolzano European Centre for Minority Issues Martinus Nijhoff Publishers LEIDEN • BOSTON 2007, page 144.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Timofey Agarin and Malte Brosig, *Minority Integration in Central Eastern Europe Between Ethnic Diversity and Equality* Edited and introduced by Timofey Agarin and Malte Brosig, Radopi, Amsterdam - New York, NY 2009, Page 132 file:///C:/Users/nuhi.osmani/Downloads/Timofey_Agarin_Malte_Brosig_Minority_Integrati.pdf, accessed on 10th of January, 2017.

⁸⁵ Ibid.

ways, be it by language and music or by their trades and crafts.” (*Gypsies in Europe* 1993, Recommendation 1203: paras. 2 and 3).⁸⁶

Ultimately, Pentassuglia endorses the definition of “minority” provided by Francesco Capotorti in 1978 with regard to Article 27 of the ICCPR and elaborated by article 57 of the same treaty.⁸⁷ According to this definition, “minority” refers to a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being 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 cultures, traditions, religion or language.⁸⁸

According to Pentassuglia, this definition reflects the core principles of the term minority and specifies that, although belonging to this group is a matter of an individual’s choice to preserve her heritage, a subjective element must be substantiated by objective criteria relevant to a person’s identity.⁸⁹ According to Pentassuglia’s book offers a comprehensive overview of the treatment of minorities within international law, with three main objectives.⁹⁰ First, it outlines the substantive entitlements available to minorities by contrasting them to the wider background of international human rights.⁹¹ Second, it describes and underscores the role of international institutions in the development of protective regimes.⁹² Finally, it addresses special problems and questions that arise in the context of minority rights, such as the difficulty of arriving at a universal definition of the term “minority”.⁹³

⁸⁶ Ibid.

⁸⁷ By *Aristides Díaz-Pedrosa*, * GAETANO PENTASSUGLIA, *MINORITIES IN INTERNATIONAL LAW: AN INTRODUCTORY STUDY* (STRASBOURG: COUNCIL OF EUROPE PUBLISHING, 2002), page 379.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

1.1. Definition for Minorities in Germany

Consequently, in the Bonn–Copenhagen Declarations, the minorities are not defined by origin or traditional affiliation to the border region itself.⁹⁴ Although the minorities are limited to the border region, this does not presume that the same applies to the individual members of the minority.⁹⁵ This is indeed a very liberal concept of minorities, which is based on the assumption that a minority is a question of fact rather than an issue of definition. Still, citizenship of the state that the minority lives in is required, although in everyday life no authority discriminates between German, Danish or even other nationals identifying themselves as members of the Danish minority in Germany or vice versa in the case of the German minority in Denmark. Nevertheless, in legal terms, the distinction is important.⁹⁶

1.2. Definition for Minorities in Latvia

Latvia defined national minorities as “citizens of Latvia who differ from Latvians in terms of their culture, religion or language, who have traditionally lived in Latvia for generations and consider themselves to belong to the State and society of Latvia, who wish to preserve and develop their culture, religion or language”.⁹⁷ Persons who are not citizens of Latvia or another State but who permanently and legally reside in the Republic of Latvia, who do not belong to a national minority within the meaning of the Framework Convention for the Protection of National Minorities as defined in this declaration, but who identify themselves with a national minority that meets the definition contained in this declaration, shall enjoy the rights prescribed in the Framework Convention, unless specific exceptions are prescribed by law.⁹⁸

1.3. Balkan ethnic minorities

In Yugoslav and Russian political discourse from the Communist era, ethnic minorities used to be called ‘nationalities’ (*narodnosti* in Yugoslavia) if they had

⁹⁴ Arie Bloed, Rainer Hofmann, Joseph Marko, James Mayall, John Packer, Marc Weller. *Managing Editors*: Emma Lantschner, Jonathan Wheatley. *Assistant Editors*: Alice Engl, Vladislav Michalcik, Gabriel N. Toggenburg, Matthew Ward. *General Editors* / *European Yearbook of Minority Issues*: VOLUME 5, EURAC research Europäische Accademi Bozen – Bolzano European Centre for Minority Issues Martinus Nijhoff Publishers LEIDEN • BOSTON 2007, page 127.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ Edited by Bernd Rechel, *Minority Rights in Central and Eastern Europe* BASEES/Routledge series on Russian and East European studies, page 144.

⁹⁸ *Ibid.*

appropriate referent nations outside the federative state. As the term ‘minority’ points to some major entity, the term ‘nationality’ is both secondary to and dependent upon the notion of the ‘nation’ (*narod* according to the Soviet or Yugoslav classification; in Yugoslavia “*narody*” were defined as “possessing nation-forming functions”).⁹⁹

1.4. The Definition of Minorities in Kosovo

"Minority" communities or "minority" in Kosovo is defined as "non-majority" Communities, which is understood for residents belonging to a national, ethnic, cultural, linguistic or religious group, traditionally present in the Republic of Kosovo, and which are not in the majority. Those groups are Serb, Turkish, Bosnian, Roma, Ashkali, Egyptians, Gorani, Montenegrin, Croatian communities and other communities. Members of the majority community in the Republic of Kosovo, as the whole who are not in the majority in a given municipality also enjoy the rights listed in the rights enjoyed by non-majority communities in other municipalities.¹⁰⁰

Furthermore, the definition of minority it is foreseen on article 4 paragraph 4.1 the Law no. 03/L-047 on the Protection and Promotion of the Rights of Communities and their members in Kosovo which emphasizes this: for the purposes of this law, communities are defined as national, ethnic, cultural, linguistic or religious groups traditionally present in the republic of Kosovo that are not in the majority.¹⁰¹

2. The Ethnic Structure of the Population in Kosovo

The republic of Kosovo is defined as a state of its citizens and not its nationalities it means Kosovo is a civil state, and not a national one.¹⁰² Kosovo recognize and guarantees special treatment to the communities in enjoying the rights they need because of being different in terms of their identity. The last census in Kosovo has

⁹⁹Marina Martynova, *Balkanskiy krizis: narody i politika* (Saryj Sad, Moscow),16-17 Another definition says that a “people is a collectivity conceived as such in virtue of its geographical, religious and linguistic characteristics and its political aspirations”. See Preda, *op.cit.*

¹⁰⁰ Chapter III, article 57 of the Constitutions of Kosovo <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf> accessed on 13th of January 2017, and Law No. 04/L-020 on amending and supplementing the Law no.03/L-047 on the protection of the rights of communities and their members, <http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20amending%20the%20law%20on%20communities.pdf>, accessed on 13th of January 2017.

¹⁰¹ Article 4 paragraf 4.1 the Law no. 03/L-047 on the Protection and Promotion of the Rights of Communities and their members in Kosovo https://www.kuvendikosoves.org/common/docs/ligjet/2008_03-L047_en.pdf, accessed on 14th of January 2017.

¹⁰² Ibid article 1.

that the population in Kosovo is made of Albanians, Serbs, Turks, Bosniaks, Gorani, Roma, Ashkali, Egyptians, Montenegrins, Croats and other , who are not declared or did not wanted to show their identity.

2.1 Albanian Community in Kosovo

Historical records show that Kosovo Albanians are descendants of the biggest Illyrian tribe ‘the Dardans’, who inhabited much wider region from what they have today.¹⁰³ Most of Kosovo Albanians are Sunni Muslims, and a part of them belong to the Islamic sect known as the Bektashi, and a part of this population are Catholics. According to the census in 2011, it was estimated that the number of Catholics is around 38.438, or approximately to 2.37% of the total number of Albanians in Kosovo.¹⁰⁴

Based on the results of the census of 2011, in Kosovo there are 1,623,419 Kosovo Albanians, who make up about 86.63% of the total population.¹⁰⁵

2.2. Serb Community in Kosovo

Kosovo Serbs constitute the largest minority in Kosovo. The Serbs community lived in four municipalities in the northern Kosovo and in the municipalities of Graçanicë and Shterpce in the south. Estimation of the number of the Serbs in Kosovo is around 146.128 Serbs who comprise about 7.8% of the total population. Based on the historical data, the Serbs community settled the Eastern Europa around VI-VII centuries A.D as part of the migration of Slavic tribes in the region during that period.¹⁰⁶

2.3. Bosnian Community in Kosovo

The Bosnian community is the second-biggest minority in Kosovo. According to the results of the census of Kosovo of 2011 supplemented with data from OSCE for the

¹⁰³ Malcolm, Noel, “Kosovo: A Short History”, London: Pan Macmillan Ltd, 1998,p 28.

¹⁰⁴ Kristaq Prifti, Kosovo Population 1831-1912, Albanian Academy of Science Tirana 2014, page 79.

¹⁰⁵ Complemented by the OSCE data for northern Kosovo , see: Communities Profile of Kosovo 2010<https://www.osce.org/kosovo/75450?download=true> accessed on 17th of January 2017; European Centre For Minority Issues Kosovo, Communities in Kosovo: Guidelines for professionals working with communities in Kosovo December 2013 <http://www.ecmikosovo.org/uploads/ECMIKosovoDec2013GuidebookforProfessionalsENG.pdf>, accessed on 17th of January 2017.

¹⁰⁶ Malcolm, Noel, “Kosovo: A Short History”, London: Pan Macmillan Ltd, 1998, page 22-24 and European Centre For Minority Issues Kosovo, Communities in Kosovo: Guidelines for professionals working with communities in Kosovo December 2013, page 16

northern part of Kosovo, ECMI Kosovo estimates that, in Kosovo are around 28.933 Bosnians, who make up about 1.54% of the total population. Most Bosnians live in Prizren, while the other part of this community live in Dragash, Peja, Istog and North Mitrovica. Bosniaks are believed to be mainly Muslim Slav community, descendants of Slavic tribes that have migrated to South East Europe in 6th and 7th centuries AD. In general, like Albanian community, they practice Sunni Islam. In the old history of Kosovo, Bosniaks were not regarded as Community.¹⁰⁷

The Bosniak community in Kosovo use the Latin script and speak Bosnian, a Slavic language closely related to Serbian, Croatian, and Montenegrin language. The Bosnian language is recognized as the official language in official use in the municipality of Istog.¹⁰⁸

2.4. Turkish Community in Kosovo

According to the results of the census of Kosovo of 2011 with data from OSCE for northern part of Kosovo, ECMI Kosovo estimates that in Kosovo there are around 18,948 Turks, who comprise around 1.01 % of the total population. Turkish community comprises the numerical majority in one of the Kosovo municipalities in Mamusha. However, the largest number of Turks lives in Prizren, Pristina municipality has also a significant Turkish Population; a small Turkish community can be found in other parts of Kosovo.¹⁰⁹

2.5. Roma Community in Kosovo

Kosovo census in 2011 was partially boycotted by Roma. According to estimates derived from the census of 2011 compared with the estimation of the other reliable organizations such as those of OSCE, the size of the Roma population is almost double less.¹¹⁰ Therefore, assessments on the number of members of the Roma community in Kosovo should be based in alternative resources. Based in Community

¹⁰⁷ Kristaq Prifti, Kosovo Population 1831-1912, Albanian Academy of Science Tirana 2014 page 79, Albanians, Serbs, Bulgarians, Vlachs, Turks and Roma are mentioned.

¹⁰⁸ European Centre For Minority Issues Kosovo, Communities in Kosovo: Guidelines for professionals working with communities in Kosovo December 2013, page 27.

¹⁰⁹ Census in Kosovo in 2011 did not cover the northern part of Kosovo. Therefore, the Municipal Profiles developed by the OSCE in 2013 are used as a source for data of the Turk community in the northern municipalities. For all the municipalities in the south the data of the census of Kosovo 2011 are used as a source.

¹¹⁰ For more information on minority communities participation in 2011 census in Kosovo see: "Minority Communities in the 2011 Kosovo Census Results: Analysis and Recommendations " ECMI Kosovo, 18 December 2012.

Profiles of 2010 and the Municipal Profiles of 2013 both developed by the OSCE, it is estimated that in Kosovo there are around 15,696 Roma, who constitute about 0.84% of the total population. The largest number of members of the Roma community is concentrated in Prizren, while a large number of them also live in Gracanica, Peja and South Mitrovica. A small number of members of the Roma Community can be found in other parts of Kosovo. The Roma community is believed to be descendant of immigrants from central India. Although a small number of Roma are believed to have arrived in Eastern Europe before the fourteenth century, the majority of Roma have migrated to this region in the fourteenth and fifteenth centuries AD.¹¹¹ The Roma community has cultural and socio-economic similarities with Ashkali and Egyptian communities in Kosovo. However, Kosovo through its institutions and legislation, recognize the Roma as a distinct and separate community, and treats them as such. Roma communities can be found throughout the region and the rest of Europe, and in smaller numbers in other regions of the world. Roma community in Kosovo is nominally Sunni Muslim, located in certain and urban areas. International Roma day, 8 April, is recognized as the official Memorial Day in Kosovo.¹¹²

2.6. Ashkali Community in Kosovo

According to the results of the census of Kosovo of 2011 supplemented with data from the OSCE for the northern part of Kosovo, it is estimated that in Kosovo there are around 15,546 Ashkali who comprise around 0.83% of the total population.¹¹³ The Ashkali community has cultural similarities and face similar Socio-economic problem such as Roma and Egyptian communities in Kosovo, but considers itself as a distinct and a separate community. In line with this, Kosovo, through its intuitions and legislation recognizes the distinct identity of the Ashkali Community and treats

¹¹¹ European Centre for Minority Issues Kosovo, Communities in Kosovo:Guidelines for professional working with communities in Kosovo December 2013, page 37; For more information on the Roma history see: http://www.coe.int/t/dg4/education/roma/histoculture_EN.asp.
<http://www.ecmikosovo.org/uploads/ECMIKosovoDec2013GuidebookforProfessionalsENG.pdf>, accessed on 19th of January 2017

¹¹² Low no.03/L-074 on the protection of the rights of communities and their members in Republic of Kosovo, article 12, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2531>, accessed on 21st of January 2017.

¹¹³ European Centre for Minority Issues Kosovo, Communities in Kosovo:Guidelines for professional working with communities in Kosovo December 2013, page 43
<http://www.ecmikosovo.org/uploads/ECMIKosovoDec2013GuidebookforProfessionalsENG.pdf>, accessed on 22nd of January 2017.

them as such. The Ashkali day, 15 February, is the officially recognized as the Kosovo Memorial Day.¹¹⁴

2.7. Egyptian Community in Kosovo

According to the results of the census of Kosovo of 2011 supplemented with data from the OSCE for the northern part of Kosovo, it is estimated that in Kosovo there are around 11,524 Egyptians who comprise around 061 % of the total population. The Egyptians consider themselves the ethnic group whose origins can be linked to ancient Egypt. In 1991 Yugoslav census, Egyptians were recognized as a distinct ethnic group for first time, although the results for the Egyptians in Kosovo have never been published in 1990 Egyptian community members began to organize in political organization and civil society.¹¹⁵

2.8. Gorani Community in Kosovo

The Gorani community in Kosovo is one of the smallest communities in the country. According to the results of the census of Kosovo of 2011 supplemented with data from the OSCE for the northern part of Kosovo, ECMI Kosovo estimates that in Kosovo there are around 10,945 Gorani who comprised around 058 % of the total population. The Gorani community is Slavic - speaking group of Islamic religion, which, although it has cultural similarities to Bosniaks, consider itself a distinct ethnic group. The Gorani community originates from Gora region ,which lies in southern Kosovo bordering Macedonia and Albania .Gorani community celebrates the beginning of spring , known as "durdjevdan" (St. George's Day), which is recognized by law as the official day of the Gorani community (6 May).¹¹⁶ Currently, most of the Gorani population live outside the region of Gora, in the other areas of Kosovo, Macedonia, Albania and also in Serbia and Western Europe and in the United States.¹¹⁷

¹¹⁴ Ibid.

¹¹⁵ Ibid page. 50.

¹¹⁶ Law nr.03/L-064 on Official Holidays in Republic of Kosovo <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2539> , accessed on 22nd of January 2017.

¹¹⁷ European Centre for Minority Issues Kosovo, Communities in Kosovo:Guidelines for professional working with communities in Kosovo December 2013, page 55, <http://www.ecmikosovo.org/uploads/ECMIKosovoDec2013GuidebookforProfessionalsENG.pdf>, accessed on 23rd of January 2017.

2.9. Montenegrin Community in Kosovo

The Montenegrin community is the second smallest in Kosovo after Croat community. Of all the communities in Kosovo, figures about the Montenegrin community are perhaps the most unclear ones, since even the representatives of the Montenegrin community themselves have no clear or approximate figures. According to the ECMI Kosovo estimated and based on the OSCE reports and the community representatives, the total number of Montenegrins in Kosovo is around 265, or 0.01% of the total population of Kosovo, mostly located in Istog and Fushë Kosova. The Montenegrin community is a Slavic ethnic group, descendants of the Slavic tribes that have migrated to South-eastern Europe in the sixth and seventh centuries AD. This community is culturally closely related to the Serb community; they are mostly Orthodox Christian and share many objects of cultural heritage.¹¹⁸

2.10. Croat Community in Kosovo

The Croat community is the smallest one in Kosovo. There are no accurate figures for the Croat community, since they were not included as a separate ethnic group in the census of 2011, but according to the OSBE reports, the total number of Croats in Kosovo is around 259, or 0.01% of total population. The Croat community is a Slavic ethnic group, descendants of the Slavic tribes that have migrated to South-eastern Europe in the sixth and seventh centuries AD. In Kosovo, there are a number of cultural heritage sites, mostly churches, including the Church of St. Nicholas in Janjeva. This community has been officially recognized by the Government in 2011 with the amendment of the Law on the protections and promotion of the rights of communities and their members in the Republic of Kosovo.¹¹⁹

3. Conclusion

To conclude, although the term '*minority*' has been used a lot during this chapter, we do not have final a definition of what a community is, respectively it differs by country to country, based on many documents and scientific theories, including conventions, which foresee a lot of definitions having similar meaning that show

¹¹⁸ Ibid page 59.

¹¹⁹ Ibid page 63.

what are definitions of minority rights in many countries especially the EU Member states.

Most definitions are based on official documents, for instance, most of countries mapping of European applying convention frame for human rights community some of them have included in their legislation term minority in constitution or law some of them are including in national legislation. Germany has included in treaty and has explained definition on case in the Bonn–Copenhagen Declarations, which clarify the minority issued which live in the border of two states.

In Kosovo, this issue is treated based on its constitution in general and particularly, the definition of communities is foreseen based on the Law no. 03/L-047 on the Protection and Promotion of the Rights of Communities and their members in Kosovo. The author Kurt Hamer, has agreed with the idea that, besides that communities are ethnic groups, religious, racial and so on, their status must be known by law. Nevertheless, the definition of what communities are, is better to specify their types and protect them on the best way. Thus, regardless of the percentage of minorities population in Kosovo is low, minorities have all the rights that the majority of populations have, even though the minorities in Kosovo have some special rights, which are elaborated in this thesis.

CHAPTER III

PROCEDURE OF APPROXIMATION WITH EUROPEAN STANDARDS AND NATIONAL LEGISLATION FOR MINORITIES IN KOSOVO

1. Procedure of Approximation of the National Legislation in Kosovo

In 1993, the Council of European Union defined the Copenhagen criteria for countries aspiring to join the European Union (EU), which are of political, economic and legal nature.¹²⁰ Consequently, the aspirations of the Republic of Kosovo to join EU are not only related to political and economic issues, but, above all, to legal issues as well.¹²¹ In the course of the European integration process, the approximation of domestic legislation with EU legislation (acquis) constitutes one of the main pillars that lead Kosovo's process towards European integration.¹²² In light of the integration process, institutions of the Republic of Kosovo have developed the appropriate legal infrastructure on legal services and standards on drafting legal acts required for approximation of domestic legislation with acquis.¹²³ The process of approximation of EU legislation in Kosovo includes a wide variety of activities and commitment of governmental institution regarding the process of planning, drafting, adoption and implementation of domestic legislation in line with EU acquis.¹²⁴ In order to carry out the process of domestic legislation approximation with EU law, the translation of EU acquis in official languages of the Republic of Kosovo assists institutions and all participating stakeholders regarding its usage and correct approximation of domestic legal acts to those of EU.

¹²⁰ Ministry of European Integration <http://mei-ks.net/en/approximation-of-legislation-561>, accessed on 1st of February 2017.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Ibid.

2. Legal Framework for Approximation

The approximation of laws in line with the EU Acquis Communautaire is one of the conditions that must be fulfilled for each country aiming for EU membership.¹²⁵ Kosovo is making significant progress while issuing its own laws in line with EU legislation. In this regard, the institutions responsible for this process have been established, as well as legal procedures are envisaged.¹²⁶

On account of this, the process of approximation of domestic legislation with EU law is a very challenging process for the institutions of the Republic of Kosovo.¹²⁷ It constitutes one of the criteria for EU membership.¹²⁸ Legislators aiming to draft legal acts in line with EU acquis standards and requirements when drafting legal acts, should comply with normative criteria and requirements arising from applicable acts such as: Regulation of Rules and Procedure of the Government of the Republic of Kosovo no. 09/2011; Administrative Instruction no. 03/2013 on Standards for the Drafting of Normative Acts and Rules of Procedure of the Assembly of the Republic of Kosovo.

Before signing the Stabilization and Association Agreement, Kosovo has made the approximation process based on its legislations. The process of legislation is an important process of Kosovo's integration towards Europe and we can conclude that it is the most important criterion for European integration and the greatest task that a member state or state needs to fulfill as Kosovo which is for European membership. So far, Kosovo has not had contractual relations with the European Union, but as mentioned above, Kosovo has preceded the process of approximation since the beginning of state formation and on.

In 2013, Kosovo opened a new chapter of its path towards the EU.¹²⁹ The June decision of the European Council to authorize the opening of negotiations for a

¹²⁵ Jeton Bytyqi, Përafrimi i Legjislacionit të Kosovës me Acquis Communautaire të BE-së: Sfidat dhe perspektivat, Prishtinë page 2. <http://www.ajls.org/doc/JBytyqi-AJLS-VOL-I.pdf> accessed on 2nd of February 2017.

¹²⁶ Ibid

¹²⁷ <http://mei-ks.net/en/legal-framework-for-approximation-#sthash.aKMVAXJZ.dpuf>; accessed on 2nd of February 2017.

¹²⁸ Ibid

¹²⁹ Instrument for Pre-accession Assistance (IPA II) 2014-2020 Kosovo* EU Legal Approximation Facility page 3. https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/kosovo/ipa/2015/04_ipa_2014_eu_legal_approximation_20141027.pdf accessed on 4th of February 2017.

Stabilization and Association Agreement, represented the start of a significant new phase in EU-Kosovo relations.¹³⁰ In its process of domestic law approximation to the EU Acquis, Kosovo needs to adopt the requirements of EU legislation and match them with adequate implementation and enforcement measures,¹³¹ in this way, it is given the possibility for Kosovo to establish contractual relations with the European Union.

The Republic of Kosovo, which has entered into contractual relations with the EU due to Kosovo specifications so far, has not been recognized by five member states and it is worth noting that during the signing of this agreement with the European Union, Kosovo was found a *modus vivendi* during the signing of this agreement has used the name Kosovo only without prejudice to its status and the footnote mentioned in the Kosovo reference for Kosovo in the preamble to the Stabilization and Association Agreement has the following content: “This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence”.¹³² Consequently, Kosovo should make the approximation of legislation not only to show its commitment that it claims to be a state pro-European or nearby Europe, but such an obligation derives from the Stabilization and Association Agreement Between Kosovo*, of the one part, and the European Union and the European Atomic Energy Community, of the other part respectively title VI article 74 Approximation of Kosovo’s law to the EU acquis, law enforcement and competition rules where it is pointed out that: The Parties recognize the importance of the approximation of the existing legislation in Kosovo to that of the EU and of its effective implementation.¹³³ Kosovo shall endeavor to ensure that its existing law and future legislation will gradually be made compatible

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Stabilisation and Association Agreement Between Kosovo* , of the one part, and the European Union and the European Atomic Energy Community, of the other Part page 1 to footnote. <http://data.consilium.europa.eu/doc/document/ST-10728-2015-REV-1/en/pdf> accessed on 4th of February 2017.

¹³³ Stabilisation and Association Agreement Between Kosovo* , of the one part, and the European Union and the European Atomic Energy Community, of the other part title VI article 74 Approximation of Kosovo’s law to the EU acquis, law enforcement and competition rules page 82. <http://data.consilium.europa.eu/doc/document/ST-10728-2015-REV-1/en/pdf> accessed on 5th of February 2017.

with the EU acquis.¹³⁴ Kosovo shall ensure that existing law and future legislation will be properly implemented and enforced.¹³⁵

This approximation shall start on the date of signature of this Agreement, and shall gradually extend to all the elements of the EU acquis referred to in this Agreement by the end of the transitional period.¹³⁶ Approximations will, at an early stage, focus on fundamental elements of the EU acquis in the field of the Internal Market, and in the field of Freedom, Security and Justice, as well as on trade-related areas, at a further stage, Kosovo shall focus on the remaining parts of the EU acquis.¹³⁷

Approximation shall be carried out on the basis of a program to be agreed between the European Commission and Kosovo.¹³⁸ Kosovo shall also define, in agreement with the European Commission, the modalities for the monitoring of the implementation of approximation of legislation and law enforcement actions to be taken, including efforts by Kosovo to reform its judiciary to implement its overall legal framework.¹³⁹ The Republic of Kosovo has also drafted a National Strategy for European Integration and Participatory Approach Kosovo 2020, with the exception of defining the national and international commitments of Kosovo in terms of European Integration, thereby defining Kosovo's priorities vis-à-vis the aspect of approximation of Kosovo legislation with the Union European farther more in the process of European Integration, Kosovo will further be assessed on its capacities to align its legislation with the EU Acquis, in all sectors of integration.¹⁴⁰ It is expected that before the date of accession, Kosovo will have transposed and enforced the full Acquis in its legal order. In this regard, the establishment of a coherent and consistent legal system is an essential basis for an enhanced implementation of legislation and alignment with the Acquis.¹⁴¹

By 2020, Kosovo will experience a properly functioning legal approximation process, involving all relevant Government institutions and the Parliament, aiming at

¹³⁴ Ibid

¹³⁵ Ibid

¹³⁶ Ibid

¹³⁷ Ibid

¹³⁸ Ibid

¹³⁹ Ibid

¹⁴⁰ National Strategy for European Integration a Participatory Approach Kosovo 2020 page 15

¹⁴¹ Ibid

harmonizing the legislation of Kosovo with the EU Acquis.¹⁴² Such objective implies the set-up of a functional and sustainable institutional coordination mechanism, the introduction of legal approximation instruments as constituent part of the legislation drafting process and the development of capacities of all line institutions to deal with the EU Acquis.¹⁴³ Moreover, a National Plan for Approximation will be adopted and under implementation.¹⁴⁴ It will include all legal acts of the EU Acquis to be transposed by Kosovo Institutions in a defined time frame by Kosovo institutions.¹⁴⁵ The draft of such plan becomes mandatory after the signing of the Stabilization and Association Agreement.¹⁴⁶

3. Determining the approximation of national legislation in European countries and comparing with the Kosovo procedure

The definition in the European Union, the concept of approximation of law means the process of harmonizing of national legislation with the EU law.¹⁴⁷ The process of approximation includes methods and techniques for transposing the EU legislation into the national law, its incorporation into the national legal systems and the process of implementation, which is individually manifested through realization of individual rights or assumption of concrete obligations.¹⁴⁸

In accordance with Art. 4(3) of the Treaty on European Union, the EU Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising from the Treaties or resulting from the acts of the EU institutions. They also shall facilitate the achievement of the EU tasks and refrain from any measure, which could jeopardize the attainment of the EU objectives.¹⁴⁹ It generally should be understood as the following: “In the broadest sense legal approximation means the transposition of provisions of EU law into the national

¹⁴² Ibid page 16.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Practical Guidelines for Legal Approximation of the Legislation of the Republic of Kosovo with the Legislation of the European Union , April 2014, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, page 37.

¹⁴⁸ Ibid.

¹⁴⁹ Practical Guidelines for Legal Approximation of the Legislation of the Republic of Kosovo with the Legislation of the European Union , April 2014, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, page 38.

legislation, implementation (application) of the provisions of such national legislation by the national competent public authorities and their enforcement by the courts and law enforcement agencies.¹⁵⁰ In practical terms, irrespective of the difference in the aforementioned terminology used (approximation or harmonization), one of the clearest indicators of the progress of a country regarding EU integration and approximation is the quantity and quality of national legal acts transposing the provisions of EU law, and the evidence of their effective application in practice.”¹⁵¹

If we make a comparison of the procedure regarding the legal approximation modalities that Kosovo has made based on its legislation and constitutional commitments as well as the international practices it has had in drafting the legislation using experts from international and especially by institutions the EU can compare that in some segments Kosovo has used EU practices and mechanisms now known as ratification and unification of legislation practices that many countries of the European Union have their obligations as well. In accordance with Regulation of Rules and Procedure of the Government of the Republic of Kosovo no. 09/2011 some steps are to be taken to approximate or harmonize domestic legislation with that of the EU known as *acquis communautaire*.

Pursuant to article 35 of Regulation of Rules and Procedure of the Government of the Republic of Kosovo no. 09/2011 wherein is foreseen the concept documents or explanatory memorandum that is about Review of Materials by the Office Prime Minister, which emphasizes that the Office of the Prime Minister (The Secretariat, the Legal Office, the Strategic Planning Office, Government Spokesperson and Prime Minister’s Communications Office) shall be responsible for reviewing concept documents or explanatory memorandum. The Ministry for European Integration shall do the same in relation to European integration issues,¹⁵² here can be seen the role of the process of approximation of EU and domestic legislation starting with the

¹⁵⁰Ibid.

¹⁵¹ Ibid.

¹⁵² Regulation of Rules and Procedure of the Government of the Republic of Kosovo no. 09/2011 Article 35 Review of Materials by the OPM, page 46, [http://www.kryeministri-ks.net/repository/docs/Rregullore_e_punes_se_Qeverise_09.2011_\(anglisht\).pdf](http://www.kryeministri-ks.net/repository/docs/Rregullore_e_punes_se_Qeverise_09.2011_(anglisht).pdf) accessed on 7th of February 2017.

development of a legal policy such as concept documents or explanatory memorandum, paragraph 6 of Article 35 clarifies in detail this procedure stating that: The Ministry for European Integration shall review the concept documents and decisions accompanied by an explanatory memorandum to ensure that the proposed policy is in harmony with EU integration priorities and that it complies with EU requirements and the *acquis communautaire*.¹⁵³ One thing almost the same foresees and article 7 Prior Consultation, wherein is stated that before the originating body or a government body submits a concept document, explanatory memorandum, draft law or sub-legal act, strategic plan of a ministry or sectorial strategy for deliberation by the Government, the body preparing the material (the ‘originating body’) is responsible for ensuring proposal (draft law, sub-legal act or policy) have the opportunity to comment upon it, In particular, the originating body must consult: ¹⁵⁴ The Ministry responsible for European Integration to ensure that the proposed policy is in harmony with EU integration priorities and that it complies with EU requirements and the *acquis communautaire*.¹⁵⁵

4. Preparation of legislation related to procedures in the Ministry

The drafting process of legislation at the ministry level starts after a law or sub-legal act is included in the legislative program or plan of sub-legal acts. The program is foreseen in article 5 of Legislative Program where among others, it is emphasized the Annual Work Plan of the Government (AWPG) includes draft laws which are summarized in a special annex – Legislative Program,¹⁵⁶ while also according to article 7 of this regulation, it is foreseen and Legislative Plans for secondary legislations.

Regarding the preparation of the first draft in the ministry until the drafting of an act of government or assembly, it is necessary to continuously respect the approximation

¹⁵³ Ibid page 47.

¹⁵⁴ Regulation of Rules and Procedure of the Government of the Republic of Kosovo no. 09/2011 Article 7 Prior Consultation page 9 [http://www.kryeministri-ks.net/repository/docs/Rregullore_e_punes_se_Qeverise_09.2011_\(anglisht\).pdf](http://www.kryeministri-ks.net/repository/docs/Rregullore_e_punes_se_Qeverise_09.2011_(anglisht).pdf) accessed on 8th of February 2017.

¹⁵⁵ Ibid page 10.

¹⁵⁶ Regulation No.13/2013 on Government Legal Service article 5 Legislative Program page 5, http://www.kryeministri-ks.net/repository/docs/Rregullore_Nr132013_per_sherbimin_ligjor_qeveritar.pdf, accessed on 9th of February 2017.

of that legal act in accordance with the standards for approximation. During the drafting phase of the proposed drafting body, the ministry coordinates closely with the various factors including the Minister of European Integration, where according to article 39 of Regulation of Rules and Procedure of the Government of the Republic of Kosovo no. 09/2011 it is foreseen that the originating body is responsible for the procedures of drafting the first draft in conformity with the principles and standards on legislative drafting specified by the Government and the OPM. Coordinates the work with other Ministries and seeks assistance from the Legal Office and the Ministry European Integration, as appropriate, in mean time carries out the initial compatibility with the Acquis Communautaire.¹⁵⁷ Therefore, since the beginning of the drafting of an act, legal approximation procedures have been initiated with EU standards. This phenomenon and work culture has been shown by Kosovo in its earlier phases before the declaration of independence and after the declaration of independence and before SAA relation. Also, most line ministries drafting a legal act in the initial project engage various international and EU specialists who help draft legislation and identify the need for EU compatibility. Such a possibility is foreseen Regulation of Rules and Procedure of the Government of the Republic of Kosovo no. 09/2011 Article 45 Use of Subject Matter Consultants who emphasizes that the Government welcomes the assistance of all qualified outside consultants and legal experts advising on the form and/or content of a draft primary of secondary law.¹⁵⁸ In order to ensure legislative coordination and the consistency of the resulting draft laws, all such consultants and experts are required to submit a written statement to the Director of the Legal Office agreeing to draft the concerned legislation in accordance with this Regulation.¹⁵⁹

Prior to the adoption of any law, a sub-legal act and any conceptual document in the Government, that country shall send to the Minister of European Integration the receipt of the EU Compliance Document of that document provided for in article 36 Submission of final proposal which states that, when submitting the final

¹⁵⁷ Regulation of Rules and Procedure of the Government of the Republic of Kosovo no. 09/2011 article 39 drafting Procedures in the Ministry [http://www.kryeministri-ks.net/repository/docs/Rregullore_e_punes_se_Qeverise_09.2011_\(anglisht\).pdf](http://www.kryeministri-ks.net/repository/docs/Rregullore_e_punes_se_Qeverise_09.2011_(anglisht).pdf) accessed on 9th of February 2017.

¹⁵⁸ Ibid page 58.

¹⁵⁹ Ibid.

recommendation to the Government meeting, the Secretariat shall ensure that it contains: The opinion of the Ministry of European Integration.¹⁶⁰ Based on these foreseen procedures, it can be summarized that the process of approximation legislation goes through many steps that prove that Kosovo is at the forefront of the European integration process.

5. The role of Legal Office of the Prime Minister 's Office of the Ministries' Legal Departments and Department of Law of the EU

All legal departments of the ministries, other than assigned tasks, have the task of drafting and harmonizing their legislation with EU standards, something that is defined according to article 21 Duties and Responsibilities of Legal Departments, paragraph 1.3 where it is foreseen that, Legal Departments in cooperation with departments, units or persons responsible for drafting the draft normative acts, ensures compatibility of normative acts proposed by respective ministry with applicable legislation in the Republic of Kosovo and European Union legislation (EU Acquis), including preparation of the Statement of Compliance (SC) and Compliance Tables (CT).¹⁶¹

In order to ensure the compatibility of Kosovo legislation with that of the EU from the legal departments as mentioned above, these two documents should be prepared Statement of Compliance (SC) and Compliance Tables, but first we need to understand what these two documents are: Table of Compliance (EU - Republic of Kosovo and Republic of Kosovo - EU) and the Statement of Compliance of Legislation of the Republic of Kosovo with EU Acquis, are the documents that accompany the draft acts of institutions of the Republic of Kosovo. These are comparative working documents, which reflect the level of compliance of national draft normative act with EU Acquis. The same are being implemented in practice

¹⁶⁰ Ibid page 48.

¹⁶¹ Regulation No.13/2013 on Government Legal Service page 24, http://www.kryeministri-ks.net/repository/docs/Rregullore_Nr132013_per_sherbimin_ligjor_qeveritar.pdf, accessed on 11th of February 2017.

from 1 January 2014.¹⁶² These two documents except are Manual on Compiling the Tables and Statement of Compliance which foresees and determines the ways of their usage are foreseen even with Administrative Instruction no. 03/2013 on standards for the drafting of normative acts - Article 30, Regulation no.13/2013 on Government Legal Service - Article 14 , and Rule of Procedure of the Assembly of 29 April 2010 – Article 54, so this is the basis where these documents are defined, including the need and purpose they have. Therefore, the essential purpose of these documents is to assess the level of compliance of a national draft normative act with EU Acquis. Explicitly, the Statement of Compliance reflects in general the correlation of specific draft act with EU Acquis and other strategic documents, while the Table of Compliance reflects in detail (article by article) the compliance of national draft normative act with EU Acquis and vice versa, providing a clear view on the level of compliance.¹⁶³ Following the preparation of the tables, all the legal departments pass an act law to the European Integration Ministry, respectively to Department of Law of the EU in Ministry of European Integration to obtain opinion on compatibility with the relevant EU Acquis.¹⁶⁴ Department of Law of the EU in addition to the duties and responsibilities set forth is responsible for issuing Legal Opinion Legislation in compliance with the EU Acquis and other responsibilities defined by other applicable legislation.¹⁶⁵ So the process of drafting legislation is a coordinated process which is carried out with close cooperation between the legal departments of the Ministries of Legal Affairs of the Prime Minister and the Department of Law of the EU in Ministry of European Integration. Following the duties and responsibilities of the Legal Departments in this aspect and their coordination in terms of harmonization of legislation, considering the importance of the Department of Law of the EU we are detailing the duties and responsibilities of this Department some of which we discussed in the first part of elaborating this process. For more duties and responsibilities of the department of EU Law are: Legal support to organizational structures of the ministries in implementation of their tasks related with the EU

¹⁶² Manual on Compiling the Tables and Statement of Compliance page 3, <http://www.mei-ks.net/repository/docs/manual-eng.pdf> accessed on 12th of February 2017.

¹⁶³ Ibid page 4.

¹⁶⁴ Regulation No.13/2013 on Government Legal Service page 16.

http://www.kryeministri-ks.net/repository/docs/Rregullore_Nr132013_per_sherbimin_ligjor_qeveritar.pdf, accessed on 14th of February 2017.

¹⁶⁵ Page 24.

Integration process; Coordinates and supports the process of legal approximation evaluation of national legislation with *acquis communautaire*, in cooperation with Office for Legal Service Assistance and line ministries; Offers support in preparation of the methodology, planning and preparation of a National Version of the *Acquis communautaire*.¹⁶⁶ So the key tasks of this Department are to assist and coordinate with the legal departments regarding the European integration process in general and in particular the process of legal approximation. After the receipt of declarations from this Department, the line ministries proceed with other documents requested by the Government for approval, but prior to submitting a law to the Government, these documents should be submitted to the Legal Office of the Prime Minister. In addition to the control that this office has, in other aspects, this one is responsible and to see if the submission of a package of documents of draft normative acts is done for review and approval by the Government wherein except others is required the Declaration of Compliance (DEP) with EU *Acquis* issued by the bearer Ministry and Compliance Tables (TEP) completed by the bearer Ministry.¹⁶⁷ After the oversight of all aspects of the Prime Minister's legal office, an act is submitted to the government for approval, then if the law is in order, then it is sent to the Assembly for approval. Below, I am presenting some practical examples of approximation of legislation taken by the Ministry of European Integration and applying it to the institutions during the process of approximation of legislation, as follows:

1. Example of Tables of Compliance (TOC) European Union – Republic of Kosovo filled out by the respective ministry, 2 Opinion on compliance with EU *acquis* and 3. Statement of compliance of legislation of the Republic of Kosovo with the EU *acquis*.

¹⁶⁶ See more at: <http://www.mei-ks.net/en/department-of-eu-law#sthash.0hrtCAAdN.dpuf> accessed on 15th of February 2017.

¹⁶⁷ Regulation No.13/2013 on Government Legal Service page 18.
http://www.kryeministri-ks.net/repository/docs/Rregullore_Nr132013_per_sherbimin_ligjor_qeveritar.pdf, accessed on 16th of February 2017.

Figure 1¹⁶⁸



Republika e Kosovës
Republika Kosova-Republic of Kosovo
Qeveria – Vlada - Government
Ministria e _____

Ministarstvo za _____ / Ministry of _____

EXAMPLE OF TABLES OF COMPLIANCE (TOC) EUROPEAN UNION – REPUBLIC OF KOSOVO FILLED OUT BY THE RESPECTIVE MINISTRY

Option/possible alternative:

1. Title of the normative act: Council Directive
2. Proposing body: European Commission
3. Table: date/month/year
4. List of relevant national legislation (full title of the act and number) with which the normative act of the Republic of Kosovo is compliant
5. The level of compliance (fully compliant, partially compliant, not compliant or not applicable) of the normative act with EU legislation: partially compliant

European Union – Republic of Kosovo

a)	b)	c)	d)
the EU normative act (Article, paragraph, subparagraph, etc.)	Provisions of the normative act of Kosovo (Article, paragraph, subparagraph, etc.)	Compliance of Kosovo legislation with EU legislation (fully compliant, partially compliant, noncompliant or not applicable)	Comments on reasons for partial compliance or non-compliance and the period foreseen for achieving full compliance
Article 1			
Article 2			
Article 3			

Figure 1 Table of compliance

¹⁶⁸ This form was taken from the Department of Law of the EU in Ministry of European Integration.



Republika e Kosovës
Republika Kosova-Republic of Kosovo
Qeveria – Vlada - Government
Ministria e Integritimit Evropian
Ministarstvo za evropske integracije – The Ministry of European Integration
OPINION ON COMPLIANCE WITH EU ACQUIS

Number:

Date:

Proposing body, which submits a normative act together with the SoC/ToC (Statement of Compliance and Table of Compliance)

1. Subject

Opinion on compliance of the draft normative act – title of the normative act – and EU Acquis

2. Attached

Number of the document of the proposing body..... (date).....

3. Preamble

Pursuant to Articles .. paragraphof the Rule on Government Procedure, Department of EU law/MEI, according to its area of jurisdiction issues the following:

4. Title Opinion

5. Introduction

Short overview/summary of the draft normative act – Article 1

6. Summary of all EU judicial acts included in the draft

- Name of the Directive or Regulation (full title of the act and number),
- Name of the Directive or Regulation (full title of the act and number),
- Name of the Directive or Regulation (full title of the act and number),

7. Description and assessment of documents sent with the legislation proposed by line ministries

The draft normative act of the proposing body – is in compliance with Article xx on the Rules of Government Procedure (OG, number) and has properly sent the SoC and ToC/or/or has not sent... Note precisely what was sent by the line ministry!

8. Opinion on compliance

- Statement regarding the main gaps in the draft by comparing it to the directive or regulation

- Identifying the directives which have not been mentioned, but which should be

- Proposal for reformulation

With this opinion, we assess that this article or this provision is not transposed from the directive and the reasons for non-fulfillment are not explained in the ToC. On this occasion, we note non-compliance with Article which differs from Article of the Directive. We propose the reformulation of Articles ... as follows ... and which is in accordance with the directive of...

- NB: The line ministries are responsible for the policies they make. Therefore, transitional/preliminary periods for full transposition are their responsibility. There is no objective/purpose that Kosovo harmonize everything immediately.

- Be careful of economic and financial impacts when EU legislation is transposed in very early phases. It is the responsibility of the Department of EU law/MEI to note its opinion, but of the line ministry to fill out the SoC and ToC and to take on the responsibility for the level of compliance.

9. Compliance assessment

During the process of checking compliance of the Draft Law with the Directive .../. of the EC for ... and the Directive .../. of the EC for ... we concluded that the draft law is:


- Fully in compliance with the above mentioned sources of EU law
 - o Very rare – only in cases of full transposition or in cases of delay of entry into force of some articles. In this phase – it is not possible to transpose fully....)
- Partial compliance
 - o In most cases – when the larger part of an EU legal act is transposed, but not all, when some important issues from EU legal acts are missing ... What is missing should be emphasized ...)
- Not in compliance
 - o When the main definitions are not transposed or are incorrectly transposed, when the key elements of the directive are missing, where a large part of the directive is not transposed.
- Is not relevant
 - o The EU legal act is not applicable in the Republic of Kosovo.

Yours sincerely,

Name and surname

Minister of the respective Ministry of European Integration

Figure 2 Opinion on compliance with the EU Acquis



Republika e Kosovës
Republika Kosova-Republic of Kosovo
Qeveria – Vlada - Government
Ministria e _____
Ministarstvo za _____ / Ministry of _____

STATEMENT OF COMPLIANCE OF LEGISLATION OF THE REPUBLIC OF KOSOVO WITH THE EU ACQUIS

1. The proposing body of the normative act:
2. Title of the draft normative act:
3. Compliance of the draft normative act with provisions of the Stabilization and Association Agreement or Interim Agreement
 - 3.1 SAA provisions and Interim Agreement regarding the normative content of the normative act.
 - 3.2 Deadline set for compliance and harmonization of legislation in accordance with the SAA provisions and Interim Agreement.
 - 3.3 Assessment of the level of fulfillment of duties/obligations that derive from the aforementioned provisions of the SAA and Interim Agreement.
 - 3.4 Reasons for partial fulfillment, or non-fulfillment/failure to fulfill obligations that derive from the above-mentioned provisions of the SAA and Interim Agreement
 - 3.5 Relation to the National Integration Program NIP/NPAA (in the present case relation to the WPEP)
4. Compliance of legislation with the EU Acquis
 - 4.1 List of primary sources of EU law and compliance with them
 - 4.2 List of secondary sources of EU law and compliance with them.
 - 4.3 List of other sources of EU law and compliance with them.
 - 4.4 Reasons for partial compliance or non-compliance.
 - 4.5 Time period set for the full realization of compliance of legislation with the EU Acquis.
5. Specify when there is no EU legislation with which compliance is required. (In this case, it is not necessary to fulfill the table on compliance with legislation).
6. Are the above mentioned sources of EU law translated in the official languages;
7. The participation of consultants in drafting normative acts and their opinions on compliance (attach documents of those consulted about drafting normative acts).
8. Signature of the Head of the Legal Department of the state body, or proposer of the normative act
9. The signature of the Minister or the head of the state body, or other proposer of the normative act

Signature, date and stamp

The legal approximation process in Kosovo follows several steps, which are summarised in the flow chart and the respective explanation of each step below:

Figure 3 Statement of Compliance of Legislation of the Republic of Kosovo with the EU acquis

¹⁷⁰ Ibid.

Table 1 ¹⁷¹

Table 1 the legal approximation process



6. Assembly proceedings

Upon approval of a law by the government, this law goes beyond the adoption procedures in the assembly submission. For the submission of a draft law to the Assembly as a supplementary condition other than the submission of other documents required by the Rules of Procedure of the Assembly of the Republic of Kosovo must be attached and Declaration on approximation and harmonization with the EU legislation and with the comparative table of acts it refers to.¹⁷²

Before the approval of any law or the assembly it is subject to surveillance procedures by Committee for European Integration. The Committee for European Integration is a permanent committee.¹⁷³ The Committee, within its scope of work and responsibilities reviews and supervises the process of harmonization of laws

¹⁷¹ IT-Platform for the legal approximation process Purpose, structure and requirements, the GIZ project “Support to the European Integration Process”, page 5.

¹⁷² assembly

¹⁷³ Rules of Procedure of the Assembly of the Republic of Kosovo Pristina Annex nr. 2. scope of activities and responsibilities of the parliamentary committees page 46 , https://www.kuvendikosoves.org/common/docs/Rr_K_RK_29_04_2010_2.pdf, accessed on 26th of February 2017.

enacted by the Assembly with the legislation of the European Union.¹⁷⁴ The scope of work of this Committee includes supervision of the harmonization process of the legal system of Kosovo with the legal system of the European Union, supervision of the harmonization process of the national legislation with the *acquis communautaire*.¹⁷⁵ After the work of this commission, the law passed in the Assembly which guarantees a high quality in terms of the process of legal approximation with that of the European Union. After the approval of the Assembly, the laws are signed by the president of the country, and they are announced in the official gazette.

The Assembly of Kosovo regarding the European integration process except has established its mechanisms as this commission based on the Stabilization and Association Agreement between the EU and Kosovo and based on National Program for Implementation of the Stabilization and Association Agreement (NPISAA) 2017 – 2021 has addressed the request to : Stabilization and Association Agreement (SAA), Article 132, foresees functioning of the Parliamentary Committee for Stabilization-Association (PCSA) as a joint forum of the European Parliament and Kosovo Assembly deputies to exchange their ideas on SAA implementation.¹⁷⁶ The Assembly of Kosovo, pursuant to the Article 132 of the SAA, on 18 March 2016, established the Parliamentary Committee for Stabilization-Association.¹⁷⁷

In addition to these mechanisms, in the Assembly of Kosovo there is a special administrative unit, the Directorate for Standardization and Approximation and Legal Harmonization that verifies the statements from MEI regarding the approximation of the draft laws with the EU legislation, as well as overseeing the alignment of legislation with the EU *acquis* and international standards applicable in Kosovo, applying to all draft laws and amendments proposed by the parliamentary committees that are proposed to the Assembly for consideration.¹⁷⁸

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ National Programme for Implementation of the Stabilisation and Association Agreement (NPISAA) 2017 – 2021 page 25. <http://kryeministri-ks.net/wp-content/uploads/docs/pkzmsa20172021ang.pdf> accessed on 27th of February 2017.

¹⁷⁷ Ibid page 25.

¹⁷⁸ Ibid page 26.

Based on the work of the members of the European Commission of the Kosovo Assembly for Integration, regarding the oversight that this commission makes the projects that pass from the Government to the Assembly, we can say that this commission has no solid expertise in the evaluation or control it does in this regard.

In addition to a research carried out by the Kosovar Civil Society Foundation (KCSF), which is based on the interviews conducted with the members of this commission, it is stated that every draft law the Government submits to the Assembly includes a “Statement of Compliance”, issued by the Ministry of European Integration (MEI).¹⁷⁹ This Statement confirms that the draft law in question is in compliance with EU legislation.¹⁸⁰ In a few rare cases, the Parliamentary Committee for European Integration (hereinafter CEI) has sent draft laws back to the Government which it did not consider to be in accordance with the EU acquis, despite the accompanying “Statement of Compliance” from the MEI.¹⁸¹

The members of the CEI do not (nor are they expected to) possess the necessary expertise for reviewing the variety of draft laws.¹⁸² At the same time, the CEI’s access to external expertise remains limited.¹⁸³ This results in draft laws passing through the CEI review process with scant scrutiny.¹⁸⁴ Sometimes this is justified by simply acknowledging that the MEI, through its Statement of Compliance, has confirmed the draft law is “in line with the EU acquis.”¹⁸⁵

¹⁷⁹ : Author: Kaltrina Hoxha, Coauthor: Taulant Hoxha , Contributors: Venera Hajrullahu, Fatmir Curri., Going beyond Political Rhetoric Turning Kosovo’s Parliamentary Committee for European Integration into a real driver for Integration. Published by KCSF and prepared by Copyright © 2015. Kosovar Civil Society Foundation (KCSF) June 2015, page 4.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

7. National Program for Implementation of the Stabilization and Association Agreement (NPISAA) 2017 – 2021

With the entry into force of the Stabilization and Association Agreement (SAA) between the Republic of Kosovo and the European Union ¹⁸⁶, on 1 April 2016, the first National Program for its Implementation (NPISAA). National Program for Implementation of the Stabilization Association Agreement (NPISAA) 2017-2021 defines the obligations that will be undertaken by the Government of Kosovo and the respective Institutions in the implementation of this program towards the implementation of the SAA. This program envisions three criteria critics: Block 1, Political Criteria, Block 2: Economic Criteria and Block 3: European standards – Approximation of Kosovo's Legislation with the EU Acquis.¹⁸⁷

Undoubtedly, the most important block of criteria is Block 3, “European standards – Approximation of Kosovo's Legislation with the EU Acquis”. It states that European standards – Approximation of Kosovo's Legislation with the EU Acquis aims to implement the Copenhagen and Madrid Criteria requiring that accession state to have the capacity to assume obligations of EU membership, including goals of political, economic and monetary union.¹⁸⁸ As such, this block includes the whole range of public policies and requires reforming the whole government through adoption of the entire EU acquis into the national legislation and its implementation, which, thus, requires administrative capacities for this purpose.¹⁸⁹ It contains 33 acquis chapters and a chapter on the legal framework for the approximation of national legislation with the acquis.¹⁹⁰ Undoubtedly, all the chapters defined by the SAA specifically article 74 of this agreement which stipulate that "approximation will be achieved on the basis of a program to be agreed between the European Commission and Kosovo." Also, the NPISAA 2017-2021 which, based on the decision of the Government of the

¹⁸⁶Stabilisation and Association Agreement, available at the Official Gazette of the European Union, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2016:071:0003:0321:EN:PDF> ; Law No. 05/L-069 on Ratification of the SAA, available at <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=11239>, accessed on 5th of March 2017.

¹⁸⁷ National Programme for Implementation of the Stabilisation and Association Agreement (NPISAA) 2017 – 2021 pp 9,10. <http://kryeministri-ks.net/wp-content/uploads/docs/pkzmsa20172021ang.pdf> accessed on the 10th of March 2017

¹⁸⁸ Ibid page 10.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

Republic of Kosovo no. 02/136 dated 10.03.2017 gives all the 35 chapters a priority but most important are the ones related to the fair trade of justice and security and freedoms and human rights where the rights of communities as part of the 23rd chapter of the judiciary and the fundamental rights are those that will pay attention to the process of approximation and harmonization of Kosovo's legislation with that of the *acquis communautaire*.

In spite of this and in this chapter, I have in particular examined the rights of communities and their members deriving from EU legislation and legislation of Kosovo, but this chapter also speaks decisively about the obligations that Kosovo has as a state in terms of harmonization of the legislation specifically chapter 23 part Legal framework in the area of protection of minorities and cultural heritage.

8. Acquis Chapter 23: Judiciary and Fundamental Rights - Legal framework in the area of protection of minorities and cultural heritage

There is a solid legislative framework on protection of minorities. The Council of Europe Convention for the Protection of National Minorities and the international convention on the elimination of all forms of racial discrimination apply directly to the republic of Kosovo in accordance with the constitution.¹⁹¹ The laws that cover the protection of minorities and cultural heritage are as the following:

Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo shall guarantee full and effective equality for all people and it is in line with the Framework Convention of the Council of Europe for the Protection of National Minorities.¹⁹² All persons belonging to communities shall be entitled to enjoy individually or jointly with others the fundamental and human rights and freedoms established in international legal obligations.¹⁹³ Law on the Use of Languages ensures the use of the official languages, as well as languages of communities whose mother tongue is not an official language, in Kosovo institutions and other organizations and enterprises that carry out public functions and

¹⁹¹ Ibid pp 254,255.

¹⁹² Ibid.

¹⁹³ Ibid.

services.¹⁹⁴ Ensures equal status of Albanian and Serbian as official languages of Kosovo and the equal rights as to their use in all Kosovo institutions and the right of all communities in Kosovo to preserve, maintain and promote their linguistic identity.¹⁹⁵

The law is drafted based on the International Convention on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages, and taking into account the Hague Recommendations regarding the Education Rights of National Minorities and the Oslo Recommendations regarding the Linguistic Rights of National Minorities, the Guidelines on the Use of Minority Languages in the Broadcast Media, and aiming to regulate the use of languages.¹⁹⁶

Law on Special Protective Zones ensures protection of Serbian Orthodox Monasteries, Churches, other religious sites, as well as historical and cultural sites of special significance for the Kosovo Serb community, as well as other communities in Republic of Kosovo, through the establishment of Special Protective Zones. With the view to monitoring and implementation of the Law on Special Protective Zones, the Implementation and Monitoring Council is made operational.¹⁹⁷

Further, EU accession requirements in the area of minority protection and cultural heritage, according to the findings of the Progress Report 2015, the strategic framework for the rights of Roma and Egyptian Roma people needs to be updated. Moreover, active measures need to be taken to include them in the labor market. Kosovo institutions must demonstrate commitment to the protection of cultural heritage, including concrete results in the fight against illegal constructions and their destruction.¹⁹⁸ The role of the institutional mechanisms in their coordination for

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid page 246.

implementation National Program for Implementation of the Stabilization and Association Agreement.

9. The role of the Ministry of European Integration and the Line Ministries

Before explaining the role and mandate of the Ministry of European Integration, I will emphasize Kosovo's interest in European integration and its role in this process. Kosovo had established adequate mechanisms of institutions since the establishment of Kosovo's incumbent institutions without becoming a state. Kosovo within the government had formed the Agency for European Integration according to the administrative order of UNMIK no.2006/. The European Integration Agency is a responsible institution for coordinating and supervising the approximation of Kosovo's legislation with *acquis communautaire*.¹⁹⁹

Hence, the Ministry of European Integration as a Central Institution is a fully competent institution that has its key role in the process of Euro-Atlantic integration, but especially in the European integration process for its further mission is: Coordination and Monitoring Role of the process of integration of the Republic of Kosovo into the European Union by ensuring the drafting of the Integration policies, the compliance of local legislation with that of the European Union, financial affiliation, public information and capacity building in this process.²⁰⁰

In addition to the executive competences that it has in the process of European integration, it is balanced with the approximation process and the harmonization of legislation for more: It coordinates the monitoring and analysis of the progress of the process approximation of local legislation with that of the EU, the compatibility of local legislation with that of the EU, and coordination of the translation of EU legislation on the process of approximation of domestic legislation with that of the EU.²⁰¹ This process is fully in line with the Kosovo Constitution which emphasizes

¹⁹⁹ Msc. Basri Shabani , PhD Student, Harmonization of Kosovo's Legislation with EU's Legislation in the Field of Security , Military Academy "Spiro Moisiu", Operations Department, Tirana, Albania, page 400.

²⁰⁰ Decision of the Government of the Republic of Kosovo no. 6/121, of the date 22.04.2010, http://kryeministri-ks.net/wp-content/uploads/docs/Vendimet_e_Mbledhjes_se_121-te_te_Qeverise_2010.pdf, accessed on 18th of March 2017.

²⁰¹ Ibid

that, “with the intention of having the state of Kosovo fully participating in the processes of Euro-Atlantic integration.”²⁰² The powers and mandate of the Integration Mechanism are regulated by Appendix 16 of Regulation no. 02/2011 on the areas of administrative responsibility of the Office of the Prime Minister and Ministries wherein is emphasized that, “the competencies of the Ministry of European integration are in accordance with the decision of the Government of the Republic of Kosovo no. 6/121, of the date 22.04.2010 and Regulation no. 07/2010 on the organizational structure of the Ministry of European Integration.”²⁰³ The Ministry of European Integration is the bridge between the European Union and the institutions of Kosovo, so it coordinates the implementation of EU policies in Kosovo and all documents required EU reports that reflect the need for changes in economic policy reforms and an accent of vacant legal and legal approximation. This burden was borne by the Ministry of European Integration.

Based on Regulation no.01/2011 on Departments for European Integration and Policy Coordination in the Ministries, it is stated that this Regulation provides for operation, tasks, responsibilities and status of the Departments for European Integration and Policy Coordination in line ministries. For instance, all line ministers have established their own legal departments based on Article 2 of this Regulation, which states that “in each ministry, there shall be established a Department for European Integration and Policy Coordination (hereinafter a Department) which will work under supervision of Secretary-General in given ministry.”²⁰⁴ The Department has the duties and responsibilities to:

Offer assistance and advice in establishing and deciding given ministry’s priorities taking into account obligations stemming from the European integration process; ensure consistency between policies, plans and strategies and the EU standards; coordinate efforts in securing contributions for development of the European Partnership Action Plan (EPAP) and annual work plans, and ensure their compliance with the Medium Term Expenditure Framework and other strategic documents etc.

²⁰² Constitution of the Republic of Kosovo page v, <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>, accessed on 22nd of March 2017.

²⁰³ Appendix 16 of Regulation no. 02/2011 on the areas of administrative responsibility of the Office of the Prime Minister and Ministries <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10533>, accessed on 24th of March 2017.

²⁰⁴ Regulation no.01/2011 on Departments for European Integration and Policy Coordination in the Ministries article 1 and 2, https://www.mei-ks.net/repository/docs/rregullore_nr_01-2011_per_departamentet_ML.pdf, accessed on 28th of March 2017.

Key tasks and responsibilities of these departments i.e policy co-ordination to meet EU standards but one of the key tasks of these departments, which is in the interest of addressing this chapter is to “offer assistance to legal departments in the context of including EU policies in the national legislation in the course of their harmonization with the Acquis, and ensure that laws required under the EPAP are included in the legislative strategy of the Government”.²⁰⁵

So the role of the legal departments of the ministries I have dealt with in this chapter where there is a legal co-ordination between the Ministry of European Integration and the EU Department of Justice with the legal departments of ministries clearly shows that, these roles and engagement have also departments for European Integration and Policy Coordination in the Ministries as well as these departments have the key duties and responsibilities regarding the role and importance of European developments for Kosovo.

10. Legislation Rights of Communities in Kosovo

The rights of communities and their members in the Republic of Kosovo are guaranteed by the Constitution of Kosovo, Law no. 03 / L-047 on the Protection and Promotion of the Rights of Communities and their Members, with relevant legislation in force, as well as by-laws. The Constitution of the Republic of Kosovo guarantees the fundamental rights in accordance with Chapter II of the Constitution (Human Rights) and regulates the rights of the community within Chapter III of the Constitution (community rights).²⁰⁶ Human rights and fundamental freedoms guaranteed by international agreements and instruments are guaranteed by the Constitution and are directly applicable in the Republic of Kosovo.²⁰⁷ Also, the Kosovo Constitution in Article 156 Displaces and internally displaced persons stipulates that: The Republic of Kosovo shall promote and facilitate the safe and dignified return of refugees and internally displaced persons and assist them in recovering their property and possession.²⁰⁸

²⁰⁵ Ibid. article 4.

²⁰⁶ The Constitution of the Republik of Kosovo chapter II-III. <http://www.kryeministri-ks.net/repository/docs/ConstitutionIKosovo.pdf>, accessed on 28th of March 2017.

²⁰⁷ Ibid

²⁰⁸ Ibid article 156

The Republic of Kosovo promotes a spirit of peace, tolerance, inter-cultural and inter-religious dialogue, and supports conciliation between communities.²⁰⁹ For the protection and promotion of the rights of communities and their members in the Republic of Kosovo, the Assembly of the Republic of Kosovo ratified the Law on Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo.²¹⁰ The purpose of the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo is to enable communities to cultivate, develop and express their identity, to protect their fundamental and human rights and to ensure their full and effective equality through special measures implemented by the Kosovo government. It provides a general definition of communities as: “National, ethnic, cultural, linguistic or religious groups traditionally present in the Republic of Kosovo that are not in the majority. These groups are Serb, Turkish, Bosnian, Roma, Ashkali, Egyptian, Gorani, Montenegrin, Croatian and other communities. Members of the community in the majority in the Republic of Kosovo as a whole who are not in the majority in a given municipality shall also be entitled to enjoy the rights listed in this law.”²¹¹

Together with the Law on the use of languages, this is the most important law with regard to community rights. It has provisions on: identity; language; culture; media; religion; education; economic and social opportunities; health; political participation; and the Consultative Council for Communities.²¹² The Law protects communities and their members’ right to freely express, maintain and develop their culture and identity. It also guarantees the equality of communities and protects them from discrimination.²¹³

The Law also sets out some basic provisions with regard to language, such as the official status of Serbian and Albanian and their alphabets at the central level and Turkish, Bosnian and Roma at the municipal level.²¹⁴ However, for more specific

²⁰⁹ <https://www.rks-gov.net/EN/f318/civil-freedom/communities> accessed on 28th of March 2017.

²¹⁰ Ibid

²¹¹ Article 1 the Law no. 03/L-047 on the Protection and Promotion of the Rights of Communities and their members in Kosovo https://www.kuvendikosoves.org/common/docs/ligjet/2008_03-L047_en.pdf ,accessed on 29th of March 2017.

²¹² Ibid articles 2,3,4, 5 ,6.

²¹³ Ibid articles 2,5.

²¹⁴ Ibid article 4.

guidelines it refers to the Law on the Use of Languages. Communities and their members have the right to effective participation in political decision-making at all levels of government, including the decisions of special importance for them or for the areas in which they live.²¹⁵

Law no. 04 / L-115 on Amendments and Amendments to Laws Concerning the Completion of Kosovo's International Independence Oversight, Amend as follows:

All refugees from Kosovo and internally displaced persons shall have the right to return and claim their property and personal possessions in accordance with national and international laws.²¹⁶ Each individual shall have the right to make a free decision and to be informed about his/her place of return. Institutions of the Republic of Kosovo shall take all necessary measures to facilitate and to create favourable atmosphere conducive to the safe and dignified return of refugees and displaced persons, based upon 'their free and informed decisions, including efforts to promote and protect their freedom of movement and protection from intimidation.²¹⁷ Conditions for return of displaced persons and mechanisms of cooperation with relevant international institutions shall be defined by the institutions of Republic of Kosovo in accordance with the Constitution and applicable laws.²¹⁸

Regulation (GRK) - No. 01/2018 on the Return of Displaced Persons and Durable Solutions is to establish necessary conditions for achieving durable solutions for persons displaced within Kosovo and in the region.²¹⁹ Provisions of this Regulation shall be implemented by all competent bodies in the process of return of displaced persons in accordance with international human rights standards applicable in Kosovo, ethnic, religious, gender and racial equality, freedom of movement, property rights and best interest of children, as well as freedom from discrimination shall be applied throughout the process of returns and reintegration of displaced persons.²²⁰

Regulation No. 02/2010 for the Municipal Offices for Communities and Return:

²¹⁵ Ibid article 11.

²¹⁶ Law No. 04/L-115 on Amending and Supplementing the laws related to the ending of International Supervision of Independence of Kosovo Official Gazette of the Republic of Kosova / No. 25 / 07 September 2012, Pristina.

²¹⁷ Ibid

²¹⁸ Ibid

²¹⁹ Regulation (GRK) - No. 01/2018 on the Return of Displaced Persons and Durable Solutions, was approved in the 23 - meeting of the Government of Republic of Kosova, with the decision no. 06/23 dt. 04.01.2018 articles 1.

²²⁰ Ibid article 2.

The purpose of this regulation is to ensure that municipalities establish, within the scope of their competencies, and based on the needs of non-majority communities living in their territory and/or traditionally or habitually resident in their territory, adequate administrative structures, the Municipal Offices for Communities and Return, which shall protect and promote the rights of communities, the equal access of all communities to public services and the creation of conditions for sustainable return of refugees, displaced persons and repatriated persons.²²¹

11. Legislation of Vital Interest for Non-Majority Communities

The legislation of vital interest are laws where the adoption, amendment or repeal of the following laws, require the vote of a majority of the Assembly members who are present and voting from among the members of set-aside or guaranteed seats.²²² For the adaption and amendment or repeal of the following laws, the vote of the majority of members of Parliament is required who are present and voting and holding set-aside or guaranteed seats for representatives of communities that are not in majority.²²³ What is important as mechanism for protecting the right on non-majority communities that: “None of the laws of vital interest may be submitted to a referendum”.²²⁴

The laws of vital interest according to the constitution are: Laws changing municipal boundaries, establishing or abolishing municipalities, defining the scope of powers of municipalities and their participation in inter-municipal and cross-border relations, Laws implementing the rights of Communities and their members, other than those set forth in the Constitution, Laws on the use of language, Laws on local elections, Laws on protection of cultural heritage, Laws on religious freedom or on agreements with religious communities, Laws on education, Laws on the use of symbols, including Community symbols and on public holidays.²²⁵

²²¹ Regulation No. 02/2010 for the municipal offices for communities and return article 1, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10522>, accessed on 30th of March 2017

²²² The Constitution of the Republik of Kosovo article 81. <http://www.kryeministri-ks.net/repository/docs/ConstitutionIKosovo.pdf>, accessed on 30th of March 2017

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Ibid.

12. Conclusions

To conclude, an important criteria for the approximate process is the Copenhagen Criteria for countries which wanted to join the EU. Those criteria are economic, political and legal nature. In this regard, the EU states needed to do the approximation of the domestic legislation with the European standards. The institutions of the Republic of Kosovo are doing the process of approximate of the domestic legislation with EU standards. This procedure is being done based on some documents which are in force including the Stabilization and Association Agreement, as well as on some internal legal acts. To do the approximate process of the legislation, the procedure of the approximation based in some legal steps is foreseen where the Ministry of European Integration is the main institution which coordinates this process with other ministries and some agencies.

As previously elaborated in this chapter, the approximate process of the national legislation with EU standards is quite advanced and this process is going well, but MEI and other institutions which are drafting some legal acts, as well as the Parliament of Kosovo which issues those acts face some obstacles in the implementation process. Having said this, none of those institutions foresee the process of practical implementation of these acts well. Therefore, the practical implementation of the legislation in line with the European standards remains a big challenge since the rule of law in practice is not going in the right way.

This is what is said in the Kosovo report progress: “Kosovo is at an early stage in/has some level of preparation for applying the *acquis* and the European standards in this area.”²²⁶ Some progress has been made, including in the investigation and prosecution of some high-level corruption cases. However, corruption is widespread and remains an issue of concern.²²⁷ The adoption of several pieces of legislation that are important for the functioning of the judiciary and the fight against corruption marked a

²²⁶ Brussels, 29.5.2019 SWD(2019) 216 final COMMISSION STAFF WORKING DOCUMENT Kosovo* 2019 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2019 Communication on EU Enlargement Policy {COM(2019) 260 final} *.

²²⁷ Ibid

significant step forward and these now require robust implementation.²²⁸ As regards fundamental rights, implementation of the relevant laws and strategies continues to be undermined by inadequate financial and other resources, and a lack of political prioritisation and coordination”.²²⁹

As a final point, legislation rights of communities in Kosovo and the community rights in the Republic of Kosovo are guaranteed based on the Constitution and the International Convention which are both applicable in Kosovo as well as based on specific Law no. 03 / L-047 on the Protection and Promotion of the Rights of Communities and their Members and other laws including Law for use of Language and sub-legal acts. The minority rights are being fully implemented compared to the part of approximate legislation, therefore we can consider that the process of approximate of legislation in practice is not applicable while the legislations for minority rights is being applicable in practice.

²²⁸ Ibid

²²⁹ Ibid

CHAPTER IV

LEGISLATION RIGHTS OF COMMUNITIES IN EUROPE

1. Treatment of minority rights by the European Union and the Council of Europe

The European Union as a political, economic and monetary union is created with the Paris Agreement in 1954. The membership of Central and Eastern Europe states in the European Union are conditioned by the criteria adopted on 22 June 1993, with the existence of “stable institutions guaranteeing the rule of law, human rights and respect for protection of minorities”.²³⁰ The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.²³¹ These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.²³²

In order to avoid tensions and potential conflicts in Europe, particularly with regard to minorities and borders, in March 1995 the European Union has adopted the stability Pact in Europe.²³³ Comprehensive treatment is therefore given here to a selection of rights which are vouchsafed for individuals in international human rights instruments, but which also have added significance for persons belonging to minorities by virtue of their suitability for collective exercise and enjoyment.²³⁴ Each of the selected rights/topics (non-discrimination/equality, participation, education, culture, religion and language) touch on freedom of expression issues too.²³⁵ The analytical approach to each of these rights proceeds from a general introduction to

²³⁰ Florence Benito –Rohmer, The minority question in Europe, op cit, page 34.

²³¹ Treaty Establishing a Constitution for Europe article 1-2, page 17. https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_establishing_a_constitution_for_europe_en.pdf, accessed on 1st of April 2017.

²³² Ibid

²³³ Text: Florence Benito –Rohmer, the pact consist of declaration a list of agreements, various act and political statements that participating states have decided to include it and supporting measures supported by the European Union., The minority question in Europe, op cit, page 94-124.

²³⁴ McGonagle, T ,University of Amsterdam UvA-DARE (Digital Academic Repository) **Minority rights and freedom of expression: a dynamic interface**. Link to publication *Citation for published version (APA)*: McGonagle, T. E. (2008). Minority rights and freedom of expression: a dynamic interface, page 9.

²³⁵ Ibid.

more specific treatment in respect of their exercise by persons belonging to minorities.²³⁶

Before discussing the issue of equal treatment for internal minorities any further it must be mentioned that within each community there exist minorities of many different kinds.²³⁷

The main theoretical contribution is the treatment of ethnic politics from the perspective of more general theories on voter behaviour, party competition, representation and conflict (see Birnir, 2007; Cox, 1997; Eisinger, 1970; Hug, 2001; Mansbridge, 1999; Meguid, 2008).²³⁸ A context-sensitive theory of collective action with a focus on ethnic parties and political entrepreneurship introduces a microfoundation and drives the argument.²³⁹ Regarding the advancement of linguistic rights in the international legal aspect according to the International Covenant on Civil and Political Rights and, in particular, article 27 inspired the contents of the United Nations Minorities Declaration.²⁴⁰ It states that: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.²⁴¹

Minority rights under the Council of Europe are guaranteed rights under the Framework Convention for the Protection of National Minorities (FCNM), to establish and implement this convention, a mechanism was established to oversee the implementation of the Framework Convention for the Protection of National Minorities (FCNM). This mechanism is called the Advisory Committee on the Framework Convention for the Protection of National Minorities, selection of Advisory Committee is foreseen to be done in this way. The Advisory Committee shall elect from among its ordinary members a President and a first and second Vice-

²³⁶ Ibid.

²³⁷ Edited by Avigail Eisenberg and Jeff Spinner-Halev - *Minorities within Minorities Equality, Rights and Diversity*, Cambridge University Press 2004 page 93.

²³⁸ Julian Bernauer *Postdoctoral Researcher and Lecturer, Institute of Political Science, University of Bern, Switzerland* **Ethnic Politics, Regime Support and Conflict in Central and Eastern Europe**, page 18.

²³⁹ Ibid.

²⁴⁰ Minority Rights: International Standards and Guidance for Implementation United Nation New York and Geneva, 2010, page 15.

²⁴¹ Ibid.

President.²⁴² The President and Vice-Presidents shall be elected for a term of 2 years, provided that such period shall not exceed the duration of their term of office as ordinary members of the Committee.²⁴³ The Advisory Committee based on rule 8 and 9 of the Council of Europe ACFC/INF (98) 2 Rules of Procedure of the Advisory Committee On the Framework Convention for the Protection Of National Minorities (Adopted by the Advisory Committee on 29 October 1998), there are two organs as well Bureau of the Committee and Secretariat of the Committee. These organs of this Committee ensure a better implementation and supervision of Framework Convention for the Protection of National Minorities, therefore the oversight of the convention in question by this mechanism ensures better implementation by the signatories of this convention. Framework Convention for the Protection of National Minorities, it has been ratified by Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, “North Macedonia”, Ukraine and the United Kingdom.²⁴⁴ Four member states of the Council of Europe – Belgium, Greece, Iceland and Luxembourg – have also signed but not yet ratified it. Andorra, France, Monaco and Turkey have not signed the Convention.²⁴⁵

Some thirty-nine states are currently party to this treaty and a special monitoring agreement related to Kosovo* was signed with the United Nations Interim Administration Mission in Kosovo (UNMIK) in 2004.²⁴⁶ These committees have established various relationships and communications to strengthen the best implementation of Framework Convention for the Protection of National Minorities, where in assessing the 20th anniversary of its functioning Framework Convention for the Protection of National Minorities, was found The working relation between

²⁴² Council of Europe ACFC/INF (98) 2 Rules of Procedure of the Advisory Committee On the Framework Convention for the Protection Of National Minorities (Adopted by the Advisory Committee on 29 October 1998). Rule 1 page2.

²⁴³ Ibid rule 2, page 2.

²⁴⁴ Advisory Committee on the Framework Convention for the Protection of National Minorities Tenth activity report covering the period from 1 June 2014 to 31 May 2016 footnote 1, page 7.

²⁴⁵ Ibid.

²⁴⁶ Ibid page 7.

the Committee of Ministers and the Advisory Committee has been remarkably constructive from the start, with the Committee of Ministers following in broad lines the Opinions of the ACFC, and its hands-on supervision methods (including country visits, followup seminars), notwithstanding the rather ‘demanding’ reading of state obligations.²⁴⁷ The ACFC’s constructive dialogue with states, and its practice of picking up the recommendations of the previous supervision cycle, has resulted in relentless pressure on the states to improve their record, continuously inviting them to broaden the groups the FCNM applied to, and extend the strength of the rights.²⁴⁸

During the past two years, the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) continued to strive for the effective guarantee of the human rights of persons belonging to national minorities across Europe.²⁴⁹ The 4th monitoring cycle of the implementation of the Framework Convention for the Protection of National Minorities (the Framework Convention) is well under way and the ACFC acknowledges the institutional, legislative, and policy-making progress achieved in many states parties between June 2014 and May 2016.²⁵⁰ At the same time, however, it is also aware that the protection of minorities faces new challenges due to the increasing complexity and diversity of our societies, coupled with global phenomena such as migration flows, the economic crisis and growing insecurity.²⁵¹

To address the rights of minorities by the Council of Europe, and to have a greater advance in awareness raising by some states, no doubt precedes it three major events – the fall of the Berlin Wall in November 1989 and then the breakup of the former Yugoslavia in 1991 and of the former Soviet Union the same year – brought about sweeping changes in the history of our continent and the political architecture of

²⁴⁷ Kristin Henrard Professor of Fundamental Rights and Minorities at the Erasmus School of Law, Rotterdam/ECMI FCNM in focus of dealing with diversity: is the Framework Convention at a Cross-road? 20 years page 107, (The interviews in this publication were conducted by Stéphanie Marsal. Publication and video were produced by the ECMI with funding from the Council of Europe. The opinions expressed in this work are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe or its member States).

²⁴⁸ Ibid.

²⁴⁹ Advisory Committee on the Framework Convention for the Protection of National Minorities Tenth activity report covering the period from 1 June 2014 to 31 May 2016, Francesco Palermo President of the ACFC (2014-2016) page 5.

²⁵⁰ Ibid.

²⁵¹ Ibid.

Europe.²⁵² Following those events, a whole range of new states began aspiring to democracy, respect for human rights and the rule of law.²⁵³ Against that background, the Council of Europe was assigned a completely new role founded on its legal *acquis* – primarily the European Convention on Human Rights – and its unrivalled expertise.²⁵⁴

The advancement of minority rights was made after the Lisbon Treaty where it can be concluded that with this minority trait, they became the primary category in EU legislation Title III: Equality article 20: Equality before the law, everyone is equal before the law.²⁵⁵ Article 21: Non-discrimination 1. any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. Thus, Article 20 deals with equality before the law, while Article 21 decisively foresees the prohibition of discrimination on a national or minority basis. It is more correct to find that “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities (...).” (Art 2 TEU).²⁵⁶

According to Dr. Ulrike Barten, the Treaty of Lisbon includes three major points that warrant consideration in the context of minorities.²⁵⁷ For one, persons of minorities are for the first time explicitly mentioned in EU primary law.²⁵⁸ For another, the Charter of Fundamental Rights (CFR) receives the status as an internationally legally

²⁵² Mr Philippe Boillat /Strasbourg, 19 June 2018 Minorities and Minority Languages in a Changing Europe Conference on the occasion of the 20th anniversary of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages Council of Europe, Strasbourg, France Palais de l’Europe, room 1 18 – 19 June 2018 Conclusions and final remarks by the rapporteur of the conference, Mr Philippe Boillat, page 2.

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*

²⁵⁵ Consolidated Reader-Friendly Edition of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) as amended by the Treaty of Lisbon (2007) Third edition 2009, page 202.

²⁵⁶ Bruno de Witte, Alexander H. Trechsel, Dragana Damjanović, Elin Hellquist, Josef Hien, Paolo Ponzano, Democrats in the European Parliament/ European Union Democracy Observatory (EUDO) Robert Schuman Centre for Advanced Studies, European University Institute Via delle Fontanelle, 19; I-50014 San Domenico di Fiesole; Italy EUDOSecr@eui.eu; www.eudo.eu & Legislating after Lisbon New Opportunities for the European Parliament A study prepared in the framework of the European Union Democracy Observatory for the Group of the Progressive Alliance of Socialists page 56.

²⁵⁷ Dr Ulrike Barten, Junior Research Associate European Centre for Minority Issues Flensburg, Germany, Minority Rights in the European Union after Lisbon, page 2.

²⁵⁸ *Ibid.*

binding document.²⁵⁹ Thirdly, it is envisaged that the European Union will accede to the European Convention on Human Rights (ECHR).²⁶⁰

Dr Tawhida Ahmed is a lecturer at the School of Law who emphasizes that today, although minority protection remains of a patchwork nature in EU internal law, the changes brought to EU law since the 2009 Treaty of Lisbon provide better grounds for its evolution.²⁶¹ Although this new emphasis on minority rights and diversity must not be exaggerated (the EU Treaties still do not embody a general legal competence on minority rights), since 2009, the legal environment is one where concrete legal moves towards minority protection could actually occur.²⁶² The Lisbon Treaty provides some basis for common legislation on the integration of minorities (Article 79(4) TFEU).²⁶³ The article only applies to common “incentives” and “supporting measures” regarding newly arrived immigrants from non-EU countries.²⁶⁴ The treaty does amend the EU’s list of fundamental values to include the responsibility to protect the rights of minorities and the specific inclusion of the word “minorities” in a list of basic EU values strengthens its role in antidiscrimination vis a vis ethnicity.²⁶⁵ The Constitutional Treaty of 2004 was the first constitutive document of the EU that made reference to “the rights of persons belonging to minorities.”²⁶⁶ However, it has failed to find the approval of all member states.²⁶⁷

²⁵⁹ Ibid .

²⁶⁰ Ibid.

²⁶¹ <http://blogs.lse.ac.uk/europpblog/2012/09/04/eu-minority-rights-lisbon-treaty/> accessed on 3rd of April 2017.

²⁶² Ibid. article 4.

²⁶³ Ibid.

²⁶⁴ OPEN SOCIETY EU PAPER 1 Human Rights in the EU, How the Lisbon Treaty could HELP, page 24.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Bernd Rechel , **What Has Limited the EU's Impact on Minority Rights in Accession** <http://eep.sagepub.com/content/22/1/171> The online version of this article can be found at: DOI: 10.1177/0888325407311796 *East European Politics and Societies* 2008 22: 171 Bernd Rechel **Countries?** Published by: <http://www.sagepublications.com> accessed on 5th of April 2017. On behalf of: American Council of Learned Societies, page 180.

²⁶⁷ Ibid

2. Legislation on Minority Rights in Estonia, Latvia, Lithuania, Romania and some European Countries - Comparative Aspects - Their Institution and Legal With Kosovo

Human rights legislation is a whole of rights under the umbrella of this legislation and the rights of communities in particular. The human rights of ethnic minorities are explicitly set out in the Universal Declaration of Human Rights, the International Covenants, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities and other widely adhered to international human rights treaties and Declarations.²⁶⁸

Also, the human rights legislation in the Baltic states and Romania, which legislation will treat as advanced legislation, since all these countries are part of the EU, there is no very specific or specific division as is the case of Kosovo or cases arising from conflicts or war where ethnic groups may be vulnerable and in some other form or form are granted exclusive rights. Specifically, in these countries, which will deal with the legislation on the rights of minorities or ethnic groups, it will be the non-inclusive treatment of minority rights within the legal system and specific treatment. Minority rights are an integral part of human rights with a certain ambition. The human right of members of ethnic minorities to freedom from any distinction, exclusion, restriction or preference based on race, colour, national or ethnic origin, language, religion, birth, or any other status, which has the purpose or effect of impairing the enjoyment of human rights and fundamental freedoms.²⁶⁹ The human right of members of ethnic minorities to freedom from discrimination in all areas and levels of education, employment, access to health care, housing, and social services.²⁷⁰ The human right of each member of an ethnic minority to equal recognition as a person before the law, to equality before the courts, and to equal

²⁶⁸ <http://www.pdhre.org/rights/ethnicity.html>, accessed on 9th of April 2017.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

protection of the law.²⁷¹ Prior to all persons as persons of ethnic or minority ethnic communities or ethnic minorities, but any group is subject to the law and must have equal treatment before the law, respecting diversity or specific rights such as national, linguistic culture rights.

3. Legislation on Minority Rights in Estonia

Before I start addressing the subject of legislation on the protection of community rights in Estonia, it is important to emphasize the fact that Estonia is a country that has ratified the Framework Convention for the Protection of National Minorities. I have addressed this issue at the beginning of this chapter, concretely the rights of minority in the Council of Europe where I have mentioned the states that have ratified this convention.

The legislation on minority rights in Estonia is defined by a number of constitutional-law laws as the highest act, then National Minorities Cultural Autonomy Act as well as other specific laws regulating the rights set out in full. The European legislation in charge and that of Estonia in particular is an advanced legislation that achieves full applicability. The Estonian Constitution stipulates that national minorities have the right, in the interests of their culture, to establish self-governing agencies under such conditions and pursuant to such procedure as are provided in the National Minorities Cultural Autonomy Act.²⁷² The National Minorities Cultural Autonomy Act approved by Riigikogu which is a law-making body, for paring the National Minorities Cultural Autonomy Act and some laws have recounted The procedure for the passage of laws shall be provided by the Riigikogu Procedure Act.²⁷³ The following laws may be passed and amended only by a majority of the membership of the Riigikogu: Citizenship Act, Riigikogu Election Act, President of the Republic

²⁷¹ Ibid.

²⁷² Constitution of the Republic of Estonia Friday, 15 July 2016 11:37 Translation into English. Translations into English are officially sanctioned for information purpose only. Only The Estonian language text has the force of law. Passed 28.06.1992 RT 1992, 26, 349 Entry into force 03.07.1992 Amended by the following Acts: 06.05.2015 entered into force 13.08.2015 - RT I, 15.05.2015, 1; 13.04.2011 entered into force 22.07.2011 - RT I, 27.04.2011, 1; 12.04.2007 entered into force 21.07.2007 - RT I 2007, 33, 210; 05.10.2003 entered into force 06.01.2004 - RT I 2003, 64, 429; 25.02.2003 entered into force 17.10.2005 - RT I 2003, 29, 174. § 51, page 17, <https://vp2006-2016.president.ee/en/republic-of-estonia/the-constitution/index.html> accessed on 13th of April 2017.

²⁷³ Ibid page16.

Election Act, Local Government Election Act, Referendum Act and National Minorities Cultural Autonomy Act ect.²⁷⁴

Throughout this thesis, in the definition section I have dealt with the definition of communities in Kosovo where this issue is defined by Law no.03/L-047 on the protection of the rights of communities and their members which has determined what the communities are in terms of this law. The same is also regulated in Estonia by the National Minorities Cultural Autonomy Act where it has determined this for the purposes of this act, a national minority shall mean Estonian citizens who: reside in the territory of Estonia, have long-term, sound and permanent ties with Estonia - differ from Estonians by their ethnic belonging, cultural characteristics, religion or language, are led by their wish to collectively maintain their cultural customs, religion or language which are the basis for their common identity.²⁷⁵ In addition, I will also continue to present a comparison of the definition of community rights in Austria, Switzerland and Estonia the declarations by Austria, Estonia and Switzerland consider that the term national minority applies to those ethnic, religious or linguistic groups that can point to long-standing, firm and lasting ties with the relevant State party, and whose members are citizens of the State.²⁷⁶ The declaration by Austria defined national minorities as ‘those groups which come within the scope of application of the Law on Ethnic Groups and which live and traditionally have had their home in parts of the territory of the Republic of Austria and which are composed of Austrian citizens with non-German mother tongues and with their own ethnic cultures’.²⁷⁷ Estonia referred to the following criteria: citizens of Estonia who reside on the territory of Estonia; maintain long-standing, firm and lasting ties with Estonia; are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics; and are motivated by a concern to preserve together their

²⁷⁴ Ibid.

²⁷⁵ National Minorities Cultural Autonomy Act Passed by the Act of 26 October 1993 (RT I 1993, 71, 1001), entered into force 28 November 1993. amended by the following Acts: 05.06.02 entered into force 01.07.02 - RT I 2002, 53, 336; 19.06.02 entered into force 01.08.02 - RT I 2002, 62, 376. Page 1, <http://www.legaltext.ee/text/en/XX00038.htm> 30/01/2008, accessed on 13th of April 2017.

²⁷⁶ STEVEN WHEATLEY, *Democracy, Minorities and International Law* STEVEN WHEATLEY is Senior Lecturer in Human Rights Law and International Law at the University of Leeds. A M B R I D G E U N I V E R S I T Y P R E S S Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, Sa˜o Paulo C A M B R I D G E U N I V E R S I T Y P R E S S The Edinburgh Building, Cambridge, CB2 2RU, UK Published in the United States of America by Cambridge University Press, New York www.cambridge.org page 53

²⁷⁷ Ibid

cultural traditions, their religion or their language, which constitute the basis of their common identity.²⁷⁸

On the other hand, the Swiss declaration defines national minorities as ‘groups of individuals numerically inferior to the rest of the population of the country or of a canton, whose members are Swiss nationals, have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common identity, in particular their culture, their traditions, their religion or their language’.²⁷⁹ The National Minorities Cultural Autonomy Act has defined the rights of national minorities to create their own cultural organs, the cultural autonomy of a national minority shall mean the right of persons belonging to a national minority to establish cultural autonomy bodies in order to perform culture-related rights granted to them by the Constitution.²⁸⁰ How to form these cultural bodies and which communities have the right to form these organs is also defined by the National Minorities Cultural Autonomy Act where it potentiates persons belonging to the German, Russian, Swedish and Jewish national minority, and persons of national minorities with a population of over 3000 may establish cultural autonomy bodies.²⁸¹

Cultural autonomy has been practiced in many countries and is being dealt with by scientific doctrine and legal and constitutional aspects and as such cultural autonomy concerns the devolution of authority to a minority group over an aspect of State policy, for example education, providing an opportunity for ‘self-government’ by the group in relation to the issue in question.²⁸² Karl Renner first proposed the idea of cultural autonomy in the early part of the twentieth century.²⁸³ Renner sought to develop a mechanism by which non-territorial groups could enjoy autonomy in areas

²⁷⁸ Ibid

²⁷⁹ Ibid

²⁸⁰ National Minorities Cultural Autonomy Act Passed by the Act of 26 October 1993 (RT I 1993, 71, 1001), entered into force 28 November 1993. amended by the following Acts: 05.06.02 entered into force 01.07.02 - RT I 2002, 53, 336; 19.06.02 entered into force 01.08.02 - RT I 2002, 62, 376. Page 1 <http://www.legaltext.ee/text/en/XX00038.htm> 30/01/2008, accessed on 17th of April 2017.

²⁸¹ Ibid

²⁸² STEVEN WHEATLEY, *Democracy, Minorities and International Law* STEVEN WHEATLEY is Senior Lecturer in Human Rights Law and International Law at the University of Leeds. A M B R I D G E U N I V E R S I T Y P R E S S Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo C A M B R I D G E U N I V E R S I T Y P R E S S The Edinburgh Building, Cambridge, CB2 2RU, UK Published in the United States of America by Cambridge University Press, New York www.cambridge.org, page 176.

²⁸³ Ibid.

such as education, whilst at the same time participating in the overall decision-making processes of the State.²⁸⁴

According to the author Steven Wheatley with regard to cultural autonomy, concludes that Contemporary examples include the Estonian Law on Cultural Autonomy for National Minorities 1993, and the Hungarian 1993 Act LXXVII ‘On the Rights of National and Ethnic Minorities’.²⁸⁵ Latvia lacks comprehensive minority rights legislation and has thus failed to ratify the Framework Convention for Protection of National Minorities.²⁸⁶

4. Community Legislation in Latvia

Like Estonia, Latvia is the country that has ratified the Framework Convention for the Protection of National Minorities, Latvia ratifies this convention on 06/06/2005.²⁸⁷ Notwithstanding this Latvia as a state in some reports and scientific research made prior to 2005 received criticism in this regard regarding the prolongation of ratification of Framework Convention for the Protection of National Minorities, where it was considered the ratification of the Framework Convention for the Protection of National Minorities is urgently needed and could provide the constructive basis for internal dialogue on minority rights issues facing the country.²⁸⁸ A very related fact was that Latvia had not ratified the Convention by the time it became a member of the EU in 2004, but only acceded to the Convention in 2005.²⁸⁹ Regarding the issue of ratification of this convention at a time when Latvia was a country accepted in the European Union which had not ratified this convention, it was considered that the European Union had used double standards for this. While the European Commission supervises the fulfilment of criteria in accession countries very precisely, and register its observations in Annual Regular Reports, some of the current member states still did not ratify the Framework

²⁸⁴ Ibid.

²⁸⁵ Ibid page175.

²⁸⁶ Open society Institute 2001 Minority Protection in Latvia Monitoring the EU accession Proces Protection page 269.

²⁸⁷ <https://www.coe.int/en/web/minorities/etats-partie> accessed on 19th of April 2017.

²⁸⁸ Analytical Report PHARE RAXEN_CC Minority Education RAXEN_CC National Focal Point Latvia Latvian Centre for Human Rights and Ethnic Studies Minority Education in Latvia Vienna, 2004, page 5.

²⁸⁹ Edited by Bernd Rechel, Minority Rights in Central and Eastern Europe, BASEES/Routledge series on Russian and East European studies, page 7.

Convention for the protection of National Minorities themselves.²⁹⁰ Of the ten accession countries, only Latvia has so far failed to join the Convention, while five EU states – the Netherlands, Belgium, Luxembourg, France and Greece – haven't ratified the accord, and France hasn't even signed it.²⁹¹ This has led the Minority Rights Group International to accuse the EU of setting double standards.²⁹²

Also Latvia has not signed the European Charter for Regional or Minority Languages (ECRML).²⁹³ However, it ratified the Framework Convention for the Protection of National Minorities (FCNM) in 2005.²⁹⁴ Concerning this conclusion of Latvia as a member state of the European Union there is stagnation or delay in some aspects, eg the approval of important documents of international character. Despite the desires of the European Commission, Latvia refused to ratify the Framework Convention before becoming a member of the EU though signing the document in 1995.²⁹⁵ The Latvian parliament delayed until June 2005 before promulgating the FCNM, although they too added a declaration listing who fell into the category of 'national minority' in Latvia.²⁹⁶ Once again, the Russian-speaking community was not listed. These examples tell us something about the significance of the Framework Convention in Europe.²⁹⁷

The legal aspects of minority rights in Latvia except application of the Framework Convention for the Protection of National Minorities is regulated by the Constitution and some laws, in the provisions of how constitution stipulates it Latvia as democratic, socially responsible and national state is based on the rule of law and on respect for human dignity and freedom; it recognises and protects fundamental human rights and respects ethnic minorities.²⁹⁸ Article 114 of the Constitution

²⁹⁰ TINA FERLE, MANCA ŠETINC, CONSTITUTIONAL PROTECTION OF MINORITY LANGUAGES IN THE EUROPEAN UNION Presented at Inclusion and Exclusion in Contemporary European Societies, IUC Dubrovnik, April 2004, page 4.

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ Ewa Chylinski Mahulena Hofmannová, ECMI **READY FOR Ratification Early compliance of non-States Parties with the European Charter for Regional or Minority Languages** A Handbook with twenty proposed instruments of ratification (eds.), page 176.

²⁹⁴ Ibid.

²⁹⁵ Palgrave Macmillan, The European Minority Rights Regime Towards a Theory of regime effectiveness David.J. Galbreath Joanne Mcevoy, page 76.

²⁹⁶ Ibid.

²⁹⁷ Ibid same page 77.

²⁹⁸ The Constitution of the Republic of Latvia 04.02.2016. *Text consolidated by Valsts valodas centrs (State Language Centre) with amending laws of: 21 March 1933 [shall come into force from 21 March 1933]; 27 January 1994 [shall come into force*

provides persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.²⁹⁹ If we compare the constitution of Latvia and Estonia with the condition of Kosovo, which I have quoted during this paper, we can conclude that the rights of minorities are guaranteed by the constitution of the Republic of Kosovo, both in terms of their recognition and in the aspect of competences and the establishment of institutional mechanisms are much more advanced, even though Estonia and Latvia are a member state of the European Union. Chapter III of the Constitution of the Republic defines rights of communities and their members where paragraph 1 of this chapter emphasizes 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.³⁰⁰ Based on this, the rights of communities in Kosovo were elaborated and specific and exclusive rights, so the constitution of Kosovo guarantees more substantive rights and gives more space to communities in Kosovo than the Constitution of Latvia and Estonia, though Estonia compared to Latvia has a more guaranteed system since it has determined the National Minorities Cultural Autonomy Act. Kosovo's constitutions regulates linguistic rights, educational rights, as well as the rights of institutional representation of communities in explicit and more advanced rights which have been dealt with in this thesis of this paper. If we look at the condition of Latvians which from 1993 to in 2014 has been amended several times we can conclude that the constitutional provisions concerning minorities have not undergone any change or advancement.

from 26 February 1994]; 5 June 1996 [shall come into force from 26 June 1996]; 4 December 1997 [shall come into force from 31 December 1997]; 15 October 1998 [shall come into force from 6 November 1998]; 30 April 2002 [shall come into force from 24 May 2002]; 8 May 2003 [shall come into force from 5 June 2003]; 23 September 2004 [shall come into force from 21 October 2004]; 15 December 2005 [shall come into force from 17 January 2005]; 3 May 2007 [shall come into force from 31 May 2007]; 8 April 2009 [shall come into force from 2 November 2009]; 19 September 2013 [shall come into force from 18 October 2013]; 19 June 2014 [shall come into force from 22 July 2014,] <http://www.satv.tiesa.gov.lv/en/2016/02/04/the-constitution-of-the-republic-of-latvia> accessed on 20th of April 2017.

²⁹⁹ Ibid.

³⁰⁰ Constitution of the Republic of Kosovo Chapter III Rights of Communities and Their Members Article 57 General Principles Paragraph 1 page 16 . <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>, accessed on 22nd of April 2017.

5. International Instruments and Domestic Legislation in Latvia

Latvia has signed and ratified a number of internationally binding treaties protecting the rights of minorities, with the notable exceptions of the Framework Convention on the Protection of National Minorities, the European Convention on Nationality and the European Charter on Regional and Minority Languages.³⁰¹ According to the research conducted, it appears that Latvia has been delayed as a state in ratifying international acts that directly affect the rights of minorities or ethnic groups in this country, in addressing this issue which I have based on some research material highlights. The Law Unrestricted Development of National and Ethnic Groups of Latvia and rights cultural autonomy was pass on March by Supreme Council (Latvia's pre-1993 Parliament).³⁰² The law predates the basic UN and European minority rights instruments and was seen by a number of minority NGO activists as a great step forward at the time of passage.³⁰³

The Law on Unrestricted Development and the right to Cultural Autonomy of National and Ethnic Groups of Latvia of 19 March 1991 was adopted to guarantee to all national and ethnic groups in the Republic of Latvia the rights to cultural autonomy and selfadministration of their culture.³⁰⁴ Over twenty years, the legal system of Latvia has developed and evolved and, consequently, the majority of provisions contained in this Law currently overlap with the provisions of other normative acts.³⁰⁵

Law About the Unrestricted Development and Right to Cultural Autonomy of Latvia's Nationalities and Ethnic Groups, this Law is adopted to guarantee to all nationalities and ethnic groups in the Republic of Latvia the rights to cultural

³⁰¹ Open society Institute 2001 Minority Protection in Latvia Monitoring the EU accession Proces Protection page 278.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Council of Europe Strasbourg, 6 December 2016 ACFC/SR/III(2016)001 Third Report submitted by Latvia pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (Received on 6 December 2016)/ Third Report on the Implementation of the Framework Convention for the Protection of National Minorities by the Republic of Latvia page 11.

³⁰⁵ Ibid.

autonomy and self-administration of their culture.³⁰⁶ Paragraphs 1 and 2 of this law also stipulate Republic of Latvia residents are guaranteed, irregardless of they nationality, equal human rights which correspond to international standards.³⁰⁷ Each 16 years old citizen of Latvia or person who has neither Latvia's nor other state's citizenship and who is a permanent resident of Latvia, has the right to establish or to restore ethnicity records in personal documents, according to his or her national consciousness and ethnic origin, and according to procedure established by law.³⁰⁸ The acquisition of the state of Latvia as well as the holding of the state is regulated by Citizenship Law according to Section 2. is determined the Holding of Latvian Citizenship Latvian citizens are: 1) persons who were Latvian citizens on 17 June 1940, and their descendants who have registered in accordance with the procedures set out in law, except persons who have acquired the citizenship (nationality) of another state after 4 May 1990; 1.1) Latvians and Livs whose permanent place of residence is Latvia, who have registered in accordance with the procedures set out in law and who do not have citizenship (nationality) of another state, or who have received an expatriation permit from the state of their former citizenship (nationality), if such permit is provided for by the laws of that state.³⁰⁹ This law does not state in general terms of who are citizens of Latvia without mentioning the term minority or ethnic groups, but as I elaborated with the Law About the Unrestricted Development and Right to Cultural Autonomy of Latvia's Nationalities and Ethnic Groups have the right in their personal documents to keep records of ethical affiliation or to restore those data.

³⁰⁶ Law About the Unrestricted Development and Right to Cultural Autonomy of Latvia's Nationalities and Ethnic Groups Adopted 19.03.1991 Amendments: 15.06.94 page 1. <http://www.regione.taa.it/biblioteca/minoranze/lettonia3.pdf>, accessed on 22nd of April 2017.

³⁰⁷ Ibid.

³⁰⁸ Ibid.

³⁰⁹ Text consolidated by Tulkošanas un terminoloģijas centrs (Translation and Terminology Centre) with laws of: 16 March 1995; 6 February 1997; 22 June 1998. If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause. The Saeima has adopted and the President has proclaimed the following law: Citizenship Law Chapter One General Provisions page 1, <http://unpan1.un.org/intradoc/groups/public/documents/unpan018407.pdf>, accessed on 23rd of April 2017.

6. Comparative Aspects of Institutional and Legal Rights

Similarly to Estonia, which guarantees cultural mechanisms for the protection of minorities or ethnic groups, Latavi himself in the mere way of defining this issue, yes, Estonia is guaranteeing a cultural autonomy and mechanisms that guarantee such autonomy through National Minorities Cultural Autonomy Act which for the purpose of this Act, the cultural autonomy of a national minority shall mean the right of persons belonging to a national minority to establish cultural autonomy bodies in order to perform culture-related rights granted to them by the Constitution.³¹⁰

Latavi secures this issue through the law as emphasized while these rights are guaranteed by general institutional mechanisms without separating or creating special mechanisms or institutions that protect the rights of minorities or epinectal groups. While the Republic of Kosovo has a variety of state institutions, which I have emphasized in some parts of this work is starting from the Assembly of the Republic of Kosovo as a legislative institution which has foreseen Committee on the Rights, Interests of the Communities and Return,³¹¹ then Consultative Council for Communities which is a Consultative Council for Communities acts under the authority of the President of the Republic of Kosovo in which all Communities shall be represented.³¹² Kosovo besides these two mechanisms has foreseen several other bodies such as Ministry for Communities and Return,³¹³ the Municipal Offices for Communities and Return,³¹⁴ and the Office for Community Affairs/Office of the Prime Minister.³¹⁵ Here, we can conclude that Kosovo has created institutional mechanisms that may have the same or similar mandate and that this combination of competencies may also have Kosovo in its legislative body with a composition or

³¹⁰ , National Minorities Cultural Autonomy Act Passed by the Act of 26 October 1993 (RT I 1993, 71, 1001), entered into force 28 November 1993. amended by the following Acts: 05.06.02 entered into force 01.07.02 - RT I 2002, 53, 336; 19.06.02 entered into force 01.08.02 - RT I 2002, 62, 376. <http://www.legaltext.ee/text/en/XX00038.htm> 30/01/2008, accessed on 24th of April 2017.

³¹¹ <http://www.kuvendikosoves.org/?cid=2,110,137> accessed on 25th of April 2017.

³¹² Constitution of the Republic of Kosovo article 60 page 18 <http://www.kryeministri-ks.net/repository/docs/Constitution%20Kosovo.pdf>, accessed on 25th of April 2017.

³¹³ Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries article 18 paragraph 1.15 page 22, http://www.kryeministri-ks.net/repository/docs/Rregullorja_02-2011-e_miraturar nga_Qeveria-finale.pdf, accessed on 26th of April 2017.

³¹⁴ Regulation No. 02/2010 for the Municipal Offices for Communities and Return, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10522> , accessed on 27th of April 2017.

³¹⁵ <http://www.zck-ks.net/?page=2,4,253>, accessed on 27th of April 2017.

structure of the Assembly as follows: The Assembly has one hundred twenty (120) deputies elected by secret ballot on the basis of open lists.³¹⁶ In the framework of this distribution, twenty (20) of the one hundred twenty (120) seats are guaranteed for representation of communities that are not in the majority in Kosovo.³¹⁷

Despite the fact that the rights of communities in Kosovo are advanced in the comparative aspect at the level of institutional and legal mechanisms, which also elaborated the level of constitutional rights between Kosovo, Estonia and Latvia, and now I consider the institutional aspect that in all these issues highlighted that Kosovo has an advanced system of constitutional and legal constitutional rights was emphasized that Kosovo has signed Framework Convention for the Protection of National Minorities (FCNM) acting as the United Nations Interim Administration Mission in Kosovo, where I emphasized that Kosovo* was signed with the United Nations Interim Administration Mission in Kosovo (UNMIK) in 2004, this was done at a time when Kosovo was not a state, but I want to emphasize that this convention has applied to its constitution article 22, where it is anticipated direct Applicability of International Agreements and Instruments for more human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions: Council of Europe Framework Convention for the Protection of National Minorities,³¹⁸ except for some other convention, but I emphasized this convention for the specific weight that has been related to the subject I am dealing with.

Furthermore, Kosovo has the Law no.03/L-047 on the protection of the rights of communities and their members which has a specific and highly specific character to which it is defined communities and their members shall have the right to freely maintain, express and develop their culture and identity, and to preserve and enhance the essential elements of their identity, namely their religion, language, traditions and

³¹⁶ Constitution of the Republic of Kosovo article 64 page 20, <http://www.kryeministri-ks.net/repository/docs/Constitution%20Kosovo.pdf>, accessed on 29th of April 2017.

³¹⁷ Ibid.

³¹⁸ Ibid article 22, page 6.

cultural heritage.³¹⁹ In addition to the specific rights enumerated in this law, fundamental human rights shall be exercised freely and equally, including freedom of thought; of expression; of the media; of association and assembly; of religious belief and practice; and the right to manifest, in public or private, individually or in community with others, the cultural attributes of the respective community.

Compared to the domestic law of the Republic of Kosovo with these two states as well as Lithuania and Bulgaria, which I will discuss below, I consider that Kosovo has an advanced legal system and institutional and political representation. While applying or implementing the rights in practice, is the most advanced in the EU member states which I am addressing in this chapter. Regarding political representation and mandate gained or guaranteed minority seats, this practice has neither Estonia nor Latvia, for the more the Estonian constitution defines the rights and obligations of parliament Riigikogu according to chapter IV the Riigikogu,³²⁰ but does not mention the composition or division of mandates on an ethnic basis, though it has an advanced democratic system of internal political representation.

7. Legislation on the Rights of Minorities / Ethnic Groups in Lithuania

Lithuania, the first country of the Central and East European (CEE) region to adopt a specific law on national minorities in 1989, recently became a subject of international concern regarding the situation with its minorities.³²¹ In his statement of 12 July 2012, Knut Vollebæk, at the time OSCE High Commissioner on National Minorities, emphasized that, during his visits to Lithuania in 2011 and 2012, he “ha[s] encouraged the Government of Lithuania to address the legal vacuum created by the lapse of the Law on Ethnic Minorities in 2010”.³²² The legal basis regulating or defining the legal system for the protection of minorities in the Republic of Lithuania is as follows:

³¹⁹ Law no. 03/I-047a on the Protection and Promotion of the Rights of Communities and their Members in Kosovo article 2 page 2, <https://gzk.rksgov.net/ActDetail.aspx?ActID=2531>, accessed on 1st of May 2017.

³¹⁹ Ibid.

³²⁰ <https://www.riigiteataja.ee/en/eli/521052015001/consolide>, accessed on 2nd of May 2017.

³²¹ Dr. Tove H. Malloy, Hanna Vasilevich / LITHUANIA'S MINORITY RELATED LEGISLATION: IS THERE A LEGAL VACUUM? Hanna Vasilevich ECMI WORKING PAPER #70 September 2013 ECMI Working Paper European Centre for Minority Issues (ECMI) Director: Dr. Tove H. Malloy © ECMI 2013 page 3.

³²² Ibid.

The Constitution of the Republic of Lithuania (Art. 37 and 45) regulates the rights of people belonging to national minorities.³²³ The protection of rights and freedoms of national minorities and the people belonging thereto forms an integral part of the international protection of human rights and falls within the ambit of the field of international cooperation.³²⁴ The Republic of Lithuania has ratified the key international agreements regulating the rights of national minorities.³²⁵ The agreements of the United Nations:

- The Universal Declaration of Human Rights;
- The International Covenant on Civil and Political Rights;
- The Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention for the Protection of Human Rights and Fundamental Freedoms;
- On 1 February 1995, the Republic of Lithuania signed the Framework Convention for the Protection of National Minorities of the Council of Europe, followed by ratification thereof without any reservations on 17 February 2000.

The Republic of Lithuania Law on Associations and the Republic of Lithuania Law on Charity and sponsorship, guarantees the freedom of association and the right to receive sponsorship for the people belonging to national minorities.³²⁶ The Laws on Citizenship, on the State Language, on Education, on Provision of Information to the Public, on Religious Communities and Associations, on Political Parties and Political Organisations, on the Fundamentals of Protection of the Rights of the Child, and other legal acts guarantee and regulate protection of the rights of people belonging to national minorities.³²⁷

On the other hand, the Constitution of Lithuania does not have many provisions defining the rights of minorities or ethnic groups. This constitution in a very general way mentions these rights if we compare it with the Constitution of Kosovo freely say that the Constitution of Kosovo is very advanced in this aspect, (we have

³²³ <https://lrkm.lrv.lt/en/activities/national-minorities>, accessed on 3rd of May 2017.

³²⁴ Ibid.

³²⁵ Ibid.

³²⁶ Ibid.

³²⁷ Ibid.

mentioned this in the top part where I made this comparative aspect in month Estonia and Latvia as two EU and Baltic states). Lithuania's constitution in its provisions, specifically in articles 37 and 45 defines the rights of communities who live there well but treats these communities not as persons living in that state but firstly considers them ethnic groups only in the case of the state of Lithuania where it is stated in Article 37 that Citizens belonging to ethnic communities shall have the right to foster their language, culture, and customs.³²⁸ Whereas Article 45 of this constitution, affirms ethnic communities of citizens shall independently manage the affairs of their ethnic culture, education, charity, and mutual assistance.³²⁹ Ethnic communities shall be provided support by the State.³³⁰

In a research done by Hanna Vasilevich ECMI Working Paper is considered there are only two articles in Lithuania's Constitution that refer directly to the country's „ethnic communities“.³³¹ Minorities shall “foster their language, culture and customs” (Art.37) as well as “independently manage the affairs of their ethnic culture, education, charity, and mutual assistance” (art. 45) which shall also be supported by the State.³³² Thus, despite the absence of a definition for the term “ethnic community” in the Constitution, we may infer three general criteria for these groups: the presence of specific language, culture, and customs. In order to enjoy the rights described in the Constitution, however, Lithuanian citizenship is required.³³³ Thus, only a Lithuanian citizen may be considered part of any national minority. Accordingly, national minorities in Lithuania can consist only of Lithuanian citizens.³³⁴

As previously stated, the rights of minors / ethnic groups in Lithuania have extensive rights and as such are included in different legislation within the legal system of this

³²⁸ Constitution of the Republic of Lithuania (Adopted by citizens of the Republic of Lithuania in the Referendum of 25 October 1992)
[page6.http://europam.eu/data/mechanisms/COI/COI%20Laws/Lithuania/Lithuania_Constitution_1992.%20amended%20in%202003.pdf](http://europam.eu/data/mechanisms/COI/COI%20Laws/Lithuania/Lithuania_Constitution_1992.%20amended%20in%202003.pdf), accessed on 5th of May 2017

³²⁹ Ibid page 8.

³³⁰ Ibid.

³³¹ Dr. Tove H. Malloy ,Hanna Vasilevich/ LITHUANIA'S MINORITYRELATED LEGISLATION: IS THERE A LEGAL VACUUM? ECMI WORKING PAPER #70 September 2013 ECMI Working Paper European Centre for Minority Issues (ECMI) © ECMI page 6.

³³² Ibid.

³³³ Ibid.

³³⁴ Ibid.

country, this is foreseen and according to article one of Law on the State Language which other laws of the Republic of Lithuania and legal acts adopted by the Seimas of the Republic of Lithuania shall guarantee the right of persons, belonging to ethnic communities, to foster their language, culture and customs.³³⁵

Regarding the issue of legislation on the rights of minorities or national minorities, Lithuania was the country that, before declaring its independence, created a system of rights for minority or ethnic groups, as well as adopt legislation in this regard, since the rights of the minorities were taken into consideration already within the independence movement before Lithuania regained its sovereignty.³³⁶ Lithuania adopted a law on national minorities prior to its declaration of independence in 1989 and established Department of Nationalities with a task to assist the country's minorities in several walks of life.³³⁷ The Law on National Minorities guarantees the rights of all minorities prohibiting all kind of discrimination on the grounds on race, ethnicity nationality or language.³³⁸ The law contains provision regarding the right to equal protection, to obtain aid from the state to develop their culture and education, to establish own media, to freedom of religion, to right to establish ethnic cultural organizations and to contact person with same ethnical background abroad, to equal political representation and to right to hold any post in institutions, organizations and enterprises.³³⁹

One could possibly argue that there is no legal vacuum in minority legislation starting from 1 January 2010 (when the Lithuanian authorities terminated old law on national minorities), because international legislation and other national laws are absolutely sufficient to regulate the situation of Lithuanian minorities.³⁴⁰ The Law on Ethnic Minorities and its termination as well as the shortcomings connected with the existing legal vacuum that resulted in the lack of a current specific Law on

³³⁵ Official translation the Republic of Lithuania Law on the State Language 31 January 1995, No. I-779 Vilnius (As last amended on 13 June 2002, No. IX-954) I. GENERAL PROVISIONS article 1, page 1. <https://e-seimas.lrs.lt/rs/legalact/TAD/TAIS.275246/>, accessed on 8th of May 2017.

³³⁶ Markko Kallonen Minority protection and linguistic rights in Lithuania page 4.

³³⁷ Ibid.

³³⁸ Ibid.

³³⁹ Ibid.

³⁴⁰ **The Law on ethnic minorities in Lithuania: a positive argument** <http://www.icelds.org/2018/02/26/the-law-on-ethnic-minorities-in-lithuania-a-positive-argument/> accessed on 10th of May 2017.

national minorities and nonadoption of a new one for more than three years.³⁴¹ Repeal of the Law on Ethnic Minorities currently fomenting disagreements and has further increased the need to issue such a law.

On 15 February 2018, the Social Democratic Party political group in the Lithuanian Seimas came up with a new draft law on ethnic minorities.³⁴² The registered draft law not only provides definitions of ethnic minority and minority language, but also enlists the right of using a minority language in communication (oral or written) with municipalities (Art. 5), the right of receiving information and the first legal aid in a minority language (Art. 6) and the right of writing the names of places, streets, subjects of public administration and topographical signs in a minority language (Art. 7) if a minority comprises no less than one-third of the inhabitants in a municipality.³⁴³

The decision to abrogate this law does not seem to be fair enough, as the Lithuanian authorities are trying to re-issue such a law even at the time of its abolition there was dissatisfaction with some communities, especially the Polish one this decision may have been influenced by the political aspirations, but the fact that only Polish members of the Supreme Council abstained, shows the possible fear or a protest in order to attract attention to the Polish question in Lithuania.³⁴⁴ Nonetheless, the political agreement between Lithuanian Poles and the government was achieved in 1991 when a Law of National Minorities was adopted.³⁴⁵ It ensured protection of the use of minority languages besides official state language in those districts where ethnic minorities made up the majority of the inhabitants.³⁴⁶ However, in 2010 this

³⁴¹ Dr. Tove H. Malloy, Hanna Vasilevich /LITHUANIA'S MINORITY RELATED LEGISLATION: IS THERE A LEGAL VACUUM? ECMI WORKING PAPER #70 September 2013 ECMI Working Paper European Centre for Minority Issues (ECMI) © ECMI page 3.

³⁴² **The Law on ethnic minorities in Lithuania: a positive argument** <http://www.icelds.org/2018/02/26/the-law-on-ethnic-minorities-in-lithuania-a-positive-argument/> accessed on 11th of May 2017.

³⁴³ Ibid.

³⁴⁴ By: Dr. Krzysztof Kowalski (Kraków) Dr. Doc. Antonin Kalous „Master of Arts Thesis Euroculture Jagiellonian University, Kraków (Home) Palacký University, Olomouc (Host) June 2016 Models of Polishness among Lithuanian Polish Minority Submitted by: Simonas Teškevičius 1120462 (Kraków); 80063379 (Olomouc) Supervised (Olomouc) Vilnius, 20 June 2016 Signature page 45.

³⁴⁵ Ibid.

³⁴⁶ Ibid.

law lost the power and until now it was not replaced by any other law protecting the rights of the minorities.³⁴⁷

If we compare legal and institutional arrangements between Kosovo and Lithuania, it is clear that Kosovo has an advanced set of conditions (which I have dealt with in this section and also in this chapter) compared to Lithuania, but a very interesting feature is that, Lithuania before the declaration of its independence has issued Law of National Minorities as well yet without declaring its independence in Chapter 4 Rights of Communities and Their Members General Provisions Constitutional Framework for Provisional Self-Government in Kosovo³⁴⁸ in a detailed manner regulated the role of communities in Kosovo, as well as being treated at the same time it was the exclusive competence of EULEX which was authorized to oversee Kosovo's independence in concrete terms Law No. 03/ L -047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, who was entrusted to the local authorities to apply this law after passing the supervision phase as per Article 1 of Law on Amending and Supplementing the Laws Related to the Ending of International Supervision of Independence of Kosovo.³⁴⁹

Even so, in the Institutional Framework of Lithuania compared to Kosovo, there are not many institutional mechanisms, but have created the Department of National Minorities to the Government of the Republic Of Lithuania is the authority responsible for the implementation of the national minorities' policy. The Department was re-established on the 1st of July 2015 following Decree No. 1300 "On establishment of a budgetary institution – the Department of National Minorities to the Government of the Republic of Lithuania" of the 24th of November 2014.³⁵⁰ In addition to this chapter, we will also deal with the language rights legislation in Lithuania in language rights rights.

Therefore, regarding the rights of minority or ethnic groups in Lithuania there is a rise in social expansion but years ago In Lithuania complex awareness campaigns

³⁴⁷ Ibid.

³⁴⁸ Constitutional Framework for Provisional Self-Government in Kosovo

https://www.assembly-kosova.org/common/docs/FrameworkPocket_ENG_Dec2002.pdf , accessed on 12th of May 2017.

³⁴⁹ Law no. 04/1-115 on Amending and Supplementing the Laws Related to the Ending of International Supervision of Independence of Kosovo article 1 page 1, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2840> accessed on 15th of May 2017.

³⁵⁰ <https://tmde.lrv.lt/en/about-the-department> , accessed on 15th of May 2017.

run by the Equal Opportunities Ombudsperson in 2007 demonstrated impact in terms of increased public sensitivity to disabled people, ethnic minorities and other minority groups.³⁵¹

8. Legislation on Community Rights in Romania

The Romanian understanding of the national state, as an intrinsic link between an ethno-culturally defined community and the state, has also been debated in scholarly literature. Weber considered this definition a reflection and result of nationalism being imbued with Romania's political life and legislative processes.³⁵² Solcan focused on the logical inconsistencies between the national concept of political community and those parts of the Constitution referring to the protection of national minorities, which can be understood as the main contradiction in the Romanian Constitution.³⁵³ A similar conclusion was drawn by the UN High Commissioner for Human Rights, as can be observed in his following statement: "Concern is also expressed about the concept of the nation-State since it may result in weakening the policy of protecting minorities and could aggravate the relations between communities."³⁵⁴ Weber further mentions that the concept of a national state has the general legal consequence that minority standards included in the Constitution are lower in comparison to former Romanian traditions.³⁵⁵

In its first proclamation of 22 December 1989, the new political power called for equality of minorities with the majority as a basic principle of the new regime.³⁵⁶ On 6 January 1990, the National Salvation Front issued another declaration promising a constitution comprised of individual and collective minority rights, a ministry and a law on national minorities.³⁵⁷ In October 1990, the government issued a new

³⁵¹ Margit Ammer, Niall Crowley, Barbara Liegl, Elisabeth Holzleithner, Katrin Wladasch, Kutsal Yesilkagit, -Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC SYNTHESIS REPORT October 2010 Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights, page 136.

³⁵² Wolfgang Zellner, Randolph Oberschmidt, Claus Neukirch, **Institute for Peace Research and Security Policy at the University of Hamburg** (Eds.) Comparative Case Studies on the Effectiveness of the OSCE High Commissioner on National Minorities/**István Horváth** Facilitating Conflict Transformation: Implementation of the Recommendations of the OSCE High Commissioner on National Minorities to Romania, 1993-2001 Working Paper 8, page 60.

³⁵³ Ibid.

³⁵⁴ Ibid.

³⁵⁵ Ibid.

³⁵⁶ Nandor Magyar, Letitia Mark, Hajnalka Harbula Eniko Magyar-Vincze, Country Report on Ethnic Relations: Romania, Ethnic differences in education and diverging prospects for urban youth in an enlarged Europe.

³⁵⁷ Ibid.

declaration on the problem of national minorities.³⁵⁸ At this time, the focus was on the general commitments of the relevant Organisation for Security and Co-operation in Europe (OSCE) and Council of Europe documents; the law on minorities was no longer mentioned, moreover, significant emphasis was put on the idea that inter-ethnic harmony could not involve separation or isolation of the minorities from the majority.³⁵⁹ The main goal of the Parliament elected in 1990 was to work out a new constitution, and the question of a law on minorities became secondary.³⁶⁰

Romania's constitution compared to the other three constitutions and that of Estonia, we consider that Romania has a more elaborate and specific treatment of this matter, whereby according to article 6, the Right to Identity is determined that, the state recognizes and guarantees for members of the national minorities the right to preserve, develop, and express their ethnic, cultural, linguistic, and religious identity.³⁶¹ The protective measures taken by the state to preserve, develop, and express the identity of the members of the national minorities shall be in accordance with the principles of equality and nondiscrimination in relation to the other Romanian citizens.³⁶²

Romania does not yet have a law on national minorities, as other states have.³⁶³ However, although it is difficult to outline a definition of the national minorities, we can mention the one stipulated in the bill on national minorities according to which "The national minority is any community of Romanian citizens living in Romania since the establishment of the modern state, numerically inferior to the majority population, with their own ethnic identity, expressed through culture, language or religion that they wish to preserve, express, and develop."³⁶⁴ People belonging to national minorities are Romanian citizens, which expresses freely and openly the

³⁵⁸ Ibid.

³⁵⁹ Ibid.

³⁶⁰ Ibid.

³⁶¹ Romania's Constitution of 1991 with Amendments through 2003, page 8.

³⁶² Ibid.

³⁶³ Roxana Alina Petraru, PROTECTION OF NATIONAL MINORITIES IN ROMANIA AND REPUBLIC OF MOLDOVA. GUIDELINES "Petre Andrei" University of Iași rrroxana@yahoo.com, CES Working Papers, III, (2), 2011, Page 331.

³⁶⁴ Ibid.

affiliation to a national community, or minors whose parents or other legal representatives have declared, by law, this membership".³⁶⁵

Even though Romania has a legal vacuum or a lack of law enforcement of an adequate minority rights, law has begun since a new law for ethnic minority groups was developed by the Democratic Alliance of Hungarians from Romania, in 2005 and was to be adopted by the Romanian Parliament, but never reached the plenum of the legislative institution.³⁶⁶ This project made reference to a newly developed personal and cultural autonomy project, referring to some special institution.³⁶⁷ Hence, Romania as if it and other states regarding the laxity of legislation made only one attempt to enact the law on minority rights attempting to go astray. But most of the EU states the legal aspect of community rights are addressing their inclusion within national legislation with the justification that the level of rights is equal to everyone by avoiding the logic of issuing any specific law while also integrating the rights of communities within the legal system, while also giving them specific rights to some other basic laws such as the law on the rule of law and integrating into their system international acts such as the framework convention for the protection of national minorities and other acts affecting the rights of minorities.

Romania with the draft Law on the Statute of National Minorities living in Romania had determined that: this law regulates the juridical statute of the national minorities living in Romania.³⁶⁸ The national minorities are recognized as constitutive factors of the Romanian state.³⁶⁹ By national minority we understand any community of Romanian citizens, living on the territory of Romania from the moment the modern Romanian state was established, that is numerically inferior to the majority population, with its specific ethnic identity expressed by culture, language or religion, and who wishes to preserve, express and promote its identity.³⁷⁰

³⁶⁵ Ibid

³⁶⁶ Nandor Magyari, Letitia Mark, Hajnalka Harbula Eniko Magyari-Vincze, Country Report on Ethnic Relations: Romania, Ethnic differences in education and diverging prospects for urban youth in an enlarged Europe, page 20.

³⁶⁷ Ibid

³⁶⁸ Draft Law on the Statute of National Minorities living in Romania

<http://miris.eurac.edu/mugs2/do/blob.pdf?type=pdf&serial=1131546546218>, accessed on 19th of May 2017.

³⁶⁹ Ibid.

³⁷⁰ Ibid.

9. Minority Rights Law in Moldova and Poland

Moldova's constitution in some of its articles defines constitutional state obligations regarding group rights being of a different ethnic origin, are, together with the Moldovans, forming the Moldovan people, judging the rule of law, the civic peace, democracy, human dignity, the rights and freedoms of man, the free development of human ect, simultaneously the State recognizes and guarantees all its citizens the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity.³⁷¹

All citizens of the Republic of Moldova are equal before the law and the public authorities, without any discrimination as to race, nationality, ethnic origin, language, religion, sex, political choice, personal property or social origin.³⁷²

The state of Moldova, apart from its constitution where the rights of ethnic groups have been included, has also Law of the Republic of Moldova on the Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations, with which law, except regulating the rights of national minorities in detail in the introductory provisions of this law, has issued a statement with which besides the other commitments is mentioned and the full respect of Universal Declaration of Human Rights and other international legal acts on human rights, including the Framework Convention for the Protection of National Minorities,³⁷³ so it is proved that Moldova applies strongly the Framework Convention for the Protection of National Minorities , Moldavia became state parties to the Convention on 20/11/1996.³⁷⁴

With article 1 of the Law of the Republic of Moldova on the Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations three very important elements are identified on which the rights of persons belonging to national minorities are known, such elements are citizenship, culture and language,

³⁷¹ Constitution of the Republic of Moldova adopted on July 29, 1994, article 8 , page 1 and 2.

³⁷² Ibid article 14, page 4

³⁷³ Law of the Republic of Moldova on the Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations

³⁷⁴ <https://www.coe.int/en/web/minorities/etats-partie> , accessed on 24th of May 2017.

and more specifically this article specifies the following: persons belonging to a national minority shall include persons who reside on the territory of the Republic of Moldova, have Moldovan citizenship, possess ethnical, cultural and linguistic features that differ from the majority of the population (Moldovans) and consider themselves to be of a different ethnical origin.³⁷⁵ Whereas Articles 2 and 3 of this law regulate the right of declaration or designation as a national minority which is guaranteed by this law and which empowers constitutional rights and international relations regarding the right of declaration of nationality, this the issue is regulated as follows: Art. 2. “any person belonging to a national minority has the right to freely choose whether to be considered as such and this choice or exercise of his / her rights related to such a choice shall not be to his / her disadvantage, art. 3. - Relations arising in the context of realization by persons who live on the territory of the Republic of Moldova and are its citizens of their rights and liberties related to their belonging to national minorities shall be governed by the Constitution of the Republic of Moldova, the present law, as well as international treaties and agreements to which the Republic of Moldova is a party.”³⁷⁶ According to the law of the Republic of Moldova on the Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations the state guarantees realization of the rights of the people belonging to national minorities to pre-school education, middle school, high school and professional, undergraduate and graduate education in Moldovan and Russian, and shall also create conditions for the realization of their rights to education and training in their mother tongue (Ukrainian, Gagauz, Bulgarian, Jewish, etc).³⁷⁷

Under this responsibility, this law guarantees numerous rights in the linguistic and educational aspect, but in a specific way this law regulates representation of persons belonging to national minorities in Parliament and local councils shall be obtained as a result of elections in accordance with the legislation in force, also with this law is determined proportional representation in the institutions of the executive branch and

³⁷⁵ Law of the Republic of Moldova on the Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations article 1 ,page 1. <http://miris.eurac.edu/mugs2/do/blob.html?type=html&serial=1050070790600> ,accessed on 24th of May 2017.

³⁷⁶ Ibid article 2 and 3, page 2.

³⁷⁷ Ibid article , page 2.

those of the judicial branch of all levels, in the army, in the law enforcement agencies, and the creation of the agency responsible for promotion of the state policy in the field of interethnic relations including implementation of the present law shall be the Department for Interethnic Relations.³⁷⁸

The Polish Constitution adopted on 2 April 1997, for the first time after the war, contains a provision dedicated exclusively to protecting national and ethnic minorities, however without a definition of those two categories.³⁷⁹ The legislator extended the rights of national and ethnic minorities beyond those identified in the Article 35.³⁸⁰ The extension of such rights also results from international agreements, thus far there is no statute regulating in a comprehensive and complete manner the situation of national and ethnic minorities (the Constitution does not make its adoption mandatory), the legal regulations concerning these issues are dispersed.³⁸¹ Also, the Constitution of the Republic of Poland of 1997 provides basic guarantees for Polish citizens who are members of national and ethnic minorities.³⁸² Another important Act which in greater detail regulates their rights is the Act of 6 January 2005 on National and Ethnic Minorities and Regional Language¹ (hereinafter referred to as the Act).³⁸³ The Act and numerous regulations provide the basis for protection of national and ethnic minorities' rights.³⁸⁴ Poland is also a signatory of international agreements of which the Framework Convention for the Protection of National Minorities which is a treaty of the Council of Europe, 2 and the European Charter for Regional or Minority Languages 3 are especially important.³⁸⁵

Minority Rights in Poland compared to minority rights in Lithuania, Latvia are similar, while the rights of communities of the Republic of Moldova compared with Estonia are similar but Moldova has a more advanced legal system since there is a much more specific law that regulates community rights in more detail, in general the

³⁷⁸ Ibid chapter IV article 23-25 , page 5.

³⁷⁹ 1216-2574/USD 20.00 Acta Juridica Hungarica 2004 Akademiai Kiado, Budapest 45, nos 3-4 , (2004) National and Ethnic Minorities in Poland—the Legal Problem of Definition page 1

³⁸⁰ Ibid.

³⁸¹ Ibid.

³⁸² PRZEGLĄD ZACHODNI 2014, No. II GRAŻYNA BARANOWSKA Poznań LEGAL REGULATIONS ON NATIONAL AND ETHNIC MINORITIES IN POLAND, page 1.

³⁸³ Ibid.

³⁸⁴ Ibid.

³⁸⁵ Ibid.

rights of communities in Moldova regarding specific legislation are with advanced. If we compare Moldova's legislation with that of Kosovo we can conclude that Kosovo's legislation regulating community rights is more advanced than that of Moldova.

10. The language rights in Union European

The European Charter for Regional or Minority Languages is the European convention for the protection and promotion of languages used by traditional minorities.³⁸⁶ Together with the Framework Convention for the Protection of National Minorities it constitutes the Council of Europe's commitment to the protection of national minorities.³⁸⁷

Regional or minority languages are part of Europe's cultural heritage and their protection and promotion contribute to the building of a Europe based on democracy and cultural diversity.³⁸⁸

The Charter, drawn up on the basis of a text put forward by the Standing Conference of Local and Regional Authorities of Europe, was adopted as a convention on 25 June 1992 by the Committee of Ministers of the Council of Europe, and was opened for signature in Strasbourg on 5 November 1992, it entered into force on 1 March 1998.³⁸⁹ Regrettably, the importance of the European Charter for Regional or Minority Languages (ECRML) is not reflected by the number of ratifications.³⁹⁰ While the Framework Convention for the Protection of National Minorities has 39 States Parties, the ECRML has so far been ratified by 25 member States of the Council of Europe and signed by a further eight member States.³⁹¹ As the Secretary General of the Council of Europe stated in his Biennial report to the Parliamentary Assembly on the Application of the ECRML in 2010, "it remains disappointing that a

³⁸⁶ <https://www.coe.int/en/web/european-charter-regional-or-minority-languages> , accessed on 27th of May 2017.

³⁸⁷ Ibid.

³⁸⁸ Ibid.

³⁸⁹ Ibid.

³⁹⁰ **Editors: Ewa Chylinski, Mahulena Hofmannová, Early compliance of non-States Parties with the European Charter for Regional or Minority Languages** A Handbook with twenty proposed instruments of ratification Ewa Chylinski **Publisher: European Centre for Minority Issues (ECMI) © ECMI 2011, page 3.**

³⁹¹ Ibid.

considerable number of member states of the Council of Europe have not yet become parties to the Charter.³⁹²

In EU countries as the basic legislation applicable to minority language rights, is the European Charter for Regional or Minority Languages (ECRML), as well as most states apply language laws and strategies for that. It will continue to expose the application of the language rights legislation in some separate countries and will make a comparison with Kosovo.

11. Language Rights in Estonia

Since its independence, Estonia has pursued policies of integration of minorities under the aegis of the doctrine of “identity rebuilding”, meaning the recognition of minorities who traditionally resided on the territory of Estonia prior to becoming a republic under the Soviet Union.³⁹³ In the declaration contained in the instrument of ratification of the Framework Convention for the Protection of National Minorities of 1997, the “national minorities are considered as those citizens of Estonia who reside on the territory of Estonia; maintain longstanding, firm and lasting ties with Estonia; are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics; are motivated by a concern to preserve together their cultural traditions, their religion or their language, which constitute the basis of their common identity”.³⁹⁴

Until this time, Estonia has not signed the European Charter for Regional or Minority Languages (ECRML). However, it ratified the Framework Convention for the Protection of National Minorities (FCNM) in 1997.³⁹⁵ Despite Estonia did not sign the European Charter for Regional or Minority Languages, it has issued the Language Act which has determined that Scope of Application of Act is this Act regulates the use of the Estonian language and foreign languages in oral and written administration, public information and service, the use of Estonian sign language and

³⁹² Ibid.

³⁹³ Ewa Chylinski Mahulena Hofmannová, **ECMI READY FOR Ratification Early compliance of non-States Parties with the European Charter for Regional or Minority Languages** A Handbook with twenty proposed instruments of ratification (eds.), page 43.

³⁹⁴ Ibid.

³⁹⁵ Ibid page 42.

signed Estonian language, the requirements for and assessment of the proficiency in the Estonian language, exercise of state supervision over compliance with the requirements provided in this Act and on the basis thereof and liability for the violation of the requirements of the Act.³⁹⁶ While paragraph 2 of this article of the act has also determined the use of language of legal persons in private law and natural persons is regulated if it is justified for protection of fundamental rights or in the public interest.³⁹⁷ For the purposes of this Act public interest means public safety, public order, public administration, education, health, consumer protection and occupational safety³⁹⁸. The establishment of requirements concerning use of and proficiency in Estonian shall be justified and in proportion to the objective being sought and shall not distort the nature of the rights which are restricted³⁹⁹. The articles of the Estonian Constitution (51.2) and the Language Act (10.1) give the right to use the minority language when submitting documents, and to receive answers from State agencies and from the local governments in the language of a national minority as well as in Estonian. Where the national minorities constitute the majority of inhabitants, the Language Act (Article 11) allows for its use as an internal working language⁴⁰⁰

Estonian is the official language of Estonia, according to the Constitution and supporting legislation.⁴⁰¹ So, according to the first chapter of the Estonian Constitution general provisions it is noted that the official language of Estonia is Estonian.⁴⁰² The latter defines the language of a national minority as a foreign language (i.e. any language other than Estonian) which Estonian citizens who belong to a national minority have historically used as their mother tongue in Estonia.⁴⁰³ An

³⁹⁶ Declared by the President of the Republic of Estonia Decision No 860 of 09.03.2011 Language Act Passed 23 February 2011 article 2 page 1.

³⁹⁷ Ibid

³⁹⁸ Ibid

³⁹⁹ Ibid

⁴⁰⁰ Ewa Chylinski Mahulena Hofmannová, ECMI READY FOR Ratification Early compliance of non-States Parties with the European Charter for Regional or Minority Languages A Handbook with twenty proposed instruments of ratification (eds.), page 43.

⁴⁰¹ Edited by: Tarlach McGonagle, (IViR) Bethany Davis Noll (PCMLP), Monroe Price (PCMLP), MINORITY-LANGUAGE RELATED BROADCASTING AND LEGISLATION IN THE OSCE Programme in Comparative Media Law and Policy (PCMLP), Centre for Socio-Legal Studies, Wolfson College, Oxford University & Institute for Information Law (IViR), Universiteit van Amsterdam Study commissioned by the OSCE High Commissioner on National Minorities April 2003, page 184.

⁴⁰² Constitution of the Republic of Estonia Chapter I. general provisions, page <https://www.riigiteataja.ee/en/eli/521052015001/consolide>, accessed on 29th of May 2017.

⁴⁰³ Edited by: Tarlach McGonagle (IViR), Bethany Davis Noll (PCMLP), Monroe Price (PCMLP), MINORITY-LANGUAGE RELATED BROADCASTING AND LEGISLATION IN THE OSCE Programme in Comparative Media Law and Policy

elaboration made by Tina Ferle, Manca Šetinc Presented at Inclusion and Exclusion in Contemporary European Societies, IUC Dubrovnik, April 2004 , Estonian is quoted as an official language where, according to this, emphasize it the official language of Estonia is Estonian (Art.6), but the constitution guarantees minorities among some special rights also some linguistic rights.⁴⁰⁴ In localities where at least half of the permanent residents belong to an ethnic minority, everyone shall have the right to receive answers from state and local government authorities and their officials in the language of that ethnic minority (Art. 51/2).⁴⁰⁵ In localities where the language of the majority of the population is other than Estonian, local government authorities may use the language of the majority of the permanent residents of that locality for internal communication (Art. 52/2).⁴⁰⁶

The Constitution also mentions the special linguistic rights of minorities: the right to preserve ethnic identity (Article 49), the right to establish cultural autonomies (Article 50), the right of national minorities' educational institutions to choose the language of instruction (Article 37), the right to receive responses in minority languages from municipal and state authorities in localities where at least 50% of permanent residents belong to minorities (Article 51), and the right to use a second language in official transactions in localities where Estonian is not the native language of over half the residents (Article 52).⁴⁰⁷ Also, a similar elaboration quoting the stipulated articles of the constitution has provided Tina Ferle, Manca Šetinc Presented at Inclusion and Exclusion in Contemporary European Societies, IUC Dubrovnik, April 2004, where according to this treatment, the following articles are presented:

(PCMLP), Centre for Socio-Legal Studies, Wolfson College, Oxford University & Institute for Information Law (IViR), Universiteit van Amsterdam Study commissioned by the OSCE High Commissioner on National Minorities April 2003, page 184.

⁴⁰⁴ TINA FERLE, MANCA ŠETINC, CONSTITUTIONAL PROTECTION OF MINORITY LANGUAGES IN THE EUROPEAN UNION *Presented at Inclusion and Exclusion in Contemporary European Societies, IUC Dubrovnik, April 2004, page 18*

⁴⁰⁵ Ibid

⁴⁰⁶ Ibid

⁴⁰⁷ Vadim Poleshchuk (ed.), *Chance to Survive, Legal Information Centre for Human Rights Minority Rights in Estonia Report* Excerpt from the book:: *Minority Rights in Estonia and Latvia*, Tallinn: Foundation for Historical Outlook, 2009, page 19

Article 37: Everyone has the right to education. Education is compulsory for school-age children to the extent specified by law, and shall be free of charge in state and local government general education schools, in order to make education accessible, the state and local governments shall maintain the requisite number of educational institutions.⁴⁰⁸ Other educational institutions, including private schools, may also be established and maintained pursuant to law, parents shall have the final decision in the choice of education for their children.⁴⁰⁹ Everyone has the right to receive instruction in Estonian, the language of instruction in national minority educational institutions shall be chosen by the educational institution, the provision of education shall be supervised by the state.⁴¹⁰

Article 51: Everyone has the right to address state agencies, local governments, and their officials in Estonian and to receive responses in Estonian, in localities where at least one-half of the permanent residents belong to a national minority, everyone has the right to also receive responses from state agencies, local governments, and their officials in the language of the national minority.⁴¹¹ Article 52: In localities where the language of the majority of the residents is not Estonian, local governments may, to the extent and pursuant to procedure provided by law, use the language of the majority of the permanent residents of the locality as an internal working language.⁴¹²

Such a case recidivism is foreseen in Article 2, item 2 and 5 Language Act Passed 23 February 2011 emphasizes that a language of a national minority is a foreign language that Estonian citizens who belong to a national minority have historically used as their mother tongue in Estonia.⁴¹³

The state-owned television broadcaster transmits news and other programmes in Russian and has formally adopted plans to significantly increase its Russian-language

⁴⁰⁸ MANCA ŠETINC, CONSTITUTIONAL PROTECTION OF MINORITY LANGUAGES IN THE EUROPEAN UNION, TINA FERLE, *Presented at Inclusion and Exclusion in Contemporary European Societies*, IUC Dubrovnik, April 2004, page 34.

⁴⁰⁹ Ibid

⁴¹⁰ Ibid

⁴¹¹ Ibid

⁴¹² Ibid

⁴¹³ Declared by the President of the Republic of Estonia Decision No 860 of 09.03.2011 Language Act Passed 23 February 2011.

output.⁴¹⁴ One state-owned radio station broadcasts predominantly in Russian; its aim is to facilitate the integration of the Russian speaking population into Estonian society by providing information about all aspects of life in the country in the Russian language (and to a minor extent also in the Ukrainian and Belarussian languages).⁴¹⁵ According to the Language Act (Article 25) when broadcasting (including transmission by television stations or cable networks) audiovisual works (including programmes and advertisements), ‘foreign language’ text shall be accompanied by an adequate translation into Estonian.⁴¹⁶ A translation into Estonian is not required for programmes which are immediately retransmitted, or for language learning programmes, or for the newsreader’s text of originally produced ‘foreign language’ news programmes and of originally produced live ‘foreign language’ programmes.⁴¹⁷ The US translation is mandatory when a pre-recorded programme is broadcasted.⁴¹⁸ Furthermore, the volume of foreign language news programmes and live foreign language programmes without translations into Estonian shall not exceed 10% of the volume of weekly original production.⁴¹⁹

For instance, linguistic and cultural issues are necessarily uppermost in the priorities of minorities owing to the (often) precarious status of their languages and culture.⁴²⁰ In short, the enjoyment of freedom of expression is very often the guarantor of the whole panoply of rights (civil and political, economic, social, cultural, linguistic and others) to which members of minority groups lay claim - either individually or collectively.⁴²¹

Language being a central form of expression and communication, the protection of linguistic rights must be guaranteed in connection with other rights, including, *inter*

⁴¹⁴ Edited by: Tarlach McGonagle (IViR) Bethany Davis Noll (PCMLP) Monroe Price (PCMLP), MINORITY-LANGUAGE RELATED BROADCASTING AND LEGISLATION IN THE OSCE Programme in Comparative Media Law and Policy (PCMLP), Centre for Socio-Legal Studies, Wolfson College, Oxford University & Institute for Information Law (IViR), Universiteit van Amsterdam Study commissioned by the OSCE High Commissioner on National Minorities April 2003, page 184.

⁴¹⁵ Ibid

⁴¹⁶ Vadim Poleshchuk (ed.), Legal Information Centre for Human Rights Minority Rights in Estonia Report Excerpt from the book: Chance to Survive: Minority Rights in Estonia and Latvia, Tallinn: Foundation for Historical Outlook, 2009, page 71

⁴¹⁷ Ibid.

⁴¹⁸ Ibid.

⁴¹⁹ Ibid.

⁴²⁰ McGonagle, T. E., University of Amsterdam UvA-DARE (Digital Academic Repository) Minority rights and freedom of expression: a dynamic interface McGonagle, T. Link to publication *Citation for published version (APA):* McGonagle, T. E. (2008). Minority rights and freedom of expression: a dynamic interface, page 6.

⁴²¹ Ibid.

alia the right to education, access to the media, and participation in cultural, social and economic life and in public affairs.⁴²²

In January 1995 the Estonian Parliament adopted a new citizenship law, which tightened the naturalization requirements by extending the required residency period from two years to five and by introducing a civics examination (in Estonian) alongside the Estonian language exam.⁴²³ That same month, parliament also adopted a new Language Act, which declared Estonian the sole official language and termed all other languages spoken in Estonia ‘foreign languages’.⁴²⁴ While the law represented a necessary update of Estonia’s first, perestroika-era language law, it was also clearly designed to make the new ethnopolitical order even more unequivocal (Järve 2002).⁴²⁵ Lastly, in 1997 the parliament mandated a set of Estonian language requirements for electoral candidates at both the national and local level, henceforth, candidates had to sign a written statement confirming that their level of Estonian was sufficient to take part in the work of legislative bodies.⁴²⁶

Estonia adopted its first brief integration programme in 1999.⁴²⁷ The programme proposed the following directions of integration: Linguistic-communicative integration: the creation of a common sphere of information and the Estonian language environment with the preservation of cultural diversity; Legal-political integration understood as the creation of a population loyal to the Estonian state, and the reduction of the number of residents without Estonian citizenship; Socio-economic integration understood as the achievement of greater competitiveness and social mobility regardless of ethnicity and native language.⁴²⁸

By law or Citizenship Act of Estonia are required certain conditions to be met by this law for obtaining the Estonian state and one of them is the giving of the language test this is determined under Article 6 Conditions for acquiring Estonian citizenship by naturalization paragraph 3 where it is foreseen that be proficient in the Estonian

⁴²² Framework Convention for the Protection of National Minorities Convention-cadre pour la protection des minorités nationales First Edition, COMPILATION OF THEMATIC COMMENTARIES OF THE ADVISORY COMMITTEE, page 6.

⁴²³ Edited by Bernd Rechel, *Minority Rights in Central and Eastern Europe BASEES/Routledge series on Russian and East European studies* page 108.

⁴²⁴ *Ibid*

⁴²⁵ *Ibid*

⁴²⁶ *Ibid*

⁴²⁷ Vadim Poleshchuk (ed.), *Legal Information Centre for Human Rights Minority Rights in Estonia Report Excerpt from the book: Chance to Survive: Minority Rights in Estonia and Latvia*, Tallinn: Foundation for Historical Outlook, 2009.

⁴²⁸ *Ibid*.

language in accordance with the requirements provided in section 8 of this Act,⁴²⁹ while section 8 regulates this issue in a detailed manner. If we make a gap between Kosovo and Estonia, Kosovo has a more advanced legislation on languages and the state and has established institutional mechanisms to oversee the implementation of language legislation in Kosovo.

According to Article 5 of the Constitution of the Republic of Kosovo, paragraph 1, the official languages in the Republic of Kosovo are Albanian and Serbian, while according to paragraph 2, it is defined that 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.⁴³⁰ According to article 58, Responsibilities of the State paragraph 2 is foreseen that the Republic of Kosovo shall promote a spirit of tolerance, dialogue and support reconciliation among communities and respect the standards set forth in the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.⁴³¹

According to article 1 of the Law no. 02/L-37 on the use languages the purpose of this law is to ensure the use of the official languages, as well as languages of communities whose mother tongue is not an official language, in Kosovo institutions and other organizations and enterprises who carry out public functions and services, the equal status of Albanian and Serbian as official languages of Kosovo and the equal rights as to their use in all Kosovo institutions, the right of all communities in Kosovo to preserve, maintain and promote their linguistic identity, the multilingual character of Kosovo society, which represents its unique spiritual, intellectual, historical and cultural values.⁴³² At the municipal level, other community languages, such as Turkish, Bosnian and Roma will be languages in official use under conditions specified in this Law.⁴³³

⁴²⁹ Issuer: Riigikogu Type: act , Citizenship Act Passed 19.01.1995 RT I 1995, 12, 122 Entry into force 01.04.1995 section 8 Requirements for and assessment of proficiency in the Estonian language, page 3

⁴³⁰ Constitution of the Republic of Kosovo Chapter I article 5 , page 2 <http://www.kryeministriks.net/repository/docs/ConstitutionIKosovo.pdf>, accessed on 1st of June 2017.

⁴³¹ Ibid Chapter III , page 16.

⁴³² OFFICIAL GAZETTE OF THE PROVISIONAL INSTITUTIONS OF SELF-GOVERNMENT IN KOSOVO / PRISHTINA: YEAR II / NO. 10 / 01 MARCH 2007 Law No. 02/L-37 ON THE USE LANGUAGES article 1, page 1.

⁴³³ Ibid.

As it can be seen, the legislation on languages in Kosovo is more advanced than in Estonia. The Kosovo constitution guarantees two languages with equal terms both Serbian and Albanian including their alphabet. At central level we have two languages while more in the local one. Kosovo has also applied the European Charter for Regional or Minority Languages, while Estonia has still applied this convention and the official language is only Estonian. Whereas, in terms of institutional mechanisms, Kosovo has also formed a language commission in the prime minister's office, which is authorized to oversee the law.⁴³⁴

Regarding the issue of citizenship Law no. 04/L-215 on citizenship of Kosovo, there is neither a limitative provision for persons belonging to communities or their members who do not live in Kosovo for a long time to obtain citizenship even though they have not lived in Kosovo for almost 20 years, and this law does not nor a specific provision in cases where a citizen who wishes to take the state of Kosovo is required to know the Albanian language as is the case with Estonian where I should know the Estonian language.

According to Article 10, Naturalization of Foreign People, Paragraph 1, Subparagraph 6, Law no. 04/L-215 on citizenship of Kosovo, it is emphasized that he/she provides evidence of elementary knowledge in reading and writing in one of the official languages of the Republic of Kosovo, and of its culture and social order.⁴³⁵

So, compared to these models that I outlined, Kosovo's legislation on linguistic rights is very advanced both in terms of rights and enforcement and institutional mechanisms. The Republic of Kosovo, with its linguistic rights, has established the institutional mechanisms that deal with overseeing and implementing language legislation. Within the Office of the Prime Minister is the Language Commissioner's Office mandate, competence and role I have dealt with in the Office of the Language Commissioner.

⁴³⁴ <http://www.komisioneri-ks.org/>, accessed on 3rd of June 2017.

⁴³⁵ Official Gazette of the Republic of Kosova / no. 33 / 2 September 2013, Pristina Law no. 04/L-215 on Citizenship of Kosovo article 10 paragraph 1, page 10.

12. Linguistic rights of ethnic and cultural groups in Latvia

The only official language of the country is Latvian and any other languages spoken by citizens or residents of Latvia as their mother tongue are classed as foreign and are subject to restrictive regulation (this includes Russian, which is the first language of around 36% of the population).⁴³⁶ The Law on State Language adopted on 9 December 1999 is in force now.⁴³⁷ The purposes of the present Law are the preservation, protection and development of the Latvian language, the integration of national minorities in the society of Latvia while observing their rights to use their mother tongue or any other language to the constitution of the Latvia the Latvian language is the official language in the Republic of Latvia.⁴³⁸ Latvia has not signed the European Charter for Regional or Minority Languages (ECRML).⁴³⁹ However, it ratified the Framework Convention for the Protection of National Minorities (FCNM) in 2005.⁴⁴⁰ Latvian language legislation aims to consolidate Latvian as the state language.⁴⁴¹ Safeguarding the linguistic rights of the many Latvian inhabitants who speak a different first language is not a declared policy goal.⁴⁴² The Latvian language is the official language in the Republic of Latvia. According to paragraph 10 of the Law about the Unrestricted Development and Right to Cultural Autonomy of Latvia's Nationalities and Ethnic Groups, it is anticipated that the Government Institutions of the Republic of Latvia should promote the creation of material conditions for the development of education, language and culture of the nationalities and ethnic groups residing within Latvia's territory, foreseeing defined sums from the government's budget for such purposes.⁴⁴³

⁴³⁶ Edited by: Tarlach McGonagle (IViR) Bethany Davis Noll (PCMLP) Monroe Price (PCMLP) MINORITY-LANGUAGE RELATED BROADCASTING AND LEGISLATION IN THE OSCE Programme in Comparative Media Law and Policy (PCMLP), Centre for Socio-Legal Studies, Wolfson College, Oxford University & Institute for Information Law (IViR), Universiteit van Amsterdam Study commissioned by the OSCE High Commissioner on National Minorities April 2003, page 288.

⁴³⁷ LANGUAGE POLICY AND PROTECTION OF THE STATE LANGUAGE IN LATVIA Ina Druviute Congres Mondial sur les Politiques linguistiques/World Congress Language Policies Barcelona, 16-20 d'abrid de 2002, page 5.

⁴³⁸ Latvia - Constitution { Adopted on: 15 Feb 1922 } { Significantly amended in: 1998 } { Official name: Constitution of the Republic of Latvia } { ICL Document Status: 1998 } Article 4 [Language, Flag] , page 1.

⁴³⁹ Ewa Chylinski Mahulena Hofmannová (eds.), ECMI READY FOR Ratification Early compliance of non-States Parties with the European Charter for Regional or Minority Languages A Handbook with twenty proposed instruments of ratification, page 76.

⁴⁴⁰ Ibid.

⁴⁴¹ Open society Institute 2001 Minority Protection in Latvia Monitoring the EU accession Proces Protection page 283.

⁴⁴² Ibid.

⁴⁴³ Law About the Unrestricted Development and Right to Cultural Autonomy of Latvia's Nationalities and Ethnic Groups Adopted 19.03.1991 Amendments: 15.06.94 page 2.

According to the official language law, section 1, the purpose of this law is to ensure the maintenance, protection and development of the Latvian language; the maintenance of the cultural and historic heritage of the Latvian nation, the right to freely use the Latvian language in any sphere of life within the whole territory of Latvia, the integration of members of ethnic minorities into the society of Latvia, while observing their rights to use their native language or other languages, the increased influence of the Latvian language in the cultural environment of Latvia, to promote a more rapid integration of society.⁴⁴⁴ Latvia's constitution emphasize that persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.⁴⁴⁵

As can be seen in the scope of this law, we can conclude that only paragraph 4 of this article speaks of ethnic minorities and their linguistic rights, while the main focus is on strengthening the language of Latvia. Therefore, compared to Law No. 02/L-37 on the Use Languages of the Republic of Kosovo we can consider that the law of Kosovo for the language I elaborated in the part about Estonia has the main focus on minority language rights of minorities in Kosovo. Based on this, the main focus of the purpose of the specific law should be to guarantee the linguistic rights of national minorities or ethnic groups since ne of the greatest challenges for modern democratic theory and practice is to provide adequate protection to language, religious and cultural minorities, especially minorities that do not have a local or regional territorial area where they constitute the majority.⁴⁴⁶

The Law envisages in the Section 2. Purpose and Scope of Application of this Law, “4) to promote the integration of society on the basis of the Latvian language; while fulfilling the requirements of the Official Language Law, to promote the full implementation of the constitutional functions of Latvian as the official language of Latvia, paying special attention that it should serve as the common language of

⁴⁴⁴ The Saeima has adopted and the President has proclaimed the following Law: Official Language Law Section 1, page 1.

⁴⁴⁵ Latvia - Constitution { Adopted on: 15 Feb 1922 } { Significantly amended in: 1998 } { Official name: Constitution of the Republic of Latvia } { ICL Document Status: 1998 } Article 114 [Minorities], page 11.

⁴⁴⁶ Bertus de Villiers, *Beijing Law Review*, 2012, 3, 170-183 <http://dx.doi.org/10.4236/blr.2012.34023> Published Online December 2012 (<http://www.SciRP.org/journal/blr>) Protecting Minorities on a Non Territorial Basis—Recent International Developments* Bertus de Villiers# University of Western Australia, Perth, Australia. Email: bertus.devilliers@uwa.edu.au Received July 18th, 2012; revised August 30th, 2012; accepted September 10th, 2012, page 1.

mutual communication of all inhabitants of Latvia; to ensure its preservation and use, determining the procedures appropriate for the public interests whereby the electronic mass media under the jurisdiction of Latvia shall use the official language during their broadcast time and concurrently envisaging the right to use languages of minorities and other languages in the electronic mass media”.⁴⁴⁷

A parallel argument is also mentioned in the Official Language Law which refers this issue to media legislation and according to this law is defined as follows: the language of mass media broadcasts shall be determined by the Radio and Television Law.⁴⁴⁸

13. Language Rights in Lithuania

The Law on Ethnic Minorities (1989), Article 4 states that in offices and organisations located in areas serving substantial numbers of a minority with a different language, the language spoken by that minority shall be used in Lithuanian, meaning that local authorities and public services must use the minority language as well.⁴⁴⁹ According to the Law on State Language (1995), Article 4 states that audio and visual programmes that are intended for ethnic minorities may use the minority language and the Law on the Press and other Mass Media (1990) states that ethnic minorities have the right to use the minority language in the mass media.⁴⁵⁰ The Lithuanian language is the state language of the Republic of Lithuania.⁴⁵¹ The preamble to the Constitution of the Republic of Lithuania, identifying the main values of the state, distinguishes the preservation of native language and writing, article 14 of the Constitution sets that Lithuanian shall be the state language.⁴⁵² In addition, according to Article 13 of the Law on State Language it is determined that

⁴⁴⁷ Ewa Chylinski, Mahulena Hofmannová, ECMI READY FOR Ratification Early compliance of non-States Parties with the European Charter for Regional or Minority Languages A Handbook with twenty proposed instruments of ratification (eds.), page 78.

⁴⁴⁸ The Saeima has adopted and the President has proclaimed the following Law: Official Language Law Section 16 page 5.

⁴⁴⁹ Ewa Chylinski Mahulena Hofmannová ECMI READY FOR Ratification Early compliance of non-States Parties with the European Charter for Regional or Minority Languages A Handbook with twenty proposed instruments of ratification, page 87.

⁴⁵⁰ Ibid

⁴⁵¹ Official translation THE REPUBLIC OF LITHUANIA LAW ON THE STATE LANGUAGE 31 January 1995, No. I-779 Vilnius (As last amended on 13 June 2002, No. IX-954) I. GENERAL PROVISIONS, article 2, page, 1. <https://e-seimas.lrs.lt/rs/legalact/TAD/TAIS.275246/>, accessed on 8th of June 2017.

⁴⁵² Ramunė Jakštienė* Mykolas Romeris, IMPLEMENTATION OF THE PRINCIPLE OF STATE LANGUAGE IN LITHUANIA: RECENT PROBLEMATIC ASPECTS University, Faculty of Public Security, Department of Law Putvinskio str. 70, LT 44211 Kaunas Tel.: +370 657 72711, e-mail: jakstieneramune@gmail.com, page 45.

“audiovisual programmes, motion pictures publicly shown in Lithuania must be translated into the state language or shown with subtitles in Lithuanian.”⁴⁵³ Paragraph 1 of this Article shall not be applied to teaching and special programmers and events, as well as events and programmes held for a certain occasion or intended for ethnic communities, and also to radio and television programmers or texts of musical works of foreign states, which are broadcasted in Lithuania.⁴⁵⁴ Thus, the Lithuanian constitution, in addition to the preamble to Article 14 with regard to linguistic rights, those rights referred to in Articles 29, 37 and 117, Article 29 provides that the rights of the human being may not be restricted, nor may he be granted any privileges on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views.⁴⁵⁵

While Article 37 defines that citizens belonging to ethnic communities shall have the right to foster their language, culture, and customs.⁴⁵⁶ Article 117 of the Constitution of Lithuania speaks of language rights in cases where it stipulates that in the Republic of Lithuania, court proceedings shall be conducted in the State language.⁴⁵⁷ Lithuania has its own language/law on the state language, which is little advanced in terms of addressing the linguistic rights of ethnic groups. This law stipulates that ethnic groups enjoy their language rights under other laws. Additionally, Article 1 of this law determines this: “This law shall regulate the use of the state language in public life of Lithuania, protection and control of the state language, and the responsibility for violations of the Law on the State Language.”⁴⁵⁸ The Law shall not regulate unofficial communication of the population and the language of events of religious communities as well as persons, belonging to ethnic communities.⁴⁵⁹ Other laws of the Republic of Lithuania and legal acts adopted by the Seimas of the Republic of Lithuania shall guarantee the right of persons, belonging to ethnic communities, to

⁴⁵³ Official translation THE REPUBLIC OF LITHUANIA LAW ON THE STATE LANGUAGE 31 January 1995, No. I-779 Vilnius (As last amended on 13 June 2002, No. IX-954) I. GENERAL PROVISIONS, article 13 page 4. <https://e-seimas.lrs.lt/rs/legalact/TAD/TAIS.275246/>, accessed on 9th of June 2017

⁴⁵⁴ Ibid

⁴⁵⁵ Lithuania's Constitution of 1992 with Amendments through 2006 article 29, page 7.

⁴⁵⁶ Ibid article 37 page 9.

⁴⁵⁷ Ibid article 117 page 30.

⁴⁵⁸ Official translation THE REPUBLIC OF LITHUANIA LAW ON THE STATE LANGUAGE 31 January 1995, No. I-779 Vilnius (As last amended on 13 June 2002, No. IX-954) I. GENERAL PROVISIONS, article 1, page, 1. <https://e-seimas.lrs.lt/rs/legalact/TAD/TAIS.275246/>, accessed on 11th of June 2017.

⁴⁵⁹ Ibid.

foster their language, culture and customs.⁴⁶⁰ If we look at the purpose of this law we can conclude that this law aims at strengthening the language of Lithuania as well as the protection of the language of ethnic groups. Lithuania has not yet ratified or signed European Charter for Regional or Minority Languages.⁴⁶¹ The fact that Lithuania has not yet signed this card shows best how it is engaged in advancing the language rights of its communities

14. Language Rights in Moldova, Romania and Poland

14.1. Moldova

According to the constitution of Moldova, article 13 on State Language, the use of other languages is defined as follows:

“The State language of the Republic of Moldova is the Moldovan language based on the Latin alphabet. The State shall acknowledge and protect the right to the preservation, development and use of the Russian language and other languages spoken within the territory of the State. The State will encourage and promote studies of foreign languages that enjoy widespread international sage, the use of languages within the territory of the Republic of Moldova shall be established by organic law.⁴⁶² In accordance with the Constitution (Fundamental Law) of the Moldavian SSR, the state language of the Moldavian SSR is Moldavian language, functioning on the basis of the Latin alphabet. Moldavian, as state language, is used in all spheres of political, economic, social and cultural life and, therefore, fulfills on the territory of the Republic the function of international (interethnic) communication language.⁴⁶³ Moldavian SSR guarantees to all inhabitants of the republic free education of state language, on the level necessary to exercise work functions.

In Moldova, the HCNM has been engaged in long-term efforts to resolve the dispute over the registration of schools in the Transdnistrian region and teaching in the

⁴⁶⁰ Ibid.

⁴⁶¹ Chart of signatures and ratifications of Treaty 148 *Charter for Regional or Minority Languages* Status as of 12/11/2018 https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/148/signatures?p_auth=azyIEWnB , accessed on 11th of June 2017.

⁴⁶² CONSTITUTION OF THE REPUBLIC OF MOLDOVA Adopted on 27 July 1994 article 13 page 4 , http://www.constcourt.md/public/files/file/Actele%20Curtii/acte_en/MDA_Constitution_EN.pdf, accessed on 15th of June 2017.

⁴⁶³ Republic of Moldova PARLIAMENT LAW No 3465 dated 01.09.1989 Functioning of Languages on the Territory of the Moldavian SSR, article 1, page 1, https://en.wikisource.org/wiki/Law_%22on_Functioning_of_Languages_on_the_Territory_of_the_Moldavian_SSR%22, accessed on 17th of June 2017.

Moldovan language using the Latin script.⁴⁶⁴ He visited the country in order to discuss this issue with representatives of the Moldovan government and to urge the breakaway regime's leadership to provide the necessary conditions for the normal operation of those schools.⁴⁶⁵ Moldova, prior to independence from the Soviet Union, fears of extinction were tied largely to the maintenance of the Moldovan (Romanian) language: Either we return to the Latin script and get [Moldovan] designated the state language, or else we shall disappear as a nationality.⁴⁶⁶

Moldova signed on 11.07.2002 the European Charter for Regional or Minority Languages, whereas in 2011, the Moldovan authorities set up a working group on ratification of the Charter comprising representatives of relevant ministries, some national minorities and Moldovan experts.⁴⁶⁷ In February 2012, this working group prepared, with the financial and expert support of the Council of Europe, a draft ratification instrument.⁴⁶⁸ Despite the steps taken by Moldova, Moldova has not ratified the European Charter for Regional or Minority Languages yet.

14.2 Language Rights in Romania

Pursuant to Romania's Constitution, Article 13, the official language in Romania is Romanian.⁴⁶⁹ Also, paragraph 3 of Article 32 stipulates that “the right of persons belonging to national minorities to learn their mother tongue, and their right to be educated in this language are guaranteed; the ways to exercise these rights shall be regulated by law.”⁴⁷⁰ Paragraph 2, of Article 120 also provides: In the territorial-administrative units where citizens belonging to a national minority have a significant weight, provision shall be made for the oral and written use of that national minority's language in the relations with the local public administration authorities and the decentralized public services, under the terms stipulated by the

⁴⁶⁴ *General Editors* Arie Bloed Rainer, Hofmann Joseph, Marko James, Mayall John, Packer Marc, Weller *Managing Editors* Emma Lantschner Tove H. Malloy *Assistant Editors* Marnie Lloyd Gabriel N. Toggenburg Leonhard Voltmer Matthew Ward, EUROPEAN YEARBOOK OF MINORITY ISSUES volume ,page 609.

⁴⁶⁵ Ibid

⁴⁶⁶ Ethnic Violence and the Societal Security Dilemma Paul Roe is Assistant Professor in the Department of International Relations and European Studies at the Central European University, Hungary, page 69.

⁴⁶⁷ <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/promoting-ratification-in-the-republic-of-moldova> accessed on 19th of June 2017.

⁴⁶⁸ Ibid

⁴⁶⁹ PDF generated: 17 Jan 2018, 19:48 This complete constitution has been generated from excerpts of texts from the repository of the Comparative Constitutions Project, and distributed on constituteproject.org. constituteproject.org Romania's Constitution of 1991 with Amendments through 2003, article 13 page 9

⁴⁷⁰ Ibid paragraph 3 article 32, page 13.

organic law.⁴⁷¹ The education law which is valid today contains several discriminatory elements and restrictions. For instance, certain “national” subjects (history, geography) can only be taught through the medium of the state language and the final examination can only be conducted using the Romanian language.⁴⁷² The law on public administration accepted in 2001 extends the fields of activity in which minority languages can be used – but only in settlements in which the proportion of the minority reaches 20% of the settlement’s total population. On a day-to-day basis public administration on regional and local levels is characterised by efforts to ensure the exclusive use of the Romanian language; at the same time the presence of minority languages is natural in local administration.⁴⁷³ The study shows the opportunities for making progress with minority mother tongues in religion, in the workplace, in health institutions and in the media.⁴⁷⁴

Romania does not have a special law on languages, and its language rights with regard to ethnic groups or minorities are foreseen by different laws. Nevertheless, compared with other countries such as Lithuania Latvia and Estonia, Romania is a country that has applied the European Charter for Regional or Minority Languages. It has signed this convention on 17.07.1995 and has ratified it on 29.01.2008. This card entered into force on 01.05.2008.⁴⁷⁵

Overall, we can conclude that Romania has no advanced legal system in this regard and there are some shortcomings. According to some reports, it has even been proven that Romania is the country that has the disadvantage of language issues. According to the report regarding the implementation of racial Directive in Romania 2005-2010 - Access to public interest information. National affiliation. Language. Romanians. D.T. complained about the fact that the internet page of the local public authority (Town Hall) comprises information of public interest only in Hungarian language and therefore persons of Romanian nationality who do not know Hungarian language

⁴⁷¹ Ibid article 120, page 33.

⁴⁷² http://adattar.adatbank.transindex.ro/tanulmany/Abstract_Pentek-Beno.htm , accessed on 22nd of June 2017.

⁴⁷³ Ibid.

⁴⁷⁴ Ibid.

⁴⁷⁵ https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/148/signatures?p_auth=bvnnvR8Ws , accessed on 23rd of June 2017.

have no access to information of interest to the local community.⁴⁷⁶ Referring to its case-law, the Committee set down that it issued a decision that there was discrimination through decision no. 26/09.02.2007 by which it ascertained that the publishing of information of public interest only in Hungarian language is discrimination and similarly, through decision no. 131/21.06.2007 that the publishing of information of public interest only in Romanian language is discrimination as regards access to these information.⁴⁷⁷ In this case, persons belonging to the Romanian community are discriminated compared to Hungarian citizens through the impossibility to ensure equal access to public interest information in Romanian language.⁴⁷⁸ Through decision no. 736 of 16.12.2008, the Committee ascertained the existence of a differentiated treatment (direct discrimination) and it recommended endeavouring to ensure the same information in Romanian language. (art. 2 par. 1 and 4 of G.O. no.137/2000, republished).⁴⁷⁹

14.3 Language Rights in Poland

According to Article 27 of the Constitution, Polish shall be the official language in the Republic of Poland.⁴⁸⁰ This provision shall not infringe upon national minority rights resulting from ratified international agreements.⁴⁸¹ While paragraph 1 of Article 35 stipulates that the Republic of Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture.⁴⁸² Whereas paragraph 2 of this article emphasizes that, national and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.⁴⁸³

⁴⁷⁶ Report regarding the implementation of racial Directive in Romania 2005-2010 Consiliul Nacional Pentru Combaterea Discriminarilor page 48.

⁴⁷⁷ Ibid.

⁴⁷⁸ Ibid.

⁴⁷⁹ Ibid.

⁴⁸⁰ PDF generated: 17 Jan 2018, 19:48 This complete constitution has been generated from excerpts of texts from the repository of the Comparative Constitutions Project, and distributed on constituteproject.org. constituteproject.org Poland's Constitution of 1997 article 27, page 7.

⁴⁸¹ Ibid.

⁴⁸² Ibid article 35, page 8.

⁴⁸³ Ibid.

Poland has signed this convention on 12.05.2003, and has ratified it on 12.02.2009, this card entered into force on 01.06.2009.⁴⁸⁴

The Act on the Polish Language does not recognize any other language for communication other than Polish. It stipulates that “this law refers to the protection of the Polish language, its use in public and legal action on the territory of the Polish Republic”.⁴⁸⁵ Since the article foresees that this law is not contradictory to: legal regulations about the relations between the state and churches and other organisations practising religious cults and rituals, legal regulations about the rights of national minorities and ethnical groups.⁴⁸⁶

15. Ethnic Composition

In a timely manner, I will present the ethnic composition of some states that have been presented during the treatment of their legislation.

15.1. Ethnic composition of Lithuanian

As the most homogenous country of among the ex-USSR countries west of Russia, where the titular nation constitutes about 84.1 percent of its population, Lithuania accommodates about 115 different ethnic groups.⁴⁸⁷ During the last two decades of Lithuania’s independence, its most sizeable ethnic communities underwent significant demographic changes, reflected in the following table:

⁴⁸⁴ https://www.coe.int/t/web/conventions/full-list/-/conventions/treaty/148/signatures?p_auth=bvnyR8Ws , accessed on 24th of June 2017.

⁴⁸⁵ The Act on the Polish Language (From October, 7 1999) article 1, page 1. <https://ospcom.files.wordpress.com/2011/11/dr19.pdf> accessed on 25th of June 2017.

⁴⁸⁶ Ibid article 2 , page 1.

⁴⁸⁷ Dr. Tove H. Malloy, LITHUANIA’S MINORITYRELATED LEGISLATION: IS THERE A LEGAL VACUUM? Hanna Vasilevich ECMI WORKING PAPER #70 September 2013 ECMI Working Paper European Centre for Minority Issues (ECMI) © ECMI 2013, page 3.

Table 2 ⁴⁸⁸*Table 2 Dynamics of the ethnic composition of the Lithuania's population in 1989 -2011 Ethnicity*

Table 1: Dynamics of the ethnic composition of the Lithuania's population in 1989-2011 Ethnicity		1989		2001		2011	
<i>Number</i>	<i>%</i>	<i>Number</i>		<i>%</i>		<i>Number</i>	
Lithuanians	2,924,251	79.6		2,907,293	83.5	2,561,314	84.1
Poles	257,994	7.0		234,989	6.7	200,317	6.6
Russians	344,455	9.4		219,789	6.3	176,913	5.8
Belarusians	63,169	1.7		42,866	1.2	36,227	1.2
Ukrainians	44,789	1.2		22,488	0.7	16,423	0.5
Jews	12,390	0.3		4,007	0.1	3,050	0.1
Tatars	5,135	0.1		3,235	0.1	2,793	0.1
Total	3,674,802	100		3,483,972	100	3,043,429	100

15.2. Ethnic Composition in Estonia

The ethnic minority groups of Estonia came into the country predominately during the Soviet Union's rule.⁴⁸⁹ These include the Tartars who number 1,981, Latvians (2,198), Jewish (2,023), Lithuanians (1,882), and Poles (1,747). Most of them are immigrants from their home countries.⁴⁹⁰ Despite the years of the political war era in the 20th Century, Estonian is a multiethnic country.⁴⁹¹

⁴⁸⁸ Ibid page 4.

⁴⁸⁹ <https://www.worldatlas.com/articles/largest-ethnic-groups-in-estonia.html> accessed on 28th of June 2017.

⁴⁹⁰ Ibid.

⁴⁹¹ Ibid.

The number of permanent residents has now been adjusted, compared to the initial results published by Statistics Estonia on 31 May 2012. The final number of enumerated permanent residents as at 31 December 2011 was 1,294,455, with 5,558 temporary residents also enumerated.⁴⁹²

Estonia records one of the lowest populations in the world with around 1.3 million citizens.⁴⁹³

Table 3

Table 3 Largest Ethnic Groups in Estonia

Rank	Ethnic Background	Number Living in Estonia, 2016
1	Estonian	905,805
2	Russian	330,263
3	Ukrainian	23,256
4	Belarusian	12,171
5	Finnish	7,659
6	Tatars	1,981
7	Latvians	2,198
8	Jewish	2,023
9	German	1,913
10	Lithuanian	1,882
11	Polish	1,747

⁴⁹² Diana Beltadze RAHVALOENDUSE TULEMUSED CENSUS RESULTS EESTI STATISTIKA KVARTALIKIRI 4/12. QUARTERLY BULLETIN OF STATISTICS ESTONIA 17 THE SIZE, STRUCTURE AND DISTRIBUTION OF THE POPULATION OF ESTONIA BASED ON THE 2011 CENSUS Statistics Estonia, page 18.

⁴⁹³ <https://www.worldatlas.com/articles/largest-ethnic-groups-in-estonia.html>, accessed on 29th of June 2017.

15. 3. Ethnic Composition in Latvia

While for Estonia and Lithuania I have mentioned the ethnic composition of ethnic minorities or ethnic groups in this way, here in Latvia I have based the non-citizenship state as well as the aliens who live in Latvia.

Table 4 ⁴⁹⁴

Table 4 Residents of Latvia by ethnicity and citizenship in 2001

	Citizens	Non-citizens	Foreigners	Total	Percent
Latvians	1,363,136	3,549	753	1,367,438	57.9%
Russians	307,323	368,380	17,733	693,436	29.4%
Belarusians	23,659	70,331	1,429	95,419	4.0%
Ukrainians	7,804	51,514	3,230	62,548	2.7%
Poles	39,676	18,957	371	59,004	2.5%
Lithuanians	15,988	15,924	1,113	33,025	1.4%
Jews	5,770	3,922	300	9,992	0.4%
Estonians	1,445	948	239	2,632	0.1%
Others	15,706	17,539	3,695	36,940	1.6%
Total	1,780,507	551,064	28,863	2,360,434	100.0%

15.4. Ethnic Composition in the Baltic States

The publication of results of the 2000-2011 round censuses makes it possible to analyze the dynamics of ethnic structure and patterns of the titular ethnicities and ethnic minorities during more than two decades since independence regained.⁴⁹⁵

⁴⁹⁴ Open society Institute 2001 Minority Protection in Latvia Monitoring the EU accession Proces Protection page 310.

⁴⁹⁵ Peteris Zvidrins DYNAMICS OF THE ETHNIC STRUCTURES IN THE BALTIC COUNTRIES IN THE 21st CENTURY University of Latvia Atis Berzins University of Latvia page 1.

Table 8 Ethnic composition in the Baltics in 1989-2011 (in thousand) ⁴⁹⁶

Table 5 Ethnic composition in the Baltics in 1989-2011 (in thousand)

Ethnicity	1989	2000	2011	Change 2011/1989 %	Change 2011/1989
Lithuanians	2 962	2 943	2 588	-374	-12.6
Latvians	1 395	1 376	1 289	-106	-7.6
Estonians	968	939	905	-63	-6.5
Russians	1 725	1 278	1 060	-665	-38.5
Poles	321	297	247	-75	-23.2
Belarussians	211	158	117	-94	-44.4
Ukrainians	185	115	85	-100	-54.2
Jews	40	17	12	-28	-71.2
Other (incl. not indicated)	101	112	107	6	5.7
Total	7 907	7 234	6 408	-1 499	-19.0

16. Legislation Rights of Communities in the Region

16.1. Minority rights in Serbia

The Constitution of Serbia and the Law on Protection of Minority in Serbia,⁴⁹⁷ guarantee the rights of the minority communities, such as the use of languages, rights to information in their mother tongue, guarantee the rights of national minority to organize minority councils at the local governmental level through the Law on Local Government. The State shall guarantee special protection to national minorities for the purpose of exercising full equality and preserving their identity.⁴⁹⁸

16.2. Minority rights in Montenegro

The Constitution of Montenegro defines that the official language in Montenegro shall be Montenegrin. Cyrillic and Latin alphabet shall be equal. Serbian, Bosniac,

⁴⁹⁶ Ibid.

⁴⁹⁷ Law no 6/98 on Protection of Minority in Serbia, Official Gazette of Serbia.

⁴⁹⁸ Article 14 of the Constitution of Republic of Serbia.

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/74694/119555/F838981147/SRB74694%20Eng.pdf> accessed on 4th of july 2017

Albanian and Croatian shall also be in the official use.⁴⁹⁹ The Law on Protection of Minority Rights⁵⁰⁰ guarantees the right of education, the right for protection of cultural and religious rights, the right of representation in public life, cross-border cooperation with the country of origin, the rights of creating minorities councils, etc.⁵⁰¹

16.3. Minority rights in Albania

Albania as a country with a communist system has been one of the most isolated countries in Europe, with gross violations of human rights, and minority rights have only been formally established in the Constitution of 1976.⁵⁰² The Constitution of Albania of 28 November, in its basic principles reads about the coexistence and understanding of Albanians with minorities, while article 20 reads about religious, linguistic and cultural equality. Albania has no specific law on the protection of minorities, but a part of minority rights are regulated in the Law on protection from discrimination,⁵⁰³ where through this law is guaranteed the free expression of religious and language identity, as well as the right to exercise their rights, their education and union in associations and organizations, to protect their interests. Albanians consist of 83% of the population, and the rest of minorities constitute Greeks, Macedonians, Montenegrins, Roma, Egyptians, Romanians ect.

16.4. Minority rights in North Macedonia

The Macedonian Constitution guarantees the fundamental and national rights for all its citizens,⁵⁰⁴ and the other mechanism for the protection of minority rights in Macedonia is the Law against Discrimination.⁵⁰⁵ Relations to the rights of ethnic Albanians, who make up the largest minority community they are regulated by the Ohrid Framework Agreement of 13 September 2001. The Ohrid Agreement was an agreement which brought the cessation of hostilities between Macedonians and

⁴⁹⁹ Article 13 of the Constitution of Montenegro https://www.constituteproject.org/constitution/Montenegro_2007.pdf, accessed on 8th of July 2017.

⁵⁰⁰ <http://media.cgo-cce.org/2013/06/7-Zakon-o-manjinskim-pravima-i-slobodama.pdf> accessed on 8th of July 2017.

⁵⁰¹ Član 42b, Savjeti osnovani na osnovu Pravila za prve izbore savjeta ("Službeni list RCG"), br.46/7 nastavljaju sa radom do osnivanja savjeta manjinskih naroda ili drugih manjinskih nacionalnih zajednica u skladu sa ovim zakonom.

⁵⁰² Luan Omari, The question of national minorities and Albania page 105; The Constitution of the People's Republic of Albania of 1976 article 42.

⁵⁰³ Law on Protection from Discrimination no. 10/211 dated 04.02.2010, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_178702.pdf, accessed on 11th of July 2017.

⁵⁰⁴ The Constitution of the Republic of Northern Macedonia, Official Gazette of RM, no. 52/1991, date 22.11.1991.

⁵⁰⁵ Law on Protection from Discrimination, Official Gazette of RM, no. 50/2010, date 13.04.2010.

Albanians. This agreement contains principles concerning the development of decentralized governance, non-discrimination and equal representation⁵⁰⁶ whereas Annex A contains an Amendment of the Constitution, Annex B changing of legislation and Annex C the implantation and confidence-building measures.

17. Conclusions

In conclusion, considering the issue of legislation on communities' rights or ethnic groups in some EU countries, we can begin our conclusion as to how much advanced and applied the minority rights are within national legislation so much little will be needed to issue specific laws. Given these points, most EU member states need to advance their national legislation on the rights of communities or ethnic minorities. This would be possible by creating a European Constitution whereby the mechanism of approximation of legislation would be foreseen. This issue has been pending and member states do not have such legal obligations for approximation of legislation.

A very important legal mechanism that EU and non-EU member states apply including Kosovo, is the Convention for the Protection of National Minorities which applies in the majority of states and is a key mechanism for advancing community rights. This convention as far as its implementation is concerned, has a mechanism of control and this is done through Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) .

Most of the countries that I have dealt with in this chapter, all of which are part of the EU, have in their legal and constitutional system the rights of communities well but not adequately included. All states have the rights of communities in the constitution, some have specific laws such as Estonia, that has the Law on Cultural Autonomy for National Minorities, Latvia, the Law Unrestricted Development of National and Ethnic Groups of Latvia, Moldova, the Law of the Republic of Moldova on the Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations. If we compare the constitutional rights and the legislation of these

⁵⁰⁶ The Ohrid Framework Agreement of 13 September 2001.

states to Kosovo, I consider that Kosovo has more advanced legislation compared to these states.

The linguistic rights of minorities in these countries that I have dealt with, are very scarce, neither one of these states treats the languages of minorities as an official language, whereas Kosovo has two official languages at the central level as well as official languages at the local level. Likewise, the special legislation or laws that these states have for language, do little to pay for minority language rights but more talk about their languages. Kosovo also has institutional mechanisms for the use of languages that guarantee law enforcement such as the Language Commissioner. What is very important to mention is that, these countries or most of them do not apply to the European Charter for Regional or Minority Languages when it is known that this card is the main basis for guaranteeing language rights this card does not apply to these countries as Estonia, Latvia, Lithuania, while states like Romania Moldova have signed and ratified this card.

Regardless of the treatment of language rights to a large extent in the law on languages, these rights in these states are also defined by other laws, citizenship education etc. Another aspect of treatment is the ethnic composition that is considered high in comparison to Kosovo. The minority rights in the region are approximately of the same level with other countries, except Kosovo. One important issue which can consider the bigger achievements in the North Macedonia is the equally-applying level of the Albanian and Macedonian language. Given these points, we can conclude that the Republic of Kosovo has a more advanced legislation than EU states as well as regional ones. This constitutional and legal minority rights came as a consequence of international pressure.

CHAPTER V

RETURN OF DISPLACED PERSONS TO KOSOVO BY REGION AND COUNTRY

1. The Effects of Displacement

Before discussing the return process of displaced persons in the region, I would like to present the reasons for displacement in Kosovo during 1998 and 1999, a time when the war took place after the brutal suppression of Serbia's regime with Slobodan Milosevic.

At that time, with the denial of the rights of Albanians from the former Federal Republic of Yugoslavia, such oppression and persecution of Albanians and the violation of human rights in Kosovo continued with such brutality for more than a decade. The brutality of Kosovo Albanians lasted for 10 years which began with the abolition of the autonomy of Kosovo, on March 23, 1989, in the Assembly of the Socialist Autonomous Province of Kosovo. This abolition was done without the consent of the Albanians who even opposed it powerfully, but in that meeting will be amended the Constitution of 1974, which suppresses the autonomy of Kosovo in the Yugoslav Federation. Kosovo was left as an integral part of Serbia.⁵⁰⁷ The Serbian regime continued with dismissing of Albanian workers from their institutions and their jobs, the closure of schools and university to other executions such as political imprisonments and the killing of Albanian soldiers in the Yugoslav Army. The violation of human rights in a brutal way triggers the formation of the Kosovo Liberation Army in order to cope with and oppose unprecedented brutality. The KLA opposed strongly the military and paramilitary forces who wanted to exterminate the Albanian population with a view to territorial expansion. During that unequal conflict, the Serbs regime expelled the Albanian population more than half of them burnt their homes, with the intervention of the North Atlantic Treaty Organization

⁵⁰⁷ <https://telegrafi.com/kujtese-25-vite-nga-suprimimi-i-dhunshem-i-autonomise-se-kosoves-fotovideo/> accessed on 13th of July 2017.

(NATO) changed the situation in Kosovo dramatically.⁵⁰⁸ More than 850,000 Albanians were forced to leave Kosovo, while nearly half a million were displaced within Kosovo.⁵⁰⁹ Serbia factually did ethnic cleansing of Kosovo.⁵¹⁰ Meanwhile, mass killings by Serb forces occurred on a daily basis, with an average of 250 victims per day, raising the number of killed to more than 10,000 people.⁵¹¹ The Serbian regime forces killed and massacred 13,000 and 549 people, of whom 76 per cent civilians, and 24 per cent of armed forces.⁵¹² After the war, Kosovo Albanians returned to their homes and a number of them went to European countries and they were settled there. This process ended after all refugees returned from Albania, North Macedonia and Montenegro, while the rest of the non-majority population mainly RAE Serbs were supposed to be targets of attacks and consequently moved between 60,000 - 220,000. Kosovo Serbs left Kosovo during the second half of 1999.⁵¹³ Therefore, the largest part of Serbian nationality after the war was concentrated in North Mitrovica and the rest in Serbia and a part of other minority communities which for various reasons did not return to Kosovo. After that displacement, a small displacement was also the one which came as a result of riots of March 2004. As a result of this shift, the approximate number of internally displaced persons within the country and region according to international statistics based on different reports of Kosovo, Serbia and according to the Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, Serbia, including Kosovo, currently has one of the largest numbers of Internal Displaced Persons in Europe.

The Special Rapporteur was informed by the Government of Serbia that there is a total number of 227,112 Internal Displace Person in Serbia, including in Kosovo, and that this includes 209,112 in Serbia and an estimated 18,000 in Kosovo. However, according to estimates provided by the Office of the United Nations High Commissioner for Refugees (UNHCR), the Internal Displace Person in need of

⁵⁰⁸ Instituti Kosovar për Kërkime dhe Zhvillime të Politikave Seria e Kërkimeve Politike botim i veçantë Drejtësia tranzicionale në Kosovë Punim Diskutues Prishtinë, qershor faqe 16 .

⁵⁰⁹ Ibid.

⁵¹⁰ Ibid.

⁵¹¹ Ibid.

⁵¹² <http://zeri.info/aktuale/67223/ne-luften-e-kosoves-u-vrane-8-mije-e-693-shqiptare/> accessed on 14th of July 2017

⁵¹³ Instituti Kosovar për Kërkime dhe Zhvillime të Politikave Seria e Kërkimeve Politike botim i veçantë Drejtësia tranzicionale në Kosovë Punim Diskutues Prishtinë, qershor, faqe 17.

assistance number 97,000 in Serbia and 17,500 in Kosovo. ⁵¹⁴ Whereas an evaluation made by the Instrument for Pre-accession Assistance (IPA II) – 2014-2020 specifies that 17,336 individuals remain displaced within Kosovo, out of this 684 are currently residing in 36 Collective Centers in Kosovo. ⁵¹⁵ Almost 85% of individuals living Collective Centers are from Serbian minority and almost 5% from Roma, Ashkali and Egyptian (RAE) communities. ⁵¹⁶

These reports are somewhat unrealistic as a part of the displaced has settled in their place of displacement. Most of them have not expressed the will to return for various reasons after a long period of time and they have been adopted in their place of displacement. As for the closure of collective centers, they are all expected to be closed in 2018, and at the same time their number in report with the Instrument for Pre-accession Assistance (IPA II) – 2014-2020 now apparently has improved.

This chapter will focus on the topic of displaced persons from Kosovo in the region, internally displaced persons and a part of the displacement of the Albanian population from the northern part of the city of Mitrovica to the South. Thus, the period of displacement of these categories is regulated by the relevant legislation in force in Kosovo and it is between 28 March 1998 and 31 March 2004 ⁵¹⁷, this issue apart Regulation (GRK) - No. 01/2018 on the return of displaced persons and durable solutions, is regulated by the relevant laws that have defined the date of the beginning and end of the war in Kosovo. These laws, as it is Law no. 04/I-054 on the status and the rights of the martyrs, invalids, veterans, members of Kosovo Liberation Army, civilian victims of war and their families and Law no. 04/I-261 on Kosovo Liberation Army war veterans, even though these laws regulate in different ways some war dates but as the starting point or the definitive date of the beginning

⁵¹⁴ Chaloka Beyani General Assembly Distr.: General 5 June 2014 Human Right Concil twenty -sixth session Agenda item 3Genpromotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Original: English Report of the Special Rapporteur on the human rights of internally displaced persons, page 5.

⁵¹⁵ Instrument for Pre-accession Assistance (IPA II) 2014-2020 Kosovo* EU Legal Approximation Facility page 4. https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/kosovo/ipa/2015/04_ipa_2014_eu_legal_approximation_20141027.pdf accessed on 16th of July 2017.

⁵¹⁶ Ibid.

⁵¹⁷ Article 1 of Regulation (GRK) - No. 01/2018 on the Return of Displaced Persons and Durable Solutions, (was approved in the 23 - meeting of the Government of Republic of Kosovo, with the decision no. 06/23 dt. 04.01.2018).

and end of the war in Kosovo is 27.02.1998 up to 20.06.1999⁵¹⁸. This regulation has properly defined as the exact date of war the 28.02.1998 but the date of the end of the war should be reviewed and the displaced persons should be treated by 27.02.1998 up to 20.06.1999. The period of one month of March 2004, since after that date 20.06.1999 there was no reason for displacement but there were some obstacles in the return process which are evident actually and up to this day, for example, the return of Albanians to the northern part of Kosovo is impossible.

2. Categorization of Displaced Persons - Difference between Internally Displaced Persons and Refugees

Considering that Kosovo during the moment of displacement of these categories did not have to resolve the political and legal status and the status of Kosovo was not resolved after the end of the war, these persons during the administration of the United Nations Mission in Kosovo (UNMIK) were treated as persons internally displaced persons. This issue was regulated with several manuals and booklets, namely the Sustainable Returns and Voluntary Returns Protocol (June 2006) and UNMIK's "Revised Returns for Sustainable Returns" (June 2006), but the treatment of these categories unfortunately was continued after Kosovo's declaration of independence, specifically with the Community Strategy and Return for 2009-2013, which states that Displaced persons from Kosovo are described by following categories: a) Internally Displaced Persons b) Internally Internal Displaced Persons c) Refugees.

Definition: "Internally displaced persons are individuals who have been forced to leave their homes because of armed conflict, avoid armed conflict, the situation of violence in general, violations of human rights, due to natural disasters or those artificial those who have been internationally recognized borders."⁵¹⁹ When talking about Kosovo, these are individuals and families who live within the borders of

⁵¹⁸ Official Gazette of the Republic of Kosova / no. 30 / 31 december 2011, Pristina Law no. 04/I-054 on the status and the rights of the martyrs, invalids, veterans, members of kosova liberation army, civilian victims of war and their families article 3 paragraph 1.10.

⁵¹⁹ Strategy For Communities and Returns 2009-2013, page 13.

Serbia and Montenegro (while Serbia and Montenegro were still one country and until Kosovo declared its independence).⁵²⁰

Persons displaced within the country are individuals or groups that are displaced (they don't live in places where they lived before the conflict or post conflict, who were forced to leave their place) but currently living within the borders of Kosovo.⁵²¹

Refugees are persons located outside the borders of their national state or country-residence, who fear persecution because of their race, religion, nationality, belonging to any social group, or any political opinion, and who do not want to be protected by state or return for fear of persecution, violence and threats by federal entities or non-federal or individuals.⁵²²

The term 'displaced persons' is also used with two other documents that have regulated this matter in the most advanced but not in the proper manner for the fact of the category of displaced persons located outside the state borders of the state are refugees and not displaced persons, well these two documents have foreseen this legal situation by responding to circumstances created after the war since at that time Kosovo was not considered as an independent state even though after the declaration of its independence these circumstances have changed, but not quite because some of the countries in the region where they are displaced from Kosovo, consider them as internally displaced persons because they do not yet recognize the Republic of Kosovo. Therefore, based on the changes made in these two documents, Kosovo has dealt with the category of displaced persons in the most advanced way of eliminating the definition of internally displaced persons and displaced persons, with the new documents it is determined to have two categories of Displaced Persons but not as before.

⁵²⁰ Ibid.

⁵²¹ Ibid.

⁵²² Ibid.

The categories of displaced persons are now divided into two groups or categories of internally displaced persons and displaced persons in the region. Based on Strategy for communities and return 2014 – 2018 these categories of persons are defined as follows:

Internally Displaced Persons, Persons or groups of persons who have been forced or obliged to flee or to leave their places of permanent residence in Kosovo between January 1998 and the end of March 2004, in particular as a result of or in order to avoid the effects of armed conflict, the situation of general violence, violations of human rights, but remained within the territory of Kosovo.⁵²³ Displaced persons in the region Serbia, Montenegro, North Macedonia, Bosnia and Herzegovina, and Croatia - Persons or groups of persons who have been forced or obliged to flee or leave their places of permanent residence in Kosovo between January 1998 and the end of March 2004, in particular as a result of or in order to avoid the effects of armed conflict, the situation of generalized violence, violations of human rights, and remain outside of Kosovo, namely in the region.⁵²⁴

Also this issue has been regulated with the Regulation Government the Republic of Kosovo - No. 01/2018 on the return of displaced persons and durable solutions which regulation has once dealt with the definition of displaced persons within the country and in the region where it has defined a definition almost identical to the Community Strategy for the Return 2014-2018, this regulation has these two definitions or terms for persons displaced but initially treated what we mean by the word displaced person Displaced Person – means person who was forced to leave or forced to abandon his/her place of residence between 28 March 1998 and 31 March 2004, particularly as result or in order to avoid effects of armed conflict, situation of general violence, human rights violations.⁵²⁵ then it is the handling of the definitions separately, an internally displaced person and a displaced person in the region as follows: Internally Displaced Person – means person displaced within the territory of

⁵²³ Strategy for Communities and Return 2014-2018 page 5.

⁵²⁴ Ibid .

⁵²⁵ Regulation (GRK) - No. 01/2018 on the return of displaced persons and durable solutions, was approved in the 23 - meeting of the Government of Republic of Kosovo, with the decision no. 06/23 dt. 04.01.2018 article 3 paragraph page 3..

Republic of Kosovo⁵²⁶ and Displaced Persons in the Region – means persons displaced in Serbia, Montenegro, or North Macedonia.⁵²⁷

This regulation, which has legal force and legal character, has not properly defined the issue of the relocation report outside Kosovo's state territory since persons displaced outside the state border are considered refugees, therefore this regulation should have finally dealt with this definition since after the Kosovo declaration of independence in February 2007 all displaced persons of Kosovo have to be considered as refugees and internally displaced persons this also regulates article 156 Refugees and Internally Displaced Persons moreover this article states the Republic of Kosovo shall promote and facilitate the safe and dignified return of refugees and internally displaced persons and assist them in recovering their property and possession.⁵²⁸ To give a more specific explanation of this article can be referred to Commentary Constitution of the Republic of Kosovo edition 1 of the authors Prof. dr. Dr. Enver Hasani / Prof. Dr. Ivan Čukalović where in emphasized that the Republic of Kosovo promotes and facilitates the safe and dignified return of refugees and internally displaced persons and helps them for the return of their properties and possessions,⁵²⁹ the author has elaborated the meaning of article 156 in a more specific way explaining that this article emphasizes the obligation of the Republic of Kosovo to help in two ways secure and dignified return of refugees and other internally displaced persons within the country, including here the return of their property and possessions. The first way is to promote public authorities to make this commitment so as to create a safe return environment. The second way is to create substantial facilities by Kosovo authorities for the return of all who have been forced to leave Kosovo as a consequence of the war and the excessive violence used in Kosovo after and before 10 June 1999.⁵³⁰ Additionally, these authors have explained and attempted to remove this article from the Kosovo constitution, stating that the Constitutional Court has declared as unconstitutional the amendment 17 proposed by the Government of the Republic of Kosovo as a part of the amendments that have

⁵²⁶ Ibid.

⁵²⁷ Ibid.

⁵²⁸ Constitution of the Republic of Kosovo article 156 page 60 <http://www.kryeministri-ks.net/repository/docs/ConstitutionIKosovo.pdf> accessed on 19th of July 2017.

⁵²⁹ Prof. Dr. Enver Hasani / Prof. Dr. Ivan Čukalović Commentary Constitution of the Republic Of Kosovo Edition 1 page 703.

⁵³⁰ Ibid.

closed the era of supervised independence of Kosovo, an amendment seeking to delete this article of the Constitution. In this case, the Court found that its deletion would violate the constitutional rights guaranteed by international documents which Kosovo has a positive obligation to implement to the end, such as the right of movement and the right of property.⁵³¹

Based on what was discussed here, we can conclude that both strategies and regulation in question are in contravention of the constitution and present a legal collision in terms of correctly determining the treatment of displaced persons, these documents need to be changed urgently as such represent a constitutional violation. Since this year is foreseen the change of the Strategy for Communities and Return and it is foreseen and the issuance of a law on displaced persons automatically with these two new documents should clearly define the legal status of the displaced persons in the region by turned to the refugees. At the same time, this issue has been regulated with Comprehensive Proposal for the Kosovo Status Settlement 2 February 2007 or known as Ahtisaari's package, which has supremacy in relation to the Constitution of Kosovo, therefore it has legal status, the same has regulated this issue as in the Kosovo Constitution for more has defined: All refugees and internal displaced persons from Kosovo shall have the right to return and reclaim their property and personal possessions in accordance with domestic and international law.⁵³² Kosovo shall take all measures necessary to facilitate and to create an atmosphere conducive to the safe and dignified return of refugees and displaced persons, based upon their free and informed decisions, including efforts to promote and protect their freedom of movement and freedom from intimidation.⁵³³ Kosovo shall cooperate fully with the United Nations High Commissioner for Refugees, who will assist the competent authorities in extending protection and assistance to returnees, and who will, inter alia, undertake periodic assessments and issue public reports on the conditions of return and the situation of the internally displaced within

⁵³¹ Ibid.

⁵³² Comprehensive Proposal For the Kosovo Status Settlement 2 February 2007 article 4, page 4.

⁵³³ Ibid.

Kosovo, and shall also extend the cooperation to other organizations involved in the return process.⁵³⁴

A very important document that regulates the rights of the minor and foresaw the issuance of a number of laws referring to the category of displaced persons and refugees and Kosovo National Strategy on Property Rights December 2016 which strategy in terms of defining these categories is in the most controversial report of Kosovo, which in Objective 3 regulates the safeguarding of the property rights mentioning and categories of displaced persons non-majority communities and refugees.⁵³⁵ A definition of the meaning of the refugee notion gives and the Law on asylum which defines that a refugee is a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable, or owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, is unwilling to return to it.⁵³⁶ Therefore, as emphasized, it is urgent and immediate change of documents with which the actors involved in the return process and the treatment of displaced persons outside Kosovo as refugees.

3. The Return Process to Displaced Persons in the Region and within the Country

The process of returning to displaced persons to the region is a process that is being done in coordination with local and international institutions to guarantee the return of displaced persons and sustainable solutions. Institutions dealing with the return of displaced persons to Kosovo are the Ministry of Community and Returns, Municipalities - Municipal Communities for Communities and Return as well as international partners who support the return process. Also, as key partners can be considered the Office of the High Commissioner of Nations, United Nations High Commissioner for Refugees (UNHCR) , the Danish Refugee Council

⁵³⁴ Ibid.

⁵³⁵ Kosovo national strategy on property rights december 2016.

⁵³⁶ Law No. 03/L-066 ON ASYLUM Assembly of Republic of Kosovo, article 2 <https://www.refworld.org/pdfid/5bf2ac0b4.pdf> accessed on 20th of july 2017.

(DRC), International Organization for Migration (IOM), as well as the Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE), whereas the return of displaced persons from North Macedonia and Montenegro to Kosovo is done through the respective state institutions of the Republic of Kosovo and these states, with Serbia this coordination is done through associations of persons displaced and United Nations High Commissioner for Refugees (UNHCR), for the reason that Serbia does not recognize Kosovo.

Based on the legal procedures established by the legislation in force, the process of returning displaced persons seeking assistance - return support begins with the completion of the form which is completed in online form, the completion of this form is done direct to the Ministry of Community and Returns the ministry sends it to the Municipality where the displaced person applies for return and asks for assistance, also the application is handed over in the country of origin where the displaced person wants to return or if the displaced person wishes to return elsewhere from the country of origin after the submission of applications the process of appraisal of the applications by the Municipal Returns Committee commences, which the Committee recommends all cases that meet the criteria to the Central Review Committee, the commission makes a decision depending on the needs of the displaced persons, decisions of the Central Review Commission. Dissatisfied party can submit an appeal to the Appeals Commission which makes a decision, all this procedure is determined by Regulation - No. 01/2018 on the return of displaced persons and durable solutions.⁵³⁷ This return provided through concrete assistance depending on the needs of the returnees is considered a sustainable return as the displaced persons become a permanent solution by helping you build houses giving you packages for return, renovation and other assistance before this return considered as assisted return which with some documents is defined as what is assisted return.

According to the strategy for community and return this definition is defined as Assisted Return Based on the individual requirements from displaced persons, families or relatively small groups of returnees, assistance was provided before,

⁵³⁷ Regulation (GRK) - No. 01/2018 on the Return of Displaced Persons and Durable Solutions, was approved in the 23 - meeting of the Government of Republic of Kosova, with the decision no. 06/23 dt. 04.01.2018 articles 5, 24,25 and 26.

during and after return, usually through municipalities or NGOs through the already established programmer.⁵³⁸ Also this issue has been defined in Regulation - No. 01/2018 on the return of displaced persons and durable solutions which emphasizes that Assisted Return – means return of displaced persons who are provided assistance before, during and after the return.⁵³⁹

The Strategy for Communities and Return 2014-2018 aims for sustainable solutions where according to objective 1 the Ministry of Communities and Returns is determined to Kosovo as a democratic and multiethnic state, enables safe return and prosperous live for all its citizens in their place of origin or stable setting to another location within counter.⁵⁴⁰ The selection of application for support shall be made according to the criteria while assistance provided will include: full and partial construction of the residential space, assistance with food packages – hygiene packages, furniture, and firewood, helping to generate income, employment and infrastructure project. One of the Ministry for Community and Return priorities for returns for period of implementations of this strategy.⁵⁴¹ The foreseen return to this strategic objective has been and continues to be made according to the budgetary possibilities of the Ministry and the budget separated from the international mechanisms. As well Regulation No. 01/2018 on the return of displaced persons and durable solutions has defined that durable solution – means achieving conditions based on which returnees will no longer need assistance and shall enjoy guaranteed civic rights.⁵⁴²

In line with the Guiding Principles on Internal Displacement and the Framework on Durable Solutions for Internally Displaced Persons, the solutions include sustainable reintegration at the place of origin (return), sustainable local integration in areas where IDPs have settled (local integration) or sustainable integration in another part of the country (settlement elsewhere in the country).⁵⁴³ For these solutions to be

⁵³⁸ Strategy for Communities and Return 2014-2018 page 5.

⁵³⁹ Regulation (GRK) - No. 01/2018 on the Return of Displaced persons and Durable Solutions, was approved in the 23 - meeting of the Government of Republic of Kosovo, with the decision no. 06/23 dt. 04.01.2018, article 3 paragraph 1.6.

⁵⁴⁰ Strategy for Communities and Return 2014-2018 page 20.

⁵⁴¹ Ibid.

⁵⁴² Regulation (GRK) - No. 01/2018 on the return of displaced persons and durable solutions, was approved in the 23 - meeting of the Government of Republic of Kosovo, with the decision no. 06/23 dt. 04.01.2018, article 3 paragraph 1.8.

⁵⁴³ Chaloka Beyani General Assembly Distr.: General 5 June 2014 Human Right Concil twenty -sixth session Agenda item 3Genpromotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Original: English Report of the Special Rapporteur on the human rights of internally displaced persons, page 10.

considered “durable”, a number of conditions must be met, such as enjoyment of the protection of the State of nationality (for citizens), the voluntariness of the decision to return or settle elsewhere, real prospects for restitution of or compensation for lost property, no discrimination in the enjoyment of their rights, and equal access to public services and economic opportunities.⁵⁴⁴

The entire process of returning displaced persons who apply for assistance is made according to their needs assessment for returning from the provided documentation and field visits more over during the process of determining priority cases, the following criteria should be taken into account based on the documentation provided by the applicant and findings on the field: Potential beneficiaries with members with special needs, Potential beneficiaries with members with serious health conditions, old vulnerable people, potential beneficiaries with women head of household, potential beneficiaries under the age of 2, potential beneficiaries without income or who benefit from social assistance scheme, potential beneficiaries without secured housing, mental disability, physical disability serious health condition, income level, type of current accommodation, woman at risk, single parent, unaccompanied/separated child, children at risk, old people at risk, our rent living conditions, possession of livable property (at the place of displacement and place of origin or any other place).⁵⁴⁵

At the same time during the process of this evaluation are taken the basis and some additional criteria that determine the degree of vulnerability such as: Severe vulnerability – means family/individual facing serious problems in meeting their basic needs. As result the family meets the criteria for full assistance package, moderate vulnerability – means the family/ individual that is affected significantly, therefore family meets the criteria for partial assistance package, low vulnerability – means family/ individual that are not a priority, but an exception can be made from case to case.⁵⁴⁶

⁵⁴⁴ Ibid.

⁵⁴⁵ Regulation (GRK) - No. 01/2018 on the return of displaced persons and durable solutions, was approved in the 23 - meeting of the Government of Republic of Kosovo, with the decision no. 06/23 dt. 04.01.2018 , article 10 paragraph 1.

⁵⁴⁶ Ibid.

For all cases that have sought support on assisted return / return, consider Central Review Commission, Central Review Commission takes decisions with majority of votes of present members.⁵⁴⁷ Central Review Commission after receiving the decision, informs the parties of this decision the dissatisfied parties have the right to complain Appeals Commission. The issue of the right to appeal is now best regulated as it guarantees a guaranteed legal right under Chapter II complaints of law no. 05/I-031 on General Administrative Procedure article 125 which emphasizes that unless otherwise provided by law, an administrative appeal, may be submitted against an administrative act. It may also be submitted against administrative inaction, if the public organ has kept silent within the established deadline ⁵⁴⁸, defining this issue with Regulation No. 01/2018 on the return of displaced persons and durable solutions , creates opportunities for displaced persons who use the remedies available to achieve a claimed right and provides effect on the implementation of legal provisions as well as influences the transparency of the Institutions by increasing legal certainty for the parties involved in the assisted return process. Up to now the Ministry of Communities and Returns as a central institution and state mechanism that deals with the return process has violated an elementary right by avoiding transparency since it did not apply the right of appeal until the entry into force of the regulation in question, the Returns Support Implementation Guidelines, 26 March 2012, has ensured that the Municipal Working Group will inform the parties of the right to complain to the cases referred to for return to the Central Review Commission, but this right did not have displaced persons against the decisions of the Central Commission for Review as there was no provision of this Guide which would guarantee the right of appeal against the decisions of the Central Review Commission.⁵⁴⁹

The Ministry of Communities and Returns did not have any transparency in the publication of the decisions taken on the return process since neither a decision was published on this occasion there was a lack of transparency in the assisted return process.

⁵⁴⁷ Ibid article 25.

⁵⁴⁸Official Gazette of the Republic of Kosova / no. 20 / 21 June 2016, Pristina 1 Law no. 05/I-031 on General Administrative Procedure article 125 .

⁵⁴⁹ Guide to Implementing Return Support, dt. March 26, 2012.

4. Spontaneous Return

In contrast to assisted return, spontaneous return is done individually without any warning and the parties return to their country. Spontaneous return of the state and international organizations do not assist in the creation of housing and food facilities and assistance is done only in the things they receive with all the displaced persons being released from customs, this return is possible because there is no financial cost as the state of Kosovo guarantees the security of all citizens who wish to return except in certain parts where there are some obstacles to the reasons that I will elaborate during this paper.

With the Strategy for Communities and Return 2014-2018, as well as with Regulation No. 01/2018 on the return of displaced persons and durable solutions the definition of voluntary return has been defined according to the spontaneous return strategy we understand Spontaneous Return (Individual and small groups) - Individuals, families or groups who have returned without any prior notification or warning and did not receive any material assistance before their return or have not planned their return earlier.⁵⁵⁰ Definition given by regulation No. 01/2018 on the return of displaced persons and durable solutions, is more concrete definition than the definition of the strategy, according to this definition spontaneous return – means return of displaced persons without any prior notice and without assistance.⁵⁵¹ According to what has been clarified with definitions of spontaneous return we can conclude that Kosovo has taken all necessary measures ensuring safe return for all communities while guaranteeing constitutional and legal rights that guarantee a safe environment for all members of all communities in Kosovo.

Despite this and why the state has created conditions for return and has full assurance on freedom of movement, the number of returnees in relation to displaced persons is not high in the following, we are presenting a table with the number of voluntary returnees year 2004 until 2018, the figures in this table are taken from the Department for Project Management and Monitoring at the Ministry of Communities

⁵⁵⁰ Strategy for Communities and Return 2014-2018 page 5.

⁵⁵¹ Regulation (GRK) - No. 01/2018 on the Return of Displaced Persons and Durable Solutions, was approved in the 23 - meeting of the Government of Republic of Kosovo, with the decision no. 06/23 dt. 04.01.2018 , article 3 paragraph 1.5.

and Returns.⁵⁵²

Table 6- The number of voluntary returnees year 2004 until 2018

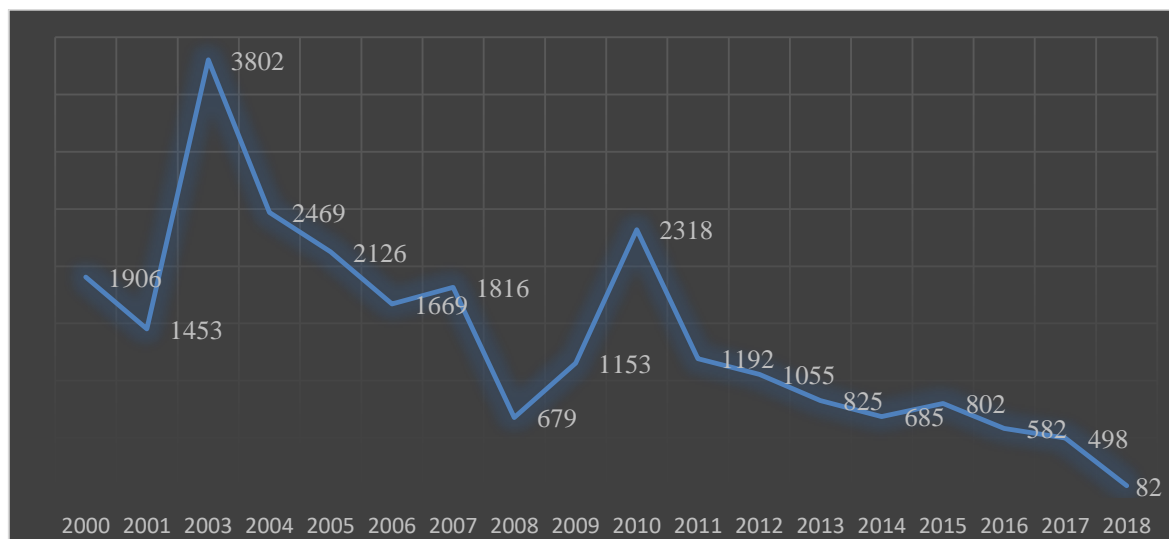
Entity / year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total persons
Serbs	818	740	615	585	231	439	895	474	375	345	398	429	299	148	2	6793
Roma	430	235	303	581	86	214	371	120	132	132	55	85	66	171	1	2982
Ashkali Egyptians	593	727	466	312	195	281	718	395	305	202	151	221	159	159	/	4884
Bosniaks	479	250	93	89	39	43	49	60	84	40	9	18	11	2	/	1266
Gorani	141	125	139	234	85	90	182	106	89	2	21	23	0	1	/	1238
Albanians	8	49	53	15	43	86	99	27	67	103	50	20	39	11	/	670
Remaining	0	0	0	0	0	0	4	10	3	1	1	6	8	6	/	39
Total persons	2469	2126	1669	1816	679	1153	2318	1192	1055	825	685	802	582	498	3	17872

At the same time I have researched and provided by the United Nations High Commissioner for Human Right *Refugees according to the table* the UN Refugee Agency Office of the Chief Of Mission Pristina, Kosovo voluntary minority return trends year 2000-2018⁵⁵³, this data is the same as the data obtained from the Department for Project Management and Monitoring at the Ministry of Community and Return if we compare it with the total number of displaced persons who returned voluntarily but without being divided into nationalities while UNHCR data start in 2000 from the Ministry in 2004. Here is a table with the following data:

⁵⁵² Information received by Department of Management and Monitoring of Project Ministry of Community and Return.

⁵⁵³ UNHCR, the UN Refugee Agency Office of the Chief of Mission Pristina, Kosovo1 Statistical Overview April 2018 Voluntary Minority Return trends year 2000-2018 page 6.

Figure 4 - The number of voluntary returnees year 2000 until 2018 according to the UN Refugee Agency Office of the Chief of Mission Pristina



5. Interview with the Director of Department for Project Management and Monitoring, former Department of Returns Mr. Albert Zeqa

I tried to do this interview in a questionnaire form then open the debate on all the questions and by analyzing the challenges and processes of returning displaced persons to the region and within the country. The question is *how does the return process of displaced persons from the region take place, especially from the Serbia, knowing that Serbia does not recognize Kosovo's independence, nor does it have a good institutional cooperation in this regard?*

The response was that returning to the state of Serbia was supported by the United Nations High Commissioner for Refugees (UNHCR), which is being conducted by the UNHCR's Danish Refugee Council (DRC) partner, these two international mechanisms together with the displaced persons in Serbia (NGOs) so far have mediated in the return process a key factor in this process is undoubtedly the Ministry of Community and Return which together with these officials conducts visits to persons to relocate these visits are visits which are carried out for the purpose of informing displaced persons and have the following meaning: Go-and-
Inform visit means to inform displaced persons at their place of displacement, on the current status in their place of origin and aims to enable displaced persons take the

decision on the possibility of return and on assistance package, whereas Go-and-See visit means establishing conditions to conduct an interethnic dialogue between the displaced persons and receiving community. These visits are an opportunity for displaced persons to visit their previous neighbors and re-establish their links with their previous community, both of these visits are now well defined with Regulation No. 01/2018 on the return of displaced persons and durable solutions, but since the start of the return process these visits have been used. This is a form of communication and identification of the needs of displaced persons who wish to return, the other way is keeping and organizing information campaigns through the IDPs in North Macedonia Serbia. Communication with other countries in the region with Montenegro and with North Macedonia is carried out between the relevant institutions of Kosovo as these countries have recognized Kosovo.

The question was about the role of UNHCR now and before?

The answer was a bit disturbing to me since UNHCR has only an advisory role and does not help the return process nor support organizing the visits. As the Ministry for Community and Returns is responsible for this issue, the Ministry proposes that the Ministry conclude a contract with the Danish Refugee Council or another international organization so that the lack of the role of UNHCR in organizing visits to Serbia and communicating with persons displaced not to be noticed. The question of non-acceptance by the majority community who refuses the minority community to return which countries do have problems? The answer was that the biggest problems are in the northern part of Kosovo where the minority community is an Albanian community will elaborate it in the rest where it will treat it as a specific particularity. Also, the problem of returning minority communities in cases where they are not accepted to return from the host community are: vilages Mushtisht Suharekë, Sllovia in Lipjan municipality as well as Municipality of Gjakova. The reasons for the refusal in these places are because there were terrible massacres in Mushtisht and Slovi, and some individuals who are considered to be part of the war are not allowed to return, while Gjakova is the place that has a majority of missing people and as a request is the return of missing people in war and then the return of displaced persons.

Regarding these returns in those countries where there are such obstacles, violate human rights and freedoms, there are progressive movements by the institutions and special working groups that have been created to carry out the return process, for example in Mushtisht. While in the Municipality of Gjakova there has been great progress for this, I refer to the meeting held on May 20, 2015 - where the Minister for Communities and Return, Dalibor Jevtic, met the mayor of Gjakova, Mimoza Kusari-Lila. Minister Jevtic said after the meeting that this was a very positive meeting, which builds mutual trust when it comes to the return process, also the Mayor of Gjakova, agreed with the Minister on cooperation for good will of all communities, and that the return process should go peacefully and without tension, and added that property right is indisputable and cannot be denied to anyone.⁵⁵⁴ Also, as far as Gjakova is concerned, the process has advanced and there have been established working groups for return there is institutional security in this process there are also visits of displaced persons and there is no other obstacle other than reconciliation of the host community.

The question about the challenges and problems identified in the return process? The answer was that these challenges were defined with the community and return strategy 2014 - 2018 and are as follows: Lack of baseline data on displaced person in the region Montenegro, Serbia and North Macedonia, lack of accurate data on displaced person in Kosovo, lack of a written strategy on durable solutions for displaced person, lack of institutional integration strategy for voluntary returnees, lack of legal basis for the management of processes for categories of returnees, temporary return of beneficiaries living in residential facilities as a benefit from assistance, lack of land allocation, Insufficiency in updating and maintaining the database on returns and communities at the central and local level, Insufficient assistance for the disadvantaged groups of returnees : youth, women, persons with disabilities, Insufficient assistance for the Roma, Ashkali and Egyptian returnees, Lack of monitoring of the implementation of the strategy.⁵⁵⁵

⁵⁵⁴ The Annual Bulletin January 2015 page 12.

⁵⁵⁵ Strategy for Communities and Return 2014-2018 page 17.

Some of the challenges and innovations that have emerged as objectives which we have elaborated during this interview are evident and have not been fulfilled, such as the lack of basic data on displaced persons in the region of Montenegro, Serbia and North Macedonia, this continues to be a challenge as there is no exact number and there is a tendency for Serbia to increase the number, there is also a lack of data on internally displaced persons since the Serb community didn't allow to register the internally displaced persons in their places, this is a challenge that is tempted to happen. The lack of a strategy for voluntary return is a challenge as there is no proper strategy for voluntary return. My personal opinion about explaining this issue was that assisted return should be substituted with spontaneous return as there are problems and challenges related to this, for example, abandonment of houses that have been built and that are many of them , there are settlements that were built houses and the displaced persons abandoned them, this phenomenon is apparently massive in some villages as in: Maxhunaj, Dolak, Shtitaricë Vushtrri Municipality and Babush Ferizaj, so it is immediate to support the spontaneous return of the people who want, it would have the effect that the budget for the vacant houses would be invested in general development such as: schools and infrastructure of roads.

To my question about assistance of donors to support the return? The answer was that there are donors who assist with housing construction such as the British Embassy, Norway, Swiss, actually there is a project which is jointly funded by the Kosovo Government and the European Union, this project has been processed and actually is the V phase of the European Union's Return and Reintegration Project in Kosovo. This project has foreseen the construction of houses for returnees in several municipalities like Istog, Prizren, Kline, Shterpce, Suhareke, Gjilan, Obiliq and Gjakova. This project is implemented by International Organization for Migration.

6. Return obstacles in the northern part of Kosovo

Viewed from the logic of dealing with the resettlement period which has dealt with Regulation (GRK) - No. 01/2018 on the Return of Displaced Persons and Durable Solutions we may consider or allege that the period of displacement in the northern part of Kosovo is from 28.02.1998 until now as there is constantly shifting in this

part and there is no security in return which is a crucial issue and sustainable solution in terms of treatment institutional level by the local level it is indisputable. The total number of Albanian displaced persons from the northern part of Kosovo is approx. 6944⁵⁵⁶, but this data is not accurate because if we refer to real numbers that are taken from the resident interviewed in that section are approximately 12,500. To make this part realistic during this chapter, I made a written interview with four displaced Albanians who know very well this problem and who since their resettlement have been organized in different ways to return to the northern part of Kosovo, which is inhabited by participants of the Serbian minority community. Currently I present the questions made with these citizens and their responses. Citizens interviewed were as follows: Nebih Seferi- an economist, resettlement North Mitrovica, Bashkim Selmani, secondary school teacher, resettlement place Leposaviq, Sokol Halili a psychologist, village Cerajë, municipality of Leposaviq, Betim Osmani an economist, resettlement place Kroi i Vitakut. The questions were all the same for everyone and were as follows:

1. When did the eviction in your country happen, the reasons for the eviction?
2. Have you tried to return to your home country as permanent residence in the northern part, if yes how many times?
3. If there are any obstacles in return, what are the factors that you think will drag your return to your permanent home, from whom you are obstructed?
4. How much do you consider to be safe to return to your country where you have lived before and have the Kosovo Police provided you with security?
5. Do you have access to your property, the property is usurped if so by whom?
6. How much have your local and central institutions assisted in providing return assistance?
7. Has any lawsuit been filed against persons who violate your rights to return and have anyone ever been arrested for doing so?
8. What are the host community motives for not allowing you to return?

⁵⁵⁶ UNHCR, the UN Refugee Agency Office of the Chief of Mission Pristina, Kosovo1 Statistical Overview April 2018 Voluntary Minority Return trends year 2000-2018 page 4.

6.1. Responses from the first respondent - Nebih Seferi

1. Eviction occurred on March 13, 1999 in North Mitrovica (Kroi i Vitakut neighborhood), the displacement came as a result of Serbian repression and violence by paramilitaries who had come from Serbia and evicted, killed the Albanians and destroyed every house and property.
2. Yes, I have tried but I have been obstructed from the so-called bridge guards.
3. We were hindered by Serbian hooligans and we are afraid that something bad will happen.
4. I do not consider that there is security, and the institutions of the state of Kosovo have never come to help us.
5. Property is destroyed and occupied by Serbs, as well as they did not leave property access.
6. Local institutions that is the northern municipalities, which are led by members of the unofficial Serbian community, has suggested that we should not go back and for help it is not a question.
7. We went to the police and filed a lawsuit against Serb hooligans and Serbian parallel structures in Kosovo but were not considered by the police either by anyone.
8. There is no expectation from the Serbian host community, despite this we have tried twice to build houses but immediately Serbs hooligans destroyed them and still are in the same state.

6.2. Responses from the second respondent - Bashkim Selmani

1. On March 13, 1999, they evicted us and then destroyed our properties.
2. I tried up to 7 times to go back to my home in 2014 but I could not, I lived in the village of Trepça in the southern part of Mitrovica.
3. In addition to barriers to return, there are also threats from Serbian hooligans.
4. I have access to the property.
5. Local South Institutions have built me home but the house is located nearby of the border with the northern part it is not destroyed but there is not enough security.
6. We have filed lawsuit but have not been considered and there have been no actions by either the court neither the police.

7. The Serbian community does not want to live in my neighborhood as neighbors together, but I will never get rid of my property and my country.

6.3. Responses from the third respondent - Sokol Halili

1. In 1999, in March, Serbian paramilitaries did not want to see any Albanian so they expelled and prosecuted us, killed, raped Albanian women, Cerajë village is the only one with Albanian in the northern part of Kosovo.

2. In 2006, 20 houses were built after the war, but only ten are inhabited because the village is isolated, there is lack of normal life without roads without public transportation and approximately 40 km is away from the city and security for free movement by Serbian hooligans makes life difficult.

1. There is no obstacle in return, but there are difficulties to live because it is an isolated place and there is no support from the municipality of Leposaviq in which the assembly and the mayor are composed of Serbs.

4. Security in the village belongs to members of Belgian KFOR while Kosovo police do not provide security.

5. We have access.

6. Local and central institutions did not provide assistance.

7. No because we do not have access as Albanians in Leposaviq municipality.

8. Lack of normal living conditions, broken streets, lack of public transport, and freedom of movement in the city make life impossible.

Answers from third respondent - Betim Osmani:

1. On 27 March 1999, the reasons were the spread of war throughout the territory of Kosovo, paramilitaries of the Serb community, killed some of our Albanian neighbors.

2. We have tried at least once a year starting from 1999.

3. The obstacles have been starting from 1999, the French KFOR, the parallel Serbian structures, while currently there are local institutions in the northern part and smugglers in connection with political officials.

4. Security from our institutions we don't have but problems with neighbors in this suburb we do not have that means Serbian politics is influencing the citizens of the city regardless of the nationality not to have a quiet life.

5. We have access it is not usurped but it is burnt and ruined, but there are barriers in return
6. Neither local nor central institutions are providing us with assistance but are neglecting our requirements to return to our properties
7. We have not filed lawsuits for the burning houses, but during the reconstruction of the house we have made denunciations by Kosovo Police, KFOR, and investigations are ongoing.
8. As long as there are negligence by our Institutions from the moods of the host Communities not seriousness cannot change our attitude.
9. In the city of Mitrovica in the North in 1998-1999 there were 12,500 inhabitants of the Albanian community and actually there are only 3500 inhabitants, most of them are displaced in the territory of the Republic of Kosovo in different cities and a part of them in the Diaspora.

Based on the responses received with these citizens, it turns out that the problem of return is directly related to the non-rule of law in this part of Kosovo or, as I have outlined in the previous chapter, ineffective rule of law instruments where it is clearly not the proper exercise of sovereignty state of the Republic of Kosovo in this part of the country, even though we now have success in this regard by controlling the border, suppression of the parallel structures according to the Brussels dialogue, the Brussels Dialogue, in the internal plan, has contributed to the consolidation of Kosovo's sovereignty in the northern part of the country through the dismantlement of Serbia's parallel structures in Kosovo in the areas where agreements and, integration of individuals of the Serb community (former staff of these structures) into the state institutions of Kosovo.⁵⁵⁷

The lack of security to return is still evident as the will of the Serbian citizens of this part and the influence of the Serbian state, as well as this is the only part where the freedom of movement of Albanian citizens lacks, compared to the rest of the country where some cases are not allowed to return due to circumstances in which the Albanian citizens are damaged and have conditions such as the return of missing

⁵⁵⁷ Edita Tahiri, Minister for Dialogue Prishtina, the Republic of Kosovo Government Program on the Brussels Dialogue 2014 – 2018, 15 January 2015 page 4.

persons from Serbia, then the return of Serbs such as Gjakovë case, but never was observed the obstacle of Serbian citizens to a free movement visits of their properties as well as realization of other civic rights. Therefore, we must have greater attention of the state on the security of citizens in this part and greater willingness of international institutions to put pressure on Serbia to implement the Brussels agreement for suppression of parallel structures throughout the Serbian state in this part of Kosovo and stopping Serbia's influence through destructive elements.

7. Inter-Institutional Coordination within Kosovo and Regional Coordination between the Countries of the Region Relating to the Return Process of Displaced Persons Institutional cooperation at the level within Kosovo

Based on Regulation No. 01/2018 on the return of displaced persons and durable solutions, the Ministry for Community and Return shall provide significant guidance and advices to municipalities on development of return policies, strategies and projects and ensure effective communication between central and municipal structures to enable all actors to contribute to this process.⁵⁵⁸ The Ministry for Community and Return, in coordination with Municipal Office for Communities and Returns shall conduct effective information activities towards displaced persons, including through Go-and-see and Go-and-inform visits, and facilitate contact, dialogue and information exchange between Ministry for Community and Return, municipality, host community and displaced persons and returnees.⁵⁵⁹ This coordination is done in terms of central level by Ministry for Community and Return with that class as well as this game together the rendering is done between the local level where Municipal Office for Communities and Returns have horizontal cooperation in the municipality and this cooperation is based on Regulation No. 02/2010 for the Municipal Offices for Communities and Return where it is emphasized that the Office shall work in full coordination with Deputy Mayor for Communities, the Municipal Directorates, the Deputy Chairperson of the Municipal Assembly for Communities and the Municipal Assembly's Communities

⁵⁵⁸ Regulation (GRK) - No. 01/2018 on the Return of Displaced Persons and Durable solutions, was approved in the 23 - meeting of the Government of Republic of Kosovo, with the decision no. 06/23 dt. 04.01.2018 , article 22 paragraph 4.

⁵⁵⁹ Ibid article 22 paragraph 5..

Committee.⁵⁶⁰ All officers of the municipality are obliged to cooperate with the Office while carrying out their duties and responsibilities.⁵⁶¹ These offices, in addition to the horizontal cooperation in the municipality, have coordination with the central level and relevant international mechanisms and non-governmental organizations the Office shall carry out its duties and responsibilities in full coordination with relevant units of the Office of the Prime Minister, the Ministry of Communities and Return , the Ministry of Local Government Administration , the Ministry of Internal Affairs , and the Ministry of Labor and Social Welfare and other competent ministries.⁵⁶²

The office shall cooperate closely with all local and international organizations working in the areas of community rights, return, repatriation and reintegration.⁵⁶³ Cooperation in the process of return of displaced persons is carried out also between central and local institutions based on legal acts and sub-legal as well as various strategic documents so this type of cooperation is foreseen with the Strategy for Community and Returns 2014-2018 and will continue with the new 2019-2024 strategy. The current strategy emphasizes it Ministry for Community and Return aims to strengthen the return process through the establishment of institutional mechanisms of cooperation with line ministries and regional and international partners.⁵⁶⁴ The Kosovo government has also established an inter-ministerial return group,⁵⁶⁵ which consists of several important ministries such as the Ministry of Communities of Return, Justice, Internal Affairs, Health, Environment, Social Welfare, etc. Representation in this group is done at ministerial level this group holds meetings as needed and discusses various issues related to the return process.

Also in the process of returning the Municipal Community Offices and return based on Regulation No. 02/2010 for the Municipal Offices for Communities and Return Prepare relevant action plans in compliance with Government and municipal

⁵⁶⁰ Regulation No. 02/2010 for the Municipal Offices for Communities and Return article 4 paragraph 1. http://www.kryeministri-ks.net/repository/docs/Rregullore_per_Zyrat_komunale_per_Komunitete_dhe_Kthim.pdf accessed on 28th of July 2017.

⁵⁶¹ Ibid article 4 paragraph 2.

⁵⁶² Ibid article 4 paragraph 3.

⁵⁶³ Ibid article 4 paragraph 4.

⁵⁶⁴ The Decision No 05/29 date 15.05.2015 of the Government of Kosovo for the establishment of the Inter-Ministerial Returns Commitment .

priorities, to assist the Municipality in fulfilling its obligations in relation to the process of return and reintegration.⁵⁶⁶ One such thing is determined by Regulation - No. 01/2018 on the return of displaced persons and durable solutions where it is emphasized Municipal Office for Communities and Returns prepares relevant action plans in accordance with municipal priorities, to assist the Municipality in fulfilling its obligations related to process of returns and reintegration based on the Regulation on Municipal Offices for Communities and Returns drafts the Municipal Action Plan for Returns.⁵⁶⁷ Municipal Action Plans for Returns, form is given in the guidelines for implementation of this regulation, are drafted based on the application forms for assistance for return received from displaced persons and assessment of specific needs of the displaced persons according to data management system and presents them to the Municipal Commission for Communities and Returns.⁵⁶⁸ Also, some Municipal Offices prepare Municipal Returns Strategies such as Municipal Community Office for Returns Prizren Municipality has prepared a Strategy for Returns and Communities 2016-2020,⁵⁶⁹ unlike the municipal plan are one-year strategies foresee a longer time. Cooperation in the return process with the relevant international institutions and cooperation from the Ministry of Communities and Returns , I emphasized in this chapter the part of the process of returning displaced persons to the region and within the country I have elaborated the role of this kind of cooperation as well kind of cooperation both at the regional and in the internal level, and the international mechanisms will also expose them to the inter-regional Initiative for the return of displaced persons from the countries of the region.

8. Profiling of Internally Displaced Persons

The profiling of displaced persons is a very important element that reflects a realistic situation of displaced persons and their needs for sustainable returns and permanent solutions. Therefore making profiling for displaced persons was a longing need which would lead to a final solution for this vulnerable category. Currently Kosovo

⁵⁶⁶ Regulation No. 02/2010 for the Municipal Offices for Communities and Return article 7 paragraph 1.4. . http://www.kryeministri-ks.net/repository/docs/Rregullore_per_Zyrat_komunale_per_Komunitete_dhe_Kthim.pdf accessed on 3rd of August 2017.

⁵⁶⁷ Regulation (GRK) - No. 01/2018 on the Return of Displaced Persons and Durable Solutions, was approved in the 23 - meeting of the Government of Republic of Kosovo, with the decision no. 06/23 dt. 04.01.2018 , article 7 paragraph 1.

⁵⁶⁸ Ibid article 7 paragraph 2.

⁵⁶⁹ Community and Return Strategy 2016-2020 Municipal Community Office for Community and Return Prizren.

in cooperation with international partners has completed the process of profiling internally displaced persons, as well as re-evaluating the interest for return of displaced persons from Kosovo to the region, these two steps are decisive steps for providing a solution to the permanent and lasting for the return of displaced persons. The profiles of displaced persons have provided an overview of how to become a permanent and permanent solution to these categories. Propagation of displaced persons was done according to Joint Internal Displace Person Profiling Service (JIPS), and this process has gone according to two working groups The Profiling Management Group (PMG) comprised the following (in alphabetical order): Danish Refugee Council (DRC) Kosovo Agency for Statistics (KAS), FKosovo Ministry for Communities and Return (MCR) • Commissariat for Refugees and Migration of the Republic of Serbia (KIRS), UN High Commissioner for Refugees (UNHCR).⁵⁷⁰ The Profiling Working Group (PWG) comprised, in addition to Profiling Management Group members, the following organizations and agencies that work with or have responsibilities related to Internal Displace Person (in alphabetical order): International Organization for Migration (IOM) ,Organization for Security and Co-operation in Europe, Mission in Kosovo (OSCE), UN Children’s Fund (UNICEF), UN Development Programme (UNDP), UN Population Fund (UNFPA).⁵⁷¹ The agreed-upon objectives of this profiling exercise are the following: To produce a sample-based demographic profile of the displaced population within Kosovo, disaggregated by age, gender, location and diversity. To conduct a comprehensive analysis of the displacement situation with regards to the social and economic integration of displaced persons; displacement-related challenges and vulnerabilities; resources and capacities; enjoyment of rights and access to services; as well as future intentions and plans.⁵⁷² To enhance institutions’ ability to advocate and design joint programming to support durable solutions for IDPs through the identification of their specific vulnerabilities and through the enhanced coordination of humanitarian and development analysis.⁵⁷³

⁵⁷⁰ Profiling of Internally Displaced Persons in Kosovo January 2018, Assessing the Route to Durable Solutions for IDPs in Kosovo page 9.

⁵⁷¹ Ibid.

⁵⁷² Ibid.

⁵⁷³ Ibid.

In order to have a perfect profiling, the profiling process of displaced persons was done according to the household and individual household surveys by sampling and by providing comparative analysis between the displaced groups as target groups were the group of displaced persons Albanian, a group of displaced persons from the Roma Ashkali or Egyptian community and the group of displaced persons from the Serb community or group. The Household Survey made a comparison of all available resources by providing transparency in determining the assessment for population groups and the number of samples taken as follows: Albanian IDPs: 1,167 households or 5,879 individuals, Roma/Ashkali/Egyptian IDPs: 137 households or 638 individuals, Serb IDPs: 3,872 households or 16,383 individuals residing in private accommodation and 140 households residing in collective centers.⁵⁷⁴ The main findings that emerged as a result of the survey conducted with these groups of nationalities were basic demographic data and displacement model, standard of living, employment and economic vulnerability, access to land and property resettlement mechanisms, and location preferred residence.⁵⁷⁵ In all these parameters, the most vulnerable community is Roma, Ashkali and Egyptian.

To conclude, providing a sustainable solution that means the local integration return to another or to the place of origin regarding the determination of persons who are declared to consider the possibility of return to the country of origin in Kosovo or those who consider the possibility of residency in the current place of resettlement all have been declared thus, according to the statistical data presented in the following trafficking and taken from figure 36: Overview of surveyed households (HHs) considering return to place of origin and stay in current location under certain conditions.⁵⁷⁶ Series 1 HHs considering returning to place of origin in Kosovo, series 2 HHs considering staying in current place of displacement.

⁵⁷⁴ Ibid page 11.

⁵⁷⁵ Ibid page 14,34,48.

⁵⁷⁶ Ibid page 69.

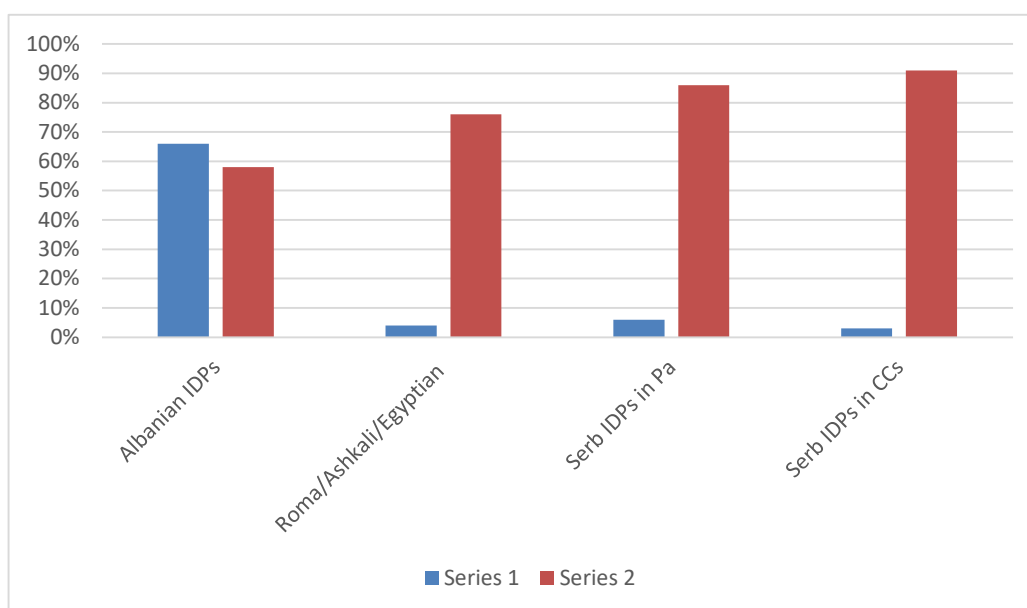


Figure 5 Overview of surveyed households

Based on these data, consider the possibility of returning to the country of origin that are exceptionally small community, Albanian majority who wishes to return mainly to the northern part of the country while looking at this chart the data that consider staying at the place of resettlement on best shows that there is no will to return displaced persons to their country of origin and all people want to live where they are displaced since they have been displaced for 20 years and most are not interested in returning. Also based on the UNHCR regional office report for southeastern Europe - displaced persons from Kosovo re-evaluating the interest for return, this report also shows that most displaced persons in the region, mainly in Serbia and in the region, are considered to be displaced up to 90,000⁵⁷⁷, there is little interest in the voluntary return process in relation to the number of displaced persons as well as displaced persons in the region and also within the country most of them want local integration. For this reason, a law should be enacted which would set the timeframes until a person can be considered displaced as well as to determine other criteria if support is requested in return and at the time of the determination of legal criteria in a proper manner the total number of internally displaced persons is decreasing. This year, the Ministry of Community and Return has foreseen the issuance of a law on displaced

⁵⁷⁷ Displaced persons from Kosovo in the region – a re- assessment of interest to return Report UNHCR Regional Office in South Eastern Europe Foreword .

persons by which the law will determine certain criteria both in terms of addressing the statute of displaced persons and in establishing legal criteria in terms of assisted return, now the Ministry regarding the new law is in the phase of preparation of the concept document which has foreseen the law.⁵⁷⁸ At the same time, Bosnia and Herzegovina has issued a law defining the standards and ways of return of displaced persons and their status.⁵⁷⁹

9. Inter-institutional Initiative on Durable Solutions for Displaced Persons from the Kosovo-Skopje process

The inter-institutional initiative for long-term solutions for displaced persons from Kosovo is an initiative of the regional cooperation that has to do with the return of displaced persons and a viable solution initially to understand the idea of this initiative we will present in concrete terms what this initiative is for responding to this, we will use the questions that have been set out according to the original document as follows: Why? A regional process necessary for supporting durable solutions for Displace Persons from Kosovo to facilitate durable solutions, including both returns and local integration of displaced persons from Kosovo, through the identification of issues and joint actions to find solutions.⁵⁸⁰ When? In 2014, the OSCE and UNHCR supported the Ministry for Communities and Returns (MCR) to launch a regional process devoted to finding durable solutions for displaced persons from Kosovo.⁵⁸¹ Who? The relevant institutions from Pristina, Belgrade, Skopje and Podgorica regularly convene through this regional process which has come to be known as the ‘Skopje Process’.⁵⁸² Through a High Level Forum established through the process, high level politicians meet on a yearly basis to agree on proposals made by the Technical Working Group established to develop and implement solutions for these displaced persons.⁵⁸³

The leading responsible institutions for this process in Kosovo is the Ministry for Communities and Returns (MCR) as its duties include the development of policies,

⁵⁷⁸ Lista e Koncept Dokumenteve për Vitin 2018 sipas Planit Vjetor të Punës së Qeverisë.

⁵⁷⁹ Law of 1999 on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina, <https://www.refworld.org/docid/3ae6b5910.html> accessed on 17th of August 2017.

⁵⁸⁰ Inter-institutional Initiative on Durable Solutions for Displaced Persons from Kosovo Summary page 1.

⁵⁸¹ Ibid.

⁵⁸² Ibid.

⁵⁸³ Ibid.

as well as the promotion and implementation of legislation for the promotion and protection of the rights of communities and their members, including the right to return.⁵⁸⁴ After the meeting of the high level ministerial forum held in Skopje, Kosovo undertook the necessary steps for the functionalization of this process, all the documents approved by the High Level Forum in Skopje such as the Concept Paper for Coordination and Planning, Priority Areas and Measures (including property rights, personal security documents, dialogue and reintegration and settlement planning), as well as the scope of the work of the technical working group was officially approved by the Inter-Ministerial Working Group on Returns dated. May 25, 2016.⁵⁸⁵

The Implementation Working Group (IWG) of the Inter-Institutional Initiative for Displaced Persons was established by decisions 176-180/2017 issued by the Ministry for Communities and Returns (MCR) on 23 February 2017.⁵⁸⁶ Its aim is to facilitate the implementation of the Action Points in Kosovo by bringing together relevant institutional Focal Points.⁵⁸⁷ The Implementation Working Group consists of a main implementation working group) with participation of all Focal Points from all five thematic sub-groups corresponding to the Technical Working Groups of the Skopje Process ('Security, Dialogue and Reintegration', 'Property Rights', 'Personal Documentation', 'Data Management', 'Solutions Planning').⁵⁸⁸ One of the most important groups of this initiative is undoubtedly that of the property rights of displaced persons, property that in some way or another was violated and some of them were destroyed and most of them were alienated through the sales process in a way volunteered by displaced persons. Another reason for solving this thematic group was the process of implementation of the implementation plan of this group. This group addressed the legislative aspect of the rights of displaced persons and communities, which has to do with the title of this thesis.

⁵⁸⁴ Ibid78.

⁵⁸⁵ Summary of information of the inter-institutional initiative for displaced persons from Kosovo and final documents page 3.

⁵⁸⁶ Report from the First Co-ordination Meeting of the Implementation Working Group of the Inter-Institutional Initiative for Displaced Persons Dures Albania, 11-14 September 2017.

⁵⁸⁷ Ibid.

⁵⁸⁸ Decisions 176-180/2017 issued by the Ministry for Communities and Returns (MCR) on 23 February 2017.

The property rights group and this initiative will be guided by some guiding principles, these principles are international principles pertaining to displaced persons, including, inter alia, guiding principles on internal displacement, the framework for sustainable solutions for Disabled Persons (2010), Principles on Housing and Restitution of Property for Refugees and IDPs (August 2005, Pinheiro Principles) will be the basic documents for the Regional Incorporation.⁵⁸⁹ This workgroup for the rights of displaced persons has an institutional set-up in the technical aspect of solving important issues, especially those dealing with the rights of displaced persons who are usurped and for which the state will to exercise control, as key institutions participating in this group are Mistry for Communities and Return, Ministry of Justice, Kosovo Judicial Council and Kosovo Property Comparison and Verification Agency, the latter has the main role in this process both in terms or the technical steps implementations or action points as well as in terms of taking legal steps for engaging in legal procedures for completing the law and sub-laws.

In this direction, the Working Group on Property Rights after the working group meeting held on December 8 in Pristina discussed the measures adopted in the area of prioritization of the group for property Rights by defining the implementation measures and the implementation deadlines. As a point of action that interferes in the legislative aspect from those set out by this group I want to elaborate two of the following: Completion and amendment of Law No. 05 / L-010 on Kosovo Property Comparison and Verification Agency, a guide to the many expulsions that will be foreseen in this law, and the amendment and supplementation of the property tax law to release displaced persons from property tax for the period that did not have their property.⁵⁹⁰

In addition to the recommendations given by the working group on property rights for amending and supplementing the Law No. 05 / L-010 on Kosovo Property Comparison and Verification Agency, the same were provided by the People's Advocate where it has ascertained and recommended Law No. 05/L-010 on the Kosovo Property Comparison and Verification Agency, Article 19, par. 7 (“For any

⁵⁸⁹ Inter-institutional Initiative on Durable Solutions for Displaced Persons from Kosovo/ Konzept document for co-ordination and planning page 12.

⁵⁹⁰ The working group, the pronsons rights, the final points of action, 11 March 2016.

subsequent re-occupation of the same property, the rules of the general enforcement procedure shall be applicable based on the same decision/judgment and eviction order as an enforcement document”) constitutes a violation of the right to property and is in contradiction to the Constitution of the Republic of Kosovo and European and international human rights instruments.⁵⁹¹ So the ombudsman has recommended that Article 19, paragraph 7, of the Law on Kosovo Property Comparison and Verification Agency (“For any subsequent re-occupation [after two evictions] of the same property, the rules of the general enforcement procedure shall be applicable based on the same decision/judgment and eviction order as an enforcement document”), be removed entirely, and article 19, paragraph 6, Law on Kosovo Property Comparison and Verification Agency, shall be amended as follows: “For any reoccupation following the execution date of an eviction order, after notification by the claimant for illegal re-occupation of the property, the Agency shall re-execute it once more by re-evicting occupants from the property based on a newly issued warrant, following the procedure in paragraph 3-5 of this Article.”⁵⁹²

His appreciation of the people's advocate has been based on the constitution of Kosovo, Article 1 of the First Protocol of the European Convention on Human Rights, which states that "No one shall be deprived of his possessions, unless it is determined by law "this right is determined by the Constitution of Kosovo article 22.⁵⁹³ Also, the advocate when making recommendations for completing legal changes is based on the United Nations' Housing and Property Restitution for Refugees and Displaced Persons Principles (the so-called "Pinheiro Principles") provide further support, highlighting the State's positive obligation to protect the right to own property, by determining that “States should take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process. States should provide all relevant agencies with adequate financial, human and other resources to successfully complete their work in a just and timely manner” (emphasize is added).⁵⁹⁴ This issue is also foreseen with

⁵⁹¹ Ex officio Case No. 551/2017 Recommendation Report of the Ombudsperson of the Republic of Kosovo with regards to revocation of certain competencies of Kosovo Property Comparison and Verification Agency according to Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency page 10.

⁵⁹² Ibid page 11.

⁵⁹³ Ibid page 6.

⁵⁹⁴ Ibid.

the Strategy for Property Rights which foresees displaced persons as a special category and also with this strategy are foreseen and evaluations are made by the Ombudsman, where through objective 3 of this strategy is defined as: universally recognized by the European Convention on Human Rights and its Protocols, international law and Kosovo's Constitution, people displaced by conflict have a right to return to their homes and immovable properties. Following the adoption of the "Principles on Housing and Property Restitution for Refugees and Displaced Persons," also known as the "Pinheiro Principles,"⁶ the concept of return, as understood by the international community, has become "not simply the return to one's country for refugees or one's city or region for DPs, but the return to and re-assertion of control over one's original home, land or property; the process of housing and property restitution."⁵⁹⁵

The following recommendations of the Ombudsman, the Property Verification Agency together with the Office of the Prime Minister initiated procedures for issuing Law on Amending and Supplementing the Law no. 05/L-010 on Kosovo Property Comparison and Verification Agency based on the concept paper for Kosovo Property Comparison and Verification Agency issued by the Government of the Republic of Kosovo⁵⁹⁶ and with which the Concept Paper are preceded by all the recommendations of the ombudsman, procedures have been initiated law on Amending and Supplementing the Law no. 05/L-010 on Kosovo Property Comparison and Verification Agency, which foresees that the property be relieved of the occupant and be deported from the property for as many times as it is necessary.

The second mechanism, which is envisaged as a mechanism with legal effects by the action plan of the group for property rights, is the adoption of a property tax law by releasing displaced persons from property tax for the period that did not have the property of them or the property was overwhelmed where the law defines the matter as follows: Occupied properties, municipalities shall be obliged to release from all tax liabilities, persons whose property has been or is occupied according to a final

⁵⁹⁵ Kosovo National Strategy on Property Rights - Ministry of Justice December 2016 Objective 3: Guaranteeing and enforcing the property rights of displaced persons and non-majority communities page 10.

⁵⁹⁶ Decision No. 03/37 dated 23.03.2013 for approving the concept document for Kosovo Property Comparison and Verification Agency.

decision issued by a public authority, competent to review cases of illegal occupation in Kosovo, paragraph 1 of this Article shall apply to tax liabilities, arising from tax years during which the person had no access and didn't use his property (in any form), as confirmed in a final decision issued by a competent public authority, for the implementation of this Article (identification of persons whose property is occupied), Municipalities shall cooperate and exchange information with the Kosovo Property Comparison and Verification Agency, Courts or any other public authority, competent to review cases of illegal occupation in Kosovo, according to the procedures stipulated in the sub-legal act issued by the Government of Kosovo pursuant to paragraph 6 of Article 14 of this Law.⁵⁹⁷ Regarding the fulfillment of this action plan of the working group on the rights of the property, the legal aspect has remained to be done and the issuance of sub-laws that will be approved by the Government and which will concretize the implementation of these two points of the plan action. This working group has also defined several other points of action which were not sufficiently interested in research in this chapter.

10. Conclusions

In elaborating this issue, some unrealistic reports were encountered that determine the number of displaced persons. Furthermore, these reports that are based on data from the state of Serbia do not take into account realistic displacement data.

In this summary, I would like to emphasize that freedom of movement, guarantee of security and access to property is guaranteed by the state and it was also earlier when Kosovo was under UNMIK administration, adding that Kosovo's border and security in Kosovo was guaranteed by NATO with the presence of the Kosovo Force (KFOR)⁵⁹⁸ in Kosovo as a defense mission and also after the end of the war, while Kosovo was not a state, there were police structures that were within the UNMIK mission, as well as Kosovo police from the beginning up to now is the institution which presents a gender and ethnic composition based on these arguments, security for the return of all refugees and displaced persons is guaranteed both in terms of security and in

⁵⁹⁷ Official Gazette of the Republic of Kosovo / no. 2 / 15 February 2018, Pristina 1 Law no. 06/L –005 on Immovable property tax- article 39 page 30.

⁵⁹⁸ The Kosovo Force (KFOR) is a NATO-led international peacekeeping force which was responsible for establishing a secure environment in Kosovo

terms of guaranteeing human rights and equal treatment, adding that members of communities in Kosovo has exclusive rights guaranteed by constitution and law. Therefore I consider that the process of returning displaced people is a voluntary process and displaced persons from Kosovo in the region have spent a long period of almost 20 years and in one form or another they have been involved in the lives of countries in the regions and most of them do not they have an interest in return or need for backing or assisted return support, while some of them have sold properties and have acquired property in the displacement area, as well, most of them are being educated or employed at the resettlement site . The barriers to return are minimal exceptions make some areas where there is no will acceptance that displaced persons return this as there are some areas where there have been massacres during the war and missing persons these places are few and this controversy exists from the citizens but nevertheless there is security from the institutions and there is no other point , with the exception of the return of displaced Albanians in the northern part of Kosovo where the return there is impossible and there is no minimal security of either persons or property. I have elaborated this in an interview with some Albanian citizens of the northern part of Kosovo. Another challenge is the state budget which is considered inadequate in relation to the demands of displaced persons to return and who want to apply for assisted or assisted return and these persons need time until there is a possibility of budgeting in the fulfillment of their needs even though the Kosovo government allocates means of returned persons every year and also has donor support. As for internally displaced persons, all displaced persons in different parts of Kosovo require local integration, this has been verified during my research and during the profiling process of internally displaced persons, with the exception of displaced persons to the majority community who are displaced from the northern part of the country where most of them want to return to their country of origin or resettlement. An interesting phenomenon is the construction of houses for displaced persons where part of them as soon as they build the house sell them or abandon them as an example to the Serbian community where, after the construction of the houses, their sale and abandonment have whole villages where the houses were built and the properties were sold and abandoned. Regarding the return assistance issue that is being completed is the closure of collective centers where there is displacement within Kosovo. In the framework of this conclusion, I recommended

that the Serbian state to seriously address the issue of displaced persons by identifying the needs of displaced persons those who wish to return to submit to the state authority of Kosovo and the rest wanting integration in Serbia to integrate them, such a pledge is given in the framework of the regional initiative for the return of displaced persons.

It is also recommended that Kosovo displaced persons in the region should not treat as displaced persons from Kosovo in the region as refugees, since such a thing as I have emphasized in this chapter is defined by the Kosovo constitution and the refugee convention, 1951, while the treatment of displaced persons from Kosovo in the regions and such status was still under the circumstances created by the war since at that time Kosovo was not a state.

This treatment of IDPs as displaced persons in the region and within the country was first determined by the UNMIK Resolution 1244 (1999) with which was foreseen establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo⁵⁹⁹ up to the final solution of the status of Kosovo, as this resolution was recognized by Yugoslav state's subjectivity. This issue will be of serious consideration and also during the research carried out on the basis of the practices of some countries that have been displaced as a result of wars, this issue is addressed in two respects: over-border displaced persons are considered refugees within internally displaced persons displaced persons. I have also reviewed Georgia's practices on this subject, which I have based on the practice of mastery of the subject Nino Mchedlishvili entitled Internally Displaced Person in Georgia: Gaps in Law and Practice, which raises this issue in two aspects and that according to the 1951 Convention Relating to the Status of Refugees a "fug" i p on who has crossed an international border because of well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result

⁵⁹⁹ Resolution 1244 (1999) Adopted by the Security Council at its 4011th meeting, on 10 June 1999, Annex 1

of such events, is unable or owing to such fear, is unwilling to return to it.⁶⁰⁰ Similar to Refugees, Internal Displaced Persons are displaced for reasons beyond their control but unlike refugees, Internal Displaced Persons have not crossed an International border.⁶⁰¹ With respect to Internal Displaced Persons, the state is obligated to protect them, equal with other citizens of the state within its jurisdiction.⁶⁰² The reason for this issue that I have mentioned in the definitions is strengthened even more by concluding that the categorization of these persons in this way by an independent state such as Kosovo violates its legal and constitutional principles. This report on the treatment of refugees who have been seeking international assistance either for war or other issues exists with other countries and with the European Union (EU) countries where Kosovo has agreements with several states for the resettlement of persons who remain illegal in EU countries⁶⁰³.

The issuance of a civil law would provide clear criteria of who is considered a displaced person who will benefit legal protection and determine the period of benefit of displaced persons who will be assisted by the state as well as the criteria who can benefit would affect the solution of this problem and the rapid reduction of this number which is an unrealistic number and which is damaging Kosovo in relation to the EU and the international mechanisms. This issue should be covered by a law and by an agreement with states in the region where state obligations will be taken and a final solution to this issue will be created. Kosovo guarantees the right of the state of all its citizens, as well Kosovo is in the good way of restitution of the occupied properties to displaced persons. After the return of displaced persons' properties and identification of displaced persons who are seeking to feel in return Kosovo gradually needs to quench the institutional structures for the return of displaced persons such as the Ministry for Returns and Communities and the Return Component to go towards its closure. There is no legal or logical practice that goes beyond 20 years and the state assumes financial obligations. This issue should be

⁶⁰⁰ Nino Mchedlishvili Faculty of Law Lund University Internally Displaced Person in Georgia: Gaps in Law and Practice Master Thesis 30 Credits Supervisor: Göran Melander Masters Programme in International Human Rights Law Spring 2014 page 4.

⁶⁰¹ Ibid.

⁶⁰² Ibid.

⁶⁰³ Agreement between the Government of the Republic of Kosovo and the Government of Hungary, for readmission of persons which stay unlawfully in their territory states.

treated equally for all citizens and the state to guarantee social welfare and security for all members of communities who are within its territory. Some states, for example, Serbia, which claims to be part of the European Union, and also the European Union states have strict criteria for citizens who do not live long enough in that state, takes them the right of citizenship do not stay and their place of residence gives you the right of the state.

There is also an element where all citizens of the Serbian community have Serbian citizenship, and a part of the displaced persons in Serbia do not recognize the state of Kosovo and do not accept the Kosovo documents. Also, persons who receive assistance in the return process should provide assurance to state authorities that they really need return and will not abandon property built by the state, for this it should be determined that persons who abandon their property are obliged to create state compensation for these investments, then there are cases when the state has offered collective flats which displaced people have benefited and do not stay in them, should be analyzed and these collective properties turn to the state and then to place persons who live in collective centers. I recommend that the new strategy for community and return be more concrete as this strategy was very scarce and did not offer a concrete solution other than the figures and numbers as well as the objectives that were in this strategy to achieve were not fulfilled as it should.

The final conclusion of the return strategy should be the an ultimate strategy with clear objectives and also the state should make a thorough analysis of the millions of money for this non-return since 2018 through 2020 excluding the component of communities for returning displaced persons. The Government of Kosovo has allocated € 20,900,000 (twenty million and nine hundred thousand Euros).⁶⁰⁴ This analysis needs to be done in two directions to the benefit of some individuals who are not displaced persons as well as displaced persons who have benefited and abandoned their homes. Kosovo guarantees security and equal treatment for all citizens indiscriminately. Kosovo provides legal and physical security to all its citizens while the continuation of non-definition of legal criteria and strategic goals

⁶⁰⁴ Official Gazette of the Republic of Kosovo / no. 01 / 09 January 2018, Pristina Law no. 06/1-020 on the Budget of the Republic of Kosovo for year 2018 page 68.

for displaced persons will last for decades and endlessly by creating black spots and blackmail in international relations.

CHAPTER VI

INTER AND TRANSNATIONAL LEGAL NORMS AND HUMAN RIGHTS VALID TODAY'S IN KOSOVO

1. Violation of human rights in new history of Kosovo

Nowadays, the meaning of human rights is preceded by a whole constellation of scholars, lawyers, politicians and philosophers of XVI-XVIII century, such names as Hugo Grocius, Spinoso, Volter and Rousseau, they were the first to give impetus importance human equality and freedom. Grocius proclaimed that "the rights of every person are inviolable, inalienable and irrevocable because they are the data from the creator or they real law, the law of reason that is in congruence with nature, that is general, immutable, everlasting, whose directives invite for doing duties, whose prohibitions alienate us from evil.....", Spinoso argues that freedom of thought and speech were not in contradiction with democracy, but on the contrary, they were known as values of this system.

Voltaire also with his stubbornness was placed severely against the power that was defined by the Catholic Church and feudal society. Equally critical, but much more efficient was Rousseau who influenced the idea of "social contract" under which the individual belongs to entirety, and entirety acts according to the will of individuals ". Great Charter of Freedoms (Magna Carta Libertatum, 1215), Law of Rights (Bill of Rights, 1689), Declaration for Independence of United States of America (1776) and Statement on Human and civil rights (1789) are first documents in which it is explained about what can be considered today as a human right inserted into the legal category. According to Becoming a Human Rights Friendly School, human rights are a fundamental set of entitlements or guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms and human dignity.

The history of Kosovo Republic is a painful event regarding to protection of Human Rights and Freedom which were abused during the war between Serbs forces and Kosovo Liberation Army. Before starting with the statistics in relation to murders, deportations, massacres and unhuman maltreating's it is worth to point out that war

or conflict in Kosovo according to International countries which happened between Serbian Forces and Kosovo Liberation Army and that was followed with the intervention of NATO, because of violation of international rules and especially - International Conventions as: Geneva Conventions for improvement of the destiny of wounded and sick people in armed forces of the war, Geneva Conventions for improvement of treatment of detained of the war, Geneva Conventions on protection of civilians in the war and supplementary protocol of Geneva Conventions of 12 August 1949, regarding to protection of international armed conflicts victims (Protocol I).⁶⁰⁵ Serbian Forces during the war which occurred from 27.02.1998 till 20.06.1999⁶⁰⁶, they had committed atrocities by murdering 11.840 people, among them 1.392 children up to 18 years old, 296 up to 5 years, 1739 women, 1882 old people over 65 years, 1450 lost, also there are violated over 20.400 Albanian women.⁶⁰⁷ If it is considered the publication entitled under Government of Orders of Crimes in Kosovo by Human Rights Watch and we collect the data on massacres in Kosovo and murders in groups or individual the figures mentioned above are the same.⁶⁰⁸

After failing to find a peaceful way which would cause prevention of the ethnic cleansing, attempt to exterminate and the total deportation of Albanian population from their homes which acts cause such violations of human rights by Serbian Government in Kosovo. On 24 March 1999 NATO began its actions of bombing of Serbian points. This event was preceded by conferences of Rambullet, and after its failure, began intensive preparation of NATO for beginning of military actions against Serbia, according to the plan that were approved earlier by NATO.⁶⁰⁹ These bombardment began on 24.03.1999 and last completely 78 days in order to result with the victory of NATO and capitulation of Serbia.⁶¹⁰

⁶⁰⁵ Zejnullah Gruda, *Mbrojtja Ndërkombëtare e të Drejtave të Njeriut* (Prishtinë; Universiteti Fama, 2007) fq. 619-621.

⁶⁰⁶ Law no. 04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, members of Kosovo Liberation Army, Civilian Victims of War and their Families article 3 paragraph 1.8 Official gazette of the Republic of Kosova / no. 30 / 31 december 2011, Pristina.

⁶⁰⁷ <http://koha.net/?id=8&arkiva=1&l=145884>, accessed on 30th of August 2017

⁶⁰⁸ Përktheu nga Mustafa NANO, Virgjil MUÇI NËN PUSHTETIN E URDHRAVE Krimet e luftës në Kosovë HUMAN RIGHTS WATCH NEW YORK WASHINGTON LONDON BRUSSELS iv Copyright © tetor 2002 by Human Rights Watch All rights reserved. origjinali anglisht

⁶⁰⁹ Prof. Dr. Arsim Bajrami e drejta e Kosovës në tranzicion faqe 74

⁶¹⁰ Ibid.

In his speech, the secretary general of NATO Javier Solana, justified the airstrikes with the fact that NATO had to stop an authoritarian regime that made oppression of people in Europe by the end of XX century. “We have a moral duty to act in this way, the responsibility is ours and we have to accomplish that.”⁶¹¹ In addition leading Western countries directly justified intervention against Serbia with an argument that the concept of human rights is a supreme concept of global right and that sovereignty of the state is in the service of this principle.⁶¹²

2. Administration of Kosovo after the conflict

Kosovo after the war was put under provisory administration of the United Nations. It happened congruent to 1244 Resolution by Security Council of United Nations.⁶¹³ In accordance with the authorization given to it by resolution 1244 (1999) of the Security Council of the United Nations on June 10, 1999, authority for the issuance of legal acts was the Special Representative of the Secretary General of the United Nations in Kosovo.⁶¹⁴ He shall exercise all powers and represents the ultimate authority, legislative, executive and judicial powers in Kosovo.⁶¹⁵ On its authority is concentrated the whole power of the United Nations in Kosovo.⁶¹⁶ He also had promulgated the Regulation on the law applicable was determined by which legal acts which will be implemented in Kosovo.⁶¹⁷ Special Representative of the Secretary General had decided that the applicable law in Kosovo to be Regulations promulgated by Special Representative of the Secretary General and subsidiary instruments issued there under and the applicable law in Kosovo of 22 March 1989.⁶¹⁸ In case of conflict shall prevail regulations and subsidiary instruments issued thereunder⁶¹⁹, so with this regulation is stipulated that in case of conflict between these legal sources of positive law, priority will have regulations and subsidiary instruments issued thereunder.⁶²⁰ If there is a legal vacuum or lack of legislation then

⁶¹¹ Press Statement by Dr. Javier Solana, Secretary General of NATO, 23 March 1999 <http://www.nato.int/docu/pr/1999/p99-040e.htm>, accessed on 1st of September 2017.

⁶¹² Uroš Lipušček Parimi i sovranitetit shtetëror dhe e drejta për vetëvendosje: Çështja e Kosovës Thesis Kosova, nr. 1, 2008, Parimi i sovranitetit shtetëror dhe e drejta për vetëvendosje. Page 59.

⁶¹³ Resolution 1244 of 1999 adopted by Security Council in his session 4011 on 10 June 1999.

⁶¹⁴ Prof. Dr. Arsim Bajrami e drejta e Kosovës në tranzicion faqe 91

⁶¹⁵ Ibid page 91.

⁶¹⁶ Ibid.

⁶¹⁷ Resolution 1244 of 1999 adopted from Security Council in its session 4011 of 10 June 1999.

⁶¹⁸ UNMIK Regulation nr. 1999/24 for the applicable Law in Kosova.

⁶¹⁹ Ibid article 1.

⁶²⁰ Prof. Dr. Arsim Bajrami e drejta e Kosovës në tranzicion faqe 26.

will be implemented the law in force in Kosovo after 22 March 1989, which is not discriminatory⁶²¹

In this period of government of United Nations Mission in Kosovo-UNMIK from 1999, when Kosovo was placed under international protectorate, it was confronted and challenged by multiple transitions, three of them were the main for economic and socio-economic development and well governing of the country, as: transformation of the authoritarian political system to a democratic, the transition from a planned economy of state into a market economy, and the transfer of power from provisory structures of UNMIK into independent structures of Kosovo.⁶²²

In 1999, Kosovo was placed under UN administration where through the Special Representative of the Secretary General, it has promulgated the Constitutional Framework for Provisional Self-Governing based on the powers conferred by resolution 1244 (1999) of Security Council of United Nations of 10 June 1999, this Constitutional Framework entered into force on 15 May 2001 after undersigning of Special Representative of the Secretary General of United Nations. This Constitutional Framework determined elements of provisory governing of Kosovo and its legislation aspect of human rights, are seasoned legal elements under international law according to which Kosovo has guaranteed the application of several instruments of international law through Chapter 3 of Constitutional Framework, human rights under clause 3.1 It states that all persons in Kosovo enjoy their rights without any kind of discrimination and in full equality with fundamental human rights, then clause 3.2 it shows for self-government institutions that respect and provide internationally recognized human rights and fundamental freedoms set out in: a) Universal Declaration of Human Rights; b) European Convention for the Protection of Human Rights and Freedom and its protocols; c) International Covenant on Civil and Political Rights and its Protocols; d) Convention on the Elimination of All Forms of Racial Discrimination; e) Convention on the Elimination of All Forms of Racial Discrimination against Women; f) Convention for Rights of Children; g) European Charter of Regional and Minority Languages; h) Framework

⁶²¹ Ibid article 1 paragraph 1. 2.

⁶²² Organization and Functioning of Local Self-Government in Kosovo, published in August 2013, Prishtina by the Ministry of Local Government.

of the Council of Europe Convention for the Protection of National Minorities. 3.3 Provisions for rights and freedom set forth in these instruments are implied in Kosovo as a part of this Constitutional Framework.⁶²³

Therefore during this period Kosovo undergo a transition which in Kosovo primarily means the process of actual state creation and later independence through an international political process,⁶²⁴ also it means moving from a system of Communist dictatorship and monistic into a democratic system based on parliamentary democracy building the rule of law, respect of Rights and Freedom of the Citizens and other values of the society.⁶²⁵

3. Legal acts on Human Rights

Before elaborating the legal acts for human rights, a general legal acts notion will be presented, which define the human rights in Kosovo based on the constitution. General acts are fundamental resources of rights development and as such are the highest acts than special acts, therefore they are considered as resources, because through them derive special legal acts.⁶²⁶ Transitional legal acts that determined human rights and freedom in Kosovo actually are acts derived from Constitution, laws and other international acts applied directly in Kosovo as well as the international agreements. Previously these documents were issued by UNMIK, which promulgated some transitional essential acts of human rights, determined with Constitutional Framework and they were quite advanced and accept international standards in this field.⁶²⁷ These applicable acts derive from Constitution of Kosovo, where it is stated that fundamental human rights and freedom are inseparable, inalienable and inviolable and they are the base of rule of law in Kosovo⁶²⁸, also in terms of their implementation of such rights according to the international right and international Convents. Republic of Kosovo has received commitments for direct constitutional application of these conventions which are listed as follows:

⁶²³ Constitutional Framework for Provisional Self-Government, which entered into force to date. 15 May 2001 Chapter 3 Human Rights page 10,11.

⁶²⁴ Prof. Dr. Arsim Bajrami e drejta e Kosovës në tranzicion faqe 21.

⁶²⁵ Ibid faqe 22.

⁶²⁶ Prof.Dr.Sc Osman Ismaili, Libri Fillet e së drejtës e autorit, Prishtinë 2004 Faqe 179.

⁶²⁷ Ibid faqe 115.

⁶²⁸ The Constitution of Kosovo Chapter II Rights and Fundamental Freedoms, Article 21 of the General Principles <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>, accessed on 6th of September 2017.

Universal Declaration for Human Rights, European Convent for Protection of Fundamental Human Rights and Freedom and its protocols, International Convent for Civil and Political Rights and its protocols, Framework Convent of Council of Europe for Protection of National Minorities, Convent for Elimination of all Forms of Racial Discrimination, Convent for Elimination of all Forms of Discrimination against Women, Convent for the Rights of Children, Convent against Torture and Maltreatments and Other Cruel, Non-human and humiliating.⁶²⁹

To be more democratic and comprehensive, the Constitution should accomplish international standards that are created and are valuable, in terms of conditions that constitution should meet in a democratic country,⁶³⁰ therefore implementation and application of these constitutional and legal principles simultaneously which are international standards it would be the best measure of the implementation of the human rights and freedoms in Kosovo, it is fact that the implementation of these rights in Kosovo was a transitional process which was accomplished after the Constitution was enforced on 15 June which is equal to the international standards by incorporation of international conventions which represent kernel elements of human rights and freedom implementation in Kosovo.

Constitutional Standards are not codified in only one text, but they are similar with legislation standards that are created in Level of European Union,⁶³¹ therefore in this way Kosovo promulgated some laws which directly have to do with the human rights in common aspect as well as in the aspect of some particular rights and some specific rights as gender equality, language rights and community rights therefore in order to accomplish commitments and obligations stemming from EU process, Republic of Kosovo adopted the following laws: Law nr.5/L-020 for Gender Equality, Official Paper Republic of Kosovo /Nr.16/ of 26 June 2015, Pristine; Law Nr. 05/L-021 for protection by discrimination, Official Paper Republic of Kosovo /Nr.16/ of 26 June

⁶²⁹ The Constitution of Kosovo Chapter II Rights and Fundamental Freedoms, Article 22 Application of International Agreements and Instruments, as well as to this article note: the rights and freedoms guaranteed with international agreements and instruments following are guaranteed by the Constitution, directly applicable in Kosovo and have priority in case of conflict, against law provisions and other acts of public service <http://www.kryeministri-ks.net/repository/docs/ConstitutionIKosovo.pdf> accessed on 6th of September 2017

⁶³⁰ Prof.Dr.Sc.Arsim Bajrami dhe Mr.Sc. Xhavit Shala, Doracaku për përgatitjen e provimit të jurispodencës botuar nga Ministria e Drejtësisë Prishtinë, gushtë Sistemi Kushtetues dhe organizimi i jurispodencës, faqe 28.

⁶³¹ Ibid.

2015, Pristine; Law Nr. 03/L-047 For Protection and Promotion of Communities and their members Official Paper Republic of Kosovo /Nr.16/ of 26 June 2015, Pristine; (year iii) /nr.28) of 04 June 2008; Law 02/L-31 for Religious Freedom in Kosovo, Official Paper of Provisory Institution for Governing Kosovo, Pristine, /II year/ Nr.11, 01 April 2007; Law nr. 02/L-37 Official Paper of Provisory Institution for Governing Kosovo, Pristine, /II year/, Nr.10 01 March 2007 etc.⁶³²

Kosovo adopted several strategic documents and as well promulgated the national Strategy for Rights of People with restricted Abilities in Republic of Kosovo 2013-2023, this strategic document aims the improvement of the present conditions in the following fields: Health; Social Welfare; Employment; Education; Local Self Governance; Legal Protection; Participation, Information and Communication; Statistics and Access. With the aim of improving the present condition in priority fields selected in the strategy, strategic objectives have been defined which will detailed and specified with concrete actions, measurable, specific, achievable and real indicators Institutions responsible for each activity will have a definite time frame and a budget line to cover the activities defined in the action plan for the implementation of the strategy. Furthermore, the strategy will serve as a guideline for the institutions of the Republic of Kosovo to work within non-discriminatory principles, respecting the inherent dignity, individual autonomy including the freedom to make their own decisions and the independence of persons, improvement of life quality and welfare, full and effective participation and all inclusion in society.⁶³³

The Government of Kosovo has drafted the Strategy for Rights of Children. This Strategy is a document which identifies priority issues who need immediate intervention and on that base will be of maximum efforts to provide children necessary protection and care for their welfare and grow up in order that children to be protected effectively from all forms of discrimination.⁶³⁴

⁶³²Official Paper Republic of Kosova.

⁶³³ National Strategy on The Rights of Persons with Disabilities in the Republic of Kosovo 2013 – 2023, page 7.

⁶³⁴ Report on the implementation of the Strategy and National Action Plan for Children's Rights in Kosovo (2009- 2013).

4. Challenges and difficulties for not complying the law on human rights

Kosovo despite the legal application of several international instruments as it is The Convention on Human Rights a key mechanism again in practice it faces with many challenges especially obstacles for implementation of this convent. Therefore, the Council of Europe organized An International Conference “Interpretation and Implementation of the European Convention on Human Rights by Constitutional Courts of the Western Balkans” was held at Hotel “Swiss Diamond” in Pristina, Kosovo. The event brought together Presidents and judges of constitutional courts of the Western Balkans and Turkey, as well as academics and legal professionals from across the Council of Europe member states.⁶³⁵ The participants discussed actual issues which stand before constitutional courts in application and interpretation of the ECHR, and their relationship with the Strasbourg Court.⁶³⁶ Challenging is also the implementation of law, in relation to it is taken an example prepared by Sadete DEMAJ May 14, 2012 who pointed out as follows the legal infrastructure in Kosovo is in full compliance with international standards. It still faces obstacles for implementation, his is due to the lack of financial and human resources, administrative obstacles and sometimes lack of adequate political will.⁶³⁷

The implementation of the legislation requires more financial support, human capacity with sufficient expertise and more efforts on coordinating cooperation. Information sharing among main stakeholders’ who are in charge for drafting and implementation of legislation is essential.⁶³⁸ The capstone project survey related to five different groups of surveyed respondent’s it showed, almost all of them have expressed concerns about the progress and effectiveness of institutions in the implementation of the legislation (see figure.)

⁶³⁵ http://www.coe.int/t/dgi/hr-natimplement/archiveSelectYear_en.asp , accessed on 11th of September 2017.

⁶³⁶ Ibid.

⁶³⁷ Sadete Demaj, Rochester Institute of Technology RIT Scholar Works Theses Thesis/Dissertation Collections 2012 Strengthening the role and capacities of Kosovo institutions for effective implementation of legislation.

⁶³⁸ Ibid.

Table 7 about the progress and effectiveness of institutions in the implementation of the legislation

	Legal Department (Ministry)	Legal officer Municipality	Police	Judges	Citizens
Concerned	58%	42%	58%	51%	53%
Very concerned	10%	8%	7%	7%	31%
Not concerned	16%	42%	21%	38	5%
Not sure	16%	8%	14%	4%	11%

The survey results from the project show that 68% of legal departments are being concerned and very concerned about the implementation of the legislation. The levels of concern of the police are very similar at 65%. There were 58% of judges concerned and very concerned, while 50% of legal officers in municipalities are concerned and very concerned. The most concerned and very concerned about the implementation of the legislation are citizens at approximately 84%.⁶³⁹ The Government of Kosovo has drafted the strategy for human rights whereof is pointed out that the promotion of human rights remains a great challenge for Kosovo, it is necessary to enforce the efforts in advancing the application of law and current politics, enforceability of remedies and administrative means in relation to human rights violations must be improved in all levels of Government.⁶⁴⁰ Range of institutions and bodies dealing with human rights in central and local level is highly distributed, sometimes even transversal.⁶⁴¹

The Government of Kosovo in order to coordinate and imply much better the laws has created administrative structures in frame of Legal Departments which structures are so called “Division for Application and Supervising” and which intended application of legislation which were created based on Administrative Directive 13/2007 for Organization and Activity for Legal Services in Executive Branch of Government of Kosovo , whereas later these structures are repealed with Regulation

⁶³⁹ Ibid.

⁶⁴⁰ Draft Strategy and Action Plan for Human Rights in the Republic of Kosovo.

⁶⁴¹ Ibid.

No.13/2013 On Government Legal Service ⁶⁴², anyhow this Regulation has advanced the role of such Divisions which play a key role in application of law.

5. Implementation of human rights in low level of Judiciary

Implementation of human rights in low level of Judiciary is influenced by the war consequences and before war system in Kosovo, wherein this legal system as all other institutional areas in Kosovo, had seriously suffered during '90 or apartheid,⁶⁴³ it is well known the totalitarian regime then the war and application of a mixed structure of applicable legislation as it is pointed out in inter and transnational legal norms and human rights valid today's in Kosovo, were main factors which is faced in legal system in Kosovo.

The justice system in Kosovo, after the war had been operated under the umbrella of UNMIK and it was followed by numerous problems and challenges judges and prosecutors unprepared basing in the fact, that these judges and prosecutors had not practiced their professions for 10 years before the war since in 1989 under siege and military police to enforce the Kosovo parliament is voted and the votes were counted in incorrect way and non-transparency, wherein Kosovo lost its autonomy,⁶⁴⁴ and the justice system of Kosovo was out of function since all Albanian judges and prosecutors were dismissed and they substituted them with judges and prosecutors of Milloshevic regime. UNMIK after establishing administration in Kosovo created mechanisms which at the very beginning has selected an emergency situation since justice system and Kosovo society were in total collapse as they had been emerging from war. In September of 1999, SRSC established Judicial Advisory Committee, which substituted Joint Advisory Council on Provisional Judicial Appointments. Judicial Advisory Committee, was composed by eight local experts and three international experts, selected and assigned by SRSC.⁶⁴⁵

⁶⁴² Regulation No.13/2013 On Government Legal Service article 23, http://www.kryeministri-ks.net/repository/docs/Rregullore_Nr132013_per_sherbimin_ligjor_qeveritar.pdf, accessed on 15th of September 2017.

⁶⁴³ Adem Gashi and Betim Musliu Kosovo Law Institute Friedrich Ebert Stiftung: executive Overview, page 4.

⁶⁴⁴ <http://www.kosovapress.com/sq/lajme/25-vjet-nga-suprimimi-i-autonomise-se-kosoves> accessed on 16th of September 2017.

⁶⁴⁵ Raport mbi: Ri-Themelimin dhe Reformimin e Sistemit të Drejtësisë në Kosovë 1999 - 2011 publikuar nga: Qendra Kosovare për Studime të Sigurisë (QKSS) "Sistemi Emergjent Gjyqësor".

By the end of 1999, the emergency system of justice had 301 judges and prosecutors and 238 assistant judges.⁶⁴⁶ According to UNMIK, against judges , prosecutors , lawyers, particularly against judges and prosecutors of emergency system of justice, began to exercise pressure and to be threatened during doing their duties.⁶⁴⁷ Legal System in Kosovo hat to be subjected to a thorough reform in times of Administration of Mission of United Statetes in Kosovo (UNMIK), but the process of electoral reform is influenced first by the unresolved issue of final status made to this delay in this regard⁶⁴⁸ , Nevertheless UNMIK did the first step since in cooperation with Provisory Self-Government Institutions of Kosovo (PSGIK) were engaged to promulgate politics, laws and to establish mechanisms and institutions which will influence positively in system, where great achievement was the entry into force of the Criminal Code and the Criminal Procedure Code in 2004.⁶⁴⁹ It also can be considered positive judicial structures where the Constitutional Framework for Provisional Self-Government of Kosovo has determined the structure of the courts in Kosovo.⁶⁵⁰ Accordingly Kosovo has Supreme Court, District Courts, Municipal Courts and Criminal Courts.⁶⁵¹

Besides UNMIK in Kosovo Legal System was assisted also by many international partners and International Organizations as USAID, National center for State Courts, etc. Since 2001, Agency of the United States of America (USAID) has done a lot to support the development of Legal System in Kosovo.⁶⁵² In cooperation with homologues of local Government and International authorities, USAID has been activated to facilitate creation of an independent and impartial judiciary, in order to improve judicial actions, to strengthen professional ethics to support participation of minorities and to increase public awareness on judicial system.⁶⁵³

⁶⁴⁶ Ibid.

⁶⁴⁷ Ibid.

⁶⁴⁸ Rafet Haxha, Çështjet e reformës në sistemin gjyqësor të Kosovës – RSHSL, Konferenca Vjetore 2008, page 4.

⁶⁴⁹ Adem Gashi and Betim Musliu Kosovo Law Institute Friedrich Ebert Stiftung executive Overview page 5.

⁶⁵⁰ Prof. Dr. Arsim Bajrami, e drejta e Kosovës në tranzicion, faqe 163.

⁶⁵¹ Ibid.

⁶⁵² <http://www.drejtesia-ks.org> accessed on 20th of September 2017.

⁶⁵³ Ibid.

Under the contract with USAID, NCSC launched the Kosovo Justice Support Program (KJSP) in June 2007.⁶⁵⁴ The underlying objective of all KJSP activities is to support an independent judiciary, and to increase the operational capacity of the system to administer justice fairly and efficiently. The KJSP Team is staffed with subject matter experts, experienced project managers, and implementation specialists—including 6 long-term international advisors and a team of 20 local advisors and project support staff.⁶⁵⁵ This project It has been aimed at improving the functioning of the judiciary in Kosovo having achieved these objectives Improve the capacity of the Kosovo Judicial Council, Improve court administration, Ethics and professional training of judges, prosecutors, and court staff, Effective representation of non-Albanian populations, Legal drafting and policy formulation within the MOJ, Establish an effective Public Prosecutors Office Accomplishments.⁶⁵⁶

6. Functioning of Judiciary system in Kosovo after declaration of independence

Justice not only in Kosovo but everywhere should mean equal treating before law for all therefore without entering in elaborating of this issue it will be quoted a saying of Aristotle “people who by nature are equal should also have in nature equal rights and equal dignity”. The equality of rights before the law mainly means jurisdiction equality of citizens and exclusion of any discrimination before of the law and in consumption of rights and freedoms guaranteed by the highest jurisdiction act.⁶⁵⁷ this right should be ensured for all citizens, in the Constitutions of many countries of the world, this right is guaranteed through constitutional norms, for instance “All citizens are equal before the law, everyone enjoys the right for protection, without discrimination” or “all citizens enjoy equal protection before the law”, or better to say all people are equal before the law and enjoy equally the right to be protected from it.⁶⁵⁸

⁶⁵⁴ <http://www.ncscinternational.org/Projects/Europe-and-Eurasia/Kosovo-KLP.aspx> , accessed on 20th of September 2017.

⁶⁵⁵ Ibid.

⁶⁵⁶ Ibid.

⁶⁵⁷ Revistë shkenore juridike, Opinio Juris, nr.1/2015 faqe 137.

⁶⁵⁸ Ibid.

Kosovo after its declaration of independence on 8 February 2008 created a necessary legal structure in justice system basing on Ahtisaari package, therefore the entering into force of Constitution of Kosovo Republic and promulgation of new laws it has avoided in a level of complexity of justice system.⁶⁵⁹ The constitution determined Kosovo as a democratic Republic.⁶⁶⁰

The Republic of Kosovo has arranged the justice system in general but particularly juridical system by creating a legal solid infrastructure since it has promulgated several laws which interfere in jurisdiction system and largely regulated a legal system which has advanced and improved protection of human rights and freedom in this aspect. In the contest Kosovo has its judicial institute which is independent Body and acts together with JPCK or institutions which follow up its duties to coordinate the necessities for professional training of judges and prosecutors of Kosovo, for training of candidates for judges and prosecutors, and other issues in relation to justice system of Kosovo.⁶⁶¹

The following is a list of the laws regulating the judicial system matter in general: Code nr. 04/L-123 of Penal Procedure, Code Nr. 03/L-193 of Justice for Minor children, Code nr. 04/L-082 Penal Code of Kosovo Republic, Law nr. 03/L-199 for Courts, this law has been amended and supplemented twice with Law Nr. 05/L -032 for amending and supplementing the Law Nr.03/L-199 for Courts and Law Nr. 04/L-171 for amending and supplementing the Law nr. 03/L-199 for Courts, Law nr. 03/L-195 for ombudsman, Law nr. 03/L-191 for execution of criminal sanctions, Law nr. 03/L-223 for the Kosovo Judicial Council, Law nr. 05/L -094 for amending and supplementing the Law nr. 03/L-223 for the Kosovo Judicial Council, Law Nr. 05/L -033 for amending and supplementing the Law nr. 03/L-223 for the Kosovo Judicial Council.⁶⁶²

With the new law Nr. 03/L-199 on Courts by which are regulated organization functioning and jurisdiction of the courts in Republic of Kosovo⁶⁶³, is done the

⁶⁵⁹ Adem Gashi and Betim Musliu , Kosovo Law Institute Friedrich Ebert Stiftung executive Overview page III. Legislation reform, page 14.

⁶⁶⁰ Ibid.

⁶⁶¹ Law on the Establishment of Kosovo Judicial Institute general provisions of Article 1, paragraph 1. 8 Official Gazette of the Republic of Kosovës / Pristina: Year III / No. 23 / April 1, 2008.

⁶⁶² Official Gazette gzk.rks-gov.net/ActDetail.aspx?ActID=2713 Republic of kosovo, accessed on 23rd of September 2017.

⁶⁶³ Law Nr. 03 / 1-199 on Courts Article 1, Official Gazette of the Republic of Kosovo / PRISTINA: YEAR V / nr. 79/24 August 2010.

change of structure and organizational division of Courts where it is pointed out that the system of Courts in the Republic of Kosovo consists of the Basic Court, Court of Appeal and Supreme Court, whereas in order to act more efficiently the appropriate court in frame of Appeal Court and Basic Courts can be established Departments or Divisions.⁶⁶⁴ Further, it will be represented in a schedule the extension of basic courts according to their Branches. In total there are seven basic courts of certain regions whereas in the other figure it is presented the extension of basic courts according to their branches, in a red color still are not established these branches.

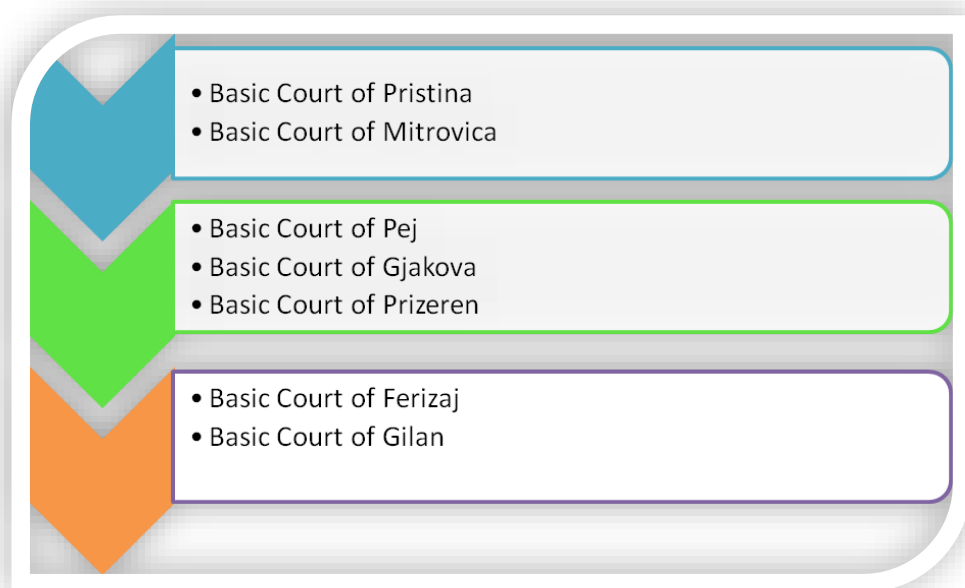


Figure 6 Basic Courts in Kosovo

⁶⁶⁴ Ibid.

Table 8 Branches of the Basic Courts in Kosovo

Basic Court in Prishtinë	Branch in Podujeve	Branch in Obiliq	Branch in Fushë Kosovë	Branch in Drenas	Branch in Lipjan	
Basic Court in Mitrovicë	Branch in Mitrovicë Veriore	Branch in Skenderaj	Branch in Vushtrri	Branch in Leposaviq	Branch in Zveqan	Branch in Zubipotok
Basic Court in Pejë	Branch in Istog	Branch in në Klinë	Branch in në Deqan	Branch in Junik		
Basic Court in Gjakovë	Branch in Malisheve	Branch in Rahovec				
Basic Court in Gjilan	Branch in Kamenicë	Branch in në Viti	Branch in Partesh	Branch in Klllokot		
Basic Court in Ferizaj	Branch in Shtime	Branch in në Shterpcë	Branch in Kaqanik	Branch in Hani i Elezit		
Basic Court in Ferizaj	Branch in Suharekë	Branch in në Dragash	Branch in Mamushë			

The Law on Courts guarantees an approach which courts treat all persons equally and no one can be discriminated against on grounds of race, color, language, religion, and political opinions and so on, national and social origin, relation with any community, ownership, economic and social situation, sexual orientation, birth, restricted abilities or any other personal status.⁶⁶⁵

The term discrimination is used to note an unjust treatment or denial of normal privileges of people because of race, gender, nationality or religion.⁶⁶⁶ It will be

⁶⁶⁵ Ibid.

⁶⁶⁶ Prof.dr Zejnullah Gruda Mbrojtja ndërkombëtare e të drejtave të njëriut libri I-III botimi katër 2007 Nocioni i Diskriminimit, Prishtinë faqe 171.

considered that constitutional and legal system of Republic Kosovo is advanced. The Kosovo judiciary still faces various challenges, among the challenges is the great number of unsolved cases, then the delay of cases, long time detention, not the proper application of legal provisions because of un sufficient knowledge of some rules by judges, small number of judges, enormous growth of demands in some big centers, are elements which affect in human rights violations, whereas another substantial element which is considered deny to have access in justice is not punishment and not development of trials but state of Kosovo in this case. Bodies of justice for war crimes that are committed by Serbian Regime, and obsolescence of offenses, even though the Secretariat of Council of Justice of Kosovo (SCJK) declared that there aren't obsolescence of offenses in Kosovo Courts, monitoring team of BIRN identified at least 22 cases in 2015.⁶⁶⁷

7. Challenges, obstacles and the difficulties of implementing the law on the Kosovo judiciary

Nowadays, Kosovo faces several obstacles and challenges in relation with rule of law regarding the human rights realization in a low level judiciary prior to basic courts and their branches as well is in the chain of judicial system in general, as the main challenge remains independence of the judicial system which is main condition for functioning democratic society in Kosovo. This independence will be created by maintaining judiciary from interference of the international factor in its duties, then by influences of local factor etc.⁶⁶⁸

The independence of judicial system is a taboo issue which is elaborated very early by different scholars as Karl Lowenstein who the Balance between Legislative and Executive Power: A Study in Comparative Constitutional Law had pointed out for all intents and purposes, however, it became axiomatic for constitutional government that, in the threefold division of powers, the judiciary was functionally divorced from the other two, even where appointment by the executive seemed indispensable.⁶⁶⁹ Additionally, the judicial System of Kosovo was facilitated by Europe Union Mission for Rule of law in Republic of Kosovo (EULEX), legal basis for the

⁶⁶⁷ Rrjeti Ballkanik Për Gazetari Hulumtuese (Birn),Raport i monitorimit të Gjykatave 2015 page 17.

⁶⁶⁸ Rafet Haxha Çështjet e reformës në sistemin gjyqësor të Kosovës – RSHSL, Konferenca Vjetore 2008, Prishtinë , page 11.

⁶⁶⁹ Karl Loewenstein University of Chicago Law Review Volume 5 | Issue 4 Article 2 ,6-1-1938 The Balance between Legislative and Executive Power: A Study in Comparative Constitutional Law page 573.

functioning of this mission is determined by Council through joint action of the European Union 2008/124/CFSP on 4 February 2008⁶⁷⁰, on this base EULEX functions in Framework of general resolution 1244 of Security Council of UNO.⁶⁷¹

EULEX Kosovo is created with the general objective to facilitate institutions, justice Bodies and Agencies for implementation of law in Kosovo in development of effective justice based in rule of law and free from political influences.⁶⁷² This mission is the largest established in frame of joint politics for Security and Defense (CSDP) of European Union.⁶⁷³ The mandate of this mission is extended twice, once in 2014 till 15 June 2016 pursuant to the Law nr.04/L-274 for International Agreement Ratification between Republic of Kosovo and European Union for rule of law in Kosovo,⁶⁷⁴ and the second time on 14 June 2016, the Council extended the mandate of the EU rule of law mission (EULEX) in Kosovo until 14 June 2018.⁶⁷⁵ However, the mission is criticized constantly that neither it undertook proper actions to fight negative phenomena in Kosovo and corruption in different levels nor any action to punish war crimes that were committed by Milloshevic regime against ethnic Albanian population even though it is known that those who committed crimes were living in some parts of Kosovo particularly in North of Kosovo, where since the declaration of Independence of Kosovo up to the organization of local elections in November 2013 Kosovo didn't extend its power in that part except international institutions and mechanisms as EULEX. In relation to this in an interview of News Agency "Beta" held on 26 November 2013 Mrs. Atifete Jahjaga- ex President of Kosovo said: "A good process without any problem, with a inclusiveness, that was the intention of these elections that are organized for very first time in these 14 years after the war held in Kosovo territory".⁶⁷⁶ Therefore, the nonfunctioning of these judicial bodies always caused violation of human rights in that part as in the aspect of non-punishment of the criminals as well in the aspect of creating rule of law which

⁶⁷⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008E0124>, accessed on 24th of September 2017.

⁶⁷¹ <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8>, accessed on 25th of September 2017.

⁶⁷² <http://www.eulex-kosovo.eu/?page=1,44,197>, accessed on 25th of September 2017.

⁶⁷³ Ibid.

⁶⁷⁴ Official Gazette of the Republic of Kosovo / No.32 / 15 May 2014.

⁶⁷⁵ http://www.consilium.europa.eu/press-releases-pdf/2016/6/47244642526_en.pdf, accessed on 29th of September 2017.

⁶⁷⁶ <http://www.president-ksgov.net/>, accessed on 29th of September 2017.

remains defiant for many years and it will be called as a black point in the Map of European Continent.

Nevertheless, this mission had undertook some minor activities in relation to these issues and punished Serbs leader Oliver Ivanovic for war crimes committed against civil population. Ivanovic pleaded not guilty to ordering the murder of ethnic Albanians in Mitrovica in April 1999 during the NATO bombing, when he was allegedly the leader of a paramilitary police unit,⁶⁷⁷ but the court on Thursday found him guilty and jailed him for nine years.⁶⁷⁸ However it found him not guilty of inciting the killing of ethnic Albanians during unrest that erupted in Mitrovica in February 2000, when many Albanians were driven out of the town by Serbs, ten were killed and many more wounded, when Ivanovic was arrested in January 2014, it sparked protests among Kosovo Serbs, who saw it as another attempt to pressurize their dwindling minority to leave Belgrade's former province.⁶⁷⁹ Despite this there are many facts and arguments on crimes that committed Slobodan Millosheviq in Kosovo, this mission undertook some minor and not serious actions for bleaching of hundreds of massacres committed against civil Albanian population.

But even so, the Institute of War Crimes Investigation had an idea to gather data for cases in relation to war crimes in Kosovo that justice treated or investigated. In this aspect it is given a schedule with data for sentenced people by Haga Tribunal established for war crimes in ex-Yugoslavia.⁶⁸⁰

⁶⁷⁷ BALKAN TRANSITIONAL JUSTICE initiative is a regional initiative which has been supported by the European Commission, the Federal Department of Foreign Affairs of Switzerland, the British Foreign and Commonwealth Office FCO and Robert Bosch Stiftung that aims to improve the general public's understanding of transitional justice issues in former Yugoslav countries (Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia).

⁶⁷⁸ Ibid.

⁶⁷⁹ Ibid.

⁶⁸⁰ The data obtained at the Institute for Research of Crimes of War in Kosovo with the document to the Ministry of Foreign Affairs, the Institute for Research of Crimes of War in Kosovo is a public institution researchers, with the aim of collecting, systematization, processing and publication of data crimes against peace, war crimes, crimes against humanity and acts of genocide committed in Kosovo during 1998, until June 1999. This institute will operate under the Ministry of Justice and has started work on 1 June 2011.

Table 9 data for sentenced people by Hauge Tribunal

	Albanians	Serbs	Total
Charged	6	12	18
Released	4	2	6
Sentenced	2	6	8
Died	-	3	3
Trail in continuance	-	1	1

At Kosovo courts, respectively according to EULEX Mission and Special Procurement of Kosovo are inherited from UNMIK 1200 cases of war crimes, they are closed or rejected (because of lack of proofs) 500 from them 300 cases are under treating by Special Procurement of Kosovo, 300 cases are being treated by Investigation Unit of war crimes by Kosovo Police and EULEX, there were reviewed more than 800.000 pages in relation to these cases.⁶⁸¹ There are initiated 51 new cases of war crimes, by including for the first time crimes of sexual violence or rape, local prosecutors and EULEX are investigating 100 cases for war crimes and 5 cases are in trial in total till 2014 and under legal frame of Kosovo are sentenced 15 cases of war crimes 7 of them are ethnic Serbians and 8 of them Albanians, most suspected of war crimes committed against Albanians of Kosovo are Serbians of Kosovo or Serbia citizens.⁶⁸² Most of them don't live in Kosovo so they are in Serbia, Kosovo judiciary by including also EULEX can develop investigation against suspected perpetrators of crimes but only in Kosovo, and legislation of Kosovo doesn't anticipate sentence in absentia, this made it impossible to have trials for cases outside Kosovo.

EULEX Mission had undertook some actions against KLA Commanders of Kosovo on 27 May, A panel of Judges of EULEX in Basic Court in Mitrovica took a decision for 15 defendants for war crimes, Drenica I and Drenica II. In the case of Drenica I, the Court punished the Ambassador of Kosovo in the Republic of Albania, Sylejman Selimi and Mayor of Skenderaj Sami Lushtaku⁶⁸³, while later the Appeal Court

⁶⁸¹ Ibid.

⁶⁸² Ibid.

⁶⁸³ State reports Practices Human Rights for 2015 Department of State of the United States • Bureau of Democracy, Human Rights and Labor Page 5.

realized from the charge Mr. Lushtaku for criminal offense murder and punished him for commanding responsibilities by reducing the sentence from 12 to 7 years. At the end of the cycle of injustice to Mr. Lushtaku who suffered 4 years and 1 month in prison⁶⁸⁴, he was released from jail, where the Supreme Court has decided to release Sami Lushtaku from all war crimes charges, for which he was sentenced to 12 years in prison by the Basic Court in North Mitrovica, and then 7 years in prison from Appeal.⁶⁸⁵ Such sentences from Kosovar society were considered justice massacre since they are punished in capital sentences for some people that were beat in war circumstances and the same court sentenced Oliver Ivanovic 9 years imprisonment because he killed 12 people. As it is pointed out, the Kosovar society was very concerned with such trial and Kosovo Assembly promulgated a Resolution under point 1 it is stated that the Liberation War of Kosovo which was led by KLA, in intention to liberate Kosovo and to bring Freedom and Independence of Kosovo, with defense and Liberation character, by respecting international war rights and standards, directed exclusively against occupying police and military forces and administration of Serbia in Kosovo, KLA is defended and appreciated by every citizen and institutions of Kosovo Republic.⁶⁸⁶ Whereas under point 8,9 it is pretended that there were violated the human rights guaranteed by Constitution and applicable legislation in the Republic of Kosova, and they should be implemented also for soldiers of KLA they their right to a fair and impartial trial and as every other citizen to guarantee equal rights in procedure in front of courts other State Bodies and bearers of public competences, all institutions and citizens of Republic Kosovo should undertake all necessary measures congruent to Constitution and applicable legislation to defend participants of KLA that can be subjected to discriminated actions as e result of being KLA member.⁶⁸⁷

Such cases of unjustified trials in some cases have diminished the image of judiciary which should be based in judiciary Ethic Code. The Ethic Code is considered as indispensable factor to increase confidence of public in judiciary system which is

⁶⁸⁴ <https://www.gazetaexpress.com/lajme/sami-lushtaku-kerkon-1-4-milione-demshperblim-per-kohen-e-kaluar-padrejtesisht-ne-burg-597891/>, accessed on 6th of October 2017.

⁶⁸⁵ <https://www.gazetaexpress.com/lajme/pdk-lirimi-i-lushtakut-i-vonuar-por-i-drejte-398556/?archive=1> accessed on 9th of October 2017.

⁶⁸⁶ Rezoluta Nr. 05-R-006 Prishtinë, më 28 tetor 2016.

⁶⁸⁷ Ibid.

present in some countries with developed democracy as in the USA, as well in Kosovo on 25 April 2006 is promulgated the Ethic Code of judiciary by judiciary Council of Kosovo, which represents a set of standards and moral norms that facilitates the judges to provide more basic abilities, ability to judge and decide honestly and biased, without being influenced by external factors and free from any form of pressure.⁶⁸⁸

8. Detention

One element which undermines the elementary rights or freedom of movement is detention, as international law as well local law, anticipate that detention should be directed by court only then when is really necessary and through decision which consist appropriate justification and sufficient.⁶⁸⁹ Long detentions before and during judicial proceedings; remain problem, judges usually require detention without asking justification to support with proofs.⁶⁹⁰ Long detention partly occurred because of non-efficacy and corruption in judiciary. Detention is a legal measure anticipated by the Penal Code and Code of penal Procedure.⁶⁹¹ Local legislation states that, Detention may be imposed only in conditions and procedures anticipated with the Code of Penal Procedure, and also it is said that detention should be reduced in the shortest possible time. When the defendant is detained, all bodies that take part in penal procedure and other bodies that offer legal aid they are obliged to act with particular urgency,⁶⁹² this issue is treated in the same way with the right of penal procedure whereof it is required to reduce detention in a shorter possible time and in situation when the defendant remains in detention, it is required by all bodies that take part in penal procedure and other bodies that offer legal aid they are obliged to act with particular urgency.⁶⁹³

⁶⁸⁸ Mc. Albina Shabani – Rama, Kodi i Etikës gjyqësore si faktor i domosdoshëm për rritjen e besimit të publikut në sistemin gjyqësorë, Justicia revistë shkencore juridike e kandidatëve të programit të trajnimit fillestar 2013/2015 në institutin gjyqësor të Kosovës viti V, nr 5/2015 prishtinë, 2015 botues Instituti Gjyqësor i Kosovës, faqe 128.

⁶⁸⁹ Department of Human Rights and Communities Department Legal System Monitoring Use of Detention criminal proceedings Kosovo: Comprehensive Review and Analysis of Residual Concerns - Part II - March 2010.

⁶⁹⁰ State reports Practices Human Rights for 2015 Department of State of the United States • Bureau of Democracy, Human Rights and Labor, page 10.

⁶⁹¹ Doracaku për përgatitjen e provimit të jurisopodencës botuar nga Ministria e Drejtësisë Prishtinë, gushtë pjesa e drejta penale, page 121.

Code no. 04 / L-123 of the Criminal Procedure Article 185 detention

<https://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Procedure%20Code.pdf> accessed on 27th of October 2017.

⁶⁹³ Doracaku për përgatitjen e provimit të jurisopodencës botuar nga Ministria e Drejtësisë Prishtinë, gushtë pjesa e drejta e procedurës penale, paraburgimi page 263.

The detention is determined in order to obtain the defendant in criminal proceedings, therefore according to the definition given in jurisprudence's manual, detention is a heavy measure to ensure the presence of defendant in criminal proceeding.⁶⁹⁴ The detention have to rely in the facts, whereof the court in a particular way evaluates the accuracy of contradictory evidence, reasons of non-approving of parties proposal, and reasons in which is based in salvation of this juridical issue, particularly in the case of verification of existence of criminal offense and criminal responsibilities of the defendant, and in the case of application of certain provisions of criminal law against the defendant and his deed.⁶⁹⁵

During a research of Organization for Security and Cooperation of Europe (OSCE) it noticed that in most monitored cases, the court has offered little justification or no reason to show the need for imposing detention.⁶⁹⁶ Courts in many matters used standardized and stereotypical formulations without giving specific facts of the case, by failing to provide an explanation for the specific circumstances of the case that allow deprivation of liberty against the defendant, in fact, often it seems that only the courts approve prosecutors' requests automatically to determine the mass detention, that usually they are poorly justified.⁶⁹⁷

The first indispensable element for legality of detention is “grounded suspicion” that the defendant committed criminal offense pursuant to Criminal Procedure Code of Kosovo, it is pointed out that state prosecutor on his request to determine detention do not succeed to verify the grounded suspicion that the detained person has committed the suspicion act, the judge of the preliminary procedure releases the defendant.⁶⁹⁸ The issue of detention is also anticipated in the Constitution of Kosovo wherein it is stated that any one that is deprived of liberty without Court order within 48 hours must be sent before the judge who decides to detain or release him/her not

⁶⁹⁴ Ibid.

⁶⁹⁵ Code no. 04 / L-123 of Criminal Procedure Article 185

detention <https://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Procedure%20Code.pdf> accessed on 28th of October 2017.

⁶⁹⁶ Department of Human Rights and Communities Department Legal System Monitoring Use of Detention in Criminal Proceedings in Kosovo general lack of reference to facts.

⁶⁹⁷ Ibid.

⁶⁹⁸ Code no. 04 / L-123 of the Criminal Procedure Article 165 Request for the measure to ensure the presence of the defendant <https://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Procedure%20Code.pdf> accessed on 1st of November 2017.

later than 48 hours from the moment he was brought to the court.⁶⁹⁹ Everyone who is arrested, has the right to come in front of the judge for a determined period of time, or to be released waiting for trial, except when the judge finds that the person poses a danger to the community or to escape from trial.⁷⁰⁰ According to evaluation of the judge of the preliminary procedure that the request of the prosecute is grounded to commit the detention because of if he/she is in liberty , they can escape or prevent the proceeding of criminal procedure by influencing in witnesses, in the injured or together participants, way and circumstances that are committed criminal acts, personal characteristics of defendants and other circumstances that show that exists the danger to repeat the act”, the above mentioned example illustrates a not sufficient justification, that only refers to the grounds for detention anticipated by law without relating them with specific facts of matter. Unfortunately “justification” above is a revision of the majority of decisions for detention that issue that courts in Kosovo.⁷⁰¹

According to the consolidated European judicial praxis for Human Rights, in that way that a grounded suspicious arrest, it is necessary police to have found sufficient proofs to raise indictment at the moment of arrest or during the time he is barred in police station. It isn’t necessary that a detained person to raise indictment or to put in front of court, since the intention of detention is to be interviewed and criminal investigation to be in progress by confirming or removal of doubt that makes ground for detention, in meantime “the fact that the doubt is considered probable it isn’t enough and there should be facts or information’s to convince an objective surveyor that the defendant has possibly committed criminal offense.⁷⁰² However, all what can be considered reasonable depends on the circumstances.

Disrespect of such cases or weak reasoning when assigning such detention as it happened in trials and pursuant to OSCE reports presents serious violation of human rights which are defined by international standards. The Constitution of Kosova and the appropriate applicable legislation, that is, there are not taken into account the

⁶⁹⁹ Article 29 Right to Liberty and Security of the Kosovo Constitution <http://www.kryeministri-ks.net/repository/docs/ConstitutionIKosovo.pdf> accessed on 3rd of November 2017.

⁷⁰⁰ Ibid.

⁷⁰¹ Department of Human Rights and Communities Department Legal System Monitoring Use of Detention in Criminal Proceedings in Kosovo general lack of reference to facts page 4.

⁷⁰² Ibid more where research OSCE referred to See Fox, Campbell and Hartley v United Kingdom, Judgment of 30 August 1990, paragraph 32. It is worth mentioning that, in this case, the court found that the information contained the police report can only "confirm that [the police] who had made the arrest had real doubt" that the defendant had been involved in an offense.

practices and decisions or cases of ECHR, therefore a constant challenge of judicial system remains not implying standards for human rights and freedom as it is anticipated in article 53 of Constitution, according to which interpretation of human fundamental rights and freedom should be done congruent with European court decisions for Human Rights and Freedom.⁷⁰³ References on practice of ECHR are scarce and in the cases when it happens they are done generally but without defining in a concrete way ECHR and relation of circumstances of the case in practice.⁷⁰⁴

9. Blockage of cases in the Court matters and the failure to solve them

The Judicial System in the Republic of Kosovo since after the war and further except the problems and a great number of challenges which were elaborated, the main and the biggest problem is great number of matters that are created after the war and further, main factor in this increase was that Kosovo was faced with a small number of judges, then there were enormous increase of matters for every year in increase.

Other factors which can be distinguished, are that Kosovo did not have a notary system, private bailiffs, and mediators, such free systems which would create a better advantage for human rights and simultaneously would facilitate the work of the judiciary, this issue was discussed earlier with ideas to promulgate the law for Notary, these duties will be downloaded from judiciary and with them will be faced new body, thus judiciary will be devoted its duties, the resolution of court cases but not any more administrative charges.⁷⁰⁵ In fact, Kosovo has improved these free professions as it is mediation, Notarial and bailiffs wherein it had promulgated the procedures of private bailiffs by promulgating the applicable appropriate legislation: Law nr. 03/1-010 for Notarial, Law nr. 03/1-057 for mediation and Law nr. 04/1-139 for executive procedure.

Law nr.04/1-139 for executive procedure intends regulation of procedure through which Courts and private bailiff define and imply execution according to the reliable

⁷⁰³ Raporti vjetori i avokatit të popullit 2015 nr. 15 prishtinë 2016 faqe 20.

⁷⁰⁴ Ibid.

⁷⁰⁵ Rafet Haxha Issues of reform in the judicial system of Kosovo - RSHSL Annual Conference 2008 page 6.

and executive documents,⁷⁰⁶ so with this law a created private bailiffs who commit executive procedures for a great number of judicial matters which earlier committed only by court. Law nr.03/1-010 for notary arranges organization and functioning of notary as a public activity in Kosova, terms and methods of duties and other issues which are important to exercise duty of notary,⁷⁰⁷ with this law many competences of courts are transferred to the notary, also Law nr. 03/1-057 for mediation influenced in facilitating of procedures and realization of some rights through this institution with which are defined rules of mediating procedure in contest relations in judicial-ownership reports of matters of justice, trade , family, job, other civil reports, administrative and criminal offenses, wherein the parties may dispose freely of their own free will, if there isn't by particular law anticipated exclusive responsibility of courts or any other competent body.⁷⁰⁸

Despite the application of free professions, the large number of unsolved cases and numerous substances in the Kosovo court system remains a challenge which in popular parlance is called cancer of society. Kosovo has issued a National Strategy to petition made reducing unsolved number of court cases, therefore this strategy aimed at overall is much greater reduction of backlog faced by Kosovo courts. This includes cases that are classified "as old" and those subjects which will become "old" if no action is taken the time to resolution / closure. The strategy defines already old cases as cases that were filed before 2012, meaning all the cases filed by December 31, 2011. As of August 2013, approximately 142.000 cases are defined as old, including approximately 91,000 cases in execution.⁷⁰⁹

According to the Kosovo Judicial Council, which refers to the first six months of 2015, the number of cases remaining unresolved as it was 425 277 and 165 471 were filed complaints/ new court cases.⁷¹⁰ While according to the annual report of the KJC

⁷⁰⁶ Article 1 of Law no. 04 / 1-139 on Execution Procedure Official Paper of the Republic of Kosovo / No. 3/31 January 2013, Prishtina.

⁷⁰⁷ Article 1 of Law no. 03 / 1-010 on Notary of Republic Official Paper of Kosovo / Pristina: Year III / No. 42/25 November 2008.

⁷⁰⁸ Article 1 paragraph 1.2 of the Law no. 03 / 1-057 for intermediaries Official Gazette of the Republic of Kosovo / Pristina: Year III / No. 41 / November 1, 2008.

⁷⁰⁹ Strategjia kombëtare për reduktimin e lëndëve të vjetra gusht 2013.

⁷¹⁰ Raporti vjetor i avokatit të popullit 2015 nr. 15 prishtinë 2016 faqe 21.

for 2015 noted the strategy for reducing the backlog as any strategy and it has some shortcomings that we have encountered during the work of the judiciary and as extraneous reasons of not fulfilling the strategy is the number major court cases and the lack of court.⁷¹¹

Hereby will be represented a schedule for the old subjects in Kosovo courts collected from 1999 until the date 30.09.2016, the data in this table are taken to the Department of Statistics of Kosovo judiciary Council.

Table 10 the Court cases in Kosovo Courts collected from 1999 until the date 30.09.2016

Matters according to name	Number of old matters from 1999 till.31/12/2015	Number of solved matters from 30/09/2016	Number of leftovers matters on 30/09/2016
1. Serious crimes	3225	784	2441
2. Offenses	13760	5131	8629
3. Offenses for minors	146	44	102
4. Civil	21257	6048	15209
5. Economic	157	73	84
6. Administrative	913	510	403
Total	39458	12590	26368

Blockage of cases in North and nonfunctioning of the judicial system in Mitrovica for more than eight years, it represents a serious violation of human rights guaranteed by the Convention on Human Rights: the right to access to justice, the right to freedom and the right to a fair trial within a reasonable time.⁷¹²

The courthouse in North Mitrovica have caused considerable damage and had no access to the court building in the north, which remains subject to civil proceedings

⁷¹¹ Raporti vjetor i Këshillit Gjyqësor të Kosovës për vitin 2015 faqe.31.

⁷¹² Ex Officio no. 415/2016 Report with recommendations of the Ombudsman in the Republic of Kosovo regarding the lack of access to the court building in Mitrovica, respectively the part Verjore denial of the right of access to justice.

in 2500 and 1700 cases of criminal procedure, which has never been able to proceed.⁷¹³

Denial of these elementary rights in that part of Kosovo is done with the help of the Serbian government, which has installed the structure of the administration and its service so far and it has disabled access or exercise of sovereignty of Kosovo in that part in particular, he has denied access to justice, which according to the commentary constitutional law considered that access to justice is not only a right in itself, but is also a means of empowering and enabling the realization of the exercise of other rights.

The right of access to court is a fundamental human right, which means no one can be prevented or stopped to address the court to seek protection of his rights, and stop shall be made either by the constitution, law or any other act, nor the individual decisions of any court or other authority.⁷¹⁴ Another factor of the non-functioning judicial system is the important factor is the lack of judges and vocational collaborators where Compared to the 2014 report on the monitoring of the regular courts, in which BIRN highlighted the immediate need for increasing the staff, especially in the courts and prosecutions that have a high influx of cases such as Prishtina/Pristina, a year later, no progress has been reached in this regard. Hence, the cases continue to accumulate and current judges and prosecutors still cannot fulfil their professional obligations in a timely manner.⁷¹⁵ The situation is not at all better with regard to the number of professional associates, which are necessary to alleviate the work of the judges.⁷¹⁶ The recommendation of the KJC was to place one professional associate for every to judges, which in practice has proven insufficient compared to the factual needs of the courts.⁷¹⁷ Report of Progress for Kosovo in 2016 points out is at an early stage in developing a well-functioning judicial system, good progress has been achieved over the past year by adopting amendments to the constitution and most secondary legislation necessary to implement the 2015 justice

⁷¹³ Ibid.

⁷¹⁴ Enver Hasanit dhe Ivan Çukalović Librit Komentari i Kushtetutës së Republikës të Kosovës, Botimi i, botuar nga Agjencia Gjermane për Bashkëpunim Ndërkombëtar GIZ, dhjetor 2013, Prishtinë, Kosovë, faqe 488.

⁷¹⁵ Annual Court Monitoring Report 2015 BIRN Balkan Investigative Reporting Network Kosovo page 55,56.

⁷¹⁶ Ibid.

⁷¹⁷ Ibid.

package laws.⁷¹⁸ Kosovo has also appointed most members of key institutions and continued to increase its clearance rate of cases, thus partly meeting two of the 2015 recommendations.⁷¹⁹ However, administration of justice is slow and inefficient, and there is insufficient accountability of judicial officials. The judiciary is still vulnerable to undue political influence and rule of law institutions suffer from lack of funding and human resources, in addressing the shortcomings outlined below, Kosovo should therefore in the coming year:

continue to implement the justice package, including adoption of the remaining secondary legislation, strengthen financial resources for the judicial sector and continue to strengthen the capacity of judges, prosecutors and support staff, to ensure proper functioning of the judicial system and the administration of courts, replace current provisions included in the laws on the Judicial and Prosecutorial Councils by adopting the law on the Office of the Disciplinary Counsel to strengthen accountability, step up efforts to reduce the backlog of cases, including by using alternative dispute resolution tools.⁷²⁰

So irregular functioning of the judicial system and denial of the right to access to court cause serious consequences on the rule of law, strengthening of public order and protection of the region from illegal practices.⁷²¹ Despite challenges Kosovo has made efforts to larger advancing system of justice but despite heavy investment by international organizations with a view to building an advanced judicial system, the judiciary does not seem to be in better condition than it was eleven years ago, despite a very limited progress. These can actually be a result of stalled reforms and politicized judiciary, the lack of drafting a law applicable in the country of applicable laws, and strong duality between Kosovo institutions and international organizations in law enforcement.⁷²²

⁷¹⁸ Brussels, 9.11.2016 SWD(2016) 363 final COMMISSION STAFF WORKING DOCUMENT Kosovo 2016 Report page 13.

⁷¹⁹ Ibid.

⁷²⁰ Ibid

⁷²¹ Ex Officio no. 415/2016 Report with recommendations of the Ombudsman in the Republic of Kosovo regarding the lack of access to the court building in Mitrovica, respectively the part Verjore denial of the right of access to justice.

⁷²² Autorët Valdrin Grainca Skender Përteshi Asistentë të hulumtimit: Florentina Hajdari Sofije Kryeziu, Forumi për Siguri Raport vlerësues Zbatimi “Politik”i ligjit në Kosovë Prishtinë, Prill 2011, faqe 5.

10. Implementation of human rights in the administrative level

Before explaining the issues of human rights in the lower administrative level it will be presented a breakdown or way of functioning of state administration bodies in the Republic of Kosovo. Direct administration institutions of the state are the highest bodies of state administration (Office of Prime Minister and Ministries), central state administration bodies and local state administration bodies.⁷²³ After treatment of this issue is the treatment of Human Rights in the low administrative level and now will be presented the definition of local bodies of state administration, local bodies of state administration are municipal bodies of state administration, the territorial jurisdiction of which correspond with territory of one or more municipalities.⁷²⁴ As human rights in general terms as well as in the administrative term or in a lower administrative level especially land has a special role under which the field of human rights represents one of the fundamental constitutional obligations must have each municipality and each sector within it.⁷²⁵ Building professional capacities of all employees in the municipality cannot be imagined without the involvement of the sector of human rights in principle with all international conventions dealing with freedoms and human rights, as well as the Constitution of the Republic of Kosovo, which clearly defines the rights and freedoms of man and focused on minority groups, religious etc.⁷²⁶ Developing legal framework for local government in Kosovo can be divided into three periods: 1. The period of administration of the municipalities with the Municipal Administrator, according to UNMIK Regulation from 2000 to 2002; 2. The period of administration by municipalities without municipal administrator of UNMIK Regulations and other legal acts of the PISG, with the transfer of powers to local self-government bodies, gradually from 2002 to 2007 3. Period of local government according to the Constitution and Laws adopted by the Assembly of the Republic of Kosovo, from 2008 until today.⁷²⁷

⁷²³ Esat Stavileci Mirlinda Batalli dhe Sokol Sadushi, *Libri e drejta Administrative –Organizimi dhe Veprimtaria administrative* Prishtinë, 2012 faqe, 87-88.

⁷²⁴ *Ibid* faqe 88.

⁷²⁵ *Organizimi dhe funksionimi i Vetëqeverisjes Lokale në Kosovë gusht 2013*, Prishtinë.

⁷²⁶ *Ibid*.

⁷²⁷ *Ministry of Local Government Organization and Operation of Local Self-Government in Kosovo 2013*, Prishtina.

Today the legal framework for local communities is based on the principles of the Constitution of Kosovo and the European Charter of Local Self-Government, article 123 of the Constitution, paragraph 4 are certain basic principles of local self-government in Kosovo, such as good governance, transparency, efficiency and effectiveness in providing public services, paying particular attention to the needs of communities that are not majority and their members.⁷²⁸ Scope is the operation of the municipal administration in Kosovo is exercised on the basis of legal powers this issue is regulated with the law nr. 03/L-040 on Local Self Government which points out that all municipal organs shall ensure that the citizens of the municipality enjoy all rights and freedoms without distinction of any kind, such as race, ethnicity, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, and that they have fair and equal opportunities in municipality service at all levels as well as Municipalities shall implement their policies and practices to promote coexistence and peace between their citizens and to create appropriate conditions enabling all communities to express, preserve, and develop their national, ethnic, cultural, religious, and linguistic identities.⁷²⁹

With this law it is planned the application and implementation of the European Charter on Local Self Government. Therefore, based on this, Kosovo has taken legal commitments for the application of the principles of the European Charter of Local Self-Government of local government and its protocols.⁷³⁰ Besides obligations constitutional and judicial at the local level and some municipalities example. Skenderaj has provided the statute for protecting the human rights where the statute of the municipality of Skenderaj notes that all organs of the municipality of Skenderaj, care to its citizens to enjoy all rights and freedoms without distinction of race, ethnicity, color, gender, language, religion, political or other opinion, national or social origin, property, birth or other status that they enjoy equal rights and opportunities in the utilities of all levels.⁷³¹

⁷²⁸ "Constitution of Republic of Kosovo", April 2008, chapter X, article 123, clause 4. <http://www.kryeministri-ks.net/repository/docs/ConstitutionIKosovo.pdf>, accessed on 15th of December 2017.

⁷²⁹ Law nr. 03/L-040 on Local Self Government article paragraphs 4.2 and 4.3, Official Gazette of the Republic of Kosova / Pristina: year III / no. 28 / 04 june 2008.

⁷³⁰ Ibid general provisions.

⁷³¹ Statuti i Komunës së Skenderajt më 27. 11. 2008 neni 3 pika 3.2.

Local government represents the right and ability of local authorities, within the limits of the law, to regulate and manage a substantial part of public affairs within their responsibility and in the interests of the local population.⁷³² Another element which contributes positively to improving and inter institutional cooperation at the local level is Law no.04/L –010 on Inter-Municipal Cooperation, by this law shall be regulated the inter-municipal cooperation amongst municipalities of Republic of Kosovo in order to perform their own and extended competencies in compliance with the Constitution of Republic of Kosovo, the applicable law as well as with the European Charter for Self-Governing of the European Council as well as by this Law shall also be regulated the cooperation of the municipalities of Republic of Kosovo with other municipalities and institutions of local governance outside Republic of Kosovo within the twining or other forms of cooperation on their own and extended competences of the municipalities.⁷³³

Local administration of the Republic of Kosovo has improved access of citizens constantly by creating good conditions in the provision of various services, one thing which is fundamental and it deemed that affects freedom and rights of citizen and this is access to public documents in the administration of Kosovo, municipal documents will be available to the public based on a direct request, following an application in writing or in electronic form, each applicant will have the right of access to documents of the Municipality⁷³⁴

Access to public documents in the Republic of Kosovo is regulated by the Law on Access to Public Documents no. 03 / L-215 approved by the Assembly on October 7, 2010, the law is based on Article 65 (1) of the Constitution of the Republic of Kosovo, the law guarantees the right of every natural or legal person to have access, without discrimination of any kind, after a preliminary application, stored in the official documents, drafted or received by public institutions. As one of the most

⁷³² <https://www.rks-gov.net/> accessed on 11th of January 2018.

⁷³³ Law No.04/L –010 on Inter-Municipal Cooperation article 2 paragraph 1 and 3, Official Gazette of the Republic of Kosova / no. 7 / 10 august 2011, Pristina.

⁷³⁴ Manual on access to public documents and initiatives for effective democratic municipalities - USAID Page 13.

important public institutions, the municipality has an obligation to allow access to its official documents for citizens without discrimination.⁷³⁵

Another challenge which violates the rights of citizens in the service of document reviews are some restrictions which are set in certain cases such as illegal. E.g. the decision of the Mayor of Ferizaj for conditioning of property tax with proof of repayment of obligations to the company's water and waste, the NGO Initiative for Progress INPO considers illegal, contrary to democratic practices and an efficient administration, non-payment of these services, sanctioned by Law Nr.04L / -139 on the executive Procedure (Official Paper of the Republic of Kosovo No. 3 /31 January 2013), Article 29, utility bills and have an executive title for the execution to be in judicial proceedings directly. Therefore, the decision of the mayor Svarqa is twofold sanctions against customer⁷³⁶

11. Employment of Minorities

The Republic of Kosovo has undertaken steps to better hiring respect minorities and gender in terms of employment which is regarded as the starting point of the implementation of human rights in the lower administrative level. The Republic of Kosovo besides taking measures, develops programs and initiatives for public employment," which aims to overcome discrimination directly or indirectly to persons belonging to communities, special consideration is given to improving the situation of Roma, Ashkali and Egyptian.⁷³⁷

The integration of non-majority communities and their employment is observed in many areas since the civil servants in the municipal administration (local) in central, health, education, and other fields. This clearly strengthens the fact that from 38 municipalities, 10 of them are with Serbian majority, where the employments are larger in relation to other municipalities. However, not excluded other government

⁷³⁵ Ibid page 6.

⁷³⁶ <http://inpo-ks.org/site/rreth-organizes/> accessed on 13th of January 2018.

⁷³⁷ Article 9 of Law no. 03 / L-047, on the Protection and Promotion of the Rights of Communities, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2531> accessed on 24th of January 2018.

institutions and non-governmental municipalities with an Albanian majority.⁷³⁸ Also, based on law for civil servants and regulation on procedures for equitable representation and proportional to the communities in the Kosovo civil service, "employment at the local level of government should be in proportion to the number of residents of the municipality they live in communities"⁷³⁹.

The Law on Civil Service in Kosovo no. 03 / L-149 defines the status of civil servants as employees of ministries, executive agencies, representative institutions, independent agencies and regulatory requirements, as well as municipalities. Article 11 requires that at least 10% of positions in central level are reserved for "those who belong to communities not in the majority in Kosovo," and that at the municipal level to be proportional representation for the demographic composition of the municipality.⁷⁴⁰

According to a survey done by a questionnaire presented by the Office of the Prime Minister / Office for Community Affairs assessment of employment of non-majority communities in the Civil Service and Public Enterprises in Kosovo in which they are presented data gathered from 104 institutions the survey shows that the average representation of non-majority communities is 5.6%. Central level institutions are below the threshold of 10%. Independent agencies have the highest average representation of non-majority communities (8.9%), while public enterprises have the lowest (2.2%). Governmental institutions (ministries and representative institutions) and executive agencies also have very low representation of non-majority communities (6.6% and 6.2% respectively), however, municipalities have relatively higher representation of minority communities (8.8%).⁷⁴¹ In this table will be presented on the percentage of representation of communities in employment at various levels.

⁷³⁸ Besim MURTEZANI Flutura HOXHA Ferdi KAMBERI Pjesëmarrja e komuniteteve jo shumicë në jetën publike konform legjisllacionit në Kosovë Prishtinë 2015.

⁷³⁹ Reg. 04/2010, on procedures for fair and proportional representation of non-majority communities in the civil service of the Republic of Kosovo <https://map.rks-gov.net/desk/inc/media/DF61A738-9817-4AA9-9DBB-CC9C9D7201D4.pdf> accessed on 28th of January 2018.; Article 11, paragraph 3 and 4 of Law no. 03 / L-149 on Civil Service of the Republic of Kosovo <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2679> accessed on 28th of January 2018.

⁷⁴⁰ Law on Civil Service in Kosovo no. 03 / L-149 Article 11 Kosovo <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2679> accessed on 28th of January 2018.

⁷⁴¹ Office of the Prime Minister / Office for Community Affairs Review of employment of non-majority communities in the Civil Service and Public Enterprises in Kosovo.

Table 11 the percentage of representation of communities in employment at various levels

Government Institutions	Executive Agencies	Independent Agencies	Private Enterprises	Local Government
6.6%	6.2%	8.9%	2.0%	8.8%

12. Gender employment at local level

Regarding to employment in terms of gender not only in a lower administrative but at all levels of the employment or resource allocation is respected in a good scale but generally human rights in Kosovo in terms of gender representation or other aspects of gender are treated well and considered advanced for the Kosovo Government with decision no. 5/131 of February 1, 2005 established the Office for Gender Equality as a separate organ of the Government of Kosovo in accordance with article 5.1 of UNMIK Regulation no. 2004/18, of June 7, 2004, on the promulgation of the Law on Gender Equality adopted by the Assembly of Kosovo (Law no. 2004/2). With the decision of the Government of Kosovo nr. 03/2006 of 12.07.06, Office of Gender Equality from 1 September 2006 is changed into the Agency for Gender Equality, in the Office of the Prime Minister.⁷⁴²

Agency for Gender Equality is an important body for the functioning of democratic institutions and has a mandate to develop, implement, propose, coordinate and monitor public policies local and international gender equality and is responsible for the promotion, protection and advancement of participation men and women equal in all spheres of political, economic, social, cultural, in Kosovo.⁷⁴³ Participation or gender representation at the political level, legal documents or administrative level responsibility is regulated by the Law on Gender Equality (LGE). The purpose of the law on gender equality is to protect, treat and establish equality between the sexes as a fundamental value for the democratic development of Kosovo society, with equal opportunities for participation of women and men and their contribution in the political, economic, social, cultural and all areas of social life. Article 3.1 of this Law stipulates as follows "that with the implementation of legal and affirmative measures,

⁷⁴² <http://abgj.rks-gov.net/> accessed on 5th of February 2018.

⁷⁴³ Ibid.

establish equal participation of women and men in the bodies of all levels of legislative, executive, judicial and public institutions, in order to participate in these institutions reach the level of their participation in the general population of Kosovo. Article 3.2 stipulates that "equal participation of women and men reached in cases where the participation of gender in the institutions, bodies or local levels is 40 percent."⁷⁴⁴

Kosovo promulgated the Law on Gender Equality which is in line with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Directive on establishing a general framework for equal treatment in employment and occupation (Directive 2000/78/EC); Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Directive 2006/54/EC); The Directive on the progressive implementation of the principle of equal treatment for men and women on issues of social security (Council Directive 79/7/EEC, of 19 December 1978); Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (Directive 2010/41/EU, of 7 July 2010); Directive on the implementing the principle of equal treatment between men and women in the access to and supply of goods and services (Directive 2004/113/EC).⁷⁴⁵ While the scope of this law applies to men, women and persons who have a protected characteristic of gender identity or sex determination, and guarantees equal opportunity and treatment in public and private areas of social life, including political and public life, employment, education, health, economy, social benefits, sport and culture and other areas set out by the present or other law.⁷⁴⁶ Further in two tables on bottom are put the numbers of employees at the municipality by sex while in comparison of the three municipalities that have the percentage of low medium and high employees' women where in lower rates it is in the Middle Dragash in Leposavic and higher where it has employed women is in Drenas.

⁷⁴⁴ Author: Ardiana Gashi Gender Equality Agency, October 2014 Proofreader: DAS Group Design Republic Printing: EMD Project Circulation 250 / Report research: participation, the role and position of Garve in central and local institutions and political parties in Kosovo.

⁷⁴⁵ OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVA / No. 16 / 26 JUNE 2015, PRISTINA Law no. 05/L -020 on Gender Equality article 1.

⁷⁴⁶Ibid article 2.

Table 12 numbers of employees at the municipality by sex

Municipalities	Total number of employees	Gender structure		
		men	Women	% women
1. Drenasi	155	43	122	72%
2. Dragashi	135	122	13	10%
3. Leposaviqi	127	79	48	38%

Table 13 total number of employees in the municipalities

Municipalities	Total number of employees	Gender structure		
		Men	Women	% women
total 38	6,607	4,819	1,788	27%

Women's participation in decision-making positions in public institutions at the local level in the municipal assemblies of 30 percent quota for women's participation has contributed that women will participate at least 30% of the seats in municipal assemblies. While in 2007 about 20 women gathered enough votes for municipal councilors, in 2013 about 51 women gathered enough votes to become a municipal councilor across Kosovo. As a result, the participation of women during this period grew by 30 percent to 34 percent of the seats.⁷⁴⁷

13. Language rights

Language is an essential dimension of individual and collective identity, the need for protection and promotion of language rights based on three main reasons: the principle of non-discrimination, will to maintain and actively promote cultural identities, ethnic and religious groups within a country or region, and the right of access to services.⁷⁴⁸ Language rights are closely related to other rights, basic human

⁷⁴⁷ Author: Ardiana Gashi Gender Equality Agency, October 2014 Proofreader: DAS Group Design Republic Printing: EMD Project Circulation 250 / Report research: participation, the role and position of Garve in central and local institutions and political parties in Kosovë page 24.

⁷⁴⁸ European Centre for Minority Issues (ECMI) Kosovo Monitoring and Evaluation of Language Rights: piloting the use of indicators in the Assembly of Kosovo Final Report Page 14 January 2014.

rights, including the right to freedom of expression, political rights, and the right to education.⁷⁴⁹ As such, language rights are necessary in practice to ensure equal participation of minority groups in the political, social and economic.⁷⁵⁰ Kosovo's constitution anticipates the Republic of Kosovo shall promote a spirit of tolerance, dialogue and support reconciliation among communities and respect the standards set by the Framework Convention of the Council of Europe for the Protection of National Minorities and the European Charter for Regional or Minority.⁷⁵¹

To ensure a democratic and pluralistic multi-ethnic society, the Kosovo legal framework provides essential protection for broad rights of different linguistic communities and obliges all public institutions and service providers to respect the use and equal status of official languages. Kosovo mission of the Organization for Security and Cooperation in Europe (OSCE) makes monitoring, regular reporting and advocacy for full realization of the linguistic rights of all communities in Kosovo.⁷⁵² Through the analysis of practices at the local level, this report shows that more than seven years after its adoption, the Law on Use of Languages remains only partially implemented, due to insufficient human and financial, are often accompanied by a lack of understanding adequate liability and / or lack of political will.⁷⁵³

The Law on Use of Languages stipulates that central and local institutions need to implement programs to increase public awareness regarding the law itself and the rights it protects.⁷⁵⁴ In accordance with Articles 2.4 and 35 of the Law on Use of Languages, municipalities are obliged to adopt detailed regulations regarding the recognition of languages spoken in their territory, in accordance with procedures established by UA the relevant Ministry of Local administration.⁷⁵⁵

⁷⁴⁹ Ibid

⁷⁵⁰ Ibid

⁷⁵¹ Kosovo's constitution Article 58, paragraph 2 <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>, accessed on 13th of February 2018.

⁷⁵² Respect for the linguistic rights of the Kosovo municipalities JUNE 2014 Organization of Security and Cooperation in Europe Mission in Kosovo Page 4.

⁷⁵³ Ibid.

⁷⁵⁴ Law on Use of Languages http://www.assembly-kosova.org/common/docs/ligjet/2006_02-L37_en.pdf, accessed on 14th of February 2018.

⁷⁵⁵ AI. 2007/06 for determining the procedures for implementing the Law on Use of Languages in Municipalities. In April 2011, the UA is replaced by AI. 2011/02.

Turkish is the official language currently in Prizren and Mamusha. In 2007 and 2008, the municipalities of Gjilan, South Mitrovica, Pristina and Vushtrri also known to use Turkish as the official language. Bosnian is an official language in Prizren, Dragash and Peja and in official use in the municipality of Istok (see table below).⁷⁵⁶

Table 14 official language in municipally level

Official languages in Kosovo – Serbian and Albanian	Official languages in municipal level			Languages in use in Municipal level		
All Municipalities	Turkish	Prizren	Mamushë	Turkish	Gjilan,	South
	Bosnian	Prizren	Dragash	Pejë	Mitrovica	Prishtinë
						Vushtrri
						Turkish Istog

Despite the fact that language rights are fair and equal and Kosovo applied advanced legislation in this regard some of the key problems identified are limited human resources, financial and technical language services within the institution in the Kosovo Assembly staff shortages that Serbian mother tongue within the translation Unit, deadlines for translation, editing and standardization of laws and draft laws, difficulties in recruiting qualified language professionals and inadequate mechanisms for quality assurance language of laws before their appointment.⁷⁵⁷ About half of the professionals working within the Translation Unit have a university degree in languages (only in Albanian language), and only one of them has prior preparation in the legislation, however, most professionals have extensive experience working and during 2013 providing a series of trainings.⁷⁵⁸

14. Implementation of human rights in Police level

Firstly, let us examine the role of the Kosovo Police in the lower level of policing it will be presented what it means by the police law, police law deals with judicial phenomena, with the security and police are also social phenomena, in this sense, the right to police should be viewed first and foremost as a special right that deals with the study of legal norms which regulate security and police, including the police and

Respect for the linguistic rights of the Kosovo municipalities JUNE 2014 Organization of Security and Cooperation in Europe Mission in Kosovo Page 11.

⁷⁵⁷ European Centre for Minority Issues (ECMI) Kosovo Monitoring and Evaluation of Language Rights: piloting the use of indicators in the Assembly of Kosovo Final Report January 2014 page 6.

⁷⁵⁸ Ibid.

security research as a social phenomenon.⁷⁵⁹ The Republic of Kosovo has arranged a comprehensive legal infrastructure and institutional defense of human rights. Therefore, based on this legal infrastructure, Kosovo Police is obliged during the commission of police powers to protect human rights. Kosovo police during the execution of duties and powers, always acting in defense of human rights on the basis of positive legislation, such as the Constitution of Kosovo, the Law on Police 04 / L-076, Law on Police Inspectorate 03 / L-231 Law on Gender Equality, the Anti-Discrimination Law, the Law on the protection and promotion of the rights of communities and their members in the Republic of Kosovo, the Law on protection from Domestic Violence, JPLK - Juvenile Penal Law of Kosovo etc. The rights and freedoms guaranteed by international agreements and the following instruments are guaranteed by this Constitution shall be directly applicable in Kosovo and have priority in case of conflict, over the provisions of laws and other public institutions.⁷⁶⁰

Pursuant to Police law, Police actions of the Republic of Kosovo are guided by the following principles: equal treatment and the right of all persons, respect of human rights and fundamental freedoms, impartiality and neutrality regarding beliefs and political views of people commitment to employment, advancement and assignment of duties in comprehensive, merit and without discrimination, reflecting the multiethnic character in the Republic of Kosovo and acknowledging the principles of gender equality and human rights incorporated into the Constitution.⁷⁶¹

Within the Kosovo police, there is Office for Human Rights and Diversity, which provides that the executive functions of the KP are in accordance with positive legislation in the sphere of local and international in field of Human Rights and Diversity. Also this office makes the promotion, advancement, protection of human rights and diversity, taking effective measures to assess the compliance of policies, legislation and activities of KP with relevant national and international standards of human rights. In the Police of Kosovo there are employed 8981 employees, of whom

⁷⁵⁹ E Drejta Policore Sarajevë / Prishtinë 2007 Universiteti AAB dhe Univerzitet u Sarajevu Kriminalistickih Nakuka faqe 6.

⁷⁶⁰ Constitution of Republic Kosova article 22 <http://www.kryeministri-ks.net/repository/docs/ConstitutionIKosovo.pdf>, accessed on 19th of February 2018.

⁷⁶¹ Law no. 04/L-076 on Police articele 2 Official Gazette of the Republic of Kosova / no. 04 / 19 march 2012, Pristina.

7885 are police officers and 1096 civilian staff 86.06% of staff belong male and 13.94% female, of which 83.75% are ethnic Albanians, and 16.25% belong to other ethnic groups.⁷⁶²

The structure of the police is organized in directorates' general director then regional, sub-stations and police stations.⁷⁶³ This structure provides security to the citizens by ensuring the presence of the police closer to the citizens thus police of Kosovo approved the Strategy and Plan of Action 2012 - 2016 / community policing, this action of the Kosovo police provide security for all citizens, making them to be safe and to feel closer to the police.

15. Police in Community

The policing community means philosophy and strategy of the organization (way of philosophy realization) that promotes action based on partnership and cooperation between the police and the community in order to achieve efficiency and effectiveness in identifying, preventing and solving the problems of crime and negative phenomena, to improve the quality of life for all.⁷⁶⁴ Based on the concept of authors Robert Trojanowicz and Bonnie Bucqueroux police in the community at the same time is a new philosophy of policing based on the idea that police officers and citizens work together and in different ways creatively choose the current problems at the local community, which crime related to the fear of crime and various forms of social disorder.⁷⁶⁵

It starts with the philosophy which is based on the achievement of those goals requires the police to develop new relationships qualitative citizens who respect the law, with these the same actions citizens use the opportunity to define priorities and engage in various actions in order to advance the overall quality of life in the areas where they live, so that the police in the community moves from reactive approach towards solving the problems of citizens - proactive.⁷⁶⁶

⁷⁶² The annual report of the work of the Kosovo Police for 2015 page 5.

⁷⁶³ <http://www.kosovopolice.com/sq/drejtore-rajonale> accessed on 26th of February 2018.

⁷⁶⁴ Policia e Kosovës Strategjia dhe Plani i Veprimit 2012 - 2016/ Policimi në Bashkësi faqe 9.

⁷⁶⁵ Ibid.

⁷⁶⁶ Ibid.

Based on this, the Kosovo Police has established a good image and protect citizens' security by creating closeness and protection of freedoms and civil rights in the lower level through such mechanisms. Yes, there are cases where this way of bad approach criticism where it is determined that in addition to many advantages, the greatest shortcoming of this methodology is that this approach is mainly directed towards officers of public order and police stations and is not exhaustive, neither it presents a philosophy of the organization as a whole, but only one pillar of it.⁷⁶⁷ The issue of community policing is considered a challenge by its KP referring them to the conference, insofar as they challenged the issue of finding the appropriate model that represents this concept in relation to BP, referring to different models of presenting this concept during the past years.⁷⁶⁸ Kosovo police had drafted Strategic Development Plan of the Kosovo Police for the year 2016 - 2020, which is based on the fundamental principles derived from the Constitution of the Republic of Kosovo, laws and strategies of the various levels of government and which is designed after conducting a several studies and analyzes of the work of the Kosovo Police, external evaluations of the reports of ASD, progress reports to the EU roadmap for visa liberalization, and in collaboration with partners, internal and external, and as the importantly, the needs of the community.⁷⁶⁹

Terrorist incidents in 2015 in Kosovo, Kosovo police arrested five Kosovo Albanians on July 11 who tried to poison water main source of Pristina, Lake Badovc. The Police arrested three men after police patrolling the reservoir seen behaving suspiciously on the shores of the lake. PK later arrested two other suspects, two of the suspects had fought for ISIL in Syria all five were accused of terrorist offenses.⁷⁷⁰

Through close cooperation with the citizens, but also with all relevant local and international institutions in the field of security, the Kosovo Police has managed to provide security, public order and sustainable peace.⁷⁷¹ Following the activities of the Kosovo Police have been achieved significant results in fighting the phenomena of concern to society, despite numerous challenges which are presented in fulfillment of

⁷⁶⁷ Forumi Siguri për Reformat në Policinë E Kosovës Prishtinë, Dhjetor 2011 faqe 13.

⁷⁶⁸ Ibid.

⁷⁶⁹ Plan i Zhvillimit Strategjik 2016 - 2020 i Policisë së Kosovës faqe 6.

⁷⁷⁰ The report of the US State Department on terrorism, June 2, 2016 the Kosovo page 3.

⁷⁷¹ The annual report of the work of the Kosovo Police for 2015 page 7.

the objectives police, during the reporting period, the Kosovo Police has recorded a total of 50230 cases of which 34209 are classified as criminal offenses, while 16021 cases were classified as misdemeanors and other type of cases.⁷⁷² Compared with 2014, the number of cases has decreased to 7.3% and a reduction of offenses for 11.68%, falls most prominent are noted as follows: the number of murders has decreased from 35 to 25 or decline to 28.57%, the number of grievous bodily harm has increased from 330 to 331, or an increase of 0.3%, the number of burglaries has decreased from 7748 in 5988, or a decline of 22.72%, the number of burglaries heavy has decreased from 6977 to 5469, or a decline of 21.61%, the number of robberies has also decreased, from 404 to 281, or 30.44% decline.⁷⁷³

Despite the achievements and the good relations between the police such as: combating of crime fighting terrorism and the prohibition of certain acts of terrorism with global and regional character and the fact that the Kosovo Police is the institution with a credible and trustful in the country yet it has different challenges. Kosovo Police Inspectorate investigated 40 allegations of excessive use of force by police during a demonstration distribution dated January 27, police used tear gas and water cannon to crush after being attacked by protesters throwing rocks and Molotov cocktails.⁷⁷⁴ PIK concluded investigations and, in consultation with the prosecutor's office, four cases submitted to the Police Department for Professional Standards for disciplinary action.⁷⁷⁵ The Council for the Protection of Human Rights and Freedoms claimed that police used excessive force during the arrest of the deputy Albin Kurti and 97 other members of the party Vetevendosje headquarters of the party on November 28, authorities arrested Kurti on charges of violence Assembly, according to television images of the plenary session, others were detained for violent obstruction of Kurti's arrest.⁷⁷⁶

⁷⁷² Ibid.

⁷⁷³ Ibid.

⁷⁷⁴ State reports Practices Human Rights for 2015 Department of State of the United States • Bureau of Democracy, Human Rights and Labor Page 5.

⁷⁷⁵ Ibid.

⁷⁷⁶ Ibid page 5 for acts of excessive violence during arrestimimi MP for Kurti on December 4, independent institution of the Ombudsman (IO) asked the Prosecutor's Office in Pristina to investigate allegations that police used excessive force.

16. Ineffective instrument of the human rights regime of Kosovo

Instruments ineffectiveness of human rights in Kosovo have evaluated from after war up to now by improving from year to year where there were challenges as in creating adequate mechanism to protect the rights and freedoms also empower them . These obstacles initially are covered in this chapter starting from the issuance of legal acts then challenges in their implementation as well as establishment of institutional mechanisms then they have had difficulties in implementing them, and so on. As instruments of ineffectiveness for human rights in Kosovo, which are not applied can be considered not exercise of the sovereignty of the state in the entire territory of the country especially the North part, the continuation of the marginalized situation in education, employment of RAE-e, not realization of the female of property rights, and not Freedom and protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo.

16.1. Ineffective instruments to exercise the state sovereignty

Before introducing ineffective instruments of human rights in Kosovo we are starting with this: Do you believe a state in which the decisions of the courts can have no validity, but can be reversed and nullified by particular persons would subsist rather than perish ⁷⁷⁷ Socrates.

This saying is proper to the situation created in the north of Kosovo since the declaration of independence where there are dualistic action by Parallel institutions operating in Kosovo. Kosovo's constitution emphasizes the Republic of Kosovo is a state of its citizens. The Republic of Kosovo exercises its authority based on respect for the rights and freedoms of its citizens and of all individuals within its borders.⁷⁷⁸ This article of the Constitution provides that citizens of Kosovo enjoy the freedoms and their rights equally within the borders the state but in reality mechanism of enforcement of this Constitution therefore Institutions state of Kosovo, which until

⁷⁷⁷ ERNST FRAENKEL THE DUAL ATATE A CONTRIBUTION TO THE THEOY OF DICTATORSHIP Translated from the German by E.A. shils, in collaboration with edith LOWENSTEIN and KLAUS KNORR 1969 OTAGON BOOKS *New York page 1.*

⁷⁷⁸ Kosva Constitution ,article 1 clause 2 <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>, accessed on 8th of March 2018.

now have not yet stretch to full sovereignty state in Northern Kosovo. In that part first attempt to stretch sovereignty was on July 26, 2011 where Kosovo police put for the first time border control in that case was murdered the policeman of the Unit ROSU by criminal structures which act unlawfully just for that began investigations by EULEX which made international arrest warrant issued by EULEX for alleged murder in 2011 of policeman Enver Zymberi which remained active, but officials are not arrested anyone or no progress was made in solving case. EULEX suspended investigation in March.⁷⁷⁹

Later motivated by criminal structures that operated in that part of Kosovo supported by the parallel structures of Serbia's institutions encouraged the population to put barricades in the street and the bridge that separates the river Ibër while on September 19, unidentified assailants fired on a car of the EULEX customs officers while he was traveling near the municipality of Zvecan, where he was killed a Lithuanian member of EULEX and one other passenger was injured.⁷⁸⁰ Also, if you refer to, that the exercise of criminal action has been permanent in that part, but these actions and control of the Republic of Kosovo has started the past years since this issue is determined by agreement between Kosovo and Serbia mediated by the EU and that these structures are extinguished and the entire police force in northern Kosovo will be integrated within the Kosovo police. '(Brussels Agreement 2013: Article 7) as a result, all members of different Serbian security structures will be offered a position in institutions and security structures of Kosovo equivalent. (Brussels Agreement 2013: Article 8) The former police MUP of Serbia in the north will be integrated into the security structures of Kosovo, while units of Civil Protection, which still operate in the north, have remained points contested between the Serbia and Kosovo that will be addressed in the future. (Government of Kosovo 2014).⁷⁸¹

⁷⁷⁹ The 2013 report on human rights in Kosovo Country Reports on Human Rights Practices for 2013 Human State Department of the United States * Bureau of Democracy, Human Rights and Labor Page 2.

⁷⁸⁰ Ibid.

⁷⁸¹ Integrimi i policisë në Kosovën Veriore: Progresi dhe sfidat e mbetura në zbatimin e Marrëveshjes së Brukselit Beograd dhe Prishtinë 2014 Maja Bjeloš dhe Bojan Elek Botuesit: Qendra e Beogradit për Politika të Sigurisë (QBPS) dhe Qendra Kosovare për Studime të Sigurisë (QKSS) page 9.

Kosovo issued Law no. 04/ L-209 for Amnesty by which regulates the conditions and procedure under which amnesty is granted to persons who have been convicted of a criminal offense, persons who are under prosecution for the offense, or persons who may be subject prosecution for offenses committed before June 20, 2013 within the territory that now constitutes the Republic of Kosovo,⁷⁸² with this the law was issued for seven persons who were prevented or hindered to exercise the sovereignty of state in this part, this phenomenon presents violations and implementation of provisions in a more favorable way by creating and enabling these groups to be selected even in political and public positions for this Karl Loewenstein, “The Trojan Horse,” He had discussed the right of participation of some persons or certain categories of discredited people, such as Nazi officials, prominent sympathizers, notorious turncoats, collaborationists, and so on, are to be excluded from eligibility by law.⁷⁸³ No one could foresee that a thing will happen in a country that represents an advanced democracies then this phenomenon happened with an intermediary of the EU, anyway it probably will contribute to interethnic relations Security democracy and ultimately avoidance the consequences of any intervention from the state. Regarding this case, the government of Kosovo have presented periodically report on the state of talks between Kosovo and Serbia and the agreements achieved well but often had serious charges in address of Belgrade for non-implementation of the agreements and commitments that were taken with long approval of second report of 2016 where is stated that the Government has been and remains a constructive and serious party to dialogue, but it is considered that more agitated phenomenon is the dualism of Serbia in implementation which means that on the one hand it implements the agreements and on the other hand continues to support parallel structures in Kosovo.⁷⁸⁴

When there are bureaucratic obstacles or similar terms of non-functioning, legal order or judicial it is easier to overcome but such dual or mixed up situation by another state threaten legal order. Reasonably Ernest Frankel pointed that it must be

⁷⁸² Official Gazette of the Republic of Kosovo / No. 39/19 September 2013, Pristina Law no. 04 / I-209 on Amnesty Article 1, paragraph 1.

⁷⁸³ Karl Loewenstein, John H. Herz Soldiers for Democracy:, Militant Democracy and the Defense of the Democratic State Ben Plache *Virginia Commonwealth University* Follow this and additional works at: <http://scholarscompass.vcu.edu/etd> Part of the History Commons © The Author This Thesis is brought to you for free and open access by the Graduate School at VCU Scholars Compass. It has been accepted for inclusion in Theses and Dissertations by an authorized administrator of VCU Scholars Compass. For more information, please contact libcompass@vcu.edu, page 75.

⁷⁸⁴ <http://www.kryeministri-ks.net> accessed on 17th of March 2018.

clearly understood that when we speak of the Dual State we do not refer to the co-existence of the bureaucracy and the party bureaucracy.⁷⁸⁵

By considering this action and other actions, which have impinged legal system judicial- constitutional of Kosovo and herein there are ineffective legal instruments and not institutional action of the state authorities, that can be considered as total non-effectiveness of this period from the declaration of Independence until 2011 by continuing with numerous challenges so far, if it will be taken in consideration and defining the state sovereignty under the constitution, which states that the sovereignty of the Republic of Kosovo stems from the people, belongs to the people and is exercised in compliance with the Constitution through elected representatives, referendum and other forms in compliance with the provisions of this Constitution, the sovereignty and territorial integrity of the Republic of Kosovo is intact, inalienable, indivisible and protected by all means provided in this Constitution and the law,⁷⁸⁶ by considering the non-effectiveness of the implementation of the provisions of the Constitutional in Northern Kosovo was zero and can be compared with the constitution partly symbolic, not in terms of content and design since Kosovo's Constitution is a very advanced document and express political will but it can be considered symbolic Constitution in terms of partly implementing it.

According to Marcelo Neves, the Symbolic Constitution is a speech converted into a legal rule, but that even so never left the level of a mere speech addressed to the masses with the purpose of creating in them a relationship of assurance about something that previously one was not sure would materialize.⁷⁸⁷ As a symbolic constitution can also be considered the Constitution of Kaçanik of 7 September 1990, with which was proclaimed Republic of Kosovo which was not recognized from any state so this was never materialized and alienated in practice this Constitution may be related to the author Marcelo Neves who pointed out it is possible to have symbolic

⁷⁸⁵ ERNST FRAENKEL THE DUAL STATE A CONTRIBUTION TO THE THEORY OF DICTATORSHIP Translated from the German by E.A. Shils, in collaboration with Edith LOWENSTEIN and KLAUS KNORR 1969 OTAGON BOOKS, introduction page xx

⁷⁸⁶ Constitution of the Republic of Kosovo article 2 <http://www.kryeministri-ks.net/repository/docs/Constitution%20Kosovo.pdf>, accessed on 21st of March 2018.

⁷⁸⁷ Marcelo Neves *Iuris* vol.08, N.03 Rio de Janeiro, 2015 PP-1554 DOI . Rio de Janeiro, 2015 PP-1554 DOI The traditional leaders constitutional Challenges in South Africa Saul Tourinho Leal 1.

kingdoms, symbolic legislations and even symbolic constitutional provisions. In the symbolic constitutionality, the Constitutions have provisions with improbable fulfillment, but that would represent some comfort for a portion of the population.⁷⁸⁸

Another element that may affect the holding of local or state bodies' hostage to their transformation can be constitutions which should enable the transformation of requiring changes to the constitutional grounds that no transformation of some powers constitutional and state creating in time may create partially symbolic constitution or such constitutional bodies. Hereby it will be presented the need for security forces of Kosovo to transform the armed forces as this military structure in Kosovo is planned to be transformed after a short time but it is better if the assembly decides to amend the Constitution it should do this with two-thirds (2 / 3) vote of all its deputies including two thirds (2/3) of all deputies holding seats reserved and guaranteed for representatives of communities that are not majority in Kosovo.⁷⁸⁹ So the constitutional amendments are necessary and sometimes create indispensability which must be real as it is defined that reality shows the need for a re-reading of the Constitution. Karl Loewenstein teaches us: in the constitutional transformation, there is production of a transformation in the reality of the configuration of the political power of the social structure and of the equilibrium of interests, without the mentioned transformation being incorporated with the constitutional document: the text of the constitution remains intact.⁷⁹⁰ Also, a constitution that does not have implementation in the quality that allows a constitution to exceed its legal efficacy is its symbolic power.⁷⁹¹ Symbolic constitutions or partially applicable affect in the growth of the ambiguity where this in proper way has treated the author Dieter Grimm to the normative and Symbolic effects of constitutions which has observed that thus it may be correct to say that a constitution's symbolic power increases with

⁷⁸⁸ Ibid.

⁷⁸⁹ Kosovo's constitution Article 65, paragraph 2 Page 22. 2 <http://www.kryeministri-ks.net/repository/docs/ConstitutionIKosovo.pdf>, accessed on 24th of March 2018.

⁷⁹⁰ Marcelo Neves Iuris vol.08, N.03 rio de janeiro, 2015 PP-1554 DOI . rio de janeiro, 2015 PP-1554 DOI The traditional leaders constitutional Challenges in South Africa saul Tourinho leal 1

⁷⁹¹ Dieter Grimm Integration by constitution the normative and symbolic effects of constitutions page 199

interpretive ambiguity, although its legally determinative power decreases to the same degree.⁷⁹²

16.2. Ineffective instruments related to non-realization of female property

Property heritage in Kosovo with the Constitution and law guaranteed by Article 16 of the Constitution of Kosovo, each law and other legal acts must be in accordance with the principles laid down in the Constitution of Kosovo. These principles include equality of all individuals before the law and full respect for all human rights and fundamental freedoms recognized internationally.⁷⁹³

Law no. 2004/26 on Kosovo heritage with this Law regulates the inheritance rights. This law stipulates that the legacy is passing by law or according to the testament of wealth (inheritance) from a dead person (decedent) to one or more persons (heirs or legatees), according to the rules set out in this Law. In terms of this law names in the masculine gender shall include the names in feminine and vice versa, without discrimination.⁷⁹⁴ In Article 130 of the Law on inheritance is regulated institute waiver, stating that the heir can renounce the inheritance by a statement made to the court while end sessions on heritage.

Waiver applies to descendants of one who has given up, unless explicitly stated that the withdrawal only on his name. If successors are minors, this waiver does not need the permission of the guardianship. The heir, who has renounced on his behalf shall be deemed not have been inherited. If heritage have given up all the seed belonging to the nearest order of inheritance at the moment of death of the testator, the bequest called next generations of subsequent inheritance.⁷⁹⁵ Inheritance law in its provisions also determined that the waiver of inheritance that has not been opened has no legal effect. But what is essentially a waiver of women Legacy mostly asked to renounce

⁷⁹² Ibid pag 200 the author based in Brodocz, supra note 11; Andre Brodocz, Chancen konstitutioneller Identitätsstiftung. Zur symbolischen Integration durch eine deutungsoffene Verfassung (chances of constitutional identity formation, The symbolic integration by an open constitution), in INTEGRATION DURCH VERFASSUNG, supra note 4, at 101

⁷⁹³The Constitution of the Republic of Kosovo article 16 <http://www.kryeministri-ks.net/repository/docs/Constitution%20Kosovo.pdf>, accessed on 31st of March 2018.

⁷⁹⁴ Law Nr. 2004/26 heritage of Kosovo Article 1 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2407>, accessed on 7th of April 2018.

⁷⁹⁵ Ibid article 130 paragraph 1,2,3 and 4.

the inheritance, it is customary for cultural reasons, but may also occur because of fraud, fear or violence from male members of the beneficiary of the inheritance..⁷⁹⁶ Women do not have clear what it means to give up and how they can properly exercise this right.⁷⁹⁷ Therefore the main factor of this issue in Kosovo is more habit and it becomes the custom and moral honesty that sisters have for brothers

In its Progress Report of the European Commission for 2015, which stated that "the effective implementation of women's rights in inheritance remains limited, despite the existence of legal provisions that regulate this issue," the progress report also requires that other efforts should be made to strengthening and protecting women's rights, including the joint registration of property in the cadastral offices and the office of the registrar. There are a series of analyzes of domestic and foreign organizations which have highlighted the non-realization of rights to inheritance by women/ girls.⁷⁹⁸ In addition to law peer heritage are several laws which may help this process or affecting this example: Law on contentious procedure sets the rules under which courts act and decide on the rights and personal interests, family and property assigned to the contentious procedure, as and the choice of legal matters in civil contentious procedure in accordance with international standards.⁷⁹⁹ As other laws affecting the heritage issues are Notary Law, Family Law and the Civil Status Law. Anyhow they give up the Legacy is a guaranteed right by law although that affect greatly the poor women in Kosovo and in other countries of the Western Balkans, the waiver of inheritance usually exercised to strengthen control of male heirs over land and other assets, and the girls are encouraged to waive their inheritance rights in favor of brothers.

16.3. Continuation of the situation of marginalization in education, employment of RAE

The marginalization of these communities continue to have an impact not effective for many reasons, especially the lack of representation political beginning e.g all

⁷⁹⁶ Prof.dr. Arta Mandro, Elona Saliqaj Notere, Prof. dr. Aurela Anastasi ,të drejtat pronësore dhe Gruaja Broshurë informuese Qendra për Nisma Ligjore Qytetare, Tiranë, 2014 faqe 10.

⁷⁹⁷ Ibid.

Progress Report for 2015.

⁷⁹⁹ Law no. 03/L007 on out contentious procedure Official Gazette of the Republic of Kosova / Pristina: year IV / no. 45 / 12 january 2009 article 1 page 1.

communities are broadly represented by the municipal Committee on Communities and the Municipal Community Office, although in no municipality these institutions are headed by members of the Roma community. In areas where communities constitute more than 10% of the municipal population, the interests of the communities represented in the Municipal Assembly through a Deputy Chairperson for Communities, again in this case, in no municipality is this position occupied by a member of Roma community.⁸⁰⁰

Not proper representation of Communities in several political levels and exceptionally Assembly Government seriously damages their advancement process in terms of their state improvements. Another phenomenon which is considered too elementary for RAE community has the right to education is considered as one of the main rights and fundamental human rights. Education is one of the main factors which influence and ensure sustainable development of each country.⁸⁰¹ Therefore, in Kosovo as in all other countries, the end of compulsory education (primary education) and reducing the school dropout rate is one of the main priorities of the Ministry of Education, Science and Technology (MEST).⁸⁰² However, the problems and challenges are manifold, ranging from the problem of collecting data for monitoring by the government to budgetary constraints. Although there is a common perception of the public that marginalized groups, such as female gender, poor and minority communities, have more problems with access to and completion of education, very little official data are collected to approach this problem constructively.⁸⁰³ Children from the most vulnerable groups remain outside the school who are of Roma, Ashkali and Egyptian communities (RAE)⁸⁰⁴ Status of RAE characterized by low attendance in compulsory education, with a number of very small Roma, Ashkali and Egyptians who attend college or university, with very small amount of teachers of Roma, Ashkali and Egyptian and with a high degree of leaving school, especially among girls.

⁸⁰⁰ <http://www.zck-ks.net>, accessed on 15th of April 2018.

⁸⁰¹ Temat e hulumtimit: Braktisja e shkollës Martesat e hershme Diskriminimi nga mësimdhënësit Përfshirja e fëmijëve me nevoja të veçanta në sistemin shkollor, faqe 16.

⁸⁰² Ibid.

⁸⁰³ Ibid.

⁸⁰⁴ Manual for School Prevention and Response Teams Towards Abandonment and Nonregistration in Compulsory Education December 2014 page 10. This publication has been developed as a part of the project “Enhancing Access to and Retention in Education for Vulnerable and Disadvantaged Children” implemented by ECMI Kosovo and in cooperation with UNICEF Office in Kosovo.

Another problem faced by Roma, Ashkali and Egyptians in the education system is the fact that the children of these communities primarily attend Albanian schools, but also in schools and classrooms in Turkish and Bosnian, a significant number of children attending language Serb enclaves or in municipalities of northern Kosovo in Mitrovica and Leposavic, where as a result of the current political situation of the Republic of Kosovo institutions and the Government have limited access.⁸⁰⁵ However, there are no schools where Roma language used as language of instruction in Roma language is not taught at all at schools in Kosovo.⁸⁰⁶ Therefore ineffective instrument of education and the fact that RAE cannot do education in their own language violates the human rights and freedoms guaranteed by the Constitution and laws and international treaties and may be considered an ineffective instrument of legal application since Kosovo applies such rights. All those mentioned above affect in economic development as the lack of education of the community causes non employment and non-economic development and definitely miserable state that has this community.

16.4. Ineffective instrument of the freedom and protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo

Another ineffective instrument that violates severely the rights and freedoms can be considered and non-Freedom and Protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo. In a survey conducted by the Youth Initiative for Human Rights Center for Social Group Development in association with the Center for Social Group Development are considered the attacks and abuse against LGBT people, or people who are perceived to be LGBT are not rare in Kosovo and stories that describe both collected during the course of this research and the incidents that have been reported in the media.⁸⁰⁷ On September 9, 2013, it began a trial because of attacks that took place in December 2012 against the publication of the magazine number Kosova 2.0 on "SEX" - in, which was interpreted by some extremist groups

⁸⁰⁵ Strategy for Integration of Roma, Ashkali and Egyptian communities in the Republic of Kosovo 2009- 2015, page 19.

⁸⁰⁶ Ibid.

⁸⁰⁷ Nisma e të Rinjve për të Drejtat e Njeriut Qendrën për Zhvillimin e Grupeve Shoqërore në bashkëpunim me Liria dhe mbrojtja për Lezbiket, Homoseksualët, Biseksualët dhe Transgjimorët në Kosovë Nëntor 2013 faqe 7.

as a support for LGBT event.⁸⁰⁸ Also, these rights are not effective and they have troubles with Family expectations, economic instability, ignorance of the government, and other realities of life in Kosovo are obstacles on the way of protecting the rights and encouraging the (self-) acceptance of the LGBT identities in Kosovo society. However, the traditionalism is one of the strongest obstacles. Stories of lesbians and gays thrown out of their homes, or suffering (family) violence or complete social exclusion after their identities are known are not unusual in Kosovo.⁸⁰⁹

17. Conclusions

We can conclude that human rights and transnational legal norms in Kosovo compared to the earlier period have advanced from time to time. The fact is known that human rights in Kosovo were violated every time by the communist system of the Federal Republic of Yugoslavia even though Kosovo had its autonomy according to the Constitution of 1974, whereas the same was abolished by the Milosevic regime where Albanians were denied rapidly basic rights and freedoms, such as employment and education of all civil rights guaranteed by international conventions

During the period of UNMIK in Kosovo was initially set a Provisory International Administration with a small number of staff, but this Administration had initially established legal rule then started to build democratic institutions which gradually transformed powers to local institutions. Kosovo had a very advanced constitutional framework and also created Provisory Self-government Institutions as well as Municipal and Central administrative mechanisms. In this way began the work of justice and police system despite certain challenges and events that faced citizens. In a standstill of some issues but gradually they were arranged since Kosovo had to fulfill certain standards to its final resolution. Kosovo declared independence in 2008 after the declaration of independence adopted the Constitution which came into force on 15 June 2008. This Constitution created an advanced system of human rights by applying directly to the implementation of instruments and international

⁸⁰⁸ Ibid

⁸⁰⁹ Fund Marija Savić Belgrade Invisible LGBT Report on the position of LGBT community in Kosovo Heartefact, January 2013 page 2.

agreements dealing with human rights. Republic of Kosovo created fairly advanced legislation based on its constitution, and the Assembly of Kosovo adopted numerous laws dealing with the human rights and the rights of communities living in Kosovo. The Constitution and its laws had problems in implementation due to various financial problems where some laws have not reached full implementation. Another challenge remains the functioning of the justice system, especially that one in a lower judicial where there are cases which aren't solved long wait for the resolution of these cases and the collection of the judicial cases because of the lack of judges prosecutors and political interference in the judicial system are some obstacles which are a measure infringing on freedoms and human rights. In relation to it the Kosovo Judicial Council should undertake actions in the resolution of cases of accumulated matters by increasing the number of judges and settling cases by choosing priority cases which risk prescription due to their obsolescence. The justice system also needs to create more independence by eliminating political interference in it. Kosovo Court Institute is in a good way but it should play a better role in the advancement and professionalism of judges. Another aspect of the non-functioning of human rights can be considered not fighting corruption and organized crime in this direction EULEX judges and prosecutors have not done enough and often they were criticized. Disturbing is the fact that this mission has not done enough to pursue war crimes criminals. Administration in Kosovo is advanced with civil services and there are created several administrative units that protect human rights and freedoms.

Non-functioning of courts in northern part of Mitrovica still is an issue to deal with. Hereafter it is to be followed if this situation will be improved since for this issue is achieved an agreement between the Governments of Serbia and Kosovo. Government and our technical working teams stated that there are no negotiations for the internal affairs of Kosovo. It should be considered the fact that the agreement will set a time when the courts open to the North and for this issue to be asked another Country that is clearly interference in indoor system. Interference in an Independent Country especially in employment of an individual who will be a judge threatens legal procedures and other structures of justice. Employment of women in positions decision-makers in Kosovo is not sufficient especially in leadership

positions, while Kosovo has advanced in terms of employment, rights of communities, whereas violated groups remain persons with restricted abilities as the law for these categories is not applied Kosovo Police is the most advanced police in the region and enjoys a great popularity and support. Kosovo police is on a good way and remains committed to the protection of citizens and is also an institution with greater credibility but it should be focused particularly in cases of civil protests and other cases where there were excess of certain powers.

Whereas as ineffective instruments of enforcement of human rights is the Legacy of Women which to a great extent violates human rights and Kosovo must work more in awareness of public opinion on this issue and the exercise of state power on the territory of country and education of RAE community, as well challengeable and worrying is Freedom and protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo, where these groups are vulnerable and endangered. As a final conclusion it will be considered that Kosovo is on the path of good promotion of human rights taking into consideration the fact that Kosovo has had various difficulties in creation of State and challenges that it has passed successful and protected the human rights and freedoms. Accordingly, the freedom of movement to all citizens and communities is guaranteed and has gradually begun the freedom of movement and Northern part of the country and this can be considered as positive. In generally Kosovo is in a good way of its state formation and completion of international standards for human rights, especially their practical implementation. So henceforth Kosovo urgently needs to eliminate some barriers and advance to find a modus for human freedoms and rights, starting from the bottom to the top.

CHAPTER VII

REGULATORY AND INSTITUTIONAL FRAMEWORK IN KOSOVO ON MINORITY RIGHTS ISSUES

1. The Assembly of the Republic of Kosovo

Kosovo is a multiethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law, through its legislative, executive and judicial. The exercise of public authority in the Republic of Kosovo is based on the principles of equality before the law for all individuals and in full respect of human rights and fundamental freedoms, recognized internationally, as well as protection of human rights and participation all communities and their members.⁸¹⁰ Inhabitants belonging to the same national or ethnic, linguistic or religious group traditionally present on the territory of Kosovo (Communities), enjoy special rights as defined by the Constitution, in addition to the rights and fundamental principles.⁸¹¹

The Assembly is the legislative institution of the Republic of Kosovo directly elected by the people, The Assembly as composition many ethnics group, The Assembly has one hundred twenty (120) deputies elected by secret ballot on the basis of open lists.⁸¹² The seats in the Assembly are distributed amongst all parties, coalitions, citizens' initiatives and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly. 2. In the framework of this distribution, twenty (20) of the one hundred twenty (120) seats are guaranteed for representation of communities that are not in the majority in Kosovo as follows: (1)

⁸¹⁰ Article 3 of the Constitution of Kosovo <http://www.kryeministri-ks.net/repository/docs/ConstitutionIKosovo.pdf>, accessed on 28th of April 2018.

⁸¹¹ Article 57 of the Constitution of Kosovo, *Any member of the community will have the right to freely choose to be treated or not treated as a member of the community and from this choice or from the exercise of rights relating to the election, it will not result any discrimination. Members of Communities shall have the right to express, raise and freely develop their identity and attributes as a community. 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. The Republic of Kosovo ensures appropriate conditions enabling communities and their members to preserve, protect and develop their identities.*

⁸¹² Article 64 of the Constitution of Kosovo, *The seats in the Assembly are distributed amongst all parties, coalitions, citizens' initiatives and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly.*

In the framework of this distribution, twenty (20) of the one hundred twenty (120) seats are guaranteed for representatives of communities that are not in the majority in Kosovo as follows:

Parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community shall have the total number of seats won through the open election, with a minimum ten (10) seats guaranteed if the number of seats won is less than ten (10).

Parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community shall have the total number of seats won through the open election, with a minimum ten (10) seats guaranteed if the number of seats won is less than ten (10); (2) Parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the other Communities shall have the total number of seats won through the open election, with a minimum number of seats in the Assembly guaranteed as follows: the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosnian community, three (3) seats; the Turkish community, two (2) seats; and the Gorani community, one (1) seat if the number of seats won by each community is less than the number guaranteed.⁸¹³ For the first two (2) electoral mandates, the Assembly of Kosovo shall have twenty (20) seats reserved for representation of Communities that are not in the majority in Kosovo, as follows: Ten (10) seats shall be allocated to the parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community and ten (10) seats shall be allocated to other Communities as follows: the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosniak community, three (3) seats; the Turkish community, two (2) seats; and the Gorani community, one (1) seat. Any seats gained through elections shall be in addition to the ten (10) reserved seats allocated to the Kosovo Serb Community and other Communities respectively.⁸¹⁴

The Kosovo Assembly has their committee which appoints permanent committees, operational committees and ad hoc committees reflecting the political composition of the Assembly. The Assembly of Kosovo in the framework of these committees has also the Committee on Rights and Interests of Communities. The Committee on Rights and Interests of Communities is a permanent committee of the Assembly.

⁸¹³ Ibid

⁸¹⁴ Ibid, article 148

This committee is composed of one third (1/3) of members who represent the group of deputies of the Assembly holding seats reserved or guaranteed for the Serbian Community, one third (1/3) of members who represent the group of deputies of the Assembly holding seats reserved or guaranteed for other communities that are not in the majority and one third (1/3) of members from the majority community represented in the Assembly.⁸¹⁵

1.1. The Committee on Rights Interests of Communities Returns

The Committee on Rights and Interests of Communities and Returns is a permanent committee of the Assembly, which consists of Member of Assembly with seats reserved or guaranteed for the Serbian Community and other communities. The task of this committee is to examine whether the Assembly any discriminatory law, where they give necessary recommendations.⁸¹⁶ The Commission has monitored the implementation of adopted laws retaliating to the rights and interests of communities through field visits in all municipalities of Kosovo, with exception of Leposaviq, Zubin Potok and Mitrovica.

2. The Presidency of Kosovo

Within the Office of the President of Republic of Kosovo operates the Consultative Council for Community. The Kosovo's President is the leader of the Consultative Council for Community⁸¹⁷ based on constitutions of Kosovo and Law on the Protection and Promotion of the Rights of Communities and their members in Kosovo Consultative Council for community of Kosovo.

The Council has the following mandate:

- assists in the organization and the articulation of the views of communities and their members in relation to legislation, public policy and programs of special relevance to them;

⁸¹⁵ Ibid, article 78.

⁸¹⁶ Ibid article 78 paragraphs 1,2.

⁸¹⁷ Ibid at the Article 84, point 13.

- provides a mechanism for regular exchange between communities and state institutions;
- affords the communities the opportunity to participate at an early stage on legislative or policy initiatives that may be prepared by the Government or the Assembly, to suggest such initiatives and to have their views incorporated in the relevant projects and programs, including the annual strategy and report,
- enables communities to participate in the needs assessments, design, monitoring and evaluation of programs that are aimed at their members or are of special relevance to them;
- makes recommendations during the decision-making process concerning the apportionment of funds, both international and allocated from the budget of the Republic of Kosovo, for projects aimed at communities or their specific interests;
- raises awareness of community concerns within the Republic of Kosovo and to contribute to harmonious relations between all communities within the Republic of Kosovo;

2.1. The Community Consultative Council

The Community Consultative Council consists of representatives of all communities in Kosovo and of the Government, the Office of the President and relevant agencies. From the Roma, Egyptian and Ashkali communities, there shall be two (2) representatives respectively, one (1) of each of whom may be a member of the Assembly of Kosovo.

The Bosniak and Turk communities shall have three (3) representatives respectively, one (1) of each of whom may be a member of the Assembly of Kosovo. The Serb community shall have five (5) representatives, two (2) of whom may be members of the Assembly of Kosovo, and the Gorani community shall have two (2) members, one (1) of whom may be a member of the Assembly of Kosovo. In relation to each member, a substitute member may be appointed. Those members who are not members of the Assembly of Kosovo shall normally be the chairpersons or vice

chairpersons or the other senior nominees of community representative organizations or representatives of associations or NGOs affiliated with a particular community.⁸¹⁸

A Consultative Council for Communities acts under the authority of the President of the Republic of Kosovo in which all Communities shall be represented.⁸¹⁹ The mandate of the Consultative Council for Communities shall: provide a mechanism for regular exchange between the Communities and the Government of Kosovo, afford to the Communities the opportunity to comment at an early stage on legislative or policy initiatives that may be prepared by the Government, to suggest such initiatives, and to seek to have their views incorporated in the relevant projects and programs, have any other responsibilities and functions as provided in accordance with law.⁸²⁰

3. The Government of Kosovo

The Government shall particularly support cultural initiatives from communities and their members, including through financial assist. The Government of Kosovo consists of 20 Ministries and the Office of the Prime Minister. The Government of the Republic of Kosovo, currently has several ministries that are run by non-majority Community. The Government has three ministers and 12 deputy ministers of which come for different community. According to Kosovo Constitution Ministries and Representation of Communities, underline that: Ministries and other executive bodies are established as necessary to perform functions within the powers of the Government. The number of members of Government is determined by an internal act of the Government.⁸²¹

⁸¹⁸ Law On the Protection and Promotion of the Rights of Communities and Their Members in Kosovo <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2531>, accessed on 7th of May 2018.

⁸¹⁹ Article 60, paragraf 1 and 3 of the Constitution of Kosovo <http://www.kryeministri-ks.net/repository/docs/Constitution%20Kosovo.pdf>, accessed on 8th of May 2018.

⁸²⁰ Ibid

⁸²¹ Minister from another Kosovo non-majority Community. If there are more than twelve (12) Ministers, the Government shall have a third Minister representing a Kosovo no majorityCommunity. There shall be at least two (2) Deputy Ministers from the Kosovo Serb Community andtwo (2) Deputy Ministers from other Kosovo non-majority Communities. If there aremore than twelve (12) Ministers, the Government shall have a third Deputy Minister representing the Kosovo Serb Community and a third Deputy Minister representing another Kosovo non-majority Community.Constitution of the Republic of Kosovo article 96 there shall be at least one (1) Minister from the Kosovo Serb Community and one (1).

3.1. Office of the Language Commissioner

The language Commission was established in 2007 within the Prime Minister Office, this body assists the government in conducting, and autonomously conduct public awareness programs and regular outreach activities to inform the public regarding their rights under the Law. The commission ensures the protection of language of the communities whose mother tongue is not an official language, but by law, is in official use in certain municipalities. In order to advance the policies that relate to the implementation of the law on the use of language, the Kosovo government has changed the mechanism, which has been operating at a Commission level by transforming it into the Office of the Languages Commissioner, who works at the Prime Minister's Office.⁸²² This office, which is led by the Language Commissioner, is mandated to monitor the implementation of the law on languages in all state institutions of Kosovo.⁸²³ Language of communities in the Republic of Kosovo in central level is Albanian language and Serbian language, while in local level are the other languages. Communities in the Republic of Kosovo use their language based on Law on the Use of Languages. The purpose of the law is to ensure the multilingual character of Kosovo society, which represents its unique spiritual, intellectual, historical and cultural values.

3.2. Office for Community Affairs in the Office of Prime Minister

The Office for Community Affairs (OCA), created by Cabinet Decision no. 06/34 on the Creation of the Office, on 3 September 2008 , was established within the Office of the Prime Minister to act as focal point within the Government for community issues.⁸²⁴

The mandate and structure of the Office of Community Affairs Regulation No.16/2013 on the organizational structure of the Office of the Prime Minister: Office of Community Affairs shall act within the Office of the Prime Minister under the leadership of the political advisor appointed by the Prime Minister, who shall be responsible to manage the office and execute its competencies.

⁸²² See decision of the Government no. 09/47, dated 09.11.2011.

⁸²³ Article 9 of the Regulation no. 07/2012, of the Office of the Language Commissioner. <http://kryeministri-ks.net/documents/rregullore-nr-07-2012-per-zyren-e-komisionerit-per-gjuhet/> accessed on 13th of May 2018.

⁸²⁴ Cabinet Decision no. 06/34 on the Creation of the Office, on 3 September 2008.

The Office of Community Affairs shall:

Provide advice to the Prime Minister on community related issues, including to: Inform and provide advice on time and property to the Prime Minister on communities related issues, Inform the Prime Minister on important issues of local, national, regional and international level, draw the attention of the Prime Minister on issues requiring his personal intervention.⁸²⁵

Coordinate on all communities' related issues, including: Coordination with government bodies, independent agencies and institutions (local and central level); Coordination with donors and international organizations in order to ensure that communities' affairs are taken into consideration effectively throughout Kosovo.⁸²⁶

3.3. Office of Good Governance human rights equal opportunities and gender issues

This office is responsible to supervise, advice, and develop specific policies and issues in the field of good governance, human rights, equal opportunities and gender equality. The Prime Minister's Office for Good Governance is as important mechanism in the development of government policies on the protection and promotion of communities' rights, human rights, gender equality policies, and person with disabilities, children's rights, combating corruption and misuse and other negative phenomena. The Office's important focus is the review and participations in drafting legislation and other important documents, which affect government policies in its areas of responsibility.⁸²⁷

3.4. Ministry of Communities and Returns

Based on Appendix 15 of Regulation no. 02/2011 on the areas of administrative responsibility of the Office of the Prime Minister and Ministries, the Ministry of Communities and Return shall:

Develop and promote policies and implement laws to promote and protect the rights of communities and their members, including the right to return, in accordance with

⁸²⁵ <http://www.kryeministri-ks.net/?page=2,134> , accessed on 25th of May 2018.

⁸²⁶ Ibid

⁸²⁷ <http://www.kryeministri-ks.net/?page1,51;http://zqm.rks-gov.net/>, accessed on 27th of May 2018.

the Constitution of the Republic of Kosovo.⁸²⁸ Ministry of community and return based on Regulation no.40/2012 on internal organization and systematization of work places in the Ministry for Communities and Return have 4 Departments and 10 Divisions. Except the mandate of the promotion of community rights deal with displaced persons, which are displaced to states of region and the internally displaced person.⁸²⁹

4. The Ombudsperson

The Constitution of the Republic of Kosovo, in its XII Chapter determines the role and the competencies of the Kosovo Ombudsperson as well as furthers the Law No. 05/L-019 on Ombudsperson, which regulates Ombudsperson Institution (OI) organizing and functioning, responsibilities and OI work model, as well as regulates procedures for lodging complaints and investigation of them.⁸³⁰ The Ombudsperson Institution represents legal mechanism for protection, monitoring and promotion of human rights and fundamental freedoms of natural and legal persons from unlawful and irregular actions or inactions of the public authorities, institutions and persons or other authorities, who exercise public authorities in the Republic of Kosovo as well as acts as a National Mechanism of prevention of torture and other cruel, inhuman and degrading treatments and punishments within all places where persons deprived of their liberty are placed, including police retention, pre-trial detention facilities, stay in health institutions, customs detention, immigration detention as well as all other facilities where suspicions on violation of human rights and fundamental freedoms may occur.⁸³¹

The Ombudsperson conducts investigations, issues recommendations, publishes reports as well as advocates for human rights and freedoms. In cases when investigations conducted by OI legal advisers result that the violation of human rights have occurred, the institution may request additional information from public

⁸²⁸Appendix 15 of Regulation no. 02/2011 on the areas of administrative responsibility of the Office of the Prime Minister and Ministries <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10533> accessed on 29th of May 2018.

⁸²⁹Regulation no.40/2012 on internal organization and systematization of work places in the Ministry for Communities and Return <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10358> accessed on 3rd of June 2018.

⁸³⁰ <http://www.ombudspersonkosovo.org/en/mission> , accessed on 6th of June 2018.

⁸³¹ Ibid.

authorities and give recommendations for respective responsible authorities.⁸³² In cases when the Ombudsperson considers that a practice or the general situation does not comply with national and international standards on human rights, it impacts an individual or wider, compiles special reports, which involve also recommendations addressing to the Assembly of Kosovo aiming to improve the situation created as well as its harmonization with national and international standards on human rights.⁸³³

5. Local Institutions

Local institutions are second level institutions that are responsible for self-government. The government of local institutions are led by the mayor of the municipality and they also have a local assembly. Based on Law Nr. 03/L-040 on Local Self Government, all municipalities have Communities Committee. The membership of the Communities Committee shall include the members of the Municipal Assembly and community representatives.⁸³⁴ Any community living in the municipality shall be represented by at least one representative in the Communities Committee. The representatives of communities shall comprise the majority of the Communities Committee.⁸³⁵ The Communities Committee shall be responsible to review compliance of the municipal authorities with the applicable law and review all municipal policies, practices and activities related with the aim to ensure that rights and interests of the Communities are fully respected and shall recommend to the Municipal Assembly measures it considers appropriate to ensure the implementation of provisions related to the need of communities to promote, express, preserve and develop their ethnic, cultural, religious and linguistic identities, as well as to ensure adequate protection of the rights of communities within the municipality.⁸³⁶

In municipalities where at least ten per cent (10%) of the citizens belong to Communities not in the majority in those municipalities, a post of the Chairperson of

⁸³² Ibid.

⁸³³ Ibid.

⁸³⁴ Law Nr. 03/L-040 on Local Self Government article 53 Communities Committee, http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L040_en.pdf accessed on 13 th of June 2018.

⁸³⁵ Ibid

⁸³⁶ Ibid

the Municipal Assembly for Communities shall be reserved for a representative of these communities.⁸³⁷

The post of the Deputy Chairperson of the Municipal Assembly for Communities shall be held by the non-majority community's candidate who received the most votes on the open list of candidates for election to the Municipal Assembly.⁸³⁸

5.1. Municipal Offices for Communities and Return

The establishment and institutional status of the office shall operate in all municipalities of the Republic of Kosovo.⁸³⁹ The office is an integral part of the municipal administration and shall be recognized in the municipal statute.⁸⁴⁰ The office shall work in full coordination with Deputy Mayor for Communities, the Municipal Directorates, the Deputy Chairperson of the Municipal Assembly for Communities and the Municipal Assembly's Communities Committee.⁸⁴¹ To ensure the implementation of their responsibilities under this regulation, Municipalities can, where they deem appropriate, establish forms of intermunicipal co-operation, including but not limited to, co-operation agreements, joint activities or the establishment of joint Offices for Communities and Return financed through the municipal budgets of municipalities concerned.⁸⁴²

5.2. Municipal Unit for Human Rights

The minorities, rights or, as it is known in Kosovo, the rights of non- majority communities, first of all are a category of human rights, therefore the human rights unit is the mechanism of interest to non-majority communities. In municipality level there are also Human Rights Units established that take care for communities as a category of human rights.⁸⁴³

⁸³⁷ Ibid article 54 Deputy Chairperson for Communities

⁸³⁸ Ibid

⁸³⁹ Regulation no. 02/2010 for the Municipal Offices for Communities and Return article 3 Establishment and institutional status, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10522> accessed on 15th of June 2018.

⁸⁴⁰ Ibid

⁸⁴¹ Ibid

⁸⁴² Ibid

⁸⁴³ Administrativ Instruction 2011/04, on amending the Instruction no 2011/1 <https://mapl.rks-gov.net/wp-content/uploads/2017/06/Udhezim-Administrativ-Nr-20114-Per-ndryshimin-dhe-plotesimin-e-udhezimit-20111-per-themelimin-e-njesive-per-te-drejt>, accessed on 15th of June 2018.

The Human Rights Unit consists of:

- Coordinator
- Gender Equality Officer
- Community Rights Officer
- Officer for People with Special Needs
- Child's Rights Officer
- Anti-trafficking Officer, etc.⁸⁴⁴

This unit has full capacities to take care for the implementation of policies and legislation to ensure implementation of human rights of other categories, including community rights, with particular emphasis in offering equal services to communities without discrimination, taking care for difficult socio-economic conditions of communities, housing, return etc.⁸⁴⁵

Bearing in mind that the human rights unit includes officers of minority rights, it makes such units very important for this category of citizens in the municipalities.⁸⁴⁶

6. Conclusions

The Republic of Kosovo has created institutional mechanism for promoting, advancing and protecting its communities' rights and their members in Kosovo. The Assembly of the Republic of Kosovo is the only body in the region and the European states who has a specific composition with minority groups. In this regard, the Assembly has one hundred and twenty (120) deputies, twenty (20) of the one hundred and twenty (120) seats are guaranteed for representation of communities that are not a majority in Kosovo. For the first two (2) electoral mandates, the Assembly of Kosovo shall have twenty (20) seats reserved for representation of Communities that are not a majority in Kosovo. Except this composition the Assembly has the Committee on Rights Interests of Communities Returns, this is a permanent committee of the Assembly, which consists of Member of Assembly with seats reserved or guaranteed for the Serbian Community and other communities.

⁸⁴⁴ Ibid Article 3.

⁸⁴⁵ The Promotion of Human Rights in the Republic of Kosovo municipalities, date provided by the Ministry of Local Government Administration, Pristina 2013, pages 14,15.

⁸⁴⁶ The Promotion of Human Rights, the report by Ministry of Local Government Administration Pristine 2014.

Furthermore, within the office of the President of Republic of Kosovo is the Consultative Council for Community the Kosovo's President is leader of the Consultative Council for Community. The Government shall particularly support cultural initiatives from communities and their members, including through financial assist. The Government of Kosovo consists of 20 Ministry and the office of the Prime Minister. Government of the Republic of Kosovo current has several ministries that are run by non-majority Community. In the framework of government is created specific ministry - Ministry of Community and Returns and Communities, which deal with communities' rights and their members as well as displaced persons and refugees. In addition, the Government has many other institutional mechanisms which deal with communities' rights which are as follows: the Office of the Language Commissioner, the Office for Community Affairs in the Office of Prime Minister, and the Office of Good Governance human rights equal opportunities and gender issues.

During this chapter, except the government are also treated some other institutional mechanisms for protecting and promoting minorities as: The Ombudsperson, Local Institutions, Municipal Offices for Communities and Return and Municipal Unit for Human Rights. Most of those institutions have the same mandate, for example the Ministry for Community and Return has the same mandate like the Municipality Office for Community and Return. Hence, the same mandate has the Office for Communities Issues as well as the Community Consultative Council and the Committee on Rights Interests of Communities Returns. Nevertheless, urgent steps must be taken to review the mandate of these institutions because most of them are unnecessary.

To illustrate this argument, we can analyze the data in the part of Chapter IX 'Methodology of Scientific Work/ in the interviews' part, where the question whether citizens think there are many institutional mechanisms dealing with minority rights and which of these do the same job or has the same mandate? For example: Ministry of Communities and Returns- Government, Office for community Affairs-Office of the Prime Minister, Municipal Offices for Communities and Returns Municipality, Consultative Council for Communities, The president's Office, Office of the

Language Commissioner, Office of the Prime Minister, Committee on the Rights, Interests of the Communities and Return Kosovo Assembly, Neither one of them. If referred to the data below/Graph no.8 Reflection opinion on target group about the question we can conclude that: In this question the respondents had the right to give more than one answer, there are cases when they answered more than three or four questions or on all questions, so according to this question do you think there are many institutional mechanisms dealing with minority rights, which of these do the same job or has the same mandate? out of the total of 54 respondents, 31% of them, or 17 people have responded to Ministry of Communities and Returns- Government, 21% of them, or 11 people have responded to Office for Community Affairs-Office Prime Minister, 24% of them, or 12 people have responded to Municipal Offices for Communities and Returns Municipality 11% of them, or 6 people from them have responded to Consultative Council for Communities- the President 's Office 5% of them, or 3 people have responded to Office of the Language Commissioner- Office Prime Minister 4% of them, or 2 people have responded to Committee on the Rights, Interests of the Communities and Return Kosovo Assembly, 3% of them, or 2 people have responded to neither one of them.

CHAPTER VIII

IMPACT OF COMPREHENSIVE PROPOSAL FOR THE KOSOVO STATUS SETTLEMENT IN THE KOSOVO CONSTITUTION AND LEGISLATION

1. Rights of Communities and their members based on Comprehensive Proposal for the Kosovo Status Settlement in Kosovo

The Comprehensive Proposal for the Kosovo Status Settlement in Kosovo has had a great impact in the Constitution of the Republic of Kosovo and a number of laws which are basics for the state. A special focus has been given to the rights of communities in Kosovo. If we compare the Constitution and the respective laws for the rights of communities, we find out that the Ahtisaari's package has the similar content.

The rights of Communities and Their Members are foreseen in a specific way in the Ahtisaari's package. Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of Kosovo (hereinafter referred to as Communities) enjoy specific rights.⁸⁴⁷ Kosovo are obliged to guarantee the protection of the national or ethnic, cultural, linguistic and religious identity of all Communities and their members. Kosovo also establish the constitutional, legal and institutional mechanisms necessary for the promotion and protection of the rights of all members of Communities and for their representation and effective participation in political and decision-making processes.⁸⁴⁸

The authorities of Kosovo shall be guided in their policy and practice by the need to promote a spirit of peace, tolerance and intercultural and inter-religious dialogue among all Communities and their members.⁸⁴⁹ The communities' rights are included in the Constitution of the Republic of Kosovo article 57 General Principles.⁸⁵⁰ Impact

⁸⁴⁷ Comprehensive proposal for the Kosovo status settlement article 4 Rights of Communities and Their Members.

⁸⁴⁸ Ibid

⁸⁴⁹ Ibid

⁸⁵⁰ Constitution of the Republic of Kosovo article 57 General Principles, 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

of Ahtisaari's Plan has been included in the Law on the protection and promotion of the rights of communities and their members in Republic of Kosovo article 1 paragraph 1 until 7, which sets out rights of Communities and Their Members.

2. The Security and Freedom of Movement

Kosovo's state is responsible to ensure appropriate conditions enabling communities, and their members to preserve, protect and develop their identities. It is the Government which should particularly support cultural initiatives from communities and their members, including through financial assistance, also according to the Ahtisaari's Plan and International Convents which are directly implemented in the Kosovo Constitution.⁸⁵¹

Kosovo shall promote, protect and respect the highest level of internationally recognized human rights and fundamental freedoms, including those rights and freedoms set forth in the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. Kosovo shall take all necessary measures towards ratifying the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.⁸⁵² All persons in Kosovo are entitled to human rights and fundamental freedoms, without discrimination of any kind on grounds of race, color, sex, language, religion, political or other opinion, national or social origin, association with community, property, birth or other status.⁸⁵³ All persons in Kosovo are equal before the law and are entitled, without any discrimination, to equal protection of the law.⁸⁵⁴ The principles of non-discrimination and equal protection under the law shall be applied and respected in particular in the areas of employment in public administration and

rights as set forth in this Constitution in addition to the human rights and fundamental freedoms provided in chapter II of this Constitution;

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;

Members of Communities shall have the right to freely express, foster and develop their identity and community attributes;

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.

⁸⁵¹ Article 22 of the Constitution.

⁸⁵² Comprehensive proposal for the Kosovo status settlement article 2 Human Rights and Fundamental Freedoms.

⁸⁵³ Ibid

⁸⁵⁴ Ibid

public enterprises, and access to public financing.⁸⁵⁵ The Constitution of Kosovo shall prescribe the legal and institutional mechanisms for the protection, promotion, and enforcement of human rights of all persons in Kosovo, as set forth in Annex I of this Settlement. Kosovo shall promote and fully respect a process of reconciliation among all its Communities and their members. Kosovo shall establish a comprehensive and gendersensitive approach for dealing with its past, which shall include a broad range of transitional justice initiatives.⁸⁵⁶ All competent authorities of Kosovo shall cooperate with and provide unrestricted access to internationally recognized human rights monitoring mechanisms or organizations.⁸⁵⁷

The citizens of the Republic of Kosovo and foreigners who are legal residents of Kosovo have the right to move freely throughout the Republic of Kosovo and choose their location of residence.⁸⁵⁸ Each person has the right to leave the country.⁸⁵⁹ Limitations on this right may be regulated by law if they are necessary for legal proceedings, enforcement of a court decision or the performance of a national defense obligation.⁸⁶⁰ Citizens of the Republic of Kosovo shall not be deprived the right of entry into Kosovo.⁸⁶¹ Citizens of the Republic of Kosovo shall not be extradited from Kosovo against their will except for cases when otherwise required by international law and agreements.⁸⁶² The right of foreigners to enter the Republic of Kosovo and reside in the country shall be defined by law.⁸⁶³

The Republic of Kosovo participates in international cooperation for promotion and protection of peace, security and human rights.⁸⁶⁴ Security institutions in the Republic of Kosovo shall protect public safety and the rights of all people in the Republic of Kosovo. The institutions shall operate in full transparency and in accordance with internationally recognized democratic standards and human rights.

⁸⁵⁵ Ibid

⁸⁵⁶ Ibid

⁸⁵⁷ Ibid

⁸⁵⁸ Constitution of the Republic of Kosovo article 35 Freedom of Movement

⁸⁵⁹ Ibid

⁸⁶⁰ Ibid

⁸⁶¹ Ibid

⁸⁶² Ibid

⁸⁶³ Ibid

⁸⁶⁴ Ibid article 17

⁸⁶⁵ Security institutions shall reflect the ethnic diversity of the population of the Republic of Kosovo.⁸⁶⁶ The Serbian Orthodox Church in Kosovo (SOC), including its clergy and their affiliates, activities and property shall be afforded additional security and other protections for the full enjoyment of its rights, privileges and immunities, as set forth in Annex V of this Settlement.⁸⁶⁷

3. Access to public services, Justice and participation in public affairs

According to Ahtisaari's package, the Republic of Kosova shall enact the framework legislation to provide equal access to public services, minimum quality and quantity standards in the provision of public services.⁸⁶⁸ While the constitution emphasizes this local self-government is based upon the principles of good governance, transparency, efficiency and effectiveness in providing public services having due regard for the specific needs and interests of the Communities not in the majority and their members.⁸⁶⁹ Related to access to public services this issue is resolved by the Law no. 06/L –113 on Law No.03/L –189 on the State Administration of the Republic of Kosovo with this law shall be regulated the scope of the state administration bodies the state administration exercises its functions and performs its duties based on the constitution, law, other provisions and general acts.⁸⁷⁰

According to Article 31, the right to fair and impartial trial of the Kosovo Constitution foresees that “everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers”,⁸⁷¹ while with the Ahtisaari package, it is predicted that the Kosovo Judicial Council shall have full independence in the performance of its functions for the purpose of ensuring an integrated, independent, professional and impartial justice system, ensuring access of all persons in Kosovo to justice and guaranteeing that the

⁸⁶⁵ Ibid article 125

⁸⁶⁶ Ibid

⁸⁶⁷ Comprehensive proposal for the Kosovo status settlement article 7 Religious and Cultural Heritage

⁸⁶⁸ Ibid Article 4 Extended Own Municipal Competencies

⁸⁶⁹ Constitution of the Republic of Kosovo article 123 General Principles ,paragraf 4

⁸⁷⁰ Law no. 06/L –113 on Law No.03/L –189 on the State Administration of the Republic of Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2706> accessed on 7th of July 2018.

⁸⁷¹ Constitution of the Republic of Kosovo article 31 Right to Fair and Impartial Trial

Kosovo justice system is inclusive and fully reflects the multi-ethnic nature of Kosovo.⁸⁷²

4. Cultural Heritage and Special Protected Zones

Kosovo has created mechanisms and legal instruments in order to enable minority communities' express, maintain and develop their culture. One of the important legal instruments among others is the Law on Protection and Promotion of the Rights of Communities and their Members in Kosovo.⁸⁷³ Among many rights of the law in question, there are even the guarantees of communities to establish cultural associations, which, in addition, have the rights to be supported and financially assisted, including support and assistance from government.⁸⁷⁴ Persons belonging to communities, acting individually or through their representative organizations, have the right to maintain, contact among them and with other people living in the Republic of Kosovo. They have the right to establish and maintain free and peaceful contacts with people in every country, and in particular, with those whom they share ethnic, cultural, linguistic, religious identity, or a common cultural heritage.⁸⁷⁵ Furthermore, it should be noted that the special protection for certain areas and objects of cultural heritage is made first to protect Serb cultural heritage and then the other heritages. The Serb cultural heritage has been endangered, especially after the war due to revenge motives, manifested in what had happened in the last war in Kosovo.⁸⁷⁶

5. Conclusion

As previously stated, the Comprehensive Proposal for the Kosovo Status Settlement was the main document for the minorities' right in the Republic of Kosovo, which rights are guaranteed with the constitution and legislation in force. The Ahtisaari's package was the basic document regarding the Kosovo status. When the Assembly of the Republic of Kosovo declared the independence, the declaration was made based

⁸⁷² Comprehensive proposal for the Kosovo status settlement article 6 The Constitutional Court and Justice System

⁸⁷³ Law no.03/L-047 on the protection of the rights of communities and their members <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2531>, accessed on 7th of July 2018.

⁸⁷⁴ Ibid article 5.4.

⁸⁷⁵ Ibid article 5.7.

⁸⁷⁶ The number of incidents against cultural heritage 2009-2013, Challenges in protection of immovable tangible cultural heritage in Kosovo, OSCE 2014.

on Ahtisaari's plan. In other words, this plan was the guideline of how Kosovo will look like. Thus, in order to implement this plan, huge steps were needed to be taken from the state of Kosovo. All minorities' rights foreseen in this plan were incorporated into the Kosovo Constitution and as a result, the Kosovo Assembly has implemented many laws which are in line with Ahtisaari's package.

To conclude, this package has arranged the political composition in the assembly, government, municipality, court and so on. This package has defined the Security and Freedom of Movement, Access to public services, Justice and participation in public affairs, Cultural Heritage and Special Protected Zones.

CHAPTER IX

METHODOLOGY OF SCIENTIFIC WORK

1. Research Purpose

Empirical research has been of great importance regarding the elaboration of hypothesis and the receipt of a series of responses to the work in this issue. Therefore, the purpose of the research was to measure the public opinion (target groups) about their perceptions of the relationship between democracy and the rights of non-majority communities in the Republic of Kosovo. This study also aims to reflect community legislation in Kosovo and that of the EU, to identify the challenges of the state of Kosovo in implementing the legislation and to provide a better life for its citizens who belong to ethnic groups or minorities in Kosovo, with particular emphasis on comparing the implementation of national legislation with European standards on minority rights issues with a special focus on Kosovo, as well as the effects on the implementation of the legislation concerned through institutional mechanisms.

2. Research tasks

1. Sample Design
2. Questionnaire Design
3. Realization of the pilot testing
4. Data analysis and research
5. Data collection
6. Design and interpretation of the results

3. Research Objectives

1. Targeting of target groups regarding their opinions on the realization of the rights of non-majority communities in Kosovo;
2. Analysis and identification of perceptions of target groups regarding their beliefs for non-majority communities;
3. Measuring public opinion through academic degrees on the types of rights of non-majority communities in Kosovo and respecting these rights by the majority;
4. Analysis of the implementation of Kosovar legislation on community rights compared to that of some countries in the region and those of the EU;
5. Research and identify the problems and challenges faced by non-majority communities and displaced persons in Kosovo.

4. Research Hypothesis

- Community rights and legal norms
- What are the minorities of international influence in the treatment of minority rights
- What are the ineffective law enforcement instruments in Kosovo
- Return of Displaced Persons to Kosovo by Region and Country.
- Approximation of Kosovo legislation with that of the EU
- Community Rights Legislation in Europe
- How applicable are the rights of non-majority communities in Kosovo comparable to that of the EU?

Sub- hypothesis:

- How important is the central level of governance for communities, as well as reflection on democracy inter-institutional coordination in combining their competencies?
- Human rights and legal norms
- The rights of Communities in Kosovo comparative aspect with several states of the region and that of the EU;
- The procedure of approximation of Kosovo legislation with that of the EU;
- Handling minority rights by the European Union;
- Minority Rights in the Council of Europe - What is the current status of the legislation on the rights of communities as well as the role of institutional mechanisms for non-majority communities in Kosovo and what are the challenges and problems?

5. Independent variables are

- Central Institutions
- Local institutions
- Rights of communities
- Displaced Persons
- Tackled groups
- Rights categories

6. Research methodology

During the research work, various methods have been used, such as legal methods, empirical methods, comparative methods, historical methods, etc.

7. Content Analysis Method

While conducting the study of this topic, various literature, primary literature, secondary and tertiary literature were used, starting from local and international scientific and academic books (Albanian and English), then various legal documents, such as constitution laws and various regulations, strategic documents, documents and official reports of some institutes such as ECMI in Germany, then reports of the Council of Europe, some governments of the member states, as well as official data from the Government of the Republic of Kosovo.

8. Legal Methods

Legal methodology, as a scientific method, is used for the fact that this study is related to community rights as a legal category. The study includes a range of laws, regulations and constitutions of different states as well as of Kosovo. During the study of this topic, the rights of minorities are analyzed from the aspect of international law, as well as from the aspect of domestic law and the implementation of minority rights. At the same time, I have conducted research on the rights of subjects in the courts, as well as the realization of some community rights related to the institutional mechanisms. Comparison of the time legislation governing UNMIK in Kosovo with that of the state of Kosovo.

9. Comparison method

During the work of this paper, comparative or comparative methods have been used, comparing the implementation of the legislation on minority rights in Kosovo and the EU, which has further strengthened the work in question. I have also compared the realization of certain rights, as well as the comparison of the realization of legal constitutional rights between ethnic communities or ethnic groups in Kosovo.

10. Statistical Method

Through this method, which was used in this paper, we have provided a range of statistical data, such as tabular forms, as well as other forms of data related to minority groups on the implementation of legislation.

11. Philosophical Method

Philosophical Method of Philosophers on "Ideas" A true idea is "clear and distinct," Descartes said. It can be proven and explained. The idea coincides with an action of the mind, it is defined as a tendency (Lejbnic). What is the origin of ideas? There are ideas derived from experience, as there are ideas that arise "a priori" as a source of mind, without referring to any concrete experience (Kant). So this method has helped me greatly in treating different tissues and thoughts.

12. Descriptive method

Part of the paper is a description of the current state of implementation of legislation or policies of institutions that deal directly with minority rights in Kosovo and the EU. Especially the description of the main duties of legal and constitutional mechanisms, which in the current Kosovo legislation in the field of minority rights have a special role.

13. Qualitative research

Based on the results of research interviews, the interview was developed with 54 official institutions. The questionnaire contained a total of 18 different questions, 10 of which were presented as closed and 7 open questions as well as a question for comment.

14. Instruments – Interview

As an instrument for conducting qualitative research, it has been used, Interview realized with focus groups, Members/ Representative of the Institution of Political Cabinets, dealing with community rights including: Consultative Council for Communities , Kosovo Property Comparison and Verification Agency civil servants of the following institutions: Office Premier (Legal Office, the Language Commissioner, Office for Communities Issues) , Municipal Officer for Community and Return, Officer from Ministry of Communities and Returns , Officer from Ministry of European Integration , officer from Ministry of Justice , some members from civil society, OSCE representatives in Kosovo - (Closed questions) and (Open questions).

15. Research Technique

The research technique was mainly through face-to-face with target groups, as well as through online communication, namely by emailing interviews and receiving feedback.

Table 15 research technique

Tasks	December 2018				April 2019		
Operational plan							
Drafting the interview							
Dissemination and receipt of results							
Analysis and interpretation of results							
Compilation of the final research report							

16. Challenges from Research

Like any scientific work, our research has had some difficulties during the process. One of the challenges was long during the research was difficult with regard to the time available to the respondents, and given the fact that this time is the end of the year and the beginning of the next year. There were also some difficulties regarding some members of the Serb community who refused to answer and they did not return the hard copy of the questionnaire.

17. Interpretation of results

In order to produce the most accurate scientific results in this paper regarding the implementation of National Legislation with the European Standards on Minority Rights in the EU, a special focus in Kosovo, we have conducted interviews with target groups:

- Office for Minority Issues within the Government of Kosovo
- Office of Kosova Agency for Comparison and Verification of Property
- OSCE Representative
- Legal Departmantentes of several Agencies
- Office of Ministry for Communities and Rerturn
- Office of Municipality Office for Communities and Return
- Office of the Consultative Council for Communities- The president 's Office
- Office of the Language Commissioner- Office Prime Minister;

- Office of the Committee on the Rights, Interests of the Communities and Return Kosovo Assembly.
- Office of Ministry of Justice
- Office of Ministry for European Integration.
- Some members from the civil society

From the interviews with the personalities from the selected groups, we have realized the results presented later in this work.

Below we will reflect the results of the interviews conducted through the questionnaire interview method, by the closed question method, and by the "open" question method. From the answers of the first group, we have achieved these results reflected in diagrams and graphs, as follows:

18. Interviews conducted through a questionnaire interview method, according to the "closed" question method

Graph no. 1: Reflection opinion on the targeting related groups ineffective instrument of the human rights regime of Kosovo are less applicable, according to which out of the total of 54 respondents, 35% of them, or 19 people responded for Ineffective instruments to exercise the state sovereignty in north part of the Republic of Kosovo, 31% of them, or 17 of them have responded to Ineffective instruments related to non-realization of women's property rights, 17% of them, or 9 of them have responded to Continuation of the situation of marginalization in education, employment for RAE community in Kosovo , 11% of them or 6 of them have responded to Ineffective instrument of the freedom and protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo, 6% of them or 3 of them have refused to respond and are declared to do not know/ Refuses to answer⁸⁷⁷

Generally ineffective instrument of the human rights regime of Kosovo are less applicable , pose challenges especially in a country and society in which Kosovo is.

⁸⁷⁷ Reflection of opinion of the Interview realized with focus groups, Members / Representative of the Institution of Political Cabinets, dealing with community rights including: Consultative Council for Communities , Kosovo Property Comparison and Verification Agency civil servants of the following institutions: Office Premier (Legal Office, the Language Commissioner, Office for Communities Issues) , Municipal Officer for Community and Return, Officer from Ministry of Communities and Returns , Officer from Ministry of European Integration , officer from Ministry of Justice , some members from civil society, OSCE representatives in Kosovo. (Closed questions) the first question.

So since I have dealt with this issue in detail in chapter Chapter VI Inter and Transnational Legal Norms and Human Rights valid today's in Kosovo, concretely in the part ineffective instrument of the human rights regime of Kosovo are less applicable we can conclude that even though these data have been presented in an interview with representatives of the most competent institutions, in some cases the situation has changed especially when it comes to the northern part of the country or the exercise of control in that part by the state mechanisms. Now the state of Kosovo exercises sovereignty in that part, the parallel structures supported by Serbia are largely abolished, but there are some that are still left. Kosovo has held free and democratic elections in that part, as well as having local authorities exercising power based on Kosovo's laws. According to the focus group research as mentioned in this research by the total of 54 respondents, 35% of them, or 19 people responded per Ineffective instruments to exercise the state sovereignty in north part of the Republic of Kosovo, This still shows skepticism as most of these respondents still think that Kosovo needs to do more work in that part of the country to fully implement the agreement. Brussels Agreement 2013 as I have been treated to Chapter VI Inter and Transnational Legal Norms and Human Rights valid today's in Kosovo , concretely in the part Ineffective instruments to exercise the state sovereignty. Kosovo has made progress in this part of the state sovereignty, but in the near future we have a comprehensive agreement on the regulation of Kosovo-Serbia intergovernmental relations and after that Serbia should remove its negative impact on this part of Kosovo state territory.

Whereas regarding to Ineffective instruments related to non-realization of women's property rights, 31% of them, or 17 of them have responded to this ineffective state power tool. We consider that this issue in the legal aspect has now been met by amending and supplementing the legislation that is related to this area as well as after giving some recommendations from various domestic and international mechanisms. A recommendation given by EULEX in Kosovo which is titled Women and Inheritance Rights to Real Estate in Kosovo , which moreover recommends to address the issue of renunciations to inheritance rights by women heirs, in order to limit renunciations and make parties carefully consider whether the renunciation act is adequate, imposing heavier taxes or notary fees on such an act should be

considered.⁸⁷⁸ Some stakeholders and women's rights NGOs have even suggested the prohibition of such a renunciation, temporary or permanently. However, the right to renounce should not be limited in cases which would bring financial burden to women heirs.⁸⁷⁹ Therefore, a heavier tax gift contracts among relatives or co-heirs, regardless of their gender, could be considered to hinder unfair acts of renunciations.⁸⁸⁰

This issue has been elaborated in detail and in the section Ineffective instruments related to non-realization of women's property rights, where I have considered and again consider that the property rights of women's inheritance in Kosovo are guaranteed by law and earlier but there are now new mandatory measures by law and certain strategies but still mentality it is the one that most affects women in Kosovo to give up their inheritance and transfer this right to their brothers.

In the end I consider that mandatory legal acts will have a positive impact on changing this situation as Kosovo is now drafting the Civil Code, which has a summary of legislation that specifically regulates inheritance and the justice system in this area .

While 17% of them or 9 of them have responded to Continuation of the situation of marginalization in education, employment for RAE community in Kosovo , this continuation of this state of affairs depends on many factors, and especially from the continuous discrimination that this community faces from other communities when it comes to budget allocation and financial means dedicated to this community, as most of this community are uneducated and can not be included in adequate institutions. Another factor is the mentality and lack of education as well as the state institutions providing support to this community by Strategy for Integration of Roma, Ashkali and Egyptian communities in the Republic of Kosovo 2009- 2015 , as I have emphasized in part Continuation of the situation of marginalization in education, employment for RAE community in Kosovo . In addition to the influence of representatives of the Serb community in the management of the allocated budget and schooling, a very curative element of the situation of this community is their mentality and early marriages unplanned number of children and the state of

⁸⁷⁸ WOMEN AND INHERITANCE RIGHTS TO REAL ESTATE IN KOSOVO Date of Submission: Quarter I 2016 Name: Mobile Monitors (Justice) Department/Office/Unit: Advisory Unit on Justice Matters- Mobile Team/ Strengthening Department, page 11.

⁸⁷⁹ Ibid.

⁸⁸⁰ Ibid.

residence. Overall, the practical implementation of the constitutional and legal rights of this community in relation to other communities, especially those of Serbs, has great discernment, is actually the most discriminated community in Kosovo.

While 11% of them or 6 of them have responded to Ineffective instrument of the freedom and protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo, the LGBT category is an unacceptable category in society and their families and should not be declared publicly, at the same time there have been marches marking their day but they have been marching of the disguised, so LGBT should not be declared for their affiliation.

Neutral answers have been provided, 6% of them or 3 of them have refused to answer and stated they do not know / Refuses to answer.

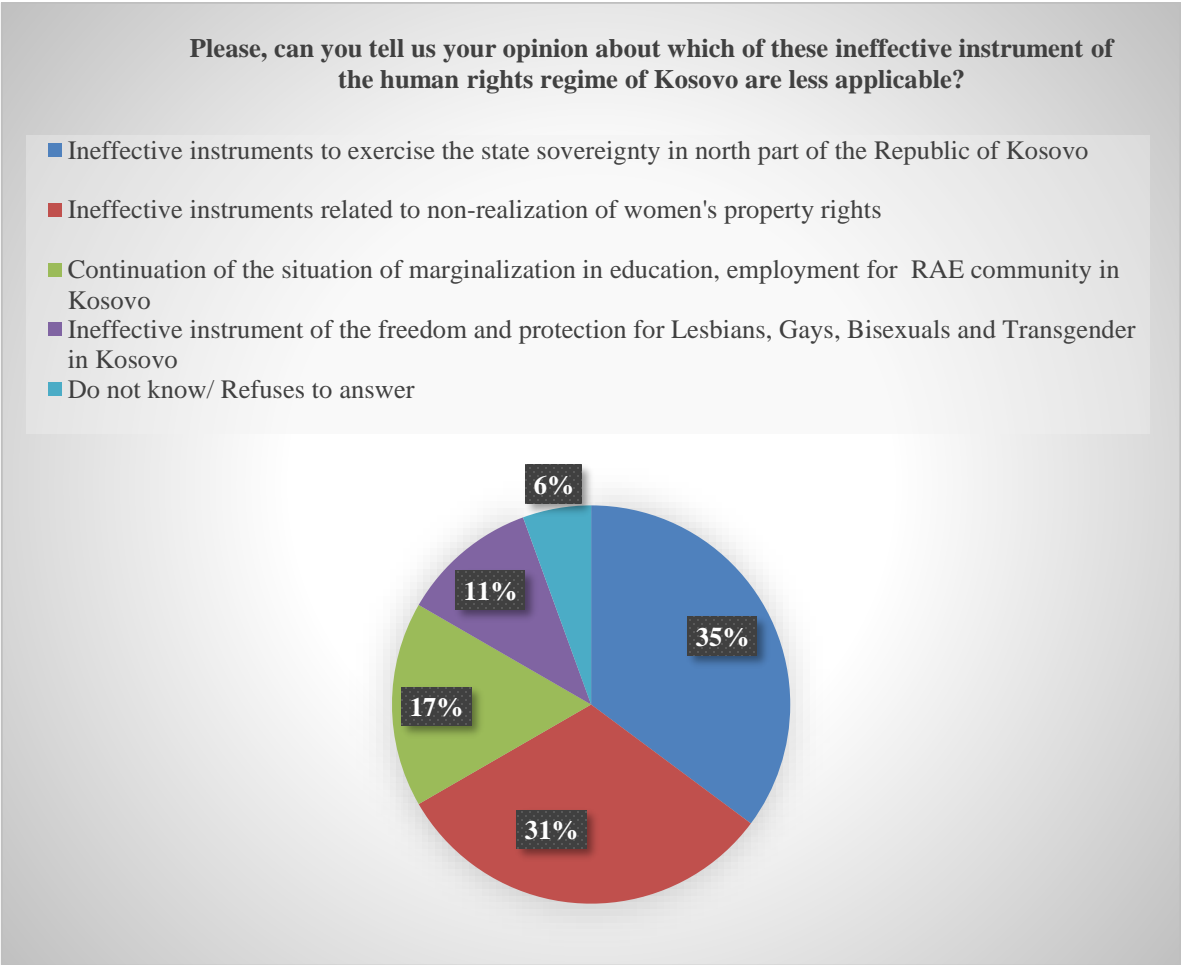


Figure 7 graph no.1

Graph no. 2: Reflection opinion on target group about the question which of these states has the rights of minorities most advanced: Republic of Kosovo, Albania,

Serbia, North Macedonia, Montenegro, Do not know/ Refuses to answer. According to them, the question was about constitutional and legal rights in providing state guarantees such as the representation of communities in politics and their involvement in decision-making through institutional mechanisms, as well as the rights of communities in responsibility (including rights, religious culture, education and so on), I asked this interview to present the opinion or opinion of the target to the interviewed groups who are the most competent people for assessing the rights of communities in Kosovo but also recognize the rights of communities countries in the region.

The result of the answer to this question has argued and compared more in my thesis in which I have presented the rights of communities in Kosovo which are mentioned in different parts of this paper, especially in political rights where it is foreseen political institutional representation and rights of employment, which I compared to the rights of communities in countries in the region to the part Legislation rights of communities in region in the framework of chapter IV Legislation Rights of Communities in Europe. Therefore, based on this issue, the Repoblika of Kosovo has an advanced system of community rights in relation to states in the region, which is the result of this research. According to the data presented in this chart regarding the question which of these states has the rights of minorities most advanced: Republic of Kosovo, Albania, Serbia, North Macedonia, Montenegro, Do not know/ Refuses to answer, the following results are provided: 83% of them, or 45 of them responded to the Republic of Kosovo is the state with the most advanced rights for communities compared to other countries. While 0% or none of the respondents did not answer for Albania. Also 2% of them or one of them responded to Serbia, at the same time 0%, or none of the respondents gave any answers to Macedonia: 4% or 2 of them responded to Montenegro. Even 11% of them or 6 of them have responded do not know/ refuses to answer.⁸⁸¹

⁸⁸¹ Reflection of opinion of the Interview realized with focus groups, Members / Representative of the Institution of Political Cabinets, dealing with community rights including: Consultative Council for Communities , Kosovo Property Comparison and Verification Agency civil servants of the following institutions: Office Premier (Legal Office, the Language Commissioner, Office for Communities Issues) , Municipal Officer for Community and Return, Officer from Ministry of Communities and Returns , Officer from Ministry of European Integration , officer from Ministry of Justice , some members from civil society, OSCE representatives in Kosovo (closed questions) the second question.

Based on these results, I would like to emphasize a very important element of this research, where the persons surveyed were from different communities and the majority of Albanians, but the answer was real as neither of them gave a response on the basis for example, an Albanian is not declared for Albania, we have a Serb for Serbia, and most of the communities surveyed including those Serbs have been declared for Kosovo. There were discussions and dilemmas about the rights of communities in North Macedonia during the survey, but they were given ideas not to declare for North Macedonia since North Macedonia had not implemented enough community rights while it was in the process of adopting some rights reforms communities where it has recently advanced especially in drafting the law on languages and political representation of minorities in its institutions.

In the end I consider and why most of them are declared for the rights of communities in Kosovo, I think this has always been done based on the constitution and the laws, as I have emphasized several times during this work comparison of the treatment between the communities in Kosovo is distinct, and I totally agree with this survey with Kosovo report among other countries of the region.

Respondents or some of them did not agree that Kosovo respects the rights of communities equally but has stated it in the light of the treatment of some of them and the fact that the constitution of Kosovo has exclusive rights to communities.

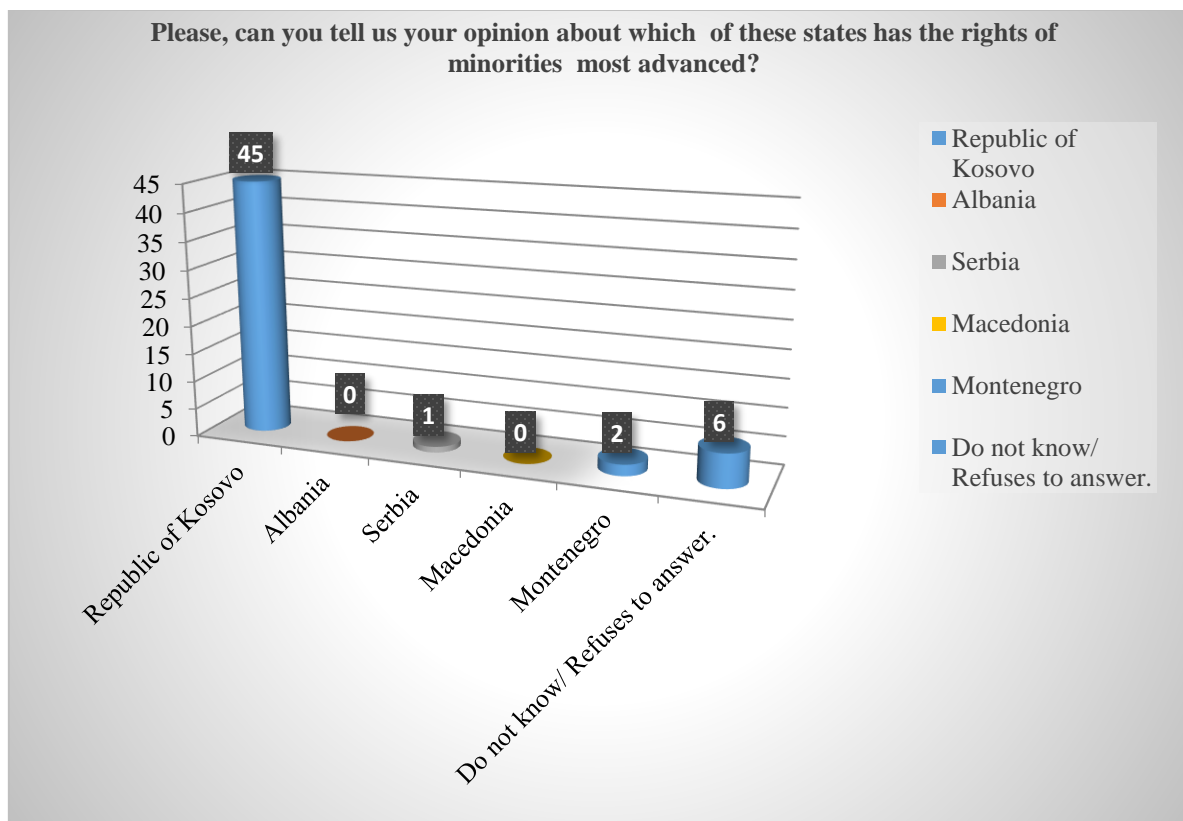


Figure 8 graph.no.2

Graph no. 3: Reflect opinion of the target groups regarding the question can you tell us your opinion about the minority rights in Kosovo are as the result: Of the international pressure, Integration of the minority in the Kosovo society, Guarantee of the equal rights of minorities, Integration of the Serb community in the Kosovo society, do not know/ Refuses to answer.

According to this, out of the total of 54 respondents, 9% of them, or 5 of them responded of the international pressure, while 31% of them, or 17 people from them have responded to Integration of the minority in the Kosovo society, 39% of them, or 21 people have responded Guarantee of the equal rights of minorities, 19% of them, or 10 people from them have responded to Integration of the Serb community in the Kosovo society, 2% of them, or 1 person from them responded not know/ refuses to answer.⁸⁸²

In this graph, results from interviews with target groups were interesting, as there was a balance of answers to the question, all the answers were real and approximate one by one, drawing a realistic conclusion. We are beginning to elaborate the

⁸⁸² Ibid (closed questions) the third question

question can you tell us your opinion about the minority rights in Kosovo are as the result: for example the first answer of the international pressure it was very real at five, there were only 5 respondents who were in favor of this option. This real option proved the fact that Kosovo's independence came from the comprehensive proposal known as the Ahtisaari Plan, which I have dealt with during my work, which imposes on how the rights of communities in Kosovo will be regulated after the declaration of independence, this plan Imposed became a real fact. Therefore, based on this fact, this response is sustainable since the international pressure on advancing and granting these rights was largely by international and international projects with a clear mission. The second answer to the question can you tell us your opinion about the minority rights in Kosovo are as the result was for Integration of the minority in the Kosovo society, where 17 people were declared for this, it is a goal in themselves and real, as all the rights granted to them were aimed at the integration into our society. Also, let's not forget the fact that all the facilities and benefits that have been given to the Serbs, especially the Serbs, became for this reason.

The third answer to the question *can you tell us your opinion about the minority rights in Kosovo are as the result was to guarantee of the equal rights of minorities*, where 21 persons stated this is correct in the constitutional and legal aspect which is advanced and represents equality for communities in all issues but in practical terms it is proved the opposite handles the Serb minority separately from others.

The fourth answer to the question 'can you tell us your opinion about the minority rights in Kosovo' are as the result was for Integration of the Serb community in the Kosovo society, where 10 people stated this, this answer was related to the third answer in which I elaborated the practical aspect of the treatment of the rights of minorities where I emphasized that the favored is the Serb, so the construction of the answers to this question had this purpose , which was proved and in the answer given.

Whereas the fifth question can you tell us your opinion about the minority rights in Kosovo are as the result ? one of them answered do not know/ refuses to answer.

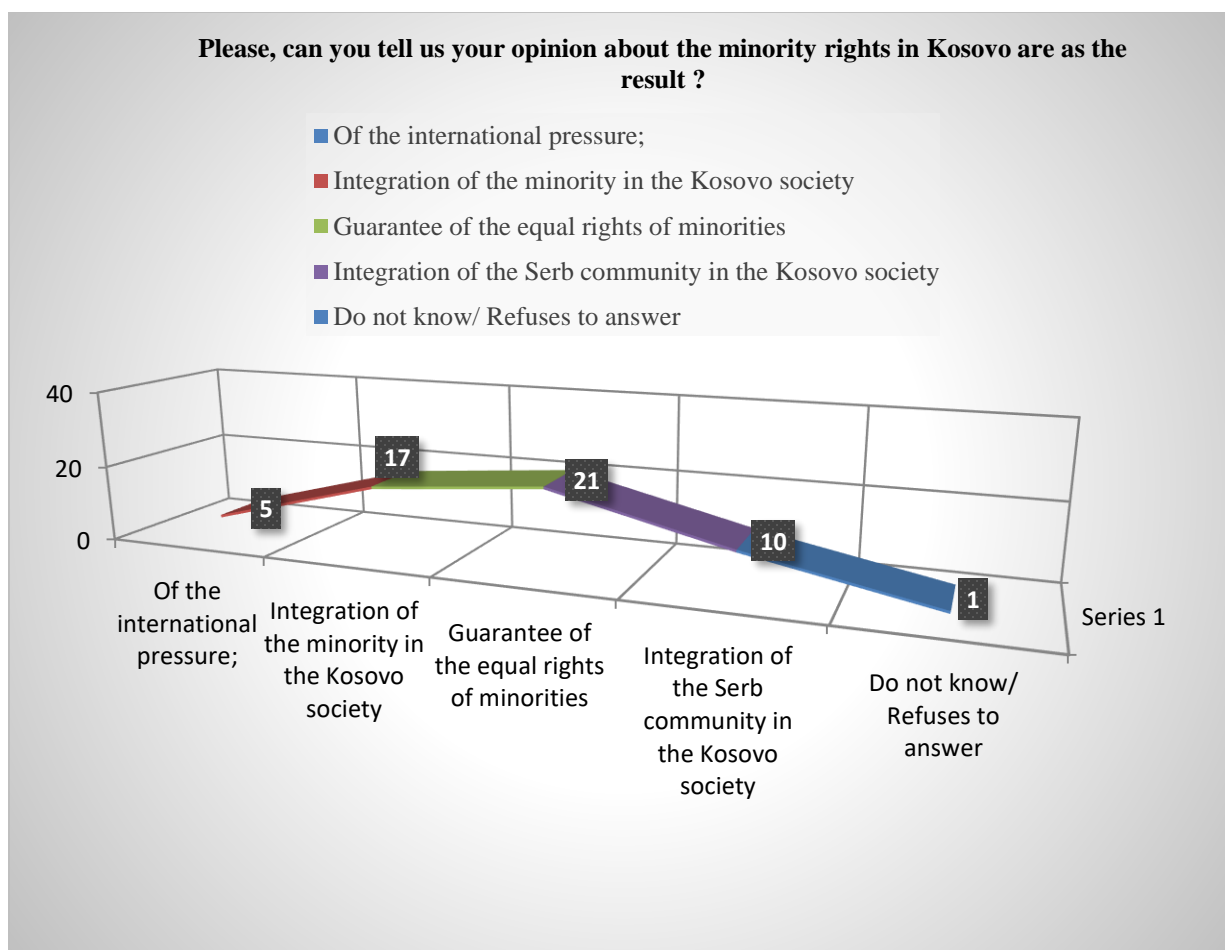


Figure 9 graph no. 3

Graph no. 4: Reflection opinion on target group about the question, *Can you tell how satisfied are you with legal and constitutional guarantees that Kosovo provides currently for non-majority communities?* Very much, Average, Little, Not at all, Do not know/ Refuses to answer.

According to this, out of 54 respondents, 85% of them, or 46 people responded 'very much', while 11% of them or 6 respondents answered 'average' 2% of them, or 1 person from them responded 'little', 0% of them, or none of them have responded to Not at all, 2% of them, or 1 person from them responded not know/ refuses to answer.⁸⁸³

According to the answers received to this question can you tell how satisfied are you with legal and constitutional guarantees that Kosovo provides currently for non-majority communities? Where 85% of them or 46 persons have been declared with

⁸⁸³ Ibid (closed questions) the sixth question.

very much, this shows that Kosovo has the most advanced legislation in terms of community rights. If we look historically or chronologically after the war in Kosovo, there were super exclusive rights to communities, starting with the constitutional framework, the Ahtisari package and finally the constitution of the Republic of Kosovo, which I have presented rights in different parts of this paper by addressing the documents in question. Kosova në Chapter III of the Constitution of the Republic defines rights of communities and their members,⁸⁸⁴ as well as in other chapters I have addressed in this paper deals with its rights related to the communities and their members contained in many laws and bylaws Kosovo has defined the rights of communities and their members including two basic laws Law no. 02/L-37 on the use languages ,⁸⁸⁵ Law No. 03/L-047 on the Protection And Promotion of the Rights of Communities and their Members in Kosovo,⁸⁸⁶ therefore based on this consider that Kosovo guarantees very well the legal and constitutional rights for the communities.

⁸⁸⁴ Constitution of the Republic of Kosovo Chapter III Rights of Communities and Their Members

⁸⁸⁵ Official Gazette of the Provisional Institutions of Self-government in Kosovo / Prishtina: year II / no. 10 / 01 March 2007 Law no. 02/L-37 on the Use Languages

⁸⁸⁶ Official Gazette of the Republic of Kosova / Pristina: Year III / no. 28 / 04 June 2008 Law no. 03/L-047a on the Protection and Promotion of the Rights of Communities and their Members in Kosovo

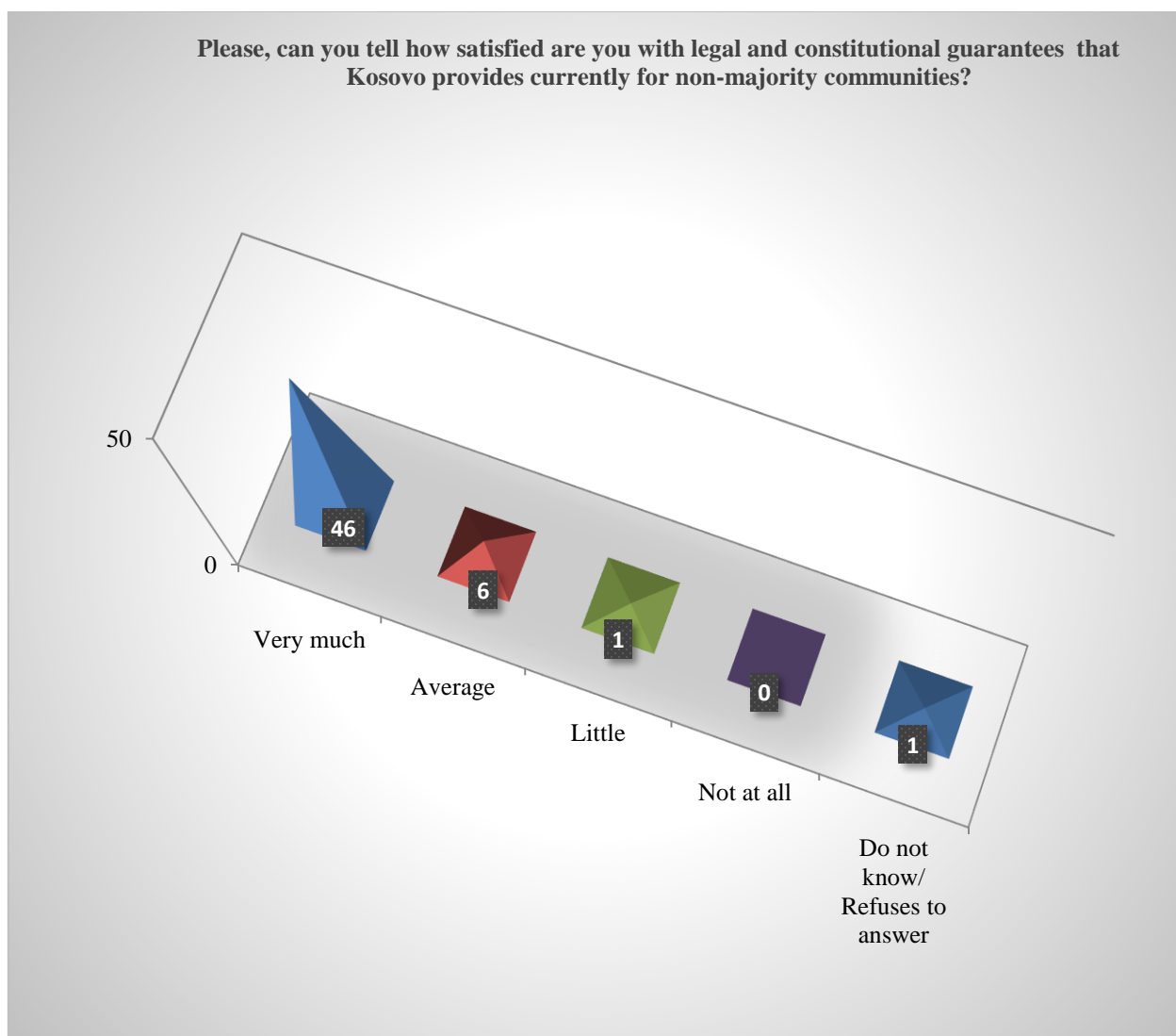


Figure 10 graph no.4

Graph no. 5: Reflection opinion on target group about the question do you think that the rights of non-majority communities are being implemented? Yes, no, to some extent, do not know/refuses to answer

According to this question *Do you think that the rights of non-majority communities are being implemented?* out of the total of 54 respondents, 91% of them, or 49 people responded Yes, while 0% of them, or none of them responded no, 9% of them, or 5 of them are responded to some extent, 0% of them, or none of them have responded to not know/ refuses to answer.⁸⁸⁷

⁸⁸⁷Reflection of opinion of the Interview realized with focus groups, Members / Representative of the Institution of Political Cabinets, dealing with community rights including: Consultative Council for Communities , Kosovo Property Comparison and Verification Agency civil servants of the following institutions: Office Premier (Legal Office, the Language Commissioner,

Based on this result as well as the question posed in this way we tried to draw a more realistic conclusion to this, this question is related to the previous question in which I have set out the aspect of legislative guarantee (can you tell how satisfied are you with legal and constitutional guarantees that Kosovo provides currently for non-majority communities) and in this regard I have compared the result of the legislative guarantee with that of the practical implementation of these rights, which result has come out rough and real. Nevertheless, there are certain elements of certain rights not practicable in the RAE community, but these issues have elaborated on others questions where I have made conclusions about it.

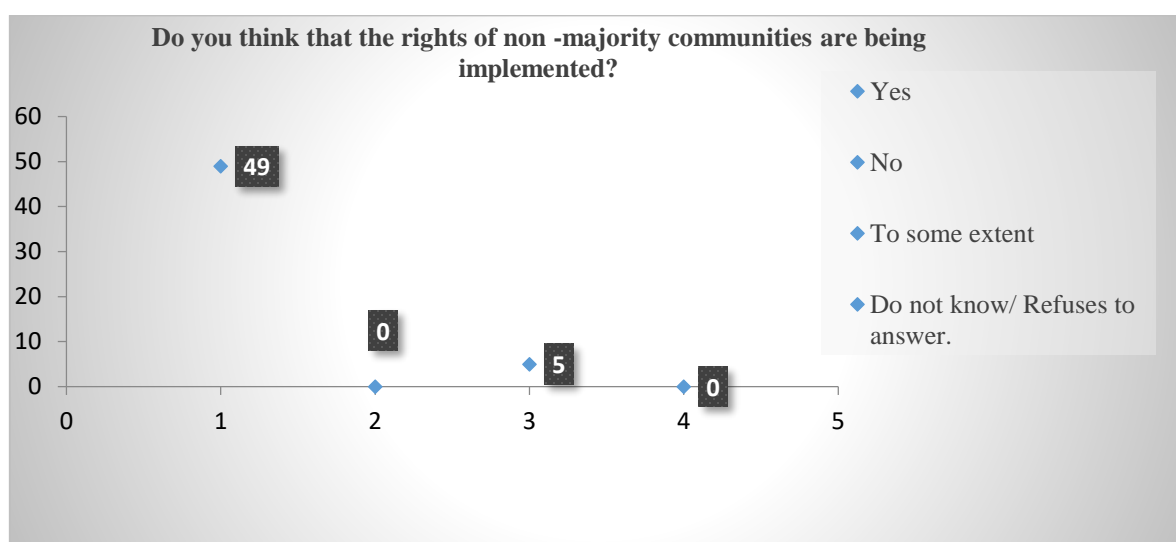


Figure 11 graph no.5

Graph no. 6: Reflection opinion on target group about the question Can you list/mention which communities' rights are being implemented in a satisfactory level? (underline at least two options) : Right to use the language, right to participate in public life (politics – employment) , cultural rights, religious rights, right to employment, right to education, right to health services, property rights and others. In this question the respondents had the right to give more than one answer, there are cases when they answered more than five questions or all questions, so according to this question Can you list/mention which communities' rights are being implemented in a satisfactory level out of the total of 54 respondents, 11% of them, or 26 of them

responded to right to use the language, 17% of them, or 37 people have responded to right to participate in public life (politics – employment) , 14% of them, or 33 people have responded to cultural rights, 15% of them, or 35 people have responded to religious rights, 13% of them, or 30 people have responded to right to employment, 16% of them, or 36 respondents have responded to right to education, 8% of them, or 19 people have responded to right to health services, 6% of them, or 14 people answered for property rights, 1% of them, or 3 people have responded to others.⁸⁸⁸

Just as the legal guarantee of community rights, then their application in practice in both diagrams was superlative. So in this part where the abovementioned rights are listed in a detailed and detailed way, I consider it and here there are very positive answers. Viewed from the specific aspect that the property rights of communities have not been implemented satisfactorily or compared with other rights are less implemented. This chart best describes the rights of communities that are specifically mentioned in the measure are applicable.

⁸⁸⁸ Ibid (closed questions) the ninth question

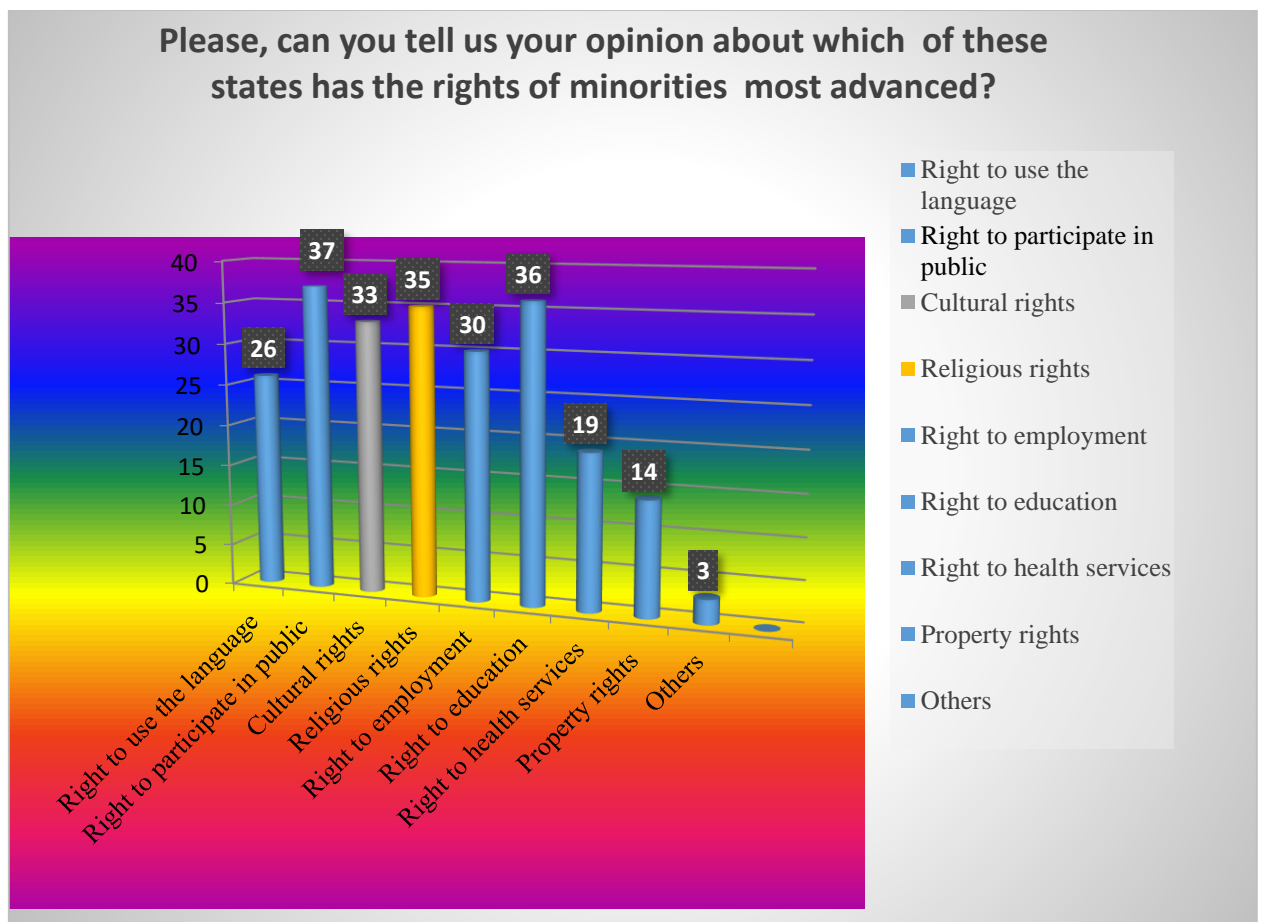


Figure 12 graph no.6

Graph no. 7: Reflection opinion on target group about the question *what is your opinion about lack of return of the displaced persons?* Security incident in some part of the state in the special way in the north part, lack of willingness to return, lack of condition for integration into Kosovo society, lack of financing support for housing construction, don't have access to their property, and others.

According to this question *what is your opinion about lack of return of the displaced persons?* out of the total of 54 respondents, 7% of them, or 4 of them responded to security incident in some part of the state in the special way in the north part, 70% of them or 38 respondents have responded to lack of willingness to return, 9% of them, or 5 people have responded to lack of condition for integration into Kosovo society, 6% of them, or 3 people have responded to lack of financing support for housing

construction, 4% of them, or 2 people have responded to don't have access to their property, 4% of them, or 2 people have responded to others.⁸⁸⁹

Regarding this issue, we have elaborated and presented the challenges and dilemmas in Chapter V Return of Displaced Persons to Kosovo by Region and Country, regarding the return process of displaced persons from Kosovo and within Kosovo as a result of the war that occurred 20 years ago. Based on this in relation to the questions made in this graph, I tried to link them to the part or dilemmas that I raised in the chapter in question with the opinions of the competent people interviewed now, though and earlier when reviewing this issue at this chapter has conducted several interviews.

Kosovo's institutions in cooperation with international organizations have for many years been creating institutional mechanisms to enable the return process of displaced persons, providing access to return and, within the possibilities, providing financial means for this.

Kosovo from its budget allocates financial means for the return of displaced persons, the government has drafted regulatory strategies and other measures to promote return, still in this respect. So to argue what I consider, 70% of respondents have given real answers because the key element for the lack of returns is lack of willingness to return, as the main element of all of this process is this. To further increase the fact that return is a voluntary process guaranteed by legal norms and the state has provided all the opportunities for this process.

There are also some other dilemmas that I have presented and that are stable but affect a small extent, such as: lack of financial means and property rights. Another element I have elaborated in this part of the paper, which is the one security incident in some part of the state in the special way in the north part, to this day there is no return to this part for the reasons of security incidents but this applies only to the majority Albanian population and not to the Serbs.

⁸⁸⁹ Ibid (closed questions) the tenth question

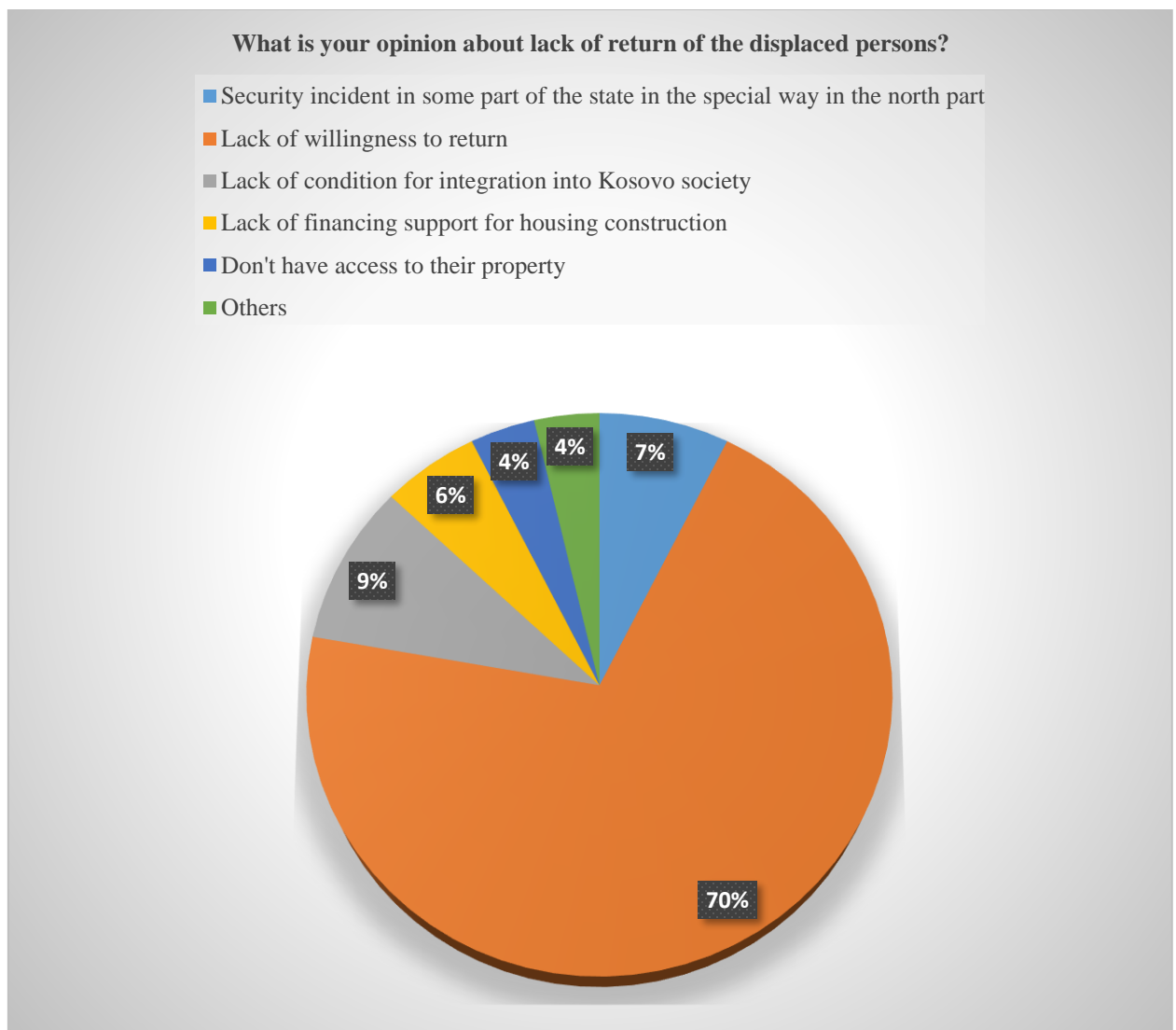


Figure 13 graph no.7

Graph no. 8: Reflection opinion on target group about the question, do you think there are many institutional mechanisms dealing with minority rights, which of these do the same job or has the same mandate? Ministry of Communities and Returns-Government, Office for community Affairs-Office Prime Minister, Municipal Offices for Communities and Returns Municipality, Consultative Council for Communities- The president's Office, Office of the Language Commissioner-Office Prime Minister, Committee on the Rights, Interests of the Communities and Return Kosovo Assembly, neither one of them.

In this question the respondents had the right to give more than one answer, there are cases when they answered more than three or four questions or on all questions, so according to this question do you think there are many institutional mechanisms

dealing with minority rights, which of these do the same job or has the same mandate? out of the total of 54 respondents, 31% of them, or 40 of them responded to Ministry of Communities and Returns- Government, 21% of them, or 28 people have responded to Office for community Affairs-Office Prime Minister , 24% of them, or 32 people have responded to Municipal Offices for Communities and Returns Municipality 11% of them, or 14 people from them have responded to Consultative Council for Communities- the President 's Office 5% of them, or 7 people have responded to Office of the Language Commissioner- Office Prime Minister 4% of them, or 6 people have responded to Committee on the Rights, Interests of the Communities and Return Kosovo Assembly, 3% of them, or 4 people have responded to neither one of them.⁸⁹⁰

Logically, it means that the Ministry of Communities and Returns-Government , Office for community Affairs-Office Prime Minister and Municipal Offices for Communities and Returns/Municipality are institutional mechanisms that perform the same function and have the same mandate, therefore these as such Ministry of Communities and Returns- Government , Office for community Affairs-Office Prime Minister should be fused and coordinate activities together with Municipal Offices for Communities and Returns Municipality. While other mechanisms should be the same for example Consultative Council for Communities- the President 's Office, which at the same time has the constitutional mandate, whereas Committee on the Rights, Interests of the Communities and Return Kosovo Assembly this is an organ within the assembly which is in a way very necessary based on the composition of the assembly and the exclusive rights of the community, I think that this must definitely exist as such. While the issue of the institutional mechanisms that deal with these issue have been created as pressure by the communities themselves and without a proper analysis of it. While regarding Office of the Language Commissioner - Office of the Prime Minister, this and some others that are institutional mechanisms should stand as such, and I have emphasized this in the part or Chapter VII Regulatory and Institutional Framework in Kosovo on Minority Rights Issues . I

⁸⁹⁰ Ibid (closed questions) the thirteenth question

consider that these institutions as well as the seats guaranteed in the Assembly of Kosovo, as well as some exclusive rights, should be reviewed once and for all.



Figure 14 graph no.8

Graph no. 9: Reflection opinion on target group about the question how much are you satisfied with the engagement of State institutions in improving interethnic relations? Very much, average, little, not at all, do not know/refuses to answer

According to this, out of 54 respondents, 78% of them, or 42 respondents answered very much, while 17% of them, or 9 people responded average. 5% of them, or 3

people responded little, 0% of them, or none of them have responded to Not at all, 0% of them, or none of them responded do not know/ refuses to answer.⁸⁹¹

Comparing this graph with the 8 charts that are interconnected, most respondents respond to their answer to the question how much are you satisfied with the engagement of State institutions in improving interethnic relations? Answered by very much , according to this it is proved that state commitment is not lacking in this direction and that state mechanisms engaging in improving interethnic relations are also considered to have relaxation of these reports now.

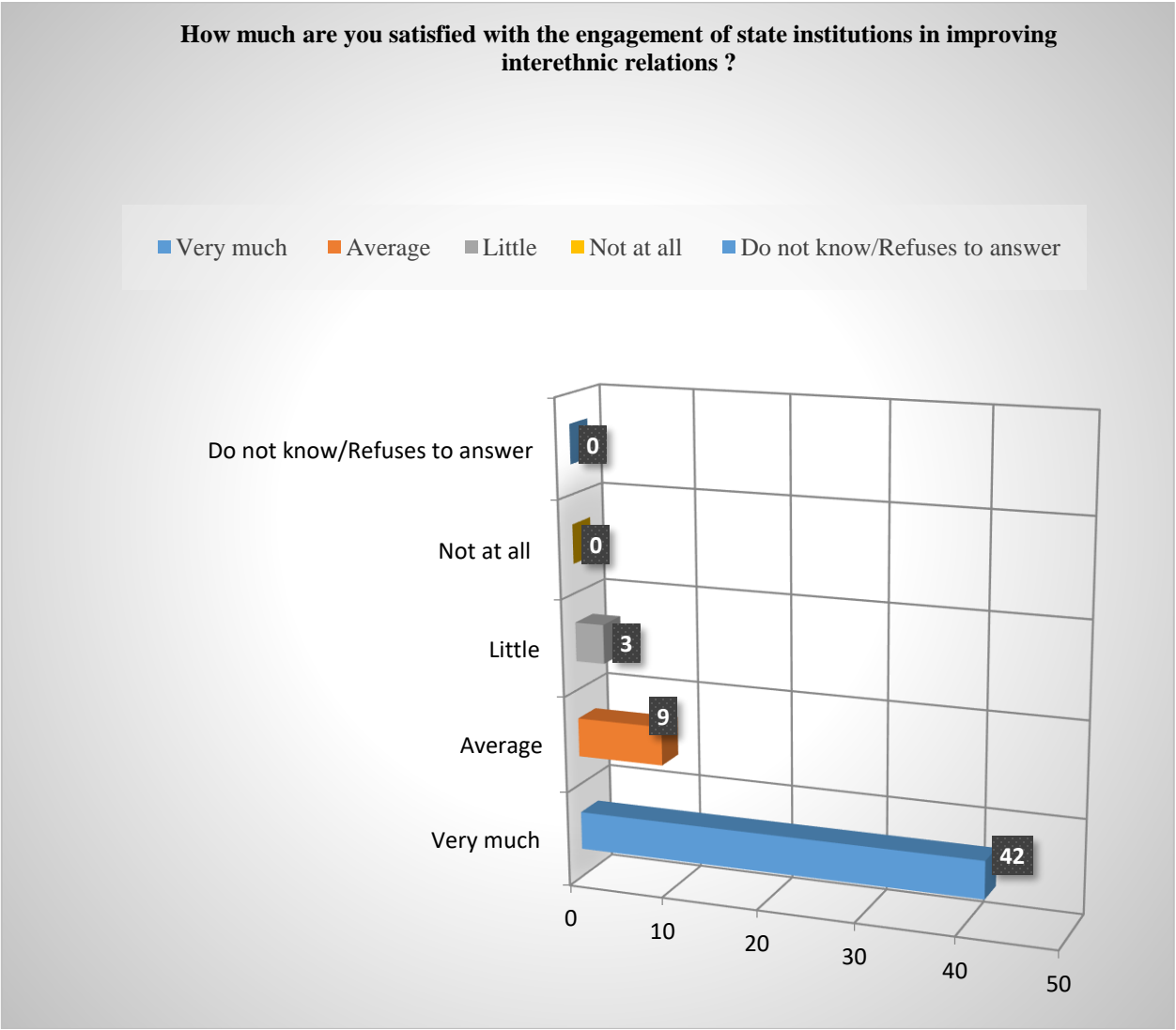


Figure 15 graph no.9

⁸⁹¹ Ibid (closed questions) the fourteenth question

Graph no. 10:Reflection opinion on target group about the question Which non-majority community in Kosovo is mostly discriminated against? Serbs, Turks, Bosniaks, Goranis, RAE communities, Montenegrin, Croats.

According to this, out of the total of 54 respondents, 2% of them, or 1 of them responded Serbs, while 0% of them, or none of them have responded to Turks, 4% of them, or 2 of them responded Bosniaks, 5% of them, or 3 people responded per Goranis, 82% of them, or 47 people have responded to RAE, 0% of them, or none of them responded to Montenegrin, 7% of them, or 4 of them responded Croats.⁸⁹²

The situation of the RAE community has reflected in the first graph of the ineffective instruments, and I have completely presented it in some parts of this paper, where I reflected the lack of this community in education, then the discrimination at work in the state administration, and discrimination which is within the communities in Kosovo. But this community has some advantages in political representation, facilitation of school delivery, but their overall status remains unchanged despite state attempts. This community as I have pointed out has problems with family planning early marriage as well as abandonment of schooling as well as the mentality of life is such. While the Serb community, from the international community remains the most treated both in terms of their treatment and in the practical application of legal rights.

⁸⁹² Ibid (closed questions) the seventeenth question

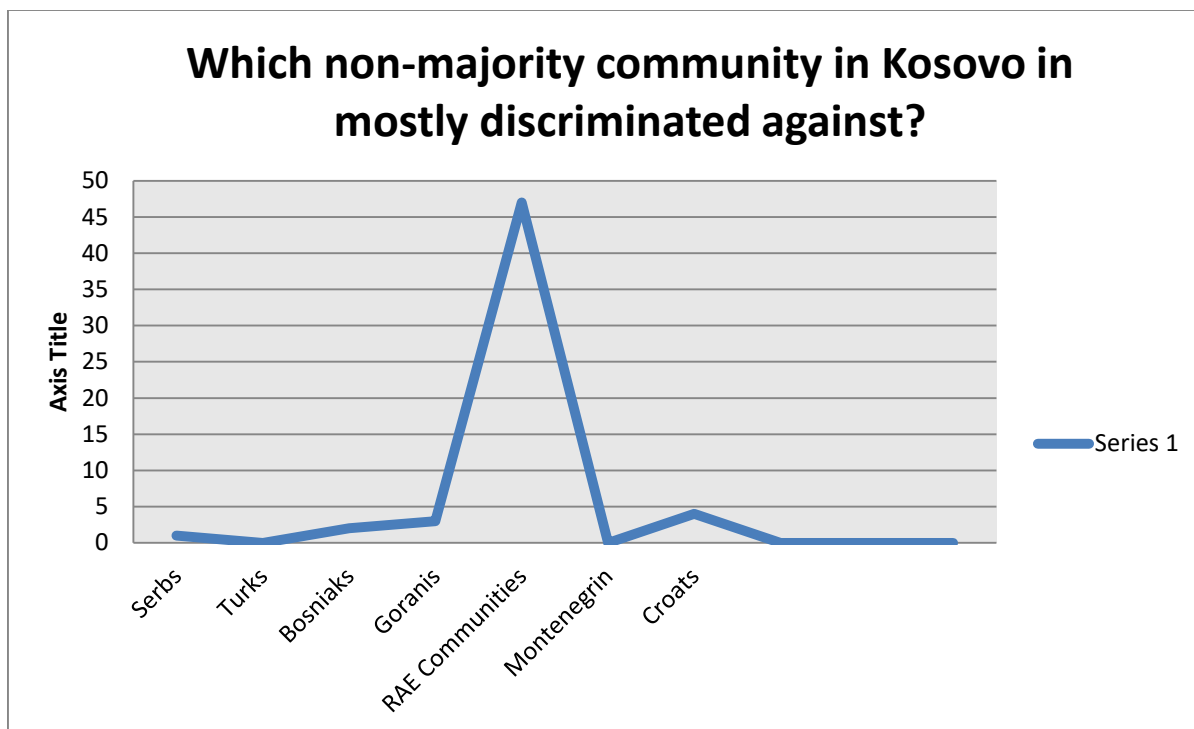


Figure 16 graph no.10

19. II. Interviews conducted through a questionnaire interview method, according to the "open" question method

After the first elaboration of the cases of closed interviews with target groups that I have presented numerically or through graphs, we are beginning to handle ideas and opinions in openly asked questions.

Starting with question no.4 which is actually the first open question where we will address some of the answers or opinions given to this question.

Question 4. Please, can you tell us your opinion about Kosovo as a "multiethnic" society?

Answer:

“As far as this question is concerned, we have received different answers only with the answer "yes" and a declarative answer that Kosovo is a multi-ethnic society, as well as a response to the form of opinion”. Out of all, 54 respondents responded positively, and here I will continue to address some of the answers:

“But Kosovo is a multiethnic society with all nations and nationalities and with all equal rights”.⁸⁹³ Most of them have responded with "yes", is a multiethnic society or similar or similar forms have given over 50% of them, and there are occasions when they have made an election about which cases or some of them will be presented according to the answers as follows:

A new state where under the Constitution and Laws in force, the minority enjoy all possible rights. Minorities are in a much more favorable position than the minorities in the states around us, even one can override rights to violation of legality and constitutionality in Kosovo.⁸⁹⁴ Kosovo has established legal bases and prerequisites for equitable realization of the rights of all communities. The creation of these conditions provides opportunities for the realization and functionalization of a multiethnic society where all ethnicities enjoy their rights as cultural, national, religious, etc.⁸⁹⁵

The 13th respondent on this question has given the following answer: According to the Constitution, it is determined that the Republic of Kosovo is a multiethnic society, composed of Albanians and other communities that are governed in a democratic way, with full respect for the rule of law, through its own legislative, executive and judicial institutions. In this regard, I consider that Kosovo has built a multiethnic state of equal, advanced citizens, which can be compared with EU countries. All communities living in Kosovo have equal access to economy, education, health, social welfare, business, culture, sport, property, justice, language, symbols, legal equality, religion, respect for human rights and freedoms, cultural and religious heritage, media, employment, representation in the organs of power.⁸⁹⁶ There have been cases when in their response they expressed the numerical composition with the percentage of the population as for example the following: In the Republic of Kosovo 90% are Albanian and 10% other communities. They live by respecting their rights.⁸⁹⁷ Their responses have been such as: Kosovars have never

⁸⁹³ Reflection of opinion of the Interview realized with focus groups, Members / Representative of the Institution of Political Cabinets, dealing with community rights including: Consultative Council for Communities, Kosovo Property Comparison and Verification Agency civil servants of the following institutions: Office Premier (Legal Office, the Language Commissioner, Office for Communities Issues), Municipal Officer for Community and Return, Officer from Ministry of Communities and Returns, Officer from Ministry of European Integration, officer from Ministry of Justice, some members from civil society, OSCE representatives in Kosovo. (Open questions) the fourth question.

⁸⁹⁴ Ibid (Open questions) the fourth.

⁸⁹⁵ Ibid (Open questions) the fourth question the seventh surveyor.

⁸⁹⁶ Ibid (Open questions) the fourth question the thirteenth surveyor.

⁸⁹⁷ Ibid (Open questions) the fourth question the seventeenth surveyor.

had the problem of living together in a multiethnic country we have always had problems from the greed of others for our lands, so the people in it can coexist with everyone those who are not enemies to us, therefore, in a multiethnic society.⁸⁹⁸ One of the interviewees in this question stated that: I see the multiethnic society in Kosovo as a wealth value that should always be maintained and cultivated.⁸⁹⁹

The Republic of Kosovo, within which they are admitted to the Constitution, seven (7) communities, such as the Serb, Bosniak, Turkish, Roma, Ashkali, Egyptian and Gorani communities, and two (2) communities, the Montenegrin community Croats are known by law since 2011 and that the future constitutional changes are expected to accept these two communities, we can say that it represents the good example of a multiethnic society in which tolerance, understanding and coexistence between communities, and which is seen as a value for Kosovo. Excluding the municipalities in the north such as: Zvecan, Zubin Potok, Leposavic and North Mitrovica.⁹⁰⁰ There have also been some similar responses and ideas that I have raised during this paper as ‘minorities enjoy equal rights in the Republic of Kosovo’. The Constitution of the Republic of Kosovo is far more advanced than the realization of rights in all spheres of life, including education, freedom of movement, free expression of thought, property, etc.⁹⁰¹ The Constitution of the Republic of Kosovo as the highest political-legal act chapter II Rights and Fundamental Freedoms Chapter III Rights of Communities and their Members. Kosovo is a constitutionally guaranteed multi-ethnic society.⁹⁰² Kosovo is one of the countries that mostly respects the rights of communities. In Kosovo, all communities are integrated in the society, and they also have equal opportunities for employment, making us a multi-ethnic functional society.⁹⁰³ Multiethnic society is conceived in many ways. In Kosovo, multiethnicity predominates by 93% Albanian majority and the rest minority minorities. Kosovo is the example of constitutional and law guarantee respect for multiethnicity and participation in minority public life.⁹⁰⁴

⁸⁹⁸ Ibid (Open questions) the fourth question the thirtieth of surveyor.

⁸⁹⁹ Ibid (Open questions) the fourth question the thirty-fourth surveyor.

⁹⁰⁰ Ibid (Open questions) the fourth question the thirty-fifth surveyor.

⁹⁰¹ Ibid (Open questions) the fourth question the thirty-sixth surveyor.

⁹⁰² Ibid (Open questions) the fourth question the thirty-seventh surveyor.

⁹⁰³ Ibid (Open questions) the fourth the forty ninth surveyor.

⁹⁰⁴ Ibid (Open questions) the fourth, the fiftieth surveyor

As previously stated, most of them answered yes, or is a multiethnic society and similar, while the questions that I had ideas have presented as they have responded. Considering why this question was open but the declarative space did not allow much comment however some of them have found ways to elaborate more on what I reflected here.

Also, a phenomenon that is being stressed in answering this question, which can be observed in most of them is to answer open questions in which there are ideas of debates or discussions, are given by the same persons, as can be seen and according to footnotes. I have answered the answers from point to point taken in the questionnaire and the answer has its footnote, indicating which poll respondent was given.

Question 5. What is your opinion on this: Does Kosovo have enough legal guarantees to guarantee the rights and freedoms of the non-majority community?

If in the fourth question as well as this question there are times when we have received answers with elaboration, short answers, as well as answers with "yes", "many" and "maximal", simultaneously we received and answered similar to each other . We are presenting some of the following answers: Not that there is sufficient legal guarantee, starting with the constitution, but there is even more than the standard of democratic states in the world.⁹⁰⁵ Yes, there are guarantees, as well as specific legislation with exclusive competences and advanced rights to communities.⁹⁰⁶ Yes, there are enough guarantees, in some cases there is a positive discrimination against the majority community.⁹⁰⁷

Starting from constitution and special laws, the rights of non-majority communities are guaranteed. In addition, international documents such as the Convention on Human Rights and Freedoms apply in Kosovo in the domestic law, which is an

⁹⁰⁵ Reflection of opinion of the Interview realized with focus groups, Members / Representative of the Institution of Political Cabinets, dealing with community rights including: Consultative Council for Communities , Kosovo Property Comparison and Verification Agency civil servants of the following institutions: Office Premier (Legal Office, the Language Commissioner, Office for Communities Issues) , Municipal Officer for Community and Return, Officer from Ministry of Communities and Returns , Officer from Ministry of European Integration , officer from Ministry of Justice , some members from civil society, OSCE representatives in Kosovo. (Open questions) the fifth question.

⁹⁰⁶ Ibid (Open questions) the fifth question, the third surveyor.

⁹⁰⁷ Ibid (Open questions) the fifth question, the fourth surveyor.

additional guarantee for the respect of community rights.⁹⁰⁸ Yes, there are guarantees, as well as specific legislation with competing competences and advanced rights for communities.⁹⁰⁹ Yes, there are guarantees, starting with the Constitution Ahtisaari Package as well as all legal and sub legal acts.⁹¹⁰ Kosovo as a democratic state has sufficient legal guarantees. It guarantees full and effective equality for all the people of Kosovo. The Republic of Kosovo accepts the spirit of tolerance peace denies the forms of chauvinism. Cultivates culture and guarantees the identity of national minorities.⁹¹¹ Regarding this question I think that Kosovo has sufficient guarantees for the implementation of the rights of communities.⁹¹² Kosovo has the most advanced constitution in the region for the protection of non-majority communities in all legal aspects under international conventions.⁹¹³ Yes, Kosovo as we know community rights have the most advanced in Europe, is a problem with finding a state in Europe that has Kosovo's advanced conditions and laws.⁹¹⁴ There is a legal basis for greater commitment to the implementation of this legislation.⁹¹⁵ Kosovo has enough legal guarantees to guarantee the rights and freedoms of non-majority communities, but needs a more active approach by all institutional representatives, both at central and local level, to live up to the guaranteed legal and constitutional rights of communities not the majority.⁹¹⁶ These were the answers made to the fourth question, but there were similar answers to each other and short as I pointed out in the beginning for this I just presented some of them, that is, those that contained.

While in many parts of this paper I have presented the legal and constitutional guarantees that Kosovo offers, and I have compared the EU and the countries in the region.

Question 11. Has Kosovo provided sufficient conditions for sustainable return of non-majority communities who have been displaced from Kosovo?

⁹⁰⁸ Ibid (Open questions) the fifth question, the seventh surveyor.

⁹⁰⁹ Ibid (Open questions) the fifth question, the tenth surveyor.

⁹¹⁰ Ibid (Open questions) the fifth question, the eleventh surveyor.

⁹¹¹ Ibid (Open questions) the fifth question, the twentieth surveyor.

⁹¹² Ibid (Open questions) the fifth question, the thirtieth surveyor.

⁹¹³ Ibid (Open questions) the fifth question, the thirty third surveyor.

⁹¹⁴ Ibid (Open questions) the fifth question, the thirty third surveyor.

⁹¹⁵ Ibid (Open questions) the fifth question, the thirty fourth surveyor.

⁹¹⁶ Ibid (Open questions) the fifth question, the thirty fifth surveyor.

Here too, as in the previous question, we have received some short answers where the majority responded "yes" or "I think that Kosovo provides conditions", and some with similar answers. We will present some of the following answers: I think that yes, based on the political and economic situation that is currently Kosovo.⁹¹⁷ Kosovo has provided and guaranteed sufficient conditions for sustainable return of non-majority communities that have been displaced from Kosovo.⁹¹⁸ The conditions he has secured according to his potential, but the seriousness of the displaced to be returned is lacking.⁹¹⁹ I think I'm excluding the northern part of Kosovo.⁹²⁰ These two responses are related to graphs 7 and 1, where it is raised the problem of exercising sovereignty in the north and I have presented problems with return. Kosovo has provided a very good climate for sustainable return for all displaced persons.⁹²¹ There is also a response from members of the other community who thinks they constantly favor only one community ⁹²², alluding to the Serbian community. I think so. The supremacy of majority representatives on collective guilt should be eliminated and the commitment of community representatives to seek apology from the bitter past should be expressed by distancing themselves from the actions they have taken over their centuries-old neighbors.⁹²³ Kosovo has made continuous efforts to create sufficient conditions for sustainable return for members of non-majority communities displaced from Kosovo.⁹²⁴ I am in the Municipality of Mitrovica from here. In 2007, our country, through the assistance of international partners, has built Roma, Ashkali and Roma community homes, and now almost everyone has enabled you to live in their properties. For other communities, there are problems for return, because this is a political issue and it is difficult to have a close time.⁹²⁵ These were some of the answers because as it is pointed out at the beginning of this question most answered with short and similar questions like these.

⁹¹⁷ Reflection of opinion of the Interview realized with focus groups, Members / Representative of the Institution of Political Cabinets, dealing with community rights including: Consultative Council for Communities , Kosovo Property Comparison and Verification Agency civil servants of the following institutions: Office Premier (Legal Office, the Language Commissioner, Office for Communities Issues) , Municipal Officer for Community and Return, Officer from Ministry of Communities and Returns , Officer from Ministry of European Integration , officer from Ministry of Justice , some members from civil society, OSCE representatives in Kosovo. (Open questions) the eleventh question.

⁹¹⁸ Ibid (Open questions) the eleventh question, the twenty-eighth surveyor.

⁹¹⁹ Ibid (Open questions) the eleventh question the twenty-ninth surveyor.

⁹²⁰ Ibid (Open questions) the eleventh question, the thirtieth surveyor.

⁹²¹ Ibid (Open questions) the eleventh question, the thirty first surveyor.

⁹²² Ibid (Open questions) the eleventh question, the thirty-second surveyor.

⁹²³ Ibid (Open questions) the eleventh question, the thirty-fourth surveyor.

⁹²⁴ Ibid (Open questions) the eleventh question, the thirty-fifth surveyor.

⁹²⁵ Ibid (Open questions) the eleventh question, the thirty-seventh surveyor.

Question 12. Do you think there is enough government commitment to implementing community rights policies?

In the 12th question, and why based on the submission and formulation was an open question and all respondents had the opportunity to give long answers or the opportunity to debate more, most of them answered "yes" and 2 from them were skeptical by giving a "somewhat" answer, There are presented some of the answers given by the respondents to this question: For the conditions and opportunities that Kosovo has, I think that even more substantial.⁹²⁶ The engagement of the Government is at the right level.⁹²⁷ The Government works sufficiently.⁹²⁸ The Government through the ministry of the Ministry for Communities and Return line has provided implementation and development of community rights.⁹²⁹ There is a good commitment yet not to the right extent in the northern part of Kosovo.⁹³⁰ Yes it is in some cases too redundant.⁹³¹ The Government has shown that it is interested and makes efforts to implement policies that are in the interest of communities, and this should be continued further.⁹³² I think that non-majority communities are treated extremely well by the government and are always offered cooperation opportunities.⁹³³ The Government of the Republic of Kosovo provides opportunities for implementation of community rights policies.⁹³⁴

The Government of the Republic of Kosovo in particular and other institutions in general have maximum engagement through various institutional mechanisms in promoting and guaranteeing the rights of communities. All the statements are sustainable, the state provides financial means through budget lines in the promotion and promotion of community activities, authorizing their community representatives in the spending of financial means, well but these means by some of their

⁹²⁶ Reflection of opinion of the Interview realized with focus groups, Members / Representative of the Institution of Political Cabinets, dealing with community rights including: Consultative Council for Communities , Kosovo Property Comparison and Verification Agency civil servants of the following institutions: Office Premier (Legal Office, the Language Commissioner, Office for Communities Issues) , Municipal Officer for Community and Return, Officer from Ministry of Communities and Returns , Officer from Ministry of European Integration , officer from Ministry of Justice , some members from civil society, OSCE representatives in Kosovo. (Open questions) the twelfth.

⁹²⁷ Ibid (Open questions) the twelfth question, the seventh surveyor.

⁹²⁸ Ibid (Open questions) the twelfth question, the eleventh surveyor.

⁹²⁹ Ibid (Open questions) the twelfth question, the seventh surveyor.

⁹³⁰ Ibid (Open questions) the twelfth question, the thirtieth surveyor.

⁹³¹ Ibid (Open questions) the twelfth question, the thirty third surveyor.

⁹³² Ibid (Open questions) the twelfth question, , the thirty-fifth surveyor.

⁹³³ Ibid (Open questions) the twelfth question, , the forty ninth surveyor.

⁹³⁴ Ibid (Open questions) the twelfth question, , the fiftieth surveyor.

representatives may not properly used, all these are reflected in the annual reports of auditors where there has been poor management of public money, such is stated by the auditor's report of 2017.⁹³⁵ Therefore, the situation is not good in some cases of communities being done by themselves. While they should seek reason from themselves, as well as institutions should take action for this mismanagement of public money.

Question 15. What is the role of the international factor in promoting community rights?

The answers to this question are given as follows: the international factor has "key role, monitoring, etc." as well as in the form of elaboration: I do not see any special role. The biggest role is the state organs.⁹³⁶ They have an important role and commit themselves to the good of Kosovo.⁹³⁷ The internationals during these 20 years of freedom have had a very important role.⁹³⁸ The role of the international community is irreplaceable to creating mistrust and exchange of international experiences with their Kosovo counterparts.⁹³⁹ The international factor helps the state of Kosovo in promoting the rights of the majority community, especially the RAE community.⁹⁴⁰ The international factor in promoting community rights has a huge role to play.⁹⁴¹ The international factor has an important role to play in promoting the rights of communities both financially and in other aspects, as well as their experience in the countries they come from and various international experiences.⁹⁴² I think that the role of the country's institutions is greater than the international factor.⁹⁴³ There is great commitment to solving and dealing with minorities' problems on their part.⁹⁴⁴

⁹³⁵ Audit Report on the Annual Financial Statements of the Ministry for Community and Return for the year ended 31 December 2017.

⁹³⁶ Reflection of opinion of the Interview realized with focus groups, Members / Representative of the Institution of Political Cabinets, dealing with community rights including: Consultative Council for Communities , Kosovo Property Comparison and Verification Agency civil servants of the following institutions: Office Premier (Legal Office, the Language Commissioner, Office for Communities Issues) , Municipal Officer for Community and Return, Officer from Ministry of Communities and Returns , Officer from Ministry of European Integration , officer from Ministry of Justice , some members from civil society, OSCE representatives in Kosovo. (Open questions) the fifteenth.

⁹³⁷ Ibid (Open questions) the fifteenth question, the fourth surveyor.

⁹³⁸ Ibid (Open questions) the fifteenth question, the fifth surveyor.

⁹³⁹ Ibid (Open questions) the fifteenth question, the seventh surveyor.

⁹⁴⁰ Ibid (Open questions) the fifteenth question, the twentieth surveyor.

⁹⁴¹ Ibid (Open questions) the fifteenth question, the twenty-eighth surveyor.

⁹⁴² Ibid (Open questions) the fifteenth question, the thirteenth surveyor.

⁹⁴³ Ibid (Open questions) the fifteenth question, the thirty first surveyor.

⁹⁴⁴ Ibid (Open questions) the fifteenth questionthe the thirty-second surveyor.

Irreplaceable, but it must be worked on raising the awareness of the representatives of the non-majority communities, however that they have taken actions that do not contribute to good neighborliness in the past. It is necessary to repent and adjudicate discriminatory policies against their neighbors.⁹⁴⁵ The international factor through non-governmental organizations installed for many years after the war, such as: UNHCR, OSCE, etc., is interested in and cooperates with us as an Office for the Integration of Minorities in Kosovo Society.⁹⁴⁶ The international factor has been the most important actor in promoting the promotion of community rights, jointly with Kosovo's local institutions.⁹⁴⁷

Question 16. How much can the promotion and respect of community rights in Kosovo's EU integration affect?

To answer this question most of the answers are given as follows: "To a certain extent and to some extent" and in the form of elaboration: I believe that respect for community rights is a plus condition for Kosovo's EU integration, is the main condition. However, it is a positive step when it is known that Kosovo has continuously fulfilled this condition.⁹⁴⁸ The EU has this issue as a basic condition for any country that wants to join.⁹⁴⁹ This is one of the conditions for joining the European family.⁹⁵⁰ This is one of the essential preconditions for Kosovo's integration into the EU.⁹⁵¹ Admission and respect for community rights and EU integration is important not only for the EU but for every country.⁹⁵² I think that is one of the key points in EU integration.⁹⁵³ There is a particular and very important importance for the respect and protection of communities for EU integration and I can say one of the conditions that we should respect and apply as one of the

⁹⁴⁵ Ibid (Open questions) the fifteenth question, the thirty-fourth surveyor.

⁹⁴⁶ Ibid (Open questions) the fifteenth question, the thirty-seventh surveyor.

⁹⁴⁷ Ibid (Open questions) the fifteenth question, the fiftieth surveyor

⁹⁴⁸ Reflection of opinion of the Interview realized with focus groups, Members / Representative of the Institution of Political Cabinets, dealing with community rights including: Consultative Council for Communities , Kosovo Property Comparison and Verification Agency civil servants of the following institutions: Office Premier (Legal Office, the Language Commissioner, Office for Communities Issues) , Municipal Officer for Community and Return, Officer from Ministry of Communities and Returns , Officer from Ministry of European Integration , officer from Ministry of Justice , some members from civil society, OSCE representatives in Kosovo. (Open questions) the sixteenth.

⁹⁴⁹ Ibid (Open questions) the sixteenth question, the fourth surveyor.

⁹⁵⁰ Ibid (Open questions) the sixteenth question, the fifth surveyor.

⁹⁵¹ Ibid (Open questions) the sixteenth question, the sixth surveyor.

⁹⁵² Ibid (Open questions) the sixteenth question, the seventeenth surveyor.

⁹⁵³ Ibid (Open questions) the sixteenth question, the twenty-eighth surveyor.

conditions for membership in these mechanisms.⁹⁵⁴ I think that the rights of communities are respected more than in all the Balkan countries and most of the European countries but again we are prevented from being part of the EU.⁹⁵⁵ Respect for communist rights affects Kosovo's integration into Europe and has a positive impact on ensuring long-term stability.⁹⁵⁶ It can positively influence since we are a multiethnic state and to take the road to the integration of our state into the EU should not violate community rights.⁹⁵⁷ Promoting community rights is a principle that is promoted at EU level and is required to be implemented in candidate countries or potential candidates for EU membership.⁹⁵⁸ There is a great impact that Kosovo has implemented and respected at the high level of community rights.⁹⁵⁹

Question 18. Additional questions/ comments?

This question has not been commented on by 45 respondents, while 5 of them have commented as follows: How and how are they using the community opportunity? Have they been influenced by their decisions on integration and expression of their belonging? Communities should play a role in creating liaison bridges to provide, respect cultures and cultural heritage of communities. Learning the languages of communities that coexist is a priority that should be utilized for all. Unification of the curriculum plan and the possibility of alternative courses for the learning of official languages.⁹⁶⁰ To have economic and trade development for communities.⁹⁶¹ The Republic of Kosovo is the only country in the region that respects and addresses mostly community rights.⁹⁶² With high responsibility I can conclude that the Republic of Kosovo has implemented the promotion and respect of community rights.⁹⁶³ Kosovo respects and guarantees at a high level all community rights.⁹⁶⁴

⁹⁵⁴ Ibid (Open questions) the sixteenth question the thirtieth surveyor.

⁹⁵⁵ Ibid (Open questions) the sixteenth question the thirty first surveyor.

⁹⁵⁶ Ibid (Open questions) the sixteenth question, the thirty fourth surveyor.

⁹⁵⁷ Ibid (Open questions) the sixteenth question, the forty ninth surveyor.

⁹⁵⁸ Ibid (Open questions) the sixteenth question, the fiftieth surveyor.

⁹⁵⁹ Ibid (Open questions) the sixteenth question, the fifty-fourth surveyor.

⁹⁶⁰ Reflection of opinion of the Interview realized with focus groups, Members / Representative of the Institution of Political Cabinets, dealing with community rights including: Consultative Council for Communities , Kosovo Property Comparison and Verification Agency civil servants of the following institutions: Office Premier (Legal Office, the Language Commissioner, Office for Communities Issues) , Municipal Officer for Community and Return, Officer from Ministry of Communities and Returns , Officer from Ministry of European Integration , officer from Ministry of Justice , some members from civil society, OSCE representatives in Kosovo. (Open questions) the eighteenth.

⁹⁶¹ Ibid (Open questions) the eighteenth question, the thirty eighth surveyor.

⁹⁶² Ibid (Open questions) the eighteenth question, the forty ninth surveyor.

⁹⁶³ Ibid (Open questions) the eighteenth question, the fifty third surveyor.

Annex 1
Interview

(Disclaimer: *This interview serves only for the purpose of surveying, studying and analyzing with regards to respecting communities' rights in Kosovo and your data will not be misused in any way. Thank you for your understanding!*)

Biography data:

Name: _____ Surname: _____ Age: _____ Gender: M/F
Ethnicity _____
Professional status: _____ Current position: _____
Residential status: City/Village/Centre
Date of the interview: _____ Day of the interview: _____

1. Please, can you tell us your opinion about which of these ineffective instrument of the human rights regime of Kosovo are less applicable.

- a) ☐ Ineffective instruments to exercise the state sovereignty in north part of the Republic of Kosovo;
- b) ☐ Ineffective instruments related to non-realization of women's property rights ;
- c) ☐ Continuation of the situation of marginalization in education, employment for RAE community in Kosovo;
- d) ☐ Ineffective instrument of the freedom and protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo;
- e) ☐ Do not know/ Refuses to answer.

2. Please, can you tell us your opinion about which of these states has the rights of minorities most advanced

- a) ☐ Republic of Kosovo;
- b) ☐ Albania;
- c) ☐ Serbia;
- d) ☐ North Macedonia;
- e) ☐ Montenegro
- f) ☐ Do not know/ Refuses to answer.

3. Please, can you tell us your opinion about the minority rights in Kosovo are as the result:

- a) ☐ Of the international pressure;
- b) ☐ Integration of the minority in the Kosovo society;
- c) ☐ Guarantee of the equal rights of minorities;
- d) ☐ Integration of the Serb community in the Kosovo society;
- e) ☐ Do not know/ Refuses to answer.

4. Please, can you tell us your opinion about Kosovo as “multi-ethnic” society?

⁹⁶⁴ Ibid (Open questions) the eighteenth question, the fifty fourth surveyor.

5. What is your opinion about: Does Kosovo have sufficient legal guarantees to guarantee the rights and freedoms of non-majority community?

6. Can you tell how satisfied are you with legal and constitutional guarantees that Kosovo provides currently for non-majority communities?

- a) ☐ Very much;
- b) ☐ Average;
- c) ☐ Little;
- d) ☐ Not at all;
- e) ☐ Do not know/ Refuses to answer

7. Do you think that the rights of non-majority communities are being implemented?

- a) ☐ Yes
- b) ☐ No
- c) ☐ To some extent
- d) ☐ Do not know/Refuses to answer

8. If not, what do you think which communities' rights are being violated?

9. Can you list/mention which communities' rights are being implemented in a satisfactory level? (*underline at least two options*)

- a) ☐ Right to use the language
- b) ☐ Right to participate in public life (politics – employment)
- c) ☐ Cultural rights
- d) ☐ Religious rights
- e) ☐ Right to employment
- f) ☐ Right to education
- g) ☐ Right to health services
- h) ☐ Property rights
- i) ☐ Others: _____

10. What is your opinion about lack of return of the displaced persons:

- a) ☐ Security incident in some part of the state in the special way in the north part;
- b) ☐ Lack of willingness to return;
- c) ☐ Lack of condition for integration into Kosovo society;

- d) ☐Lack of financing support for housing construction;
- e) ☐Don't have access to their property;
- f) ☐Others: _____

11. Did Kosovo ensure sufficient conditions for sustainable return of non-majority communities who have left Kosovo?

12. Do you think there is sufficient commitment by the Government to implement policies for communities' rights?

13. Do you think there are many institutional mechanisms dealing with minority rights, which of these do the same job or has the same mandate?

- a) ☐Ministry of Communities and Returns- Government;
- b) ☐Office for community Affairs-Office of the Prime Minister;
- c) ☐Municipal Offices for Communities and Returns Municipality;
- d) ☐Consultative Council for Communities- The president 's Office;

- e) ☐Office of the Language Commissioner- Office Prime Minister;
- f) ☐Committee on the Rights, Interests of the Communities and Return Kosovo Assembly.
- g) ☐Neither one of them

14. How much are you satisfied with the engagement of State institutions in improving interethnic relations?

- a) ☐Very much
- b) ☐Average
- c) ☐Little
- d) ☐Not at all
- e) ☐Do not know/Refuses to answer

15. What is the role of international factor in promoting communities' rights?

16. How much the promotion and respecting of communities' rights can influence in integration of Kosovo to EU?

17. Which non-majority community in Kosovo is mostly discriminated against?

- a) ☐ Serbs
- b) ☐ Turks
- c) ☐ Bosniaks
- d) ☐ Goranis
- e) ☐ RAE Communities
- f) ☐ Montenegrin
- g) ☐ Croats

18. Additional questions/comments?

General conclusions

The study has offered an evaluative perspective on an important matter concerning various groups of communities in Kosovo and distinctness aspects with EU and some European Union countries. The protections of minorities as a legal issue works in the frame of general system of human rights protection, but a progress in the direction of a general improvement of the situation of minorities as a group can hardly be recognized. As the part of the protection of human rights the contents of minority protection in universal international law has been individualized. This process has led to the application of the general rules of human rights protection on persons belonging to a minority without regularly taking into account the particularities of the protections of a group. International law will contributed to the vanishing of the protection of differences if specific legal regimes are not developed.

At the beginning of this PhD thesis, some ideas have been given which deal with human rights and human rights in general aspect have been treated, where some declarations and ideas are mentioned as follows: The Magna Carta (1215), the English Bill of Rights (1689), the French Declaration of the Rights of Man and the Citizen (1789), and the Bill of Rights in the United States Constitution (1791). Early philosophical sources of the idea of human rights include Francisco Suarez (1548–1617), ‘Francisco de Vitoria, the colonial origins of international law, Antony

Anghie, Imperialism, Sovereignty and the Making of International Law, Hugo Grotius (1583–1645), Samuel Pufendorf (1632–1694), John Locke (1632–1704), and Immanuel Kant (1724–1804). After these ideas and treatment of the declarations, are given ideas related to advancement of human rights which advancement has happened through some revolutions as mentioned in this PhD thesis to the part of the debate between Hauke Brunkhorst and Thore Prien on Anghie, Such as the Haitian revolution then the Atlantic Revolution, the French Revolution, as well as through the advancement of the International Law and Constitutions.

Furthermore, this PhD thesis presents how human rights were treated in ex-Yugoslavia and abuse of this rights from Yugoslav and Serbian state. In this paper in explicit way are addressed human rights under the constitution of Kosovo. Hence, this paper has treated the aspects of Functioning of Judiciary system in Kosovo after the declaration of independence the challenges that the justice system has had as Detention, Blockage of cases in the Court matters and the failure to solve them.

These negative elements of the functioning of the justice system in Kosovo were consequences inherited from the war and the addressing of this problem continuing to be challenging for the judicial system and implementation SAA. one a very challenging issue is Ineffective instrument of the human rights regime of Kosovo, as ineffective instruments of such, were foreseen these instruments as follow: Ineffective instruments to exercise the state sovereignty, Ineffective instruments related to non-realization of female property, Continuation of the situation of marginalization in education, employment RAE, and Ineffective instrument of the freedom and protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo. For the Ineffective instrument of the human rights regime of Kosovo is done one research through interviews, the results of this interview are shown in the graph in this thesis. The question it was Reflection opinion on the targeting related groups ineffective instrument of the human rights regime of Kosovo are less applicable: Ineffective instruments to exercise the state sovereignty in north part of the Republic of Kosovo, Ineffective instruments related to non-realization of women's property rights, Continuation of the situation of marginalization in education, employment for RAE community in Kosovo, Ineffective instrument of the freedom and protection for

Lesbians, Gays, Bisexuals and Transgender in Kosovo. Most of them selected the option of ineffective instruments to exercise the state sovereignty in north part of the Republic of Kosovo, This answer it was true, since the influence of Serbia state in this part has made impossible to exercise the state sovereignty in north part of the Republic of Kosovo. Now situation is more positive and has improvements of this ineffective instruments related to rule of law in this part, yet the consequences are evident. After general treatment of the human rights specific treatment of minority rights has begun as starting point is part of definition is what are minorities and ethnic groups. There were different ideas as doctrinal or legal of the definition what are minorities?

In this PhD thesis, the Approximation of the Legislation of the Republic of Kosovo has also been treated with the Legislation of the European Union, procedural aspect and institutional mechanisms dealing with this process and it has been concluded that Kosovo is on its good way in this process. One very specific and fundamental issue which is treated is that EU do not yet have *Acquis Communautaire* in the area of minorities' rights regarding to this issue there have been attempts, such a proposal was made during the drafting phase of the EU constitution anyway this attempt has failed. The minorities' rights in some EU countries are more advanced but the criterion of legal approximate missing. Absence of the *Acquis Communautaire* in the area of minority rights and the differences between Member States have made it impossible to have *Acquis Communautaire* for minorities. The only institutional mechanism that obliges states to the implement legislation for minorities is Advisory Committee on the Framework Convention, which oversee the implement process of the Framework Convention for the Protection of National Minorities by its signatory States. Most of the countries that are dealt with in this these, all of which are part of the EU, have in their legal and constitutional system the rights of communities well but not adequately included. All States have the rights of communities in the constitution, some have specific laws such as: Estonia has Law on Cultural Autonomy for National Minorities, Latvia the Law Unrestricted Development of National and Ethnic Groups of Latvia, Moldova Law of the Republic of Moldova on the Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations. If we compare the constitutional rights and the legislation of these

states to Kosovo is consider that Kosovo has more advanced legislation compared to these states.

A very important issue addressed in this PhD thesis is the issue of Displaced Persons in Kosovo. It is considered that, the return of displaced persons in Kosovo as a process is very prolonged and as such has a negative effect in the state budget, since the state continuously invests in return projects, while IDPs have no interest in returning. The security issues is evident as the state provides legal, physical security, as well as access to the properties of individuals. So the financially assisted for return as a process must be end and occur only voluntary return for individuals who wish to live in their own country. In end of these conclusions, it should be noted that with regard to community rights legislation in Kosovo is concerned, it derives from the impacts of the international factor and also all minority legal rights set out in the Ahtisaari Plan are incorporated into the Kosovo Constitution and its legislation. While also the first ideas to protect ethnic minorities not only in Kosovo but also in the EU are given by international requirements which today are incorporated in practice. The main legislation for community rights is the “Framework Convention for the Protection of National Minorities”, then specific legislation such as community rights laws, the case of Kosovo, etc, the laws on the use of languages and general laws where there is specific regulation for the rights of communities.

Kosovo is the country that has the most specific legislation and most advanced legislation on community rights this was concluded with the interview conducted and the results of the interviews, as well as comparisons for community legislation in some EU countries and regions which are elaborated in detail way. The Republic of Kosovo must implement legislation equally to all members of the communities in Kosovo, since there are cases of non-implementation of legislation for some communities such as RAE while benefiting Serb community.

General Recommendations

After an intense work of this PhD thesis titled “Implementation of National Legislation with European Standards in Minority Rights Issues, Special Focus in Kosovo”, many different ideas and opinions have been addressed for the human rights

and the communities rights in general, where special attention has dedicated implementation of legislation for minority rights in EU members states comparative aspect with Kosovo and finally came up with the following recommendations:

- 1) To finish the open conflicts in the Western Balkan countries with special focus reaching the Kosovo-Serbia agreement, since we have instability and a high likelihood of increasing the risk of human rights and community rights violations.
- 2) To have unified definition in the EU as what communities' rights are?
- 3) For the procedure of approximation of legislation in Kosovo a professional unit should be made, which makes the approximation and not as it is now.
- 4) The full exercise of state sovereignty in the territory of the country in the Republic of Kosovo, especially in the northern part.
- 5) The rights of vulnerable groups such as the RAE and the LGBT community need to be improved.
- 6) Legislation on Minority Rights in Estonia, Latvia, Lithuania, Romania and some European countries is well regulated most places have applied the Framework Convention for the Protection of National Minorities, but there are countries that have inadequate community legislation this is why the EU must have Acquis Communautaire for communities. In some EU countries that have been addressed in this PhD thesis must be an advancement of the language law and places that have a large percentage of communities the language of the larger community must be the official language of state use.
- 7) Kosovo must end the process of return of displaced persons as the return is not happening and the cost of the budget is severely affected. There should also be merger of institutional mechanisms dealing with returnees as well as one institutional mechanisms dealing with community issues there are three institutional mechanisms at the central level, and in each municipality we have municipal community offices, so I think we should have one at the government level and one at the local level. This recommendation came as a conclusion to the question: do you think there are many institutional mechanisms dealing with minority rights, which of these do the same job or has the same mandate? Ministry of Communities and Returns- Government, Office for community

Affairs-Office Prime Minister, Municipal Offices for Communities and Returns Municipality, Consultative Council for Communities- The president's Office, Office of the Language Commissioner- Office Prime Minister, Committee on the Rights, Interests of the Communities and Return Kosovo Assembly, neither one of them, this question has resulted has many such mechanisms having to be extinguished.

8) Inter-institutional Initiative on Durable Solutions for Displaced Persons from Kosovo-Skopje process , this initiative should be formalized through the assembly and the government, respecting the legislation on international agreements, rather than being led at the ministerial level for communities and returns

9) Definition according Regulation (GRK) - No. 01/2018 on the Return of Displaced Persons and Durable Solutions, for displaced persons in countries in the region must be in accordance with the spirit of the constitution of Kosovo, as the regulation recognizes the definition of a displaced person in the region and within the country while the Constitution Article 156 of the Constitution emphasizes this the Republic of Kosovo shall promote and facilitate the safe and dignified return of refugees and internally displaced persons. Therefore, this legal incompatibility should be urgently addressed.

10) Rights of Communities and their members based on Comprehensive Proposal for the Kosovo Status Settlement in Kosovo

11) They have been incorporated into Kosovo's constitution and legislation but the political rights of communities that are presented as barriers but state functioning should be abolished especially guaranteed seats and the 2/3 voting rights of minority communities for some specific laws, as one such is not the case in any EU country.

Literature and other Sources

1. James Tully, *Modern Constitutional Democracy and Imperialism, the Imperial Roles of Modern Constitutional Democracy*, Osgoode Hall Law Journal.
2. Antony Anghie *Imperialism, Sovereignty and the Making of International Law Positivism and the shift from natural law*, Cambridge, foreword xii.
3. Hauke Brunkhorst *European dual state The double structural transformation of the public sphere and the need for re-politization* quoted Daniel Gaus, “Critical Theory and Reconstruction”, in: *Philosophy and Social Criticism*, Online First, June 2015, (forthcoming, quoted from the manuscript).
4. Martti Koskenniemi, *the European Journal of International Law* Vol. 16 no.1 © EJIL 2005; all rights reserved EJIL (2005), Vol. 16 No. 1, 113–124 doi: 10.1093/ejil/chi105. *International Law in Europe: Between Tradition and Renewal*.
5. Prof.Dr.Sc.Arsim Bajrami dhe Mr.Sc. Xhavit Shala, doracaku për përgatitjen e provimit të jurispodencës botuar nga Ministria e Drejtësisë Prishtinë, gushtë Sistemi Kushtetues dhe organizimi i jurispodencës.
6. Prof. Dr. Arsim Bajrami e Drejta e Kosvës në tranzicion, Prishtinë.
7. Michael Simpson "Other Worlds are Actual": Tully on the Imperial Roles of Modern Constitutional Democracy, Osgoode Hall Law Journal.
8. Hauke Brunkhorst, *Critical Theory of Legal Revolutions Evolutionary perspectives*, Bloomsbury New York London New Delhi Sydney, 2014.
9. Hauke Brunkhorst /Special section on Hauke Brunkhorst Reply to critics Hauke Brunkhorst Europa-Universita`t Flensburg Institut fu`r Soziologie, Flensburg, Schleswig-Holstein, Germany *Philosophy and Social Criticism* 2015, Vol. 41(10) 1053–1067 .The Author(s) 2015 Reprints and permission: sagepub.co.uk/journalsPermissions.nav DOI: 10.1177/0191453715609857 psc.sagepub.com.
10. Martti Koskenniemi /Original Article Law’s (Negative) Aesthetic: Will it Save Us? Martti Koskenniemi University of Helsinki, Helsinki, Finland *Philosophy and Social Criticism* 1–7 ^a The Author(s) 2015 Reprints and permission: sagepub.co.uk/journalsPermissions.nav DOI: 10.1177/0191453715576770 psc.sagepub.com.

11. Gulara Guliyeva the Rights of Minorities in the European Union .A thesis submitted to The University of Birmingham For the degree of doctor of philosophy Birmingham Law School College of Arts and Law The University of Birmingham 15 July 2010.
12. Gaetano Pentassuglia, the EU and the Protection of Minorities:The Case of Eastern Europe, EJIL 2001.
<https://pdfs.semanticscholar.org/b0a5/ef0650e16ec972add890b79f46c1633f8c07.pdf>,
13. Prof.Dr Lisen Bashkurti autor i Libri Krizat ndërkombëtare/President i Akademisë Diplomatike Shqiptare, Tiranë 2008.
14. Veton Zejnullahi Universiteti i Tiranës Instituti i Studimeve Evropiane Tema: “Zgjidhja paqësore e konflikteve” Tiranë 2013.
15. Blerim Shala: Vitet e Kosovës 1998 – 1999, Prishtinë, 2001.
16. Agon Demjaha - Lulzim Peci& Albrecht Schnabel-Rohan Gunaratna /Work of politics nr. 6/14 – December 2014 Inter Ethnic Relations in West Balcan: implication for Kosova edited by Kosovar Institute for Researches and Development of Politics based in a detailed review of PMBLA, see Agon Demjaha and Lulzim Peci, “Insurgencies in the Balkans: Albanian Liberation Armies,” Albrecht Schnabel and Rohan Gunaratna red. Wars from Within: Understanding and Managing Insurgent Movements, London: Imperial College Press, 2015.
17. Nazmi Malichi Debat shkencor Traumat dhe dukuritë psikologjike si pasojë e konfliktit dhe të drejtat e njeriut faqe
18. Konferenca/Shqyrtimi dhe trajtimi shkencor si dhe riaktualizimi i Çështjes së Luginës së Preshevës në dimensionin rajonal ndërkombëtar
<http://www.nacionalalbania.al/2016/10/Konferenca/>.
19. Kurt Hamer, appointed for inter-border issues (Grenzlandbeauftragter) of the Land Schleswig-Holstein, the former Vice President of Land S-H, and one of the founders of Europe Centre for Minority Issues Kosovo,Communities in Kosovo, Guide for professionals working with communities in Kosovo, Pristina, December 2013.
20. Luan Omari, the question of national minorities and Albania, Tirana 2014.
21. Florence Benoit Rohmer, The Minority question in Europe, Tirana 1996.

22. Kristin Henrard and Robert Dunbar-Synergies in Minority protection European and International Law Perspectives, Edited Cambridge University Press 2008.
23. UN, Report of the 10th Session of the Commission on Human Rights, 18 Escor Supp. 7, UN Doc E/2573 at 48–9 (1954).
24. Minority Rights International Standards and Guidance for Implementation, United Nations New York and Geneva, 2010 & United Nations Human Rights Office of High Commissioner,
https://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf.
25. Helen O’Nions Minority Rights Protection in International Law The Roma of Europe *University of Lincoln, UK*.
26. Steven Wheatley, Democracy, Minorities and International Law University of Leeds Cambridge University Press.
27. Edited by Denika Blacklock and Katherine Nobbs, the Protection of Minorities in the Wider Europe.
28. Arie Bloed, Rainer Hofmann, Joseph Marko, James Mayall, John Packer, Marc Weller. *Managing Editors*: Emma Lantschner, Jonathan Wheatley. *Assistant Editors*: Alice Engl, Vladislav Michalcik, Gabriel N. Toggenburg, Matthew Ward, *General Editors*/ European Yearbook of Minority Issues: Volume 5, Eurac research Europäische Accademi Bozen – Bolzano European Centre for Minority Issues Martinus Nijhoff Publishers Leiden • Boston 2007.
29. Timofey Agarin and Malte Brosig/ Minority Integration in Central Eastern Europe Between Ethnic Diversity and Equality Edited and introduced by Timofey Agarin and Malte Brosig, Radopi, Amsterdam - New York, NY 2009,
file:///C:/Users/nuhi.osmani/Downloads/Timofey_Agarin_Malte_Brosig_Minority_Integrati.pdf.
30. Gaetano Pentassuglia Minorities in International Law: An Introductory Study (Strasbourg: Council of Europe publishing, 2002) By Arístides Díaz-Pedrosa.
31. Marina Martynova, *Balkanskij krizis: narody i politika* (Saryj Sad, Moscow), 16-17 Another definition says that a “people is a collectivity conceived as such in virtue of its geographical, religious and linguistic characteristics and its political aspirations”. See Preda, *op.cit.*

32. Complemented by the OSCE data for northern Kosovo , see: Communities Profile of Kosovo 2010 <https://www.osce.org/kosovo/75450?download=true>
33. European Centre For Minority Issues Kosovo, Communities in Kosovo: Guidelines for professionals working with communities in Kosovo December 2013 <http://www.ecmikosovo.org/uploads/ECMIKosovoDec2013GuidebookforProfessionalsENG.pdf>.
34. Malcolm, Noel, “Kosovo: A Short History”, London: Pan Macmillan Ltd, 1998, and European Centre For Minority Issues Kosovo, Communities in Kosovo: Guidelines for professionals working with communities in Kosovo December.
35. Kristaq Prifti, Kosovo Population 1831-1912, Albanian Academy of Science Tirana 2014 Albanians, Serbs, Bulgarians, Vlachs, Turks and Roma are mentioned.
36. European Centre For Minority Issues Kosovo, Communities in Kosovo: Guidelines for professionals working with communities in Kosovo December 2013.
37. Census in Kosovo in 2011 did not cover the northern part of Kosovo. Therefore, the Municipal Profiles developed by the OSCE in 2013 are used as a source for data of the Turk community in the northern municipalities. For all the municipalities in the south the data of the census of Kosovo 2011 are used as a source.
38. For more information on minority communities participation in 2011 census in Kosovo see: “Minority Communities in the 2011 Kosovo Census Results: Analysis and Recommendations “ ECMI Kosovo, 18 December 2012.
39. European Centre for Minority Issues Kosovo, Communities in Kosovo: Guidelines for professional working with communities in Kosovo December 2013, <http://www.ecmikosovo.org/uploads/ECMIKosovoDec2013GuidebookforProfessionalsENG.pdf>.
40. Jeton Bytyqi Përafrimi i Legjislacionit të Kosovës me Acquis Communautaire të BE-së: Sfidat dhe perspektivat, Prishtinë. <http://www.ajls.org/doc/JBytyqi-AJLS-VOL-I.pdf> .
41. Instrument for Pre-accession Assistance (IPA II) 2014-2020 Kosovo* EU Legal Approximation Facility https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/kosovo/ipa/2015/04_ipa_2014_eu_legal_approximation_20141027.pdf.

42. Practical Guidelines for Legal Approximation of the Legislation of the Republic of Kosovo with the Legislation of the European Union , April 2014, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.
43. Manual on Compiling the Tables and Statement of Compliance , <http://www.mei-ks.net/repository/docs/manual-eng.pdf> .
44. IT-Platform for the legal approximation process Purpose, structure and requirements, the GIZ project “Support to the European Integration Process”.
45. Author: Kaltrina Hoxha Coauthor: Taulant Hoxha Contributors: Venera Hajrullahu Fatmir Curri. Going beyond Political Rhetoric Turning Kosovo’s Parliamentary Committee for European Integration into a real driver for Integration. Published by KCSF and prepared by Copyright © 2015. Kosovar Civil Society Foundation (KCSF) June 2015.
46. Msc. Basri Shabani PhD Student, Harmonization of Kosovo’s Legislation with EU’s Legislation in the Field of Security , Military Academy “Spiro Moisiu”, Operations Department, Tirana, Albania.
47. Treaty Establishing a Constitution for Europe articele 1-2. https://europa.eu/europeanunion/sites/europaeu/files/docs/body/treaty_establishing_a_constitution_for_europe_en.pdf, accessed.
48. Text: Florence Benito –Rohmer the pact consist of declaration a list of agreements, various act and political statements that participating states have decided to include it and supporting measures supported by the European Union., The minority question in Europe, op cit.
49. McGonagle, T ,University of Amsterdam UvA-Dare (Digital Academic Repository) Minority rights and freedom of expression: a dynamic interface. Link to publication *Citation for published version (APA):* McGonagle, T. E. (2008). Minority rights and freedom of expression: a dynamic interface.
50. Edited by Avigail Eisenberg and Jeff Spinner-Halev - Minorities within Minorities *Equality, Rights and Diversity* ,Cambridge University Press 2004.
51. Julian Bernauer *Postdoctoral Researcher and Lecturer, Institute of Political Science, University of Bern, Switzerland* Ethnic Politics, Regime Support and Conflict in Central and Eastern Europe.

52. Cuncil of Europe ACFC/INF (98) 2 Rules of Procedure of the Advisory Committee On the Framework Convention for the Protection Of National Minorities (Adopted by the Advisory Committee on 29 October 1998).
53. Advisory Committee on the Framework Convention for the Protection of National Minorities Tenth activity report covering the period from 1 June 2014 to 31 May 2016 footnote 1.
54. Kristin Henrard Professor of Fundamental Rights and Minorities at the Erasmus School of Law, Rotterdam/ECMI FCNM in focus of dealing with diversity: is the Framework Convention at a Cross-road? 20 years, (The interviews in this publication were conducted by Stéphanie Marsal.Publication and video were produced by the ECMI with funding from the Council of Europe.The opinions expressed in this work are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe or its member States).
55. Mr Philippe Boillat /Strasbourg, 19 June 2018 Minorities and Minority Languages in a Changing Europe Conference on the occasion of the 20th anniversary of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages Council of Europe, Strasbourg, France Palais de l'Europe, room 1 18 – 19 June 2018 Conclusions and final remarks by the rapporteur of the conference, Mr Philippe Boillat.
56. Consolidated Reader-Friendly Edition of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) as amended by the Treaty of Lisbon (2007) Third edition 2009.
57. Bruno de Witte, Alexander H. Trechsel, Dragana Damjanović, Elin Hellquist, Josef Hien, Paolo Ponzano, Democrats in the European Parliament/ European Union Democracy Observatory (EUDO) Robert Schuman Centre for Advanced Studies, European University Institute Via delle Fontanelle, 19; I-50014 San Domenico di Fiesole; Italy EUDOsecr@eui.eu; www.eudo.eu & Legislating after Lisbon New Opportunities for the European Parliament A study prepared in the framework of the European Union Democracy Observatory for the Group of the Progressive Alliance of Socialists.
58. Dr Ulrike Barten Junior Research Associate European Centre for Minority Issues Flensburg, Germany, Minority Rights in the European Union after Lisbon

59. OPEN SOCIETY EU PAPER 1 Human Rights in the EU, How the Lisbon Treaty could HELP.
60. Bernd Rechel /What Has Limited the EU's Impact on Minority Rights in Accession <http://eep.sagepub.com/content/22/1/171> The online version of this article can be found at: DOI: 10.1177/0888325407311796 *East European Politics and Societies* 2008 22: 171 Bernd Rechel Countries? Published by: <http://www.sagepublications.com>
61. Steven Wheatley /Democracy, Minorities and International Law Steven Wheatley is Senior Lecturer in Human Rights Law and International Law at the University of Leeds. Cambridge University Press Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo Cambridge University Press The Edinburgh Building, Cambridge, CB2 2RU, UK Published in the United States of America by Cambridge University Press, New York www.cambridge.org.
62. Open society Institute 2001 Minority Protection in Latvia Monitoring the EU accession Process Protection.
63. Analytical Report Phare Raxen_CC Minority Education Raxen_CC National Focal Point Latvia Latvian Centre for Human Rights and Ethnic Studies Minority Education in Latvia Vienna, 2004.
64. Edited by Bernd Rechel /Minority Rights in Central and Eastern Europe, Basees/Routledge series on Russian and East European studies.
65. Tina Ferle, Manca Šetinc Constitutional Protection of Minority Languages in the European Union Presented at Inclusion and Exclusion in Contemporary European Societies, IUC Dubrovnik, April 2004.
66. Ewa Chylinski Mahulena Hofmannová/ECMI READY FOR Ratification Early compliance of non-States Parties with the European Charter for Regional or Minority Languages A Handbook with twenty proposed instruments of ratification (eds.).
67. Palgrave Macmillan The European Minority Rights Regime Towards a Theory of regime effectiveness David.J. Galbreath Joanne Mcevoy.
68. Council of Europe Strasbourg, 6 December 2016 ACFC/SR/III(2016)001 Third Report submitted by Latvia of the Framework Convention for the Protection of National Minorities (Received on 6 December 2016)/ Third Report on the

Implementation of the Framework Convention for the Protection of National Minorities by the Republic of Latvia.

69. Dr. Tove H. Malloy ,Hanna Vasilevich/ Lithuania's Minorityrelated Legislation: is there a legal vacuum? ECMI working paper #70 September 2013 ECMI Working Paper European Centre for Minority Issues (ECMI).

70. Markko Kallonen Minority protection and linguistic rights in Lithuania.

71. By: Dr. Krzysztof Kowalski (Kraków) Dr. Doc. Antonin Kalous , Master of Arts Thesis Euroculture Jagiellonian University, Kraków (Home) Palacký University, Olomouc (Host) June 2016 Models of Polishness among Lithuanian Polish Minority Submitted by: Simonas Teškevičius 1120462 (Kraków); 80063379 (Olomouc) Supervised (Olomouc) Vilnius, 20 June 2016 Signature.

72. Margit Ammer, Niall Crowley, Barbara Liegl, Elisabeth Holzleithner, Katrin Wladasch, Kutsal Yesilkagit -Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC SYNTHESIS REPORT October 2010 Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights.

73. Wolfgang Zellner/Randolf Oberschmidt/Claus Neukirch -Institute for Peace Research and Security Policy at the University of Hamburg (Eds.) Comparative Case Studies on the Effectiveness of the OSCE High Commissioner on National Minorities/István Horváth Facilitating Conflict Transformation: Implementation of the Recommendations of the OSCE High Commissioner on National Minorities to Romania, 1993-2001 Working Paper.

74. Nandor Magyari, Letitia Mark, Hajnalka Harbula Eniko Magyari-Vincze, Country Report on Ethnic Relations: Romania, Ethnic differences in education and diverging prospects for urban youth in an enlarged Europe.

75. Roxana Alina Petraru ,Protection of National minorities in Romania and Republic of Moldova. Guidelines "Petre Andrei" University of Iași rrroxana@yahoo.com, CES Working Papers, III, (2), 2011.

76. Przegląd Zachodni 2014, no. II grażyna baranowska poznań Legal Regulations on National and Ethnic Minorities in Poland.

77. Editors: Ewa Chylinski/Mahulena Hofmannová/ Early compliance of non-States Parties with the European Charter for Regional or Minority Languages A

Handbook with twenty proposed instruments of ratification Ewa Chylinski Publisher: European Centre for Minority Issues (ECMI) © ECMI 2011.

78. Edited by: Tarlach McGonagle (IViR) Bethany Davis Noll (PCMLP) Monroe Price (PCMLP)/Minority-Language Related Broadcasting and Legislation in the OSCE Programme in Comparative Media Law and Policy (PCMLP), Centre for Socio-Legal Studies, Wolfson College, Oxford University & Institute for Information Law (IViR), Universiteit van Amsterdam Study commissioned by the OSCE High Commissioner on National Minorities April 2003.

79. Vadim Poleshchuk (ed.) Chance to Survive, Legal Information Centre for Human Rights Minority Rights in Estonia Report Excerpt from the book:: Minority Rights in Estonia and Latvia, Tallinn: Foundation for Historical Outlook, 2009.

80. Ina Druviete Congres Mondial sur les Politiques linguistiques/World Congress Language Policies Barcelona, 16-20 d'abrid de 2002, Language Policy and Protection of the State Language in Latvia.

81. Bertus de Villiers ,*Beijing Law Review*, 2012, 3, 170-183 <http://dx.doi.org/10.4236/blr.2012.34023> Published Online December 2012 (<http://www.SciRP.org/journal/blr>) Protecting Minorities on a Non Territorial Basis—Recent International Developments* Bertus de Villiers# University of Western Australia, Perth, Australia. Email: bertus.devilliers@uwa.edu.au Received July 18th, 2012; revised August 30th, 2012; accepted September 10th, 2012.

82. Ramunė Jakštienė* Mykolas Romeris, Implementation of the Principle of State Language in Lithuania: Recent Problematic aspects University, Faculty of Public Security, Department of Law Putvinskio str. 70, LT 44211 Kaunas Tel.:+370 657 72711, e-mail: jakstieneramune@gmail.com.

83. General Editors Arie Bloed Rainer Hofmann Joseph Marko James Mayall John Packer Marc Weller Managing Editors Emma Lantschner Tove H. Malloy Assistant Editors Marnie Lloyd Gabriel N. Toggenburg Leonhard Voltmer Matthew Ward, European Yearbook of Minority Issues volume.

84. Ethnic Violence and the Societal Security Dilemma Paul Roe is Assistant Professor in the Department of International Relations and European Studies at the Central European University, Hungary.

85. Report regarding the implementation of racial Directive in Romania 2005-2010 Consiliul Nacional Pentru Combaterea Discriminarll.

86. Diana Beltadze Rahvaloenduse Tulemused Census Results eesti Statistika Kvartalikirj. 4/12. quarterly bulletin of statistics estonia 17 the size, structure and distribution of the population of estonia based on the 2011 census Statistics Estonia.
87. Peteris Zvidrins Dynamics of the Ethnic Structures in the Baltic Countries in the 21st Century University of Latvia Atis Berzins University of Latvia.
88. Instituti Kosovar për Kërkime dhe Zhvillime të Politikave Seria e Kërkimeve Politike botim i veçantë Drejtësia tranzicionale në Kosovë Punim Diskutues Prishtinë, qershor
89. . Chaloka Beyani General Assembly Distr.: General 5 June 2014 Human Right Concil twenty -sixth session Agenda item 3Genpromotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Original: English Report of the Special Rapporteur on the human rights of internally displaced persons.
90. Prof. Dr. Enver Hasani / Prof. Dr. Ivan Čukalović Commentary Constitution of the Republic Of Kosovo Edition 1.
91. Guide to Implementing Return Support, dt. March 26, 2012.
92. Information received by Department of Management and Monitoring of Project Ministry of Community and Return.
93. UNHCR, the UN Refugee Agency Office of the Chief of Mission Pristina, Kosovo1 Statistical Overview April 2018 Voluntary Minority Return trends year 2000-2018.
94. The Annual Bulletin January 2015.
95. Edita Tahiri, Minister for Dialogue Prishtina, the Republic of Kosovo Government Program on the Brussels Dialogue 2014 – 2018, 15 January 2015.
96. Profiling of Internally Displaced Persons in Kosovo January 2018, Assessing the Route to Durable Solutions for IDPs in Kosovo.
97. Displaced persons from Kosovo in the region – a re- assessment of interest to return Report UNHCR Regional Office in South Eastern Europe Foreword.
98. Lista e Koncept Dokumenteve për Vitin 2018 sipas Planit Vjetor të Punës së Qeverisë.
99. Inter-institutional Initiative on Durable Solutions for Displaced Persons from Kosovo Summary.

100. Report from the First Co-ordination Meeting of the Implementation Working Group of the Inter-Institutional Initiative for Displaced Persons Durres Albania, 11-14 September 2017.
101. Inter-institutional Initiative on Durable Solutions for Displaced Persons from Kosovo/ Koncept document for co-ordination and planning.
102. The working group, the pronsons rights, the final points of action, 11 March 2016.
103. Ex officio Case No. 551/2017 Recommendation Report of the Ombudsperson of the Republic of Kosovo with regards to revocation of certain competencies of Kosovo Property Comparison and Verification Agency according to Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency.
104. The Kosovo Force (KFOR) is a NATO-led international peacekeeping force which was responsible for establishing a secure environment in Kosovo.
105. Resolution 1244 (1999) Adopted by the Security Council at its 4011th meeting, on 10 June 1999, Annex 1.
106. Zejnullah Gruda, Mbrojtja Ndërkombëtare e të Drejtave të Njeriut (Prishtinë; Universiteti Fama, 2007) .
107. Doruntinë Demiri , Rëndësia e respektimit dhe promovimit të të Drejtave të Njeriut dhe ndërlidhja e tyre me Sundimin e së Drejtës dhe integrimet rajonale - rasti i Republikës së Kosovës.
108. Amnesty International, ‘Becoming a Human Rights Friendly School: A guide for schools around the world’, 2012.
109. Përktheu nga Mustafa Nano, Virgjil Muçi nën Pushtetin e Urdhrave Krimet e Luftës në Kosovë Human Rights Watch New York Washington London Brussels iv Copyright © tetor 2002 by Human Rights Watch All rights reserved. origjinali anglisht.
110. Press Statement by Dr. Javier Solana, Secretary General of NATO, 23 March 1999 <http://www.nato.int/docu/pr/1999/p99-040e.htm>,
111. Uroš Lipušček Parimi i sovranitetit shtetëror dhe e drejta për vetëvendosje: Çështja e Kosovës Thesis Kosova, nr. 1, 2008, Parimi i sovranitetit shtetëror dhe e drejta për vetëvendosje.
112. Organization and Functioning of Local Self-Government in Kosovo, published in August 2013, Prishtina by the Ministry of Local Government.

113. Prof.Dr.Sc Osman Ismaili, libri Fillet e së drejtës e autorit, Prishtinë 2004
Faqe
114. Report on the implementation of the Strategy and National Action Plan for Children's Rights in Kosovo (2009- 2013).
115. Sadete Demaj Rochester Institute of Technology RIT Scholar Works Theses Thesis/Dissertation Collections 2012 Strengthening the role and capacities of Kosovo institutions for effective implementation of legislation.
116. Adem Gashi and Betim Musliu Kosovo Law Institute Friedrich Ebert Stiftung: executive Overview.
117. Raport mbi: Ri-Themelimin dhe Reformimin e Sistemit të Drejtësisë në Kosovë 1999 - 2011 publikuar nga: Qendra Kosovare për Studime të Sigurisë (QKSS) "Sistemi Emergjent Gjyqësor" .
118. Rafet Haxha, Çështjet e reformës në sistemin gjyqësor të Kosovës – RSHSL, Konferenca Vjetore 2008.
119. Revistë shkencore juridike, Opinio Juris, nr.1/2015.
120. *Rrjeti Ballkanik Për Gazetari Hulumtuese* (Birn),Raport i monitorimit të Gjykatave 2015.
121. Karl Loewenstein University of Chicago Law Review Volume 5 | Issue 4 ,6-1-1938 The Balance between Legislative and Executive Power: A Study in Comparative Constitutional Law.
122. Balkan Transitional Justice initiative is a regional initiative which has been supported by the European Commission, the Federal Department of Foreign Affairs of Switzerland, the British Foreign and Commonwealth Office FCO and Robert Bosch Stiftung that aims to improve the general public's understanding of transitional justice issues in former Yugoslav countries (Bosnia and Herzegovina, Croatia, Kosovo, Northern Macedonia, Montenegro and Serbia).
123. The data obtained at the Institute for Research of Crimes of War in Kosovo with the document to the Ministry of Foreign Affairs, the Institute for Research of Crimes of War in Kosovo is a public institution researchers, with the aim of collecting, systematization, processing and publication of data crimes against peace, war crimes, crimes against humanity and acts of genocide committed in Kosovo during 1998, until June 1999. This institute will operate under the Ministry of Justice and has started work on 1 June 2011.

124. State reports Practices Human Rights for 2015 Department of State of the United States • Bureau of Democracy, Human Rights and Labor.
125. Rezoluta Nr. 05-R-006 Prishtinë, më 28 tetor 2016.
126. Mc. Albina Shabani - Rama* Kodi i Etikës gjyqësore si faktor i domosdoshëm për rritjen e besimit të publikut në sistemin gjyqësorë, Justicia revistë shkencore juridike e kandidatëve të programit të trajnimit fillestar 2013/2015 në institutin gjyqësor të Kosovës viti V, nr 5/2015 prishtinë, 2015 botues Instituti Gjyqësor i Kosovës.
127. Department of Human Rights and Communities Department Legal System Monitoring Use of Detention criminal proceedings Kosovo: Comprehensive Review and Analysis of Residual Concerns - Part II - March 2010.
128. Doracaku për përgatitjen e provimit të jurisprondencës botuar nga Ministria e Drejtësisë Prishtinë, gushtë pjesa e drejta penale.
129. Raporti vjetor i avokatit të popullit 2015 nr. 15 prishtinë 2016.
130. Strategjia kombëtare për reduktimin e lëndëve të vjetra gusht 2013.
131. Raporti vjetor i Këshillit Gjyqësor të Kosovës për vitin 2015.
132. Ex Officio no. 415/2016 Report with recommendations of the Ombudsman in the Republic of Kosovo regarding the lack of access to the court building in Mitrovica, respectively the part Verjore denial of the right of access to justice.
133. Enver Hasanit dhe Ivan Çukaloviç Librit Komentari i Kushtetutës së Republikës të Kosovës, Botimi i, botuar nga Agjencia Gjermane për Bashkëpunim Ndërkombëtar GIZ, dhjetor 2013, Prishtinë, Kosovë.
134. Annual Court Monitoring Report 2015 BIRN Balkan Investigative Reporting Network Kosovo.
135. Brussels, 9.11.2016 SWD(2016) 363 final Commission Staff Working Document Kosovo 2016 Report.
136. Autorët Valdrin Grainca Skender Përteshi Asistentë të hulumtimit: Florentina Hajdari Sofije Kryeziu/Forumi për Siguri Raport vlerësues Zbatimi “Politik”i ligjit në Kosovë Prishtinë, Prill 2011 faqe 5.
137. Esat Stavileci Mirlinda Batalli dhe Sokol Sadushi Libri e drejta Administrative –Organizimi dhe Veprimtaria administrative Prishtinë, 2012 faqe 87,88.

138. Organizimi dhe funksionimi i Vetëqeverisjes Lokale në Kosovë gusht 2013, Prishtinë.
139. Ministry of Local Government Organization and Operation of Local Self-Government in Kosovo 2013, Prishtina.
140. Statuti i Komunës së Skenderajt më 27. 11. 2008 neni 3 pika 3.2.
141. Manual on access to public documents and initiatives for effective democratic municipalities - USAID.
142. Besim Murtezani Flutura Hoxha Ferdi Kamberi Pjesëmarrja e komuniteteve jo shumicë në jetën publike konform legjislacionit në Kosovë Prishtinë 2015.
143. Office of the Prime Minister / Office for Community Affairs Review of employment of non-majority communities in the Civil Service and Public Enterprises in Kosovo.
144. Author: Ardiana Gashi Gender Equality Agency, October 2014 Proofreader: DAS Group Design Republic Printing: EMD Project Circulation 250 / Report research: participation, the role and position of Garve in central and local institutions and political parties in Kosovo.
145. European Centre for Minority Issues (ECMI) Kosovo Monitoring and Evaluation of Language Rights: piloting the use of indicators in the Assembly of Kosovo Final Report January 2014.
146. Respect for the linguistic rights of the Kosovo municipalities June 2014 Organization of Security and Cooperation in Europe Mission in Kosovo.
147. AI. 2007/06 for determining the procedures for implementing the Law on Use of Languages in Municipalities. In April 2011, the UA is replaced by AI. 2011/02.
148. E Drejta Policore Sarajevë / Prishtinë 2007 Universiteti AAB dhe Univerzitet u Sarajevu Kriminalistickih Nakuka.
149. The annual report of the work of the Kosovo Police for 2015.
150. Policia e Kosovës Strategjia dhe Plani i Veprimit 2012 - 2016/ Policimi në Bashkësi.
151. Forumi Siguri për Reformat në Policinë E Kosovës Prishtinë, Dhjetor 2011.
152. Plani Zhvillimor Strategjik 2016 - 2020 i Policisë së Kosovës.
153. The report of the US State Department on terrorism, June 2, 2016 the Kosovo.
154. The annual report of the work of the Kosovo Police for 2015.

155. Acts of excessive violence during arrestimimi MP for Kurti on December 4, independent institution of the Ombudsman (IO) asked the Prosecutor's Office in Pristina to investigate allegations that police used excessive force
156. Ernst Fraenkel *The Dual State a Contribution to the Theory of Dictatorship* Translated from the German by E.A. Shils, in collaboration with Edith Lowenstein and Klaus Knorr 1969 Otago Books *New York*.
157. The 2013 report on human rights in Kosovo Country Reports on Human Rights Practices for 2013 Human State Department of the United States * Bureau of Democracy, Human Rights and Labor.
158. Maja Bjeloš dhe Bojan Elek Botuesit: Qendra e Beogradit për Politika të Sigurisë (QBPS) dhe Qendra Kosovare për Studime të Sigurisë (QKSS) Integrimi i policisë në Kosovën Veriore: Progresi dhe sfidat e mbetura në zbatimin e Marrëveshjes së Brukselit Beograd dhe Prishtinë 2014.
159. Karl Loewenstein, John H. Herz *Soldiers for Democracy: Militant Democracy and the Defense of the Democratic State* Ben Plache *Virginia Commonwealth University* Follow this and additional works at: <http://scholarscompass.vcu.edu/etd> Part of the History Commons © The Author This Thesis is brought to you for free and open access by the Graduate School at VCU Scholars Compass. It has been accepted for inclusion in Theses and Dissertations by an authorized administrator of VCU Scholars Compass. For more information, please contact libcompass@vcu.edu.
160. Marcelo Neves *Iuris* vol.08, N,03 rio de janeiro, 2015 PP-1554 DOI . rio de janeiro, 2015 PP-1554 DOI The traditional leaders constitutional Challenges in South Africa Saul Tourinho Leal 1.
161. Dieter Grimm *Integration by constitution the normative and symbolic effects of constitutions*.
162. Andre Brodacz, *Chancen konstitutioneller Identitätsstiftung. Zur symbolischen Integration durch eine deutungsoffene Verfassung (chances of constitutional identity formation, The symbolic integration by an open constitution)*, in *INTEGRATION DURCH VERFASSUNG*, supra note 4, at 101.
163. Progress Report for 2015.

164. Prof.dr. Arta Mandro, Elona Saliaj Notere, Prof. dr. Aurela Anastasi ,të drejtat pronësore dhe Gruaja Broshurë informuese Qendra për Nisma Ligjore Qytetare, Tiranë, 2014.
165. Manual for School Prevention and Response Teams Towards Abandonment and Nonregistration in Compulsory Education December 2014 This publication has been developed as a part of the project “Enhancing Access to and Retention in Education for Vulnerable and Disadvantaged Children” implemented by ECMI Kosovo and in cooperation with UNICEF Office in Kosovo.
166. Temat e hulumtimit: Braktisja e shkollës Martesat e hershme Diskriminimi nga mësimdhënësit Përfshirja e fëmijëve me nevoja të veçanta në sistemin shkollor .
167. Nisma e të Rinjve për të Drejtat e Njeriut Qendrën për Zhvillimin e Grupeve Shoqërore në bashkëpunim me Liria dhe mbrojtja për Lezbiket, Homoseksualët, Biseksualët dhe Transgjinatorët në Kosovë Nëntor 2013.
168. Fund Marija Savić Belgrade Invisible LGBT Report on the position of LGBT community in Kosovo Heartefact, January 2013.
169. The Promotion of Human Rights in the Republic of Kosovo municipalities, date provided by the Ministry of Local Government Administration, Pristina 2013.
170. The Promotion of Human Rights, the report by Ministry of Local Government Administration Pristina 2014.
171. The number of incidents against cultural heritage 2009-2013, Challenges in protection of immovable tangible cultural heritage in Kosovo, OSCE 2014.
172. Women and Inheritance Rights to Real Estate in Kosovo Date of Submission: Quarter I 2016 Name: Mobile Monitors (Justice) Department/Office/Unit: Advisory Unit on Justice Matters- Mobile Team/ Strengthening Department.
173. Reflection of opinion of the Interview realized with focus groups, Members / Representative of the Institution of Political Cabinets, dealing with community rights including: Consultative Council for Communities , Kosovo Property Comparison and Verification Agency civil servants of the following institutions: Office Premier (Legal Office, the Language Commissioner, Office for Communities Issues) , Municipal Officer for Community and Return, Officer from Ministry of Communities and Returns, Officer from Ministry of European Integration , officer from Ministry of Justice , some members from civil society, OSCE representatives in Kosovo. (Closed and open questions).

174. Audit Report on the Annual Financial Statements of the Ministry for Community and Return for the year ended 31 December 2017.
175. Brussels, 29.5.2019 SWD (2019) 216 final Commission Staff Working Document Kosovo* 2019 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2019 Communication on EU Enlargement Policy {COM (2019) 260 final} *.
176. Humanitarian Law Center, <http://www.hlc-rdc.org/?p=21169&lang=de> .
177. Faculty of Law Lund University Nino Mchedlishvili Internally Displaced Person in Georgia: Gaps in Law and Practice Master Thesis 30 Credits Supervisor: Göran Melander Masters Programme in International Human Rights Law Spring 2014.

Legal sources

1. Code Nr. 04/L-082 Penal Code Republic of Kosova <http://www.assemblykosova.org/common/docs/ligjet/Criminal%20Code.pdf>.
2. Constitution of the Republic of Kosovo v, <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>.
1. Law no.03/L-047 on the protection of the rights of communities and their members <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2531>.
2. Law No. 04/L-020 on amending and supplementing the Law no.03/L-047 on the protection of the rights of communities and their members, <http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20amending%20the%20law%20on%20communities.pdf>.
3. Law no. 03/L-047 on the Protection and Promotion of the Rights of Communities and their members in Kosovo https://www.kuvendikosoves.org/common/docs/ligjet/2008_03-L047_en.pdf .
4. Law nr.03/L-064 on Official Holidays in Republic of Kosovo <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2539> .
5. Stabilisation and Association Agreement Between Kosovo* , of the one part, and the European Union and the European Atomic Energy Community, of the other part title VI Approximation of Kosovo's law to the EU acquis, law enforcement and

competition rules. <http://data.consilium.europa.eu/doc/document/ST-10728-2015-REV-1/en/pdf>

6. National Strategy for European Integration a Participatory Approach Kosovo 2020.

7. Regulation of Rules and Procedure of the Government of the Republic of Kosovo no. 09/2011, [http://www.kryeministri-ks.net/repository/docs/Rregullore_e_punes_se_Qeverise_09.2011_\(anglisht\).pdf](http://www.kryeministri-ks.net/repository/docs/Rregullore_e_punes_se_Qeverise_09.2011_(anglisht).pdf)

8. Regulation of Rules and Procedure of the Government of the Republic of Kosovo no. 09/2011 drafting Procedures in the Ministry [http://www.kryeministriks.net/repository/docs/Rregullore_e_punes_se_Qeverise_09.2011_\(anglisht\).pdf](http://www.kryeministriks.net/repository/docs/Rregullore_e_punes_se_Qeverise_09.2011_(anglisht).pdf).

9. Regulation No.13/2013 on Government Legal Service, http://www.kryeministriks.net/repository/docs/Rregullore_Nr132013_per_sherbimin_ligjor_qeveritar.pdf.

10. Rules of Procedure of the Assembly of the Republic of Kosovo Pristina, https://www.kuvendikosoves.org/common/docs/Rr_K_RK_29_04_2010_2.pdf.

11. Stabilisation and Association Agreement, available at the Official Gazette of the European Union, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2016:071:0003:0321:EN:PDF> ; Law No. 05/L-069 on Ratification of the SAA, available at <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=11239>.

12. Decision of the Government of the Republic of Kosovo no. 6/121, of the date 22.04.2010, http://kryeministri-ks.net/wp-content/uploads/docs/Vendimet_e_Mbledhjes_se_121-te_te_Qeverise_2010.pdf,

13. Appendix 16 of Regulation no. 02/2011 on the areas of administrative responsibility of the Office of the Prime Minister and Ministries <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10533> .

14. Regulation no.01/2011 on Departments for European Integration and Policy Coordination in the Ministries https://www.mei-ks.net/repository/docs/rregullore_nr_01-2011_per_departamentet_ML.pdf.

15. Law No. 04/L-115 on Amending and Supplementing the laws related to the ending of International Supervision of Independence of Kosovo Official Gazette of the Republic of Kosova / No. 25 / 07 September 2012, Pristina.

16. Regulation (GRK) - No. 01/2018 on the Return of Displaced Persons and Durable Solutions, was approved in the 23 - meeting of the Government of Republic of Kosova, with the decision no. 06/23 dt. 04.01.2018.
17. Regulation No. 02/2010 for the municipal offices for communities and return <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10522>.
18. Constitution of the Republic of Estonia Friday, 15 July 2016 11:37 Translation into English. Translations into English are officially sanctioned for information purpose only. Only The Estonian language text has the force of law. Passed 28.06.1992 RT 1992, 26, 349 Entry into force 03.07.1992 Amended by the following Acts: 06.05.2015 entered into force 13.08.2015 - RT I, 15.05.2015, 1; 13.04.2011 entered into force 22.07.2011 - RT I, 27.04.2011, 1; 12.04.2007 entered into force 21.07.2007 - RT I 2007, 33, 210; 05.10.2003 entered into force 06.01.2004 - RT I 2003, 64, 429; 25.02.2003 entered into force 17.10.2005 - RT I 2003, 29, 174.
19. National Minorities Cultural Autonomy Act Passed by the Act of 26 October 1993 (RT I 1993, 71, 1001), entered into force 28 November 1993. amended by the following Acts: 05.06.02 entered into force 01.07.02 - RT I 2002, 53, 336; 19.06.02 entered into force 01.08.02 - RT I 2002, 62, 376., <http://www.legaltext.ee/text/en/XX00038.htm> 30/01/2008.
20. The Constitution of the Republic of Latvia 04.02.2016. *Text consolidated by Valsts valodas centrs (State Language Centre) with amending laws of: 21 March 1933 [shall come into force from 21 March 1933]; 27 January 1994 [shall come into force from 26 February 1994]; 5 June 1996 [shall come into force from 26 June 1996]; 4 December 1997 [shall come into force from 31 December 1997]; 15 October 1998 [shall come into force from 6 November 1998]; 30 April 2002 [shall come into force from 24 May 2002]; 8 May 2003 [shall come into force from 5 June 2003]; 23 September 2004 [shall come into force from 21 October 2004]; 15 December 2005 [shall come into force from 17 January 2005]; 3 May 2007 [shall come into force from 31 May 2007]; 8 April 2009 [shall come into force from 2 November 2009]; 19 September 2013 [shall come into force from 18 October 2013]; 19 June 2014 [shall come into force from 22 July 2014,]* <http://www.satv.tiesa.gov.lv/en/2016/02/04/the-constitution-of-the-republic-of-latvia>.
21. Official Gazette of the Republic of Kosovo / no. 01 / 09 January 2018, Pristina Law no. 06/I-020 on the Budget of the Republic of Kosovo for year 2018.

22. Law About the Unrestricted Development and Right to Cultural Autonomy of Latvia's Nationalities and Ethnic Groups Adopted 19.03.1991 Amendments: 15.06.94. <http://www.regione.taa.it/biblioteca/minoranze/lettonia3.pdf>,
23. Text consolidated by Tulkošanas un terminoloģijas centrs (Translation and Terminology Centre) with laws of: 16 March 1995; 6 February 1997; 22 June 1998. If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause. The Saeima¹ has adopted and the President has proclaimed the following law: Citizenship Law Chapter One General <http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan018407.pdf>,
24. Regulation No. 02/2010 for the Municipal Offices for Communities and Return, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10522> .
25. Law no. 03/I-047a on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, <https://gzk.rksgov.net/ActDetail.aspx?ActID=2531> .
26. Constitution of the Republic of Lithuania (Adopted by citizens of the Republic of Lithuania in the Referendum of 25 October 1992) [.http://europam.eu/data/mechanisms/COI/COI%20Laws/Lithuania/Lithuania Constitution 1992,%20amended%20in%202003.pdf](http://europam.eu/data/mechanisms/COI/COI%20Laws/Lithuania/Lithuania Constitution 1992,%20amended%20in%202003.pdf).
27. Official translation the Republic of Lithuania Law on the State Language 31 January 1995, No. I-779 Vilnius (As last amended on 13 June 2002, No. IX-954) I. General provisions <https://eseimas.lrs.lt/rs/legalact/TAD/TAIS.275246/>.
28. The Law on ethnic minorities in Lithuania: a positive argument [.http://www.icelds.org/2018/02/26/the-law-on-ethnic-minorities-in-lithuania-a-positive-argument/](http://www.icelds.org/2018/02/26/the-law-on-ethnic-minorities-in-lithuania-a-positive-argument/).
29. Constitutional Framework for Provisional Self-Government in Kosovo https://www.assembly-kosova.org/common/docs/FrameworkPocket_ENG_Dec2002.pdf .
30. Draft Law on the Statute of National Minorities living in Romania <http://miris.eurac.edu/mugs2/do/blob.pdf?type=pdf&serial=1131546546218>.
31. Law of the Republic of Moldova on the Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations.

32. 1216-2574/USD 20.00 Acta Juridica Hungarica 2004 Akademiai Kiado, Budapest 45, nos 3-4 , (2004) National and Ethnic Minorities in Poland—the Legal Problem of Definition.
33. Declared by the President of the Republic of Estonia Decision No 860 of 09.03.2011 Language Act Passed 23 February 2011.
34. Constitution of the Republic of Estonia Chapter I. general provisions, <https://www.riigiteataja.ee/en/eli/521052015001/consolide>.
35. Issuer: Riigikogu Type: act , Citizenship Act Passed 19.01.1995 RT I 1995, 12, 122 Entry into force 01.04.1995 section 8 Requirements for and assessment of proficiency in the Estonian language.
36. Official Gazette of the Provisional Institutions of Self-government in kosovo / Prishtina: year ii / no. 10 / 01 march 2007 law no. 02/I-37 on the use languages.
37. Official Gazette of the Republic of Kosova / no. 33 / 2 September 2013, Pristina Law no. 04/I-215 on Citizenship of Kosovo.
38. The Saeima1 has adopted and the President has proclaimed the following Law: Official Language Law.
39. Latvia - Constitution { Adopted on: 15 Feb 1922 } { Significantly amended in: 1998 } { Official name: Constitution of the Republic of Latvia } { ICL Document Status: 1998 }. http://host.uniroma3.it/progetti/cedir/cedir/Lex-doc/Let_Cost.pdf,
40. Lithuania's Constitution of 1992 with Amendments through 2006.
41. Chart of signatures and ratifications of Treaty 148 *Charter for Regional or Minority Languages* Status as of 12/11/2018
https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/148/signatures?p_auth=azyIEWnB ,
42. Constitution of the Republic of Moldova Adopted on 27 July 1994http://www.constcourt.md/public/files/file/Actele%20Curtii/acte_en/MDA_Constitution_EN.pdf.
43. Republic of Moldova Parliament Law No 3465 dated 01.09.1989 Functioning of Languages on the Territory of the Moldavian SSR,
https://en.wikisource.org/wiki/Law_%22on_Functioning_of_Languages_on_the_Territory_of_the_Moldavian_SSR%22,
44. PDF generated: 17 Jan 2018, 19:48 This complete constitution has been generated from excerpts of texts from the repository of the Comparative

Constitutions Project, and distributed on constituteproject.org. constituteproject.org
Romania's Constitution of 1991 with Amendments through 2003.

45. The Act on the Polish Language (From October, 7 1999)
<https://ospcom.files.wordpress.com/2011/11/dr19.pdf>

46. Law no 6/98 on Protection of Minority in Serbia, Official Gazette of Serbia.

47. Constitution of Republic of Serbia.

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/74694/119555/F838981147/SRB74694%20Eng.pdf>.

48. Constitution of Montenegro

https://www.constituteproject.org/constitution/Montenegro_2007.pdf.

49. Savjeti osnovani na osnovu Pravila za prve izbore savjeta (“Službeni list RCG”), br.46/7 nastavljaju sa radom do osnivanja savjeta manjinskih naroda ili drugih manjinskih nacionalnih zajednica u skladu sa ovim zakonom .

50. Law on Protection from Discrimination no. 10/211 dated 04.02.2010,
https://www.ilo.org/wcmsp5/groups/public/ed_protect/protrav/ilo_aids/documents/legaldocument/wcms_178702.pdf.

51. The Constitution of the Republic of Northern Macedonia, Official Gazette of RM, no. 52/1991, date 22.11.1991.

52. Law on Protection from Discrimination, Official Gazette of RM, no. 50/2010, date 13.04.2010.

53. The Ohrid Framework Agreement of 13 September 2001.

54. Official Gazette of the Republic of Kosova / no. 30 / 31 december 2011, Pristina Law no. 04/I-054 on the status and the rights of the martyrs, invalids, veterans, members of kosova liberation army, civilian victims of war and their families.

55. Strategy for Communities and Returns 2009-2013.

56. Strategy for Communities and Return 2014-2018.

57. Law No. 03/L-066 on asylum Assembly of Republic of Kosovo,
<https://www.refworld.org/pdfid/5bf2ac0b4.pdf>.

58. Official Gazette of the Republic of Kosova / no. 20 / 21 June 2016, Pristina 1 Law no. 05/I-031 on General Administrative Procedure.

59. The Decision No 05/29 date 15.05.2015 of the Government of Kosovo for the establishment of the Inter-Ministerial Returns Commitment.

60. Community and Return Strategy 2016-2020 Municipal Community Office for Community and Return Prizren.
61. Law of 1999 on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina,
<https://www.refworld.org/docid/3ae6b5910.html>.
62. Decisions 176-180/2017 issued by the Ministry for Communities and Returns (MCR) on 23 February 2017.
63. Kosovo National Strategy on Property Rights - Ministry of Justice December 2016 Objective 3: Guaranteeing and enforcing the property rights of displaced persons and non-majority communities.
64. Decision No. 03/37 dated 23.03.2013 for approving the concept document for Kosovo Property Comparison and Verification Agency.
65. Official Gazette of the Republic of Kosovo / no. 2 / 15 February 2018, Pristina 1 Law no. 06/L –005 on Immovable property tax.
66. Agreement between the Government of the Republic of Kosovo and the Government of Hungary , for readmission of persons which stay unlawfully in their territory states.
67. UNMIK Regulation nr. 1999/24 for the applicable Law in Kosova.
68. National Strategy on The Rights of Persons with Disabilities in the Republic of Kosovo 2013 – 2023.
69. Draft Strategy and Action Plan for Human Rights in the Republic of Kosovo.
70. Law on the Establishment of Kosovo Judicial Institute general provisions of Official Gazette of the Republic of Kosovës / Pristina: Year III / No. 23 / April 1, 2008.
71. Law Nr. 03 / I-199 on Courts, Official Gazette of the Republic of Kosovo / Pristina: Year V / nr. 79/24 August 2010, official Gazette of the Republic of Kosovo / No.32 / 15 May 2014.
72. Code no. 04 / L-123 of the Criminal Procedure
<https://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Procedure%20Code.pdf> .
73. Law no. 04 / I-139 on Execution Procedure Official Paper of the Republic of Kosovo / No. 3/31 January 2013, Prishtina.

74. Law no. 03 / 1-010 on Notary of Republic Official Paper of Kosovo / Pristina: Year III / No. 42/25 November 2008.
75. Law no. 03 / 1-057 for intermediaries Official Gazette of the Republic of Kosovo / Pristina: Year III / No. 41 / November 1, 2008.
76. Law nr. 03/1-040 on Local Self Government/Official Gazette of the Republic of Kosova / Pristina: year III / no. 28 / 04 june 2008.
77. Law No.04/L –010 on Inter-Municipal Cooperation/Official Gazette of the Republic of Kosova / no. 7 / 10 avgust 2011, Pristina.
78. Law no. 03 / L-047, on the Protection and Promotion of the Rights of Communities, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2531>
79. Reg. 04/2010, on procedures for fair and proportional representation of non-majority communities in the civil service of the Republic of Kosovo <https://map.rks-gov.net/desk/inc/media/DF61A738-9817-4AA9-9DBB-CC9C9D7201D4.pdf>
80. Law no. 03 / L-149 on Civil Service of the Republic of Kosovo <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2679>
81. Official Gazette of the Republic of Kosova / No. 16 / 26 JUNE 2015, PRISTINA Law no. 05/L -020 on Gender Equality.
82. Law on Use of Languages http://www.assemblykosova.org/common/docs/ligjet/2006_02-L37_en.pdf,
83. Law no. 04/1-076 on Police/Official Gazette of the Republic of Kosova / no. 04 / 19 march 2012, Pristina.
84. Law no. 04 / 1-209 on Amnesty /Official Gazette of the Republic of Kosovo / No. 39/19 September 2013, Pristina.
85. Law Nr. 2004/26 heritage of Kosovo <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2407>.
86. Law no. 03/L007 on out contentious procedure Official Gazette of the Republic of Kosova / Pristina: year IV / no. 45 / 12 january 2009.
87. Strategy for Integration of Roma, Ashkali and Egyptian communities in the Republic of Kosovo 2009- 2015.
88. See decision of the Government no. 09/47, dated 09.11.2011.
89. Cabinet Decision no. 06/34 on the Creation of the Office, on 3 September 2008.

90. Regulation no. 07/2012, of the Office of the Language Commissioner.
<http://kryeministri-ks.net/documents/rregullore-nr-07-2012-per-zyren-e-komisionerit-per-gjuhet/>.
91. Regulation no.40/2012 on internal organization and systematization of work places in the Ministry for Communities and Return <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10358>.
92. Administrativ Instruction 2011/04, on amending the Instruction no 2011/1 <https://mapl.rks-gov.net/wp-content/uploads/2017/06/Udhezim-Administrativ-Nr-20114-Per-ndryshimin-dhe-plotesimin-e-udhezimit-20111-per-thelimin-e-njesive-per-te-drejt>.
93. Comprehensive proposal for the Kosovo status settlement Rights of Communities and Their Members.
94. Law no. 06/L –113 on Law No.03/L –189 on the State Administration of the Republic of Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2706>

Website

1. <http://www.pdhre.org/rights/ethnicity.html>.
2. <https://plato.stanford.edu/entries/rights-human/>.
3. <https://plato.stanford.edu/entries/constitutionalism>.
4. <http://skolarbete.nu/sq/skolarbeten/imperialsmen-japan>.
5. <http://www.michaelparenti.org/Imperialism101.html>.
6. <http://www.kt.gov.rs/lt/articles/presheva/>.
7. <http://www.kosovapress.com/sq/lajme/25-vjet-nga-suprimimi-i-autonomise-se-kosoves>
8. <http://www.mei-ks.net/en/departement-of-eu-law#sthash.0hrtCAAdN.dpuf>.
9. <http://blogs.lse.ac.uk/europpblog/2012/09/04/eu-minority-rights-lisbon-treaty>
10. <http://www.kt.gov.rs/lt/articles/presheva/>.
11. Ministry of European Integration <http://mei-ks.net/en/approximation-of-legislation-561>.

12. <http://mei-ks.net/en/legal-framework-for-approximation-#sthash.aKMVAXJZ.dpuf>.
13. See more at: <http://www.mei-ks.net/en/departement-of-eu-law#sthash.0hrtCAdN.dpuf>.
14. <https://www.rks-gov.net/EN/f318/civil-freedom/communities>.
15. <http://blogs.lse.ac.uk/europpblog/2012/09/04/eu-minority-rights-lisbon-treaty/>.
16. <http://www.pdhre.org/rights/ethnicity.html>.
17. <https://www.coe.int/en/web/minorities/etats-partie>.
18. <http://www.kuvendikosoves.org/?cid=2,110,137> .
19. <http://www.zck-ks.net/?page=2,4,253>.
20. <https://www.riigiteataja.ee/en/eli/521052015001/consolide>.
21. <https://lrkm.lrv.lt/en/activities/national-minorities>.
22. <https://tmde.lrv.lt/en/about-the-department> .
23. <https://www.coe.int/en/web/minorities/etats-partie> .
24. <https://www.coe.int/en/web/european-charter-regional-or-minority-languages>.
25. <http://www.komisioneri-ks.org/>.
26. <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/promoting-ratification-in-the-republic-of-moldova>.
27. http://adattar.adatbank.transindex.ro/tanulmany/Abstract_Pentek-Beno.htm.
28. https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/148/signatures?p_auth=bvvnR8Ws.
29. https://www.coe.int/it/web/conventions/full-list/-/conventions/treaty/148/signatures?p_auth=bvvnR8W.
30. <https://www.worldatlas.com/articles/largest-ethnic-groups-in-estonia.html>.
31. <https://www.worldatlas.com/articles/largest-ethnic-groups-in-estonia.html>.
32. <https://telegrafi.com/kujtese-25-vite-nga-suprimimi-i-dhunshem-i-autonomise-se-kosoves-fotovideo/>.
33. <http://koha.net/?id=8&arkiva=1&l=145884>.
34. http://www.coe.int/t/dgi/hr-natimplement/archiveSelectYear_en.asp.
35. <http://www.kosovapress.com/sq/lajme/25-vjet-nga-suprimimi-i-autonomise-se-kosoves>.
36. <http://www.drejtesia-ks.org> accessed.

37. <http://www.ncscinternational.org/Projects/Europe-and-Eurasia/Kosovo-KLP.aspx> .
38. [Official Gazette gzk.rks-gov.net/ActDetail.aspx?ActID=2713](http://gzk.rks-gov.net/ActDetail.aspx?ActID=2713) Republic of kosovo.
39. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008E0124>.
40. <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8>.
41. <http://www.eulex-kosovo.eu/?page=1,44,197> .
- http://www.consilium.europa.eu/press-releases-pdf/2016/6/47244642526_en.pdf.
42. <http://www.president-ks.gov.net/>.
43. <https://www.gazetaexpress.com/lajme/sami-lushtaku-kerkon-1-4-milione-demshperblim-per-kohen-e-kaluar-padrejttesisht-ne-burg-597891/>.
44. <https://www.gazetaexpress.com/lajme/pdk-lirimi-i-lushtakut-i-vonuar-por-i-drejte-398556/?archive=1>.
45. <http://inpo-ks.org/site/rreth-organizates/>.
46. <http://abgj.rks-gov.net/> .
47. <http://www.kosovopolice.com/sq/drejtore-rajonale> .
48. <http://www.kryeministri-ks.net>.
49. <http://www.zck-ks.net>.
50. <http://www.kryeministri-ks.net/?page=2,134>.
51. <http://www.kryeministri-ks.net?page1,51>; <http://zqm.rks-gov.net/>.
52. <http://www.ombudspersonkosovo.org/en/mission>.