

## **FREEDOM OF RELIGION IN A POST-CONFLICT AND NEWBORN COUNTRY**

### **KOSOVO CASE**

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In the planet of many worlds, full of conflicts, religion is an important ingredient of any human being. The role of religion is to creating peace, and making people live in the harmony and tolerance.

### **INTRODUCTION**

Constitutionally, Republic of Kosovo is a democratic and secular, multiethnic republic, guided by principles of non-discrimination and equal protection under the law (Declaration of Independence, paragraph 2). Kosovo is a multi-party democracy. The constitution makes provision for the institutions of the Republic of Kosovo: a unicameral Assembly with 120 members, A head of State (President of Republic), a Government consisting of a Prime Minister and ministers, and judicial institutions (Constitutional Court, Supreme Court, District Courts, Municipal Courts).

Kosovo has a total area of 10,887 km<sup>2</sup>. It has four neighbor countries: Macedonia (to the south), Albania ( to the south and west), Montenegro ( to the north-west), and Serbia ( to the north and east). The capital of Kosovo is Prishtina, with around half million inhabitants. According to Statistical Office of Kosovo, the number of population is around 2.0 million, from which 92% are Kosovo Albanians, 8% are from other communities including Serbs, Bosnians, Turks, Gorani, Roma, Ashkali and Egyptians. Kosovo has the youngest population in Europe, where 50 % are under 18, while around 70% are under 35.

The official languages in Kosovo are Albanian and Serbian. Other languages like Turkish, Bosnian and Roma languages have the status of official languages at the municipal level where the majority of those populations live. Kosovo has its state symbols (flag, seal and anthem), all of which reflect multi-ethnic character. The Flag of the Republic bears the geographical shape of Kosovo in gold on a dark blue field, surmounted by six white, five-pointed stars. The official currency in Kosovo is Euro. GDP per capita is around 2,000 Euros.

Today, Republic of Kosovo is independent state, monitored by international community. Actually, among youngest state of the world, Kosovo, sometimes called “Newborn” is recognized as sovereign and independent state by 82 states from all continents. These states include all neighboring countries, except Serbia. Furthermore, Kosovo is recognized by 22 out of 27 European Union, 24 out of

28 NATO Member States, and all of the G-7 states, which represent two thirds of world Gross Domestic Product.

## **KOSOVO CONSTITUTIONAL BACKGROUND**

### **Kosovo Constitutional Position in the Former Yugoslavia**

According to the 1946 Constitution of the Federal People's Republic of Yugoslavia, Kosovo was part of the People's Republic of Serbia and was given the status of an autonomous region (Article 2 of the 1946 Constitution). In 1963, the country's name was changed to Socialist Federal Republic of Yugoslavia (SFRY). According to the 1963 Constitution, Kosovo's status was transformed from that of an autonomous region to that of an autonomous province (Articles 111 and 112 of the 1963 Constitution).

In the Constitution of the Socialist Federal Republic of Yugoslavia (SFRY) of 1974, the SFRY was defined as a state community of voluntarily united nations and their socialist republics, as well as the autonomous provinces of Kosovo and Vojvodina, which had representation in both federal level and in the level of the Socialist Republic of Serbia (Article 1 of Constitution of the Socialist Federal Republic of Yugoslavia. 1974).

According to the 1974 Constitution, Kosovo had its own Constitution, the Constitutional and Supreme Courts, its own Parliament and Executive Committee (Article 4 of the 1974 Constitution). Furthermore, Kosovo had its own representatives in both the SFRY Chamber of Republics and Provinces and the Federal Chamber and was also represented in the Federal Presidency. Under Article 5 of the 1974 Constitution, the territory of a Republic could not be altered without the consent of that Republic, and the territory of an Autonomous Province – without the consent of that Autonomous Province. That was reinforced in the last paragraph of that Article that reads: "Boundaries between the Republics may only be altered on the basis of mutual agreement, and if the boundary of an Autonomous Province is involved – also on the basis of the latter's agreement." (Article 5 of the Constitution)

That means among other rights, the Autonomous Provinces enjoyed jurisdiction over their territory at the same level as the Republics constituting the federal state, and as stated by Weller, the Constitution of the Socialist Federal Republic of Yugoslavia of 1974, brought republic status for Kosovo in all but name (Weller, 2009, p. 28). When Yugoslavia broke up in 1991-1992, several republics declared their independence as separate states (Goldstein and Pevenhouse, 2010, p. 181), and Republic of Kosovo is one of seven states that emerged.

### **Illegal removal of autonomy in 1989**

In 1989 regime of Milosevic, made destructive political changes which destroyed the autonomy of Kosovo. This step was part of an overall campaign to securing the Serbia's domination over the Yugoslav Federation at that time. In relation to Kosovo, in March 1989 Serbia, with force, made Kosovo Assembly to accept changes in the Constitution, which removed the autonomy. This led to massive demonstration of Kosovo Albanians, many of them were killed, and got to prisons. Furthermore this was a starting point of a new era of Serbian oppression and brutality in Kosovo which ended with armed conflict in 1998-1999, many killings and ethnic cleansing. More than 12,000 people were killed, and around 1 million deported out of Kosovo. This led to involvement of international community in the Kosovo issue, and the application of the entire arsenal of tools available for crises management.

### **Declaration of independence of Kosovo in 2008**

On an extraordinary meeting convened on 17 February 2008, democratically-elected representatives of the people of Kosovo declared Kosovo to be an independent and sovereign state. In the Declaration of Independence is noted that this act "reflects the will of our people and it is in full accordance with the recommendations of UN Special Envoy Martti Ahtisaari and his Comprehensive Proposal for the Kosovo Status Settlement."

### **CURRENT POLITICAL SYSTEM**

In the Declaration of the Independence of Kosovo is stated that "The Republic of Kosovo is a democratic and secular, multiethnic republic, guided by principles of non-discrimination and equal protection under the law" (Declaration of Independence, paragraph 2)

The Constitution of Republic of Kosovo was adopted on 9 April 2008 and entered into force on 15 June 2008. According to the Constitution, Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible state ( Art. 1.1), and is state of its citizens ( art.1.2). In article 3 of the Constitution, is stated that "The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect of for the rule of law through its legislative, executive and judicial institutions".

Form of the government and separation of power is regulated with article 4 of the Constitution which states " Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them". According to this article: The Assembly of the Republic of Kosovo exercises the legislative power ( art. 4.2), "the President of the Republic of Kosovo represents the unity of

the people”, and “is the legitimate representative of the country, internally and externally, and is the guarantor of the democratic functioning of the of the institutions of Republic of Kosovo, as provided in the Constitution” (art. 4.3).

The government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentary control ( art.4.4). “Judicial Power”, according to the Constitution “is unique and independent and is exercised by courts” ( art. 4.5), and “ The Constitutional Court is an independent organ in protecting the constitutionality and is final interpreter of the Constitution” ( art.4.6). According to Constitution the “basis of the economic order of the Republic of Kosovo is market economy with free competition ( art.10). The Constitution of Republic of Kosovo provides that Kosovo shall respect international law, and international agreements and legally binding norms of international law have superiority over the laws of the Republic ( art. 19). Among the most important aspects for the protection of the rights of minority communities and their members is the decentralization programme.

### **Presence of International Community in Kosovo**

Key elements of the international presence in Kosovo are International Civilian Representative (ICR), International Steering Group (ISG), European Union’s Rule of Law Mission- EULEX, Organization for Security and European Cooperation-OSCE, and KFOR as international military presence in Kosovo. International Steering Group ( ISG) appoints International Civilian Representative (ICR) which supported by International Civilian Office (ICO) supervises implementation of Ahtisaari’s Plan (Ahtisaari Plan, Article 12).

Another important element of international presence in Kosovo is EULEX is European Security and Defence Policy mission envisaged in Ahtisaari Plan. EULEX has an operational role in the field of police and the courts, with judges and prosecutors, and its other functions are to monitor and advise local institutions. International military presence is established by NATO under the name KFOR. United Nations Interim Mission in Kosovo (UNMIK)- established according to UN Resolution 1244 of June 1999 UNMIK, has been reconfigured according to the new circumstances after the declaration of Independence.

## **LAWS GOVERNING FREEDOM OF RELIGION IN KOSOVO**

### **Constitution of Republic of Kosovo**

Constitutionally, Republic of Kosovo is a state of its citizens. The Republic of Kosovo exercises its authority based on the respect for human rights and freedoms of its citizens and all other individuals

within its borders (Article 1). The Republic of Kosovo is a secular state and is neutral in matters of religious beliefs (Article 8), and ensures the preservation and protection of its cultural and religious heritage (article 9).

Article 38 and 39 of Constitution are about Freedom of Belief, Conscience and Religion; and Religious Denominations.

- Freedom of belief, conscience and religion is guaranteed.
- Freedom of belief, conscience and religion includes the right to accept and manifest religion, the right to express personal beliefs and the right to accept or refuse membership in a religious community or group.
- No one shall be required to practice or be prevented from practicing religion nor shall anyone be required to make his/her opinions and beliefs public.
- Freedom of manifesting religion, beliefs and conscience may be limited by law if it is necessary to protect public safety and order or the health or rights of other persons.
- The Republic of Kosovo ensures and protects religious autonomy and religious monuments within its territory.
- Religious denominations are free to independently regulate their internal organization, religious activities and religious ceremonies.
- Religious denominations have the right to establish religious schools and charity institutions in accordance with this Constitution and the law.

### **Comprehensive Proposal For The Kosovo Status Settlement –(Ahtisaari’s Document)**

*Article 2- Human Rights and Fundamental Freedoms.* According to this article, “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”. Further, this article states that “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,. All persons in Kosovo are equal before the law and are entitled, without any discrimination, to equal protection of the law”.

*Article 7- Religious and Cultural Heritage.* Kosovo shall ensure the autonomy and protection of all religious denominations and their sites within its territory. 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. The SOC

shall be the sole owner of its property in Kosovo, with exclusive discretion over the management of its property and access to its premises (as set forth in Annex V of this Settlement).

### **Law on Freedom of Religion in Kosovo**

Article 1 of this Law regulates Freedom of Religion. It states that “ Everyone has the right to freedom of thought, conscience and religion. This right includes the freedom to have, not to have, to retain or to change one’s religion or belief and the freedom, either alone or in community with others, in public or in private, to manifest one’s religion or belief, in worship, teaching, practice and observance.

The right of freedom, religion or belief shall include, inter alia, the following freedoms:

- To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- To establish and govern charitable or humanitarian institutions;
- To make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief;
- To write, issue and disseminate relevant publications in these areas;
- To teach a religion or belief in places dedicated for these purposes;
- To solicit and receive financial contributions and other voluntary contributions from individuals and institutions;
- To train, appoint, elect or designate by succession their leaders called for by the requirements and standards of any religion or belief;
- To respect days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; and
- To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

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