

The Republic of Kosovo: Northern issue and relations with Serbia

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Abstract

The Ahtisaari Plan (2007) and Kosovo's constitution (2008): defines Kosovo as a multiethnic democratic society, non-religious, with a market economy and open and free competition. It provides key elements for minority rights and a strong form of decentralized local governance at the municipal and central level, in particular for the northern Serb minority community. The aim was for the Serbian minority to be provided with a special status in order to integrate and eliminate destructive policies of Serbia towards Kosovo. Municipal Local government is carrying out its functions successfully in all municipalities even in the Serb-majority ones in other parts of Kosovo, except the north. The Ahtisaari plan, Kosovo Constitution and the integration of the Serb minority in other parts of the Republic of Kosovo, are facts that indicate the guarantee and most advanced solutions in the region for the rights of the Serbian community in local and central government, the most significant democratic standards.

KEYWORDS: Kosova, International community, Ahtisaari Plan, Constitution, Minority, Governing, Development, Integration.

1. Introduction

On February 17, 2008, Kosovo unilaterally declared independence from Serbia. The Kosovar declaration of independence (2008) represents a fascinating case in international law. It poses important questions regarding the modern day understanding of the international legal theories of secession, statehood, and recognition. In light of these challenging issues and questions, other solutions to the Kosovar problem, such as the creation of an international protectorate, conditional independence, and the division along ethnic lines should have been envisioned and seriously considered before full independence of Kosovo was embraced by the West. (Milena Sterio,2009).

The Statistical Office of Kosovo (2008), according to the latest data, states that Kosovo has 2.1 million inhabitants. Although the country is considered multi-ethnic the vast majority is ethnic Albanian, with statistics ranging between 88% and 91 %. The rest are minorities among which 7% are serbs, and a 5% is comprised of other ethnic minorities such as Bosnians, Roma, Ashkali, Egyptians, and Turks. In general, Kosovo is considered to have the youngest population in Europe, of its inhabitants one third is under 15 years old, while over half of inhabitants are up to 25 years old. On the other hand, 5.5 % of inhabitants are 65 and older.

The Ahtisaari Plan(2007) commits Kosovo to maintaining multi-ethnic. It provides essential elements for minority and property rights, for a strong form of decentralized local government. Article 3.2 requires the “protection of the national or ethnic, cultural,

linguistic and religious identity of all Communities and their members.” Article 4 provides for the right of return and to reclaim property. Article 6 provides for local self-government and that municipalities “shall have the right to inter-municipal and cross-border cooperation on matters of mutual interest in the exercise of their responsibilities.” The Plan’s Annexes expand on these - Annex I (Article 8.3) gives municipalities the right to local sources of revenue and (8.4) to “inter-municipal and cross-border cooperation in the areas of their own and enhanced competencies.”

After the independence and Kosovo's constitution in 2008, concrete successes have been achieved in the legal and institutional consolidation of governance, but an effective and quality implementation of political and legal order; guarantee of human rights under international conventions and standards (see: Chapter II Fundamental Rights and Freedoms); the rights of minority communities (see Chapter III Rights of Communities and their Members); decentralization through local governance at the municipal level (Chapter X Local Government and Territorial Organization).

2. Model and methods

This study used multiple viewpoints on appropriate methods for understanding the causes, consequences, and variable correlations and effects. This study focused on researching specific facts related to Kosovo and in understanding the interpretation of local and international legal acts that relate to and interact with the processes on the Kosovar governance- Northern issue and relations with Serbia, while employing models and strategies of research on comparisons, evaluations, observation ethnography, grounded theory, and evaluating the facts and processes related to the topic on the above mentioned area. This study used the experimental model represented through active and passive observations which is a time limited study of concrete phenomena. Furthermore, the study conducted analysis of monitoring reports of international institutions on governance and northern issue and relations with Serbia.

3.The Ahtisaari Plan and Kosovo's constitution: Institutional and juridical consolidation

Legal and institutional consolidation in governance in the independent Kosovo, is based in The Ahtisaari Plan (Comprehensive Proposal for the Kosovo Status Settlement, March 2007) and international supervision of its implementation. Article 1.3 of Ahtisaari 's Plan states: “Kosovo shall adopt a Constitution. The Constitution of Kosovo shall prescribe and guarantee the legal and institutional mechanisms necessary to ensure that: Kosovo is governed by the highest democratic standards, and to promote the peaceful and prosperous existence of all its inhabitants. The Constitution shall include, but not be limited to the principles and provisions contained in Annex I of this Settlement”. This plan provides for the regulation of political and legal system in general, and some areas are defined in detail. In Article 1.1 (General Principles) it stipulates that: “Kosovo shall be a multi-ethnic society, which shall govern itself democratically, and with full respect for the rule of law, through its legislative, executive, and judicial institutions”.

Positive ratings come from all relevant international institutions regarding the implementation of the Ahtisaari Plan. An analysis conducted by Gerard.M.Galluci in 2011 in the context of affiliation on Serb northern municipalities states that the Ahtisaari Plan provides a framework for a functioning multiethnic democracy. Annex II (Article 4)

provides communities the right to express, maintain and develop their language and culture; receive pre-school, primary and secondary public education in their own language; establish and maintain their own private schools (with public financing); display community symbols; and have their own media (including TV). Annex I (Article 1.6) provides for the ability to maintain dual citizenship. Annex III defines local government, decentralization and linkages to Belgrade. Article 3 of the Annex gives municipalities full and exclusive powers for local economic development, land use, urban regulation, public services and utilities, education, health care and social services, public housing, licensing local services and naming of streets. Article 4 gives Serb-majority municipalities “enhanced participatory rights in the appointment of Police Station Commander” and provides North Mitrovica with “extended” competencies for university education and a hospital. Article 5 requires that the central government delegate to municipalities responsibility for cadastral and civil registries, voter registration, business registration and licensing, distribution of social assistance payments (excluding pensions) and forestry protection. Annex III also allows for municipalities to cooperate with (Art. 10) and receive funding from (Art. 11) Belgrade and to use educational material from Serbia in local schools (Art. 7). Annex IV provides that municipalities will have their own local courts and (Art. 2.2) mandates that “Kosovo judicial institutions shall ... reflect the ethnic composition of their area of jurisdiction.” At the national level, the Ahtisaari Plan provides for reserved and protected minority participation in the central government. Annex I provides quotas for “non-majority” participation in the national government. Article 3.3 requires a minimum of ten seats (out of 120) reserved for Kosovo Serbs in the National Assembly, as well as minimum numbers for other national minorities. Article 3.7-9 provides for 8 The Ahtisaari Plan and North Kosovo - TransConflict protected participation and voting majorities in the Assembly for issues affecting the “non-majority” communities without reference to simple majority vote or referendum. Article 5 requires a minimum number of Serb and other non-majority community representatives as ministers and deputy ministers and mandates that the civil service “reflect the diversity of the people of Kosovo.” Annex I also gives the non-majority representatives an enhanced role in choosing members of the Constitutional Court (Article 6) and in the process of amending the constitution (Article 10). Thus the Ahtisaari Plan provides a framework for a functioning multi-ethnic democracy. As to its functioning in fact, one may judge via analysis of the Plan's implementation south of the Ibar River.(Gerard.M.Galluci, 2011)

All minorities in Kosovo constitute about 8% of the population. The rest are minorities among which 7% are serbs, and a 5% is comprised of other ethnic minorities such as Bosinas, Roma, Ashkali, Egyptians, and Turks. In general. In the case of Kosovo there were no interethnic conflicts, but it was the exploitation of the Serb minority by dominant Serbian policies and international toleration. Serbia's destructive policies aim was the prevention of the creation of institutions and establishment of the governance of Kosovo as an independent state, not for the interests and rights of the Serb minority. In order to limit the obstacles of Serbia solutions included in Ahtisaari plan became eligible for the kosovars, given that Kosovo is not a pronounced multiethnic society. But the real solution of this problem is done by preventing the intrusive policies of Serbia and its allies against the independence of Kosovo because the effects of these policies are reflected in the governance. The global effects were even more specific as a result of the

large collection of problems over longer periods of time, and the politics of the surrounding countries, especially the dominating Serbian politics.

With the establishment of international guidance the Assembly proclaimed the Declaration of Independence on 17th of February 2008. International recognition followed, with a significant number of countries with a global impact accepting it. Kosovo's constitution (2008) determined the character, functions and organization of the institutions. All the definitions and governing authority of institutional powers were consolidated in compliance with the requirements of the Ahtisaari Plan, by guaranteeing all ethnic groups, civil rights, especially in regards to the Serb minority in Kosovo. The Constitution defined the political and legal system: parliamentary republic with a system of governance similar to that of Western democracies and transition countries . A unique state with a decentralized local municipal government. The constitutional politics fits the level and goals of the democratic society of Kosovo. The constitution of Kosovo represents the basic solutions to government and institutional processes according to democratic standards. The Constitution , as the supreme legal act of the Republic of Kosovo in Chapter I on Basic Provisions, Article 16.2, Supremacy of the Constitution states: "The Power to Govern stems from the Constitution". Chapter I , Article 2.1 on Sovereignty defines "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". By expressing the supremacy of this act and its constitutionality in the governing process, Chapter I, Article 16.2 defines: "The Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts shall be in accordance with this Constitution". In Article 4.1 [Form of Government and Separation of Power]: "Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution".

An essential factor is considered to be the appropriate adjustment, clear and deliberate constitutional policies for effective governance, with predictions: the parliamentary system and balancing powers; proportional electoral system; guarantee of human rights under international conventions and standards (see: Chapter II Fundamental Rights and Freedoms); the rights of minority communities (see Chapter III Rights of Communities and their Members); decentralization through local governance at the municipal level (Chapter X Local Government and Territorial Organization); After the independence in 2008, concrete successes have been achieved in the legal and institutional consolidation of governance, but an effective and quality implementation of political and legal order; rule of law, is required by fighting negative phenomena in institutions in order to prevent the alienation of the policy goals in regards to constitutional governance.

In accordance with the Constitution, laws, procedures and other relevant regulations, all institutions were constituted according to powers and responsibilities. International Court of Justice in The Hague UN on the 22nd of July 2010, published a positive advisory opinion concerning the legality of Kosovo's declaration of independence in 2008, noting that there is no contradiction on United Nations Resolution 1244, adopted by the Security Council. Among the major successes is the end of international supervision of independence (September 2012), which marked the completion of the implementation of the criteria required by the Martti Ahtisaari package. So, with this the constitutional

preconditions, legal and organizational functioning, the establishment of institutions and governance of the Republic of Kosovo were completed. However, this governance did not reach the north.

4. Northern issue and relations with Serbia

Legal solutions to the Ahtisaari Plan included in full in the Constitution and the political and functional legal system of Kosovo, as well as the successful integration of the Serb minority (except north), are undeniable arguments, and successful practices for solving problems of the north i.e. its integration. Even the international attitudes are clear that there is no change of borders on ethnic grounds. Therefore, Serbia's destructive role in the institutionalization of government in this part of Kosovo is being restricted. The Ahtisaari plan, Kosovo Constitution and the integration of the Serb minority in other parts of the Republic of Kosovo, are facts that indicate the guarantee and most advanced solutions in the region for the rights of the Serbian community in local and central government, the most significant democratic standards.

The diplomat Rohan (2012), as Ahtisaari's deputy in Vienna talks for setting the status of Kosovo, on the opening of negotiations for the normalization of relations between Kosovo and Serbia, in the context of north states that Ahtisaari Plan contains a substantial autonomy for the northern Kosovo Serbs. Therefore, he argues, any departure from this plan creates complications in the political and legal system of the Republic of Kosovo. This has been understood by all parties. Republic of Serbia also forced by domestic and integration needs, has begun to change the approach towards Kosovo and the north. Strengthening democratic institutions and the Kosovo government at all levels will affect the quality integration of this community and territory.

The essence of the results of the negotiations for the north, in the spirit of the normalization of relations between Kosovo and Serbia under the mediation of the European Commission, Brussels (2013) is seen in the 15 point agreement, signed by prime ministers Thaci and Dacic. The key points of the Agreement are:

“1. There will be an Association/Community of Serb-majority municipalities in Kosovo. Membership will be open to any other municipality provided the members are in agreement.

2. The Community/Association will be created by statute. Its dissolution shall only take place by a decision of the participating municipalities. Legal guarantees will be provided by applicable law and constitutional law (including the 2/3 majority rule).

3. The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo municipalities e.g. President, vice President, Assembly, Council.

4. In accordance with the competences given by the European Charter of Local Self Government and Kosovo law the participating municipalities shall be entitled to cooperate in exercising their powers through the Community/Association collectively. The Association/Community will have full overview of the areas of economic development, education, health, urban and rural planning.

5. The Association/Community will exercise other additional competences as may be delegated by the central authorities.

6. The Community/Association shall have a representative role to the central authorities and will have a seat in the communities' consultative council for this purpose. In the pursuit of this role a monitoring function is envisaged.

7. There shall be one police force in Kosovo called the Kosovo Police. All police in northern Kosovo shall be integrated in the Kosovo Police framework. Salaries will be only from the KP.

8. Members of other Serbian security structures will be offered a place in equivalent Kosovo structures.” (Brussels, 2013)

This agreement clearly defines the form of the Association of Municipalities with Serb-majority in northern Kosovo, determining that “In accordance with the competences given by the European Charter of Local Self Government and Kosovo law the participating municipalities shall be entitled to cooperate in exercising their powers through the Community/Association collectively” (Point 4). “The Association/Community will exercise other additional competences as may be delegated by the central authorities” (Point 5). Local government as a form of decentralization represents one of the most essential and necessary principles of governance and democratic institutions. In Kosovo this is so in the municipal level and is the most advanced in the region.

Municipalities are enjoying a high degree of local self-government in the decision-making process of local authorities and are providing the necessary participation of all citizens. Kosovo's constitution in Chapter X on Local Government and Territorial Organization Article 123.4 [General Principles] defines “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”.

Municipalities have the right to inter-municipal and inter-border cooperation in areas of their own and enhanced competences. This is defined in Chapter X, Article 124 [Local Self-Government Organization and Operation] p. 3-7:

“3. Municipalities have their own, extended and delegated competencies in accordance with the law. The state authority which delegates competencies shall cover the expenditures incurred for the exercise of delegation.

4. Municipalities have the right of inter-municipal cooperation and cross-border cooperation in accordance with the law.

5. Municipalities have the right to decide, collect and spend municipal revenues and receive appropriate funding from the central government in accordance with the law.

6. Municipalities are bound to respect the Constitution and laws and to apply court decisions.

7. The administrative review of acts of municipalities by the central authorities in the area of their own competencies shall be limited to ensuring compatibility with the Constitution of the Republic of Kosovo and the law.’’

Municipal governance represents advancement of democratic governance according to European standards and practices of local government. Chapter X on Local Government and Territorial Organization Article 123.3. states “The activity of local self-government bodies is based on this Constitution and the laws of the Republic of Kosovo and respects the European Charter of Local Self-Government. The Republic of Kosovo shall observe and implement the European Charter on Local Self Government to the same extent as that required of a signatory state”. This is a requirement of all citizens and ethnic communities of the Republic of Kosovo, for development and prosperity for all.

To realize all these rights and purposes of local interest municipal competencies have also been regulated and functionalized: a. Local economic development; b. Urban and rural planing; c. Usage and land development; d. Implementation of building regulations and building control standards; e. Local environmental protection; f. Affiliation and maintenance of public services and utilities, including appropriate water supply, sewerage and drainage, waste management, local roads, local transport and local heating schemes. Central authorities in Kosovo delegate responsibility to the municipalities as municipal powers in the following matters: a. Territorial registry; b. civil registers; c. Voter registration; d. Registration and licensing of businesses; e. Distribution of social assistance payments (excluding pensions) and f. Protection of forests.

Municipal activities in areas of their own competencies are defined in ensuring compliance with the Constitution and the law in force. This is done by administrative review of municipal acts as foreseen in the Article 6-7 of Constitution's Chapter X:

“6. Municipalities are bound to respect the Constitution and laws and to apply court decisions.

7. The administrative review of acts of municipalities by the central authorities in the area of their own competencies shall be limited to ensuring compatibility with the Constitution of the Republic of Kosovo and the law.’’

Municipal Local government is carrying out its functions successfully in all municipalities even in the Serb-majority ones in other parts of Kosovo, except the north. Even the Association of Municipalities with Serb-majority in northern Kosovo, has no reason not to work as in other municipalities. Northern Municipal Association will be established in order to implement the constitutional and legal local government and in accordance with the competencies of central authority. Now the question is how to integrate this part as fast and as successfully for it to be institutionalized and governed in accordance with the Constitution; according to the quite advanced central government and local municipal government, according to the European Charter of Local Self-Government. The constitution and the legal and political order of Kosovo is unique with its advanced and functional local municipal governments and with substantive representation and participate in decision-making of minority communities in the central level. Therefore, there is no reason for any form of destructive presence that would ultimately undermine the multi-ethnicity and the democratic determination of kosovar governance.

Kosova by empowering institutions and governance quality, best exceeds these obstacles and together with positive international partners consolidates the integrity and international position of the state of Kosovo. Even the International Community in the basic requirements for integration is seeking quality and efficiency in governance, institutionalization and a democratic culture. Governance and democratic order in Kosovo reflects international peace and security in the region and beyond.

Relations with Serbia consolidation without planning for regional cooperation and without investing in concrete projects. Specifically, investments in regional road infrastructure are essential contributors to enable quality collaboration and development. Cooperation between states, Kosovo and region, should lead in this process, and the support of regional and global financial organizations as a result will not be lacking. Because the integration processes are moving at a fast pace and present a development need and a development instrument. This cooperation will rather enable the circulation of goods, people and ideas. This cooperation will powerfully and immediately affect economic development and the development of all other areas on both sides. Consequently, this will affect the integration and development of municipalities, states and the region. Projects and ideas are those that lead, and after them come investments and support. Kosova by empowering institutions and governance quality, best exceeds these obstacles and together with positive international partners consolidates the integrity and international position of the state of Kosovo. Even the International Community in the basic requirements for integration is seeking quality and efficiency in governance, institutionalization and a democratic culture. Governance and democratic order in Kosovo and in Serbia, reflects international peace and security in the region and relations Kosovo-Serbia.

5. Conclusion

Negative impacts from Serbia and rivalities of countries with an impact countries reflected directly in the governing effects and the institutionalization in Kosovo. And all these factors created obstacles and delays in government reforms, integration and hence in the democratic consolidation in Kosovo. But global integration processes and activities of international organizations are affecting Kosovo, in order to incorporate conventions and practices of democratic governance which is useful in the constitutional order in respecting human rights, minority rights, rule of law and order. Therefore, the need for political, institutional, economic, legal and cultural reforms is evident.

Governing effects in the independent Kosovo, has faced adverse conditions: the absence of a plural democratic tradition; low level of economic development; transition reforms; the concentration of power on the existential resource sectors; negative phenomenon in institutions; regional and international circumstances lack of genuine opposition; etc. All these circumstances are affecting directly the characteristics of governance and institutional efficiency; the rule of law, democracy, respect for human rights and respect for minority rights, bring peace in Kosovo and the region. They provide safe conditions for investment, regional cooperation, integration and ultimately development. Governing quality represents an essential factor in the development and integration process ethnic minority and relations with Serbia.

Kosova by empowering institutions and governance quality, best exceeds these obstacles and together with positive international partners consolidates the integrity and

international position of the state of Kosovo. Even the International Community in the basic requirements for integration is seeking quality and efficiency in governance, institutionalization and a democratic culture. Governance and democratic order in Kosovo reflects international peace and security in the region and beyond.

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