

Ethnic decentralization in Kosovo

*Donik Sallova**

Abstract

The Declaration of Independence of Kosovo on February 17, 2008 was based on the so-called "Ahtisaari package", prepared by the envoy of the General Secretary of the United Nations, Martti Ahtisaari. The general conditions were related to the democratic and multi-ethnic nature of the state, but particularly they had to do with the granting and guaranteeing the rights of national minorities or minority communities as referred to in the document. Among other elements, the proposal presumed that through decentralization of local government and the foundation of new municipalities where minority communities live, to guarantee their self-government as a process of acceptance and integration in the state of Kosovo. The aim of this paper is to demonstrate that decentralization and the foundation of new municipalities, especially the Serb community in Kosovo, more than helped with their self-government has led to their disintegration and isolation, deepening even more the separation from the ethnic majority population in Kosovo. The Association of Serb municipalities reached in Brussels on August 2015, demonstrates the tendency of the local Serb municipalities to connect to an autonomous political organisation, as a preliminary phase towards the total boycott of the Kosovo state.

Key words: *Decentralization, Ethnic, government, Serbs, Albanians.*

* Donik Sallova, PhD. Candidate, Lecturer at AAB College. E-mail: donik.sallova@aab-edu.net

Introduction: The association of municipalities with Serbian majority in Kosovo: self-government beyond local government (local power)

The signed agreement on the Establishment of the Association / Community of Serb Majority Municipalities between Kosovo and Serbia in Brussels (August 2015), under the mediation of the EU Chief of Foreign Policy Frederica Mogherini, was interpreted in two different contexts in Kosovo and Serbia. Kosovo's political class who signed the agreement claims that the establishment of the Association will make it possible for the Serb-majority municipalities to create more space and cooperative relationship in order to achieve a better local self-government, on the other hand Serbia and Serb leaders in Kosovo claim that this agreement creates a greater compatibility between municipalities where Serbs are in the majority, accomplishing more governing and political autonomy against the central authorities in Pristina, which they do not recognize as state authorities, whereas still see Kosovo as a Serbian province. Thus on one side the government authorities in Pristina interpreted the agreement as something as something positive in the process of governance and as an element of good governance, so the inclusion of Serbian community within the Kosovo political system was welcomed by the government, quite differently on the other side the official political line of Belgrade and Serb representatives in Kosovo see this association as a way whereby Serb community will be even more protected and more apart from the political and governing system of Pristina.

Since after the declaration of independence of Kosovo on February 17, 2008, the government authorities of the Republic of Kosovo practically lost the control that UN administration had also in north inhabited by Serb majority and that any attempt to

extent the control there was stopped by the international community since the necessities imply the use of force, consequently Pristina and the international community (mainly the EU) aimed to achieve through negotiations between Pristina and Belgrade the integration of Serbs in the political and legal system of Kosovo.

The aspiration was that the integration of Serbs was being guaranteed and advances the rights and freedoms to cultivate and protect their identity in the state of Kosovo. The basis for such a guarantee for Serbs, but also other minorities, is provided in the Ahtisaari Package in which are specifically defined conditions that Kosovo must meet in order to be established as an independent and sovereign state. The first condition was that “Kosovo is a multiethnic society, where all citizens are equal”.⁷⁹ Thus, was excluded the possibility that Kosovo was constructed as a state of the Albanian nation in which Serbs and other minorities “feel threatened”. Although the idea of an independent Kosovo derives by the Albanian political elite and from Albanian people of Kosovo, and despite the Albanians when declared the state on July 2, 1990, and September 7, 1990 approved the first Constitution of the Republic of Kosovo, “Kosovo was projected as a democratic state of the Albanian nation, but that guarantees and protects the rights of national minorities”⁸⁰ (Article 1, General Provisions of the Constitution of the Republic of Kosovo). Again the international community through the process of negotiations in Vienna constructed the state of Kosovo as multiethnic state. So, state of its all citizens.⁸¹ Even though Serbia was part of

⁷⁹ Article 1, General Provisions, the Comprehensive Proposal for the Kosovo Status Settlement. 2nd February 2007.

⁸⁰ Article 1, General Provisions, the Constitution of the Republic of Kosovo, 7th September 1990. (Known as the Kacanik Constitution which was adopted in the city of Kaçanik by deputies of the Parliament of Kosovo).

⁸¹ Chapter 1, Section 1.2, the Definition of the State, the Constitution of the Republic of Kosovo, 15th June 2008.

negotiations in Vienna through which Kosovo made enough concessions and compromises about the nature of the state of Kosovo (in favor of the Serbs), especially the rights that were guaranteed to national minorities in Kosovo (minority communities as Ahtisaari Plan defines them), at the end Serbia rejected the agreement and the recognition of Kosovo. Serbia even today claims that Kosovo is an autonomous province of Serbia (even with its constitution)⁸², even that Kosovo is the "the cradle of culture and religion of the Serbian nation".⁸³

After negotiations in Vienna, under pressure from the EU and countries such as Germany, France and Britain, Serbia was forced to move towards normalization of relations with Kosovo, as a condition so Serbia could advance towards integration into the European Union. So in April 2013, under negotiation of Baroness Ashton (the head of EU foreign policy, at that time) was achieved "The first agreement for the normalization of relations between Kosovo and Serbia".⁸⁴

In the context of the topic which addresses this paper, after the general agreement of 19 April 2013, in continuation of negotiations in Brussels, Kosovo and Serbia among others also reached agreement on the general principles and key elements for "the establishment of the Association / Community of Serb Majority Municipalities in Kosovo".⁸⁵ In order to further normalization of relations between Kosovo and Serbia, was reached this agreement which presumes that integrate Kosovo Serbs in the Republic of Kosovo, guaranteeing them unifying and coordinating space in local self-government (through the Association).

⁸² The Constitution of the Republic of Serbia, Preamble, 2006. http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav.php?change_lang=en

⁸³ This idea is promoted especially by the head of the Orthodox Church of Serbia.

⁸⁴ The First Agreement of Governance Principles, on the Normalization of Relations. 19th April 2013.

⁸⁵ The agreement between Kosovo and Serbia for the Association / Community of Serb majority municipalities in Kosovo. 25th August 2015.

Will the association integrate Kosovo Serbs in the political and legal system of the Republic of Kosovo?

Although Kosovo was liberated in from Serbia (June 1999), after the bombing of NATO against police and military apparatus of Serbia in Kosovo, which was doing the ethnic cleansing in Kosovo, displaced Kosovo Serbs within Kosovo, but also abroad, still today they did not accept the new political reality in Kosovo.

The refusal of Kosovo Serbs becomes even more highlighted after the declaration of independence of Kosovo. Oriented and influenced by the politics of Belgrade, Serbs believe or want to believe that "Kosovo is still part of Serbia".⁸⁶ During the period of UNMIK and Provisional institutions of self-government Serbs were affirmative to participation in local and central government in Kosovo after the declaration of independence, except Serbs who lived in municipalities on the inside Kosovo, Serbs who lived on north municipalities categorically and violently rejected every attempt of the Kosovo government to extend its authority in those territories and population. This refusal was emphasized particularly after coming to power the party of the current Prime Minister of Serbia, Alexander Vucic, who in Kosovo established the then so-called "Serbian List", which, if we can say radicalized rejection and conditioning against the institutions of the Republic of Kosovo. Moreover, under the influence of this new political formation of Serbian majority municipalities that lie on the inside Kosovo (Gracanica and Strpce), they have increased the hostile and exclusionary approach against the political reality of an independent Kosovo.

⁸⁶ To this end, the Serbian government has established a ministry for "Kosovo and Metohija", the basic function is precisely the propagation of "Kosovo as part of Serbia".

Regardless the fact that the Ahtisaari package and the Constitution of Kosovo guaranteed advanced rights for the minority communities, especially for the Serb minority, this did not influence their belief that the state of Kosovo is also their state too. Moreover, in the Ahtisaari package and Kosovo Constitution, official languages besides the Albanian language (as language of 90% of the inhabitants of Kosovo), is also the Serbian language.⁸⁷ Ahtisaari's proposal imposed a decentralized model which delegates more power to local government. Ahtisaari's proposal dedicates a separate annex to the issue of decentralization⁸⁸, whose provisions will be incorporated in the Constitution⁸⁹ and the Law on Local Self-Government.⁹⁰

Ahtisaari's proposal is devoted a separate annex to the issue of decentralization (Annex III, Decentralization, Comprehensive Proposal for the Kosovo Status Agreement), the provisions of which will be incorporated in the Constitution (Chapter X, Local Government and Territorial Organization, the Constitution of the Republic of Kosovo), and the Law on Local Self-Government (Law on Local Self-Government, the Assembly of Kosovo). In the context of decentralization, respectively, offering local self-government for national minorities, Kosovo establishes new municipalities by law as the realization of the obligations deriving from the Ahtisaari proposal. Through the adoption of the Law on Administrative Municipal Boundaries the Parliament of Kosovo established new municipalities with minority residents (Gračanica, Ranillug, Partesh, Klllokot, Mamushë, North Mitrovica), and some existing municipalities where minorities lived and attached a series of villages (territories), other inhabited

⁸⁷ Article 5, Languages, *The Constitution of the Republic of Kosovo*, 15th June 2008.

⁸⁸ Annex III, Decentralization, *Comprehensive Proposal for the Kosovo Status Agreement*, February 2, 2007.

⁸⁹ Chapter X, Local governance and the territorial organization, *The Constitution of the Republic of Kosovo*, 15th June 2008.

⁹⁰ *Law on Local Self-Government*, the Assembly of Kosovo, 20.02.2008.

by Serbs, through this form they could be dominant majority and govern in these municipalities (as Novoberda, etc.)⁹¹

These municipalities established and reorganized especially for the Serbs, besides to its own powers and delegated powers of the central authorities, the law on Local Self-Government defines *extended competencies* in areas that are the exclusive competence of the central government. The expanded powers of Serb majority municipalities were related to the field of health, education and assignment of the commanders of police stations.⁹² According to this law, the Municipality of North Mitrovica, Municipality of Gracanica and Municipality of Strpce have the power "to provide secondary health care, including registration and licensing institutions of health care, employment, payment of salaries and treatment of health care for the personnel and administrators"⁹³. These extended powers, which are described by law for the municipalities with Serb majority are usually powers exercised by the central authorities in Kosovo such as the Ministry of Health and no other municipality inhabited by Albanian or other minorities has the right to exercise these powers at local level⁹⁴.

Meanwhile, in the field of university education, organization and the functioning of which in Kosovo are the competence of the central authorities such as the Ministry of Education and certain governmental agencies, the Municipality of North Mitrovica by law has competence "for higher education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators"⁹⁵. Also, in the field of culture, the law stipulates

⁹¹ Article 5, *Law on Administrative Boundaries*, Kosovo Assembly, February 20, 2008.

⁹² Article 19, extended competencies, *Municipal Law on Local Self-Government*, Kosovo Assembly. 20.02.2008.

⁹³ *Ibid*, Section 19

⁹⁴ *Ibid*, Section 20

⁹⁵ *Ibid*, Section 21

that “all municipalities in which the Serb community is in the majority shall have authority to exercise responsibility for cultural affairs, including protection and promotion of Serbian cultural and religious heritage and others within the municipal territory and the support of local religious communities”⁹⁶. Serb majority municipalities are defined to have “The power to exercise expanded rights to participate in choosing the local commander, according to the police law”⁹⁷.

Among others, as we can see, the power in Kosovo is much decentralized, respectively municipalities as carriers of local government have a wide variety of competencies through which they self-govern. Respectively municipalities as carriers of local government have a wide variety of competencies by which they self-govern. Especially municipalities where Serbs are a dominant majority, have extra additional powers delegated through which they are enabled at a very advanced self-governed level to promote the interests of their community and deal with issues related to identity, culture, economy, social matters, etc. But despite this, in the negotiations in Brussels, the Serbs demanded the establishment of an Association / Community through which the Serb municipalities would be connected in a “collective political body”, which will have extended powers for the full supervision of these municipal policies on education, health, economy, culture, urban planning, social issues, return of displaced persons providing services etc.

In principle and in reality, all these policies today are under the jurisdiction of the Serbian-majority municipalities and if the central government wanted has no legal right to influence or be involved in these policies. Through the Association, Serbs now want the unification of such responsibility and self-governing

⁹⁶ Ibid, Section 22

⁹⁷ Ibid, Section 23

powers of a joined legal entity, which will be a common Assembly for all its constitutive members, will have its Chairman and a Council of 30 members, a board with 7 members, common symbols, etc.⁹⁸. Thus, Belgrade politics, which urges Serbs to not recognize the Republic of Kosovo managed through this agreement to unite the Serbs under a legal entity and governance and to increase them the hopes that is possible to live and govern in Kosovo and govern without knowing (even denying the combating) the state of Kosovo.

If it is intended that through the compromise of establishing the Association, who it should be noted that differs from all other municipal associations in Kosovo, will be archived the integration of Serbs into Kosovo state, it is wrong. As well, the manner of interpretation by Serbia and the “Serbian List” was that the Serb people in Kosovo will be more autonomous against Kosovo government and the support for the Serbs through the Association will be from Serbia. Therefore, the Serbian association of municipalities completely bypasses Pristina and directly connects Kosovo Serbs with Belgrade. Promoting non- recognition and disconnecting Serbian and Albanian citizens by the prospect of a peaceful coexistence in Kosovo state. In a certain aspect Serbs perceive that their association as a central power through which they will be able to build direct connections of cooperation with Serbia and other international collaborations.

After the confrontations and harsh political debate major between the government and opposition over the nature of this association, the President addressed Constitutional Court, which released a decision according to which a considerable number of aspects of the agreement on the establishment of the Association come completely or partially in conflict with the Constitution of

⁹⁸ *Agreement on Association / Community of Serb Majority Municipalities in Kosovo*, August 25, 2015.

the Republic of Kosovo.⁹⁹ On this basis, the statute of the Association, which should be drafted by the government of Kosovo must be in accordance with the observations of the Constitutional Court, so will be removed from association executive powers which transformed it into a particular new type of executive power in Kosovo. Occurred in this situation, Serbia and Serbs in Kosovo oppose any change to the general principles in the agreement signed in Brussels, however, its actual nature is inconsistent with the constitution and the political system in Kosovo.

Thus, after the reaction of Serbia, the purpose of which is to deny the state of Kosovo, forcing Serbs of Kosovo not to accept it, it turned out that the Association is a legal entity outside the constitutional system of Kosovo, whose creation aims at maintaining further Serb of Kosovo outside of the political reality of the state of Kosovo. Consequently, should or otherwise make changes to the constitutional system of Kosovo, which means amending constitutional which foresee a new level of local government in Kosovo, such as the Association with the executive powers, or if the Association is functionalized in this form will be a parallel political organization of Serbs and Serbia in Kosovo. In both cases, the Serbs will remain isolated and alienated from society and the state integration in Kosovo. Even if is legalized the Association and included in the constitution, the Serbs will have the tendency to seek further autonomy from Pristina and so will go towards the realization of the scenario of Serbia for the division of Kosovo.

⁹⁹ *Judgment in case number KO130/15*, Constitutional Court of the Republic of Kosovo, Pristina, 23.12.2015

Final Reflections

If the objective of the international community in Kosovo has been that Kosovo will be a state of all its citizens, namely Albanians and other national minorities Serbs, Turks, Bosnians, Romanians, Ashkali, Egyptians, Gorans, Montenegrins etc. Then such purpose is accomplished about 90%. Only Serbs have not yet recognized the new political and constitutional reality in Kosovo, and they want to deny this reality, even today. This occurs due to the ongoing impact of Serbia in Kosovo. The international community, especially the EU was tricked into believing that making political and government concessions to the Serbs of Kosovo, Serbia will move towards formal recognition of Kosovo's independence, regardless of the fact that Serbia has been conditioned with the normalization of relations with Kosovo, in order to be integrated into the EU.

For 100 years, Kosovo was designed and propagated as a myth by Serbia. For 100 years Serbia has implemented projects for ethnic cleansing from Kosovo Albanians and its colonization by Serbs. The year 1999 was the culmination of this century-old Serbian project, which culminated with a displacement of over 1 million Albanians of Kosovo and the killing of over 11 thousand Albanian civilians. Undoubtedly, after 1999 there was a migration of Serbs from Kosovo, as a result of their fear of possible revenge of Albanians returned to their homes. There have been murders of Serbs. But it has never existed before, neither after 1999 in Kosovo, a plan or project of the Albanians or Albanian political subjects for any cleansing of Kosovo Serbs, as Serbian plans for ethnic cleansing of Albanian existed, such as the Cubrilovic plan.¹⁰⁰ Prior to 1999 it will be impossible because Serbs ruled, despite

¹⁰⁰ See: Vasa Çubrilloviç, *The problem of national minorities in New Yugoslavia* (Pristina: Zëri i Kosovës, 1987).

being the minority, while after 1999 it has been governed by the largest worldwide mission of the UN, UNMIK. Displaced Serbs should return to Kosovo, but not with the twentieth century's colonial plans of Serbia, or even with the numbers that proclaimed today by Belgrade for the return of over 250 thousand Serbs displaced from Kosovo.

The decentralization model which was imposed on Kosovo by Ahtisaari package, influenced far more in the disintegration of Serbs than paving the way for the Serbs and considers Kosovo as their state. This occurs because no condition was imposed on Serbia for the recognition of Kosovo, so that Kosovo Serbs become co-founders of the state of Kosovo. By ignoring Serbian chauvinism of the current policy, the international community has led to the risk proper functioning of the Kosovo state. This approach can be argued, with the cultural autonomy and exclusivity of Serbian identity that Ahtisaari's package has given to the Serbian Orthodox Church in Kosovo, through the creation of so-called "protected areas"¹⁰¹, with the reserved seats/guaranteed in the Kosovo Parliament (seats that are in complete disproportion to the number of Serbian population in Kosovo). With the establishment of new Serb municipalities (artificially unifying territories and Serbian population), and additional competences for municipalities with Serbian majorities (competences that were not given to other non-Serb municipalities), and with the establishment of the Association / Communities of Serb Municipalities, hence the international community through actions not well thought made Kosovo Serbs believe the illusion that they can live in Kosovo without recognizing Albanians and not knowing the fact that they as a

¹⁰¹ Annex V, Religious and cultural legacy, *Comprehensive Proposal for the Kosovo Status Settlement*, February 2, 2007.

majority had the democratic will of declaring independence and building a multi-ethnic state.

The positive discrimination that was done to Serbs after 1999, especially in the framework that was imposed on the Kosovo state will make that they still see themselves privileged in relation to the majority population in Kosovo, as they have been before, during the twentieth century. Only by realizing that in Kosovo they are equal citizens with rights that allow the preservation and the Serb identity cultivation, the Serbs may integrate and recognize the state of Kosovo and the free Albanian society. Whether the international community will continue with the same approach, it will segregate Serbs in Kosovo by mechanisms and distinct entities from the rest of the people, and then it will be useless to integration aspirations. To conclude, the so-called decentralization will most likely disintegrate Serbs from Kosovo state than include them.

At the end of this paper, we remind that the bloody past of the last war in Kosovo is still fresh, but Kosovo Albanian society has demonstrated that it is a society of peace and civil coexistence, and for this reason we underline the idea that the state of Kosovo is the state of all its citizens. Despite that Kosovo is a state with Albanian dominance, minorities have had and have expanded rights and freedoms like other western democracies. However, the full social peace cannot be fully achieved as long as the Serb community in Kosovo does not recognize the state of Kosovo, its symbols and laws. The will of the Albanian politics is expressed through laws quite favorable for minorities, especially for the Kosovo Serbs. And it is now the time that Serb community awareness to recognize the state in which they live and to contribute to its progress.

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