

Community rights and their implementation in Kosovo, with a special focus on the situation of language rights



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“Enhancing Minority Integration through Improved Implementation of the Law on the Use of
Languages in Kosovo”

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1. Introduction

1.1. On the historical roots of legal developments relating to use of languages

After the collapse of the communist regimes in certain Central and Eastern European countries¹ and also the downfall of the Soviet Union, some atavistic, already forgotten but unresolved questions had popped up on the agenda of these former COMECON² states and their societies through the 1990s. Furthermore some federal states of the region in question had broken off and split up around and after 1990, for instance the Soviet Union in 1991, Czechoslovakia in 1993, and Yugoslavia through the nineties ending with the secession of Kosovo from Serbia in 2008. By this process described above, a lot of new states were created without any previous or only a very limited and short-term statehood in the past. These newly emerged countries had produced and some of them still do the symptoms of so-called weak states or failed states, including their ultimate goal, to establish a homogenous nation-state, despite the cultural diversity of their societies. In addition the (national and/or ethnic) minority groups living that states had been activated as well. Many of them had started to represent their interests and campaigned for more rights either by democratic or more radical ways. Both phenomena, i.e. the wish to become a nation-state and the movements of minority groups have common roots. According to Claus Offe, this process was about the decision on identity, citizenship, State and borders of the State and the nation³. That means, the ‘politics of identity’ had a key-role in forming the political framework of not only the movements of minorities but political parties of the – sometimes new – majorities as well. In some cases the campaign for a nation-state caused bloody and serious clashes between groups having distinct identity and cultural, linguistic factors⁴. During the nineties the issue of minorities was being become a question of state security and regional stability besides the connotations relating to its human dimension. These facts endorsed the rethinking of tools used in Western European states (e.g. the relationship between majority and minority, the problems of kin-states and kin-minorities, various types of autonomy etc.) Furthermore in former communist states of Central and Eastern Europe the issue of national and ethnic minorities (and other kind of minorities as well) had been smothered artificially during so many decades, and was treated as a question of taboo, and that is why – *inter alia* – the problems were exploited so dramatically in the nineties. This process was emptying in the emergence of racial and/or ethnic extremism, and in some cases the feeling of national superiority was fostered by implicit or explicit governmental measures. 1989-1990 was an important cornerstone not only from the aspect of Central and Eastern Europe but from the view of Europe as a whole as well, at least regarding to the issue of minorities. Nevertheless there were a rather impressive development of rules on minority affairs on the international level till the downfall of communist

¹ Such as East-Germany, Czechoslovakia, Poland, the Soviet Union, Hungary, Yugoslavia, Albania and Bulgaria.

² Council for Mutual Economic Assistance was established in 1949 by states from the Eastern bloc, led by the Soviet Union.

³ Offe, Claus: ‘Capitalism by democratic design? Democratic theory facing the triple transition in East Central Europe’ in: *Social Research*, 1991. Vol. 58, no. 4. p. 869.

⁴ See the case of Yugoslavia, the Moldavian Republic, or Chechnya for instance.

regimes but after this process the issue of regulating minority rights on an international plane had get an additional impetus. Testifying this, it is enough to refer the law-making process made under the aegis of the Council of Europe and the efforts made by the CSCE (later the OSCE) on these matters. In addition the debates on rights of minorities had been revitalized in the 80s in certain Western-European societies due to the immigration tendencies and other factors as well.

1.2. Some remarks on the current international legal status of Kosovo

First of all, it seems to be necessary to declare that the judgment both on the statehood and the international subjectivity of Kosovo is not a goal of this report however it is essential to summarize at least very briefly the facts relating to this issue at the same time. As it is well-known Kosovo declared independence by seceding from Serbia in 2008 and this unilateral act is still a subject of debates among the members of the international community as a whole. 69 UN members have already recognized the independence of Kosovo of which 22 states are EU members as well. It means that approximately 36 % of the UN members and 78 % of the EU members are now recognizing Kosovo as an independent subject of the international legal system. Public international law has a quite dubious viewpoint relating to the issue of state-recognition in general, since there are no clear norms on this field, only the customary international law regulates this issue and that is why – inter alia – the question of the unilateral declaration of independence by Kosovo is regarded as an issue still under debate. Proving this statement, it is enough to refer the request for an advisory opinion from the International Court of Justice by the UN General Assembly in 2008 on the 'Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo'. In theory the International Court of Justice can withhold giving an advisory opinion at any time during the advisory process under certain circumstances. In addition, the question of state-recognition is being complicated due to some facts notably its inter se characteristics so that the legal consequences of state-recognition arising only between the states concerned which means the unilateral act of recognition cannot create rights and obligations to third legal subjects. Therefore, without judging the validity and legality of the unilateral declaration of independence by Kosovo under international legal norms, the current situation can be described as the following. The Republic of Kosovo is regarded as an independent and sovereign member of the international community by the states already recognized the statehood and Kosovo can do any legal and non-legal state acts relating to these countries mentioned. Since Kosovo can be considered as a non-recognized state by several other states that expressly refused to recognize the independence of Kosovo so that she has neither international subjectivity nor international legal capacity regarding to the countries in question. Summing up these facts, Kosovo has an entire international legal capacity (including the most important possibilities namely the conclusion of international treaties and the establishment of diplomatic and consular relations etc.) towards states who already recognized the independence. Contrarily, Kosovo has quite a limited international legal capacity towards countries which refused to recognize the statehood.

Despite the pending discussion on the international recognition of Kosovo's statehood, it is quite obvious for the moment, that the government of Kosovo and the Assembly of Kosovo exercise

almost full⁵ administrative and legal jurisdiction over the territory and population of Kosovo. This means that the implementation of the legislation on linguistic rights of communities is the responsibility of central and local state authorities in Kosovo.

1.3. Communities, minorities in Kosovo and note on terminology

The questions related to the co-existence and rights of ethnic and national communities has been determining for Kosovo society in the past decades. Obviously in the light of the 1998-1999 war, and the heavy conflicts – occasionally erupted in open violent acts, like in 2004 – between the Serbian and Albanian population of Kosovo, issues related to the situation of minorities in general have always been highly sensitive. In this aspect, the independence of Kosovo, declared in 2008 was closely linked to the fate of minorities in independent Kosovo.⁶ As a matter of fact, already under international administration (under UNMIK⁷ between 1999 and 2008) the legislation of Kosovo was designed to reflect a tolerant, multi-ethnic, multi-lingual society. The Constitution of the Republic of Kosovo, adopted after obtaining independence, declares among others, that “*The Republic of Kosovo ensures appropriate conditions enabling communities, and their members to preserve, protect and develop their identities.*”⁸ Art. 5 of the Constitution generously established two (Albanian and Serbian) official languages at national level and other languages with official status at local level.

Probably the most visible sign of this multi-ethnic approach to stabilizing Kosovar society is the legal terminology used for national and ethnic minority groups. While international documents and the most widespread practice in domestic legislation of European states is to use the term of “minority” for groups which differ from the majority in their linguistic, cultural, national or ethnic identity and which enjoy specific rights,⁹ the Assembly of Kosovo refrained to use this term, which may have negative connotations for minorities (especially for the Serbians) and opted for the use of ‘communities’ suggesting even by this terminology the equality between Albanian and non-Albanian populations of the country.¹⁰ In this paper, thus the terms ‘community’, ‘minority community’ and ‘minority’ will be used alternatively.

During the preliminary consultations and the workshops organized in Kosovo with local representatives of minority communities, municipality administration and the central government

⁵ Due to the Serb enclaves in the North, with limited territorial authority and due to the presence of UNMIK, KFOR and EULEX with limitations on security, police and judicial competencies.

⁶ See among others the so-called Ahtisaari-plan: United Nations Comprehensive Proposal for the Kosovo Status Settlement, 27 March 2007. S/2007/168/Add.1.

⁷ United Nations Interim Administration Mission in Kosovo. See more at www.unmikonline.org

⁸ Art. 58.1. of the Constitution of the Republic of Kosovo. Entered into force on 15 June 2008.

⁹ To cite the most acknowledged definition of the term offered by Francesco Capotorti, UN Special Rapporteur in 1979: „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 cultures, traditions, religion or language.” UN Doc E/CN.4/Sub.2/384/Rev.1. 1979. 5-12.

¹⁰ However there is a broader use of the term ‘community’ in Kosovo, besides referring to the minorities of the country, it is also used as referring to *all* ethnic, linguistic groups in Kosovo, regardless of their numerical position. Cf.: *Communities in Kosovo. A guidebook for professionals working with communities in Kosovo.* (Pristina, ECMI Kosovo, 2009)

within the project “Integration through the Improved Implementation of the Law on the Use of Languages” realized by the International Centre for Democratic Transition, the main issues addressed were related to the problems of effective implementation of the rights of communities. In the present paper we make an overview on existing legislative and administrative problems of implementation and on the final conclusions reached during the project.

2. Minority Community Rights in Kosovo

2.1. Attitudes of Kosovo towards relating to norms of international minority rights law and the case of the Law on the Use of Languages in Kosovo from an international legal perspective

Following from the legal situation described above, the Republic of Kosovo usually has no possibility to join to international organizations. Obviously one of the most challenging issues are that the majority of the relevant multilateral international conventions relating to minority rights were drafted by international organizations whose members are divided upon the question of the legality of the declaration of independence by Kosovo. Due to these facts Kosovo is usually not allowed to accede to international organizations dealing with – amongst others - minority rights which leads to problems relating to the recognition of the compulsory effect of international conventions containing minority rights including particularly the International Covenant on Civil and Political Rights (adopted by the UN) and the relevant instruments of the Council of Europe such as the European Charter for Regional and Minority Languages of 1992 and the 1995 Framework Convention for the Protection of National Minorities. According to the mechanisms relating to CoE legal instruments only member states are allowed to accede to its treaties and perhaps that is why Kosovo could not become a state party to the international legal texts drafted by the Council of Europe so far. In theory there is another option for non-members, but such states are allowed to accede to CoE conventions in case of an official invitation formulated by the Committee of Ministers of the Council of Europe. Similarly Kosovo is not allowed to accede any other legally binding international documents relevant on this field at the moment. However, Kosovo is bound by these instruments because of certain unilateral declarations made by the official state authorities. However accession of treaties is not the only possible option to undertake international obligations. According to the 'Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations' drafted by the International Law Commission of the United Nations in 2006: (Similarly to the capacity of concluding treaties) 'Any State possesses capacity to undertake legal obligations through unilateral declarations'¹¹ and 'declarations publicly made and manifesting the will to be bound may have the effect of creating legal obligations. When the conditions for this are met, the binding character of such declarations is based on good faith; States concerned may then take them into consideration and rely on them; such States are entitled to require that such obligations be respected.'¹² In theory, this means that Kosovo can undertake obligations arising from an international convention by declaring unilaterally her intentions to do so without formally

¹¹ See the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations of 2006 by the ILC. Section 2.

¹² See the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations of 2006 by the ILC. Section 1.

acceding any of these instruments. Accordingly, the Constitution of Kosovo in its article 22 declares the following:

'Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are *directly applicable* (emphasis added) in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

- (1) *Universal Declaration of Human Rights;*
- (2) *European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;*
- (3) *International Covenant on Civil and Political Rights and its Protocols;*
- (4) *Council of Europe Framework Convention for the Protection of National Minorities;*
- (5) *Convention on the Elimination of All Forms of Racial Discrimination;*
- (6) *Convention on the Elimination of All Forms of Discrimination Against Women;*
- (7) *Convention on the Rights of the Child;*
- (8) *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment;*

Furthermore the Law on the Use of Languages in Kosovo in its – legally non-binding – preamble states:

'(It is) Based on the International Covenant 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 and the European Charter for Regional or Minority Languages,' in addition the Parliament of Kosovo 'is 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 (...)'.

However the preamble of the Law on the Use of Languages in Kosovo cannot be considered as a legal declaration since the parliament wished only to note that during the drafting process of the law in question several relevant international norms were being taken into consideration. The case of the Constitution is slightly different though because of the declarative character of its article quoted above. After all the only question is whether domestic laws such as the Constitution of Kosovo can be considered as legally binding unilateral declarations under international law, or not? According to the current international norms on this field the answer can be both in the positive and in the negative. No doubt that the Constitution was issued by a law-making body namely the Assembly of Kosovo and not by a person representing the state in its international relations. Even though a parliament has quite restricted powers and possibilities on this field, it is clear enough that Kosovo intends to take into consideration the rules of international minority rights law including language rights as well.

The situation of national minority communities in Kosovo has become a key issue in legislation both before and after obtaining independence. Already under UNMIK administration, the provisional institutions of self-government in Kosovo, i.e. both the provisional Assembly of Kosovo and the provisional government actively worked on the establishment of a coherent legal framework for the equal rights of communities in Kosovo.¹³ Still under UNMIK administration, the Assembly of Kosovo adopted the Anti-discrimination Law¹⁴ and the Law on the Use of Languages.¹⁵ Both pieces of legislation rely on the acknowledged principles of equality and minority language rights as formulated in international and EU documents. The anti-discrimination law reflects the most important elements of non-discrimination legislation adopted within the EU (see the so-called Employment Directive¹⁶ and the Race Directive¹⁷): such as the definition of the concept of discrimination, the definition of protected groups and personal characteristics, the judicial procedure applicable for the violation of the law, including the procedures of issuing fines, etc. This law prohibits discrimination based on – among others – national or ethnic origin, language, and its area of application extends to both the public and the private sectors, the procedure for evaluating complaints is entrusted on independent bodies. Although from the perspective of persons belonging to minorities, the legal regulation of the prohibition of discrimination can only be tested in its implementation, which may raise concerns regarding the effective competencies of the authorities designated by the law for implementation. Nevertheless one of the main positive elements in this law is that not only individuals, but also civil organizations, NGOs representing the victims are entitled to turn to the authorities for requesting investigation of complaints of discrimination. The main obstacle for the thorough activation of the anti-discrimination law, however, lies in the low level of citizens' awareness of their rights and in the malfunctions of the institutional guarantees of the rule of law.

Furthermore, it shall be underlined that the prohibition of discrimination is always just the first step in safeguarding the identity of minority communities. As it was formulated already by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (later, until 2006 known as the Sub-Commission on the Promotion and Protection of Human Rights)¹⁸ there shall be a clear distinction between the concepts of 'prevention of discrimination' and 'protection of minorities': *“Prevention of discrimination is the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish. Protection of minorities is the protection of the non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population.”*¹⁹

Even if in the context of Kosovo, as it was explained above, the constitutional framework does not use the phrase 'minorities', but recognizes communities in Kosovo, it is still obvious that all

¹³ See on detail: Aleksandra Dimitrijević: *Minority Rights in the Context of Kosovo*. Pristina, 2004.

¹⁴ The Anti-Discrimination Law 2004/3.

¹⁵ Law on the Use of Languages 02/L-37.

¹⁶ 2000/78/EC Directive.

¹⁷ 2000/43/EC Directive.

¹⁸ This UN body ceased to exist in 2006 and it was replaced by the Human Rights Council Advisory Committee.

¹⁹ U.N. Doc. E/CN.4/52, Section V.

the non-Albanian communities are in non-dominant, minority position. Thus for fulfilling the constitutional commitments of Kosovo to treat all communities equally, there is a need to go beyond the prohibition of discrimination and to guarantee specific rights for non-dominant communities.

In this context, the other law, which was adopted for the protection of minority communities before gaining independence, the law on the use of languages is of outstanding importance for the recognition of minority or community rights in Kosovo. The law recognized Albanian and Serbian languages as official languages; it declares the full equality of the two languages on the entire territory of Kosovo.²⁰ Besides the regulation of official languages, the law recognizes the right of citizens' who speak other than the official languages to preserve their linguistic identity. At municipal level, the law recognizes Bosnian, Roma and Turkish languages as official languages if the number of people speaking one of these languages reaches 3% of the population in the municipality. Albanian and Serbian languages enjoy equal status in all Kosovo institutions, thus at the level of central institutions as well: at government or parliamentary sessions both national official languages can be freely used, and "every person has the right to communicate with, and to receive available services and public documents from, the central institutions of Kosovo in any of the official languages".²¹ In a similar way, at municipal level, the official languages of the municipality can be used equally in the communication with municipal institutions, in official documents and in their contacts with citizens. Municipal regulations and decisions shall be issued in all official languages of the municipality.²² Furthermore the law regulates the use of languages in public enterprises, in judicial proceedings, in education and media. For supervising the implementation of the regulations on the use of languages, the law requires the Government of Kosovo to establish a Language Commission. The main task of Language Commission is to supervise the effective use of official languages in public institutions, and to overview the implementation of the language rights of communities, to issue recommendations and proposals, and to report on the violation of language rights to the government and the parliament.²³ The composition of the Language Commission is based on the administrative instruction issued by the Prime Minister (however no information was available for us on the work of the Commission).

In general this language law reflects the main principles acknowledged at international level for the protection of persons who speak minority languages and the regulation is in full coherence with the constitutional and international obligations of Kosovo.²⁴ Nevertheless the main problems in the effective implementation of the law is the lack of appropriate social and political awareness and the administrative obstacles in implementation: e.g. the functioning and efficiency of the Language Commission was for long doubtful.²⁵

2.3. The rights of communities

²⁰ Art. 1 (ii). of the Law on the Use of Languages.

²¹ Art. 4.

²² Arts. 7-8.

²³ Art. 32.

²⁴ Art. 58.2 of the Constitution of the Republic of Kosova prescribes the respect for the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter of Regional or Minority Languages. <<http://kushtetutakosoves.info/>> Last accessed on 10.05.2010.

²⁵ *The Beginning of Implementation of the Law on the Promotion and Protection of Rights of Communities and Their Members in the Republic of Kosovo*. Humanitarian Law Centre, Belgrade, December 2008. p. 86.

Regarding the establishment of a coherent system of protection of minority communities in Kosovo, the adoption of the Law on the Protection of the Rights of Communities and their Members in the Republic of Kosovo in March 2008 was a remarkable step.²⁶ This law reinforces the rights of minorities – protected often in other legal regulations – to use their language, to enjoy healthcare assistance on an equal basis, to take the position of vice-president in municipal assembly and deputy mayor of municipality, etc. But the main goal of the law is to strengthen the participation of minority communities in political and social life. Probably the most important instrument in this endeavor at national level is the establishment of the Consultative Council for Communities. The law also requires from the government to adopt every year a general strategy for the protection of communities and it shall report the Assembly of Kosovo on the implementation of that strategy. The Consultative Council operates under the auspices of the President of the Republic which underlines the significance of high-level representation of communities in the political life of Kosovo. Following the adoption of the law, the President of the Republic, Fatmir Sejdiu – within his own constitutional authorities – issued his decision on 15 September 2008 on the establishment of the Consultative Council. In the selection process of members in the Council the Kosovo Office of the European Centre for Minority Issues was actively involved.²⁷ The mandate of the Consultative Council of Communities according to the law is

“a) to assist 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;
b) to provide a forum for coordination and consultation amongst communities, and to ensure the effective functioning of the community representative organizations according to a code of conduct to be adopted by the Community Consultative Council;
c) to provide a mechanism for regular exchange between communities and state institutions;
d) to afford 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 under Article 13 of this law, in accordance with the law;
e) to fulfill requests for other mandatory consultations with regard to certain legal acts, as foreseen in the Constitution and the law;
f) to enable 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;
g) to make 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;
h) to contribute to the reporting of the government of Kosovo to international human rights mechanisms; and
i) to raise awareness of community concerns within the Republic of Kosovo and to contribute to harmonious relations between all communities within the Republic of Kosovo.”²⁸

Though, the law does not give direct decision-making competencies to the Consultative Council, but still according to its mandate, it is entitled to have the widest institutional and political

²⁶ Law on The Protection and Promotion of the Rights of Communities and their Members in Republic of Kosovo DL-013-2008 <www.assembly-kosova.org> Last accessed on 10.05.2010.

²⁷ See Information Bulletin of ECMI Kosovo, 3 March 2008.

²⁸ Art. 12.1.

influence among other representative institutions of minority communities. The members of the Consultative Council are appointed by the President of the Republic for a two-years term (a mandate which is once renewable) and its members shall be selected among the leading representatives of civil associations and NGOs representing the communities. Within the constraints defined by the law even members of parliament representing the community concerned can be appointed.²⁹ The President of the Republic and the head of the Prime Minister's Secretariat for Communities are also members in the Council, like other representatives of relevant governmental agencies can also be members, however with the restriction that in taking decisions the representatives of communities shall always represent the majority of votes in the Consultative Council. Thus it is not possible to take any decision against the will of community members of the Council. The Consultative Council holds ordinary meetings monthly and twice a year it holds a meeting chaired by the President of the Republic to overview the community policies and concerns of communities in Kosovo.

Despite the constructive approach reflected in this law for the inclusion of community representatives in decision-making processes at the highest level, the implementation of the law raised some serious concerns. The establishment of the Consultative Council took more than half year, as the law was adopted on 15 June 2008, the selection process of the members of the Council started in November – December 2008 and the first session of the Council took place in March 2009. Based on information, received from the representatives of minority communities, the main problem in setting up the Consultative Council was not only the delay of the President of the Republic, Fatmir Sejdiu, but much more the hardly transparent selection process of the members: in line with regulations of the law, besides the determined number of MPs representing each community, the civic associations of the minority communities select the members who shall be then appointed by the President of the Republic for the two-year mandate. However the law does not regulate in details which civic organizations or NGOs should be considered as representative organizations of the community concerned and offers a relatively wide range of power to influence the selection procedure when the candidacy is disputed among the community's NGOs. For this reason Serbian and Turkish NGOs harshly critiqued the law.³⁰ The main concerns regarding the establishment and functioning of the Consultative Council of Communities can be summarized in four main points:

- i.) The selection of members for the Consultative Council was rather problematic in many cases (e.g. no civil organization or NGO was involved from Northern Kosovo – Northern Mitrovica, etc. – in the selection of Serbian members of the Council).
- ii.) Taking into account that both the President of the Republic and the representatives of the Government are members in the Council, the President of the Republic only by referring to his high office could gain excessive influence in the Council. Moreover the representatives of the Government as an executive body may also influence the decisions of the Council referring to the budgetary constraints or to hardships of implementation. But the most important question in this regard is how will the Council really be able to influence the legislation procedure and government policies? Will the Council get all appropriate information from the government for its work? For the moment only contradicting information is available on that.

²⁹ Art. 12.6. states that the Roma, Ashkaali and Egyptian communities have 2 members each in the Consultative Council (1 for each community can be an MP), the Bosnian and Turkish communities shall have 3-3 members respectively (of which 1 can be an MP), the Gorani community is represented in the Council by 2 members (1 of them can be an MP) and the Serbian community shall have 5 representatives in the Council (2 of them can be MP).

³⁰*The Beginning of Implementation of the Law on the Promotion and Protection of Rights of Communities and Their Members in the Republic of Kosovo*. Humanitarian Law Centre, Belgrade, December 2008.

- iii.) In a long run it may raise concerns that the Council does not have any effective decision-making competencies.
- iv.) Moreover most problems affecting minority communities can be addressed at local level and the Council does not have any competence to intervene in or review local practices at municipal level.³¹

There is no reliable information on any change in this political approach to the Consultative Council, the new members of the Council have been appointed by the President of the Republic on 3 March 2010.

It needs to be mentioned that after declaring independence, a new office was created in the Government to tackle issues related to communities. The main task of the Office for Communities within the Office of the Kosovo Prime Minister is to co-ordinate the government's community policies, to prepare the government strategies and legislation for communities, furthermore to inform continuously the public on the situation of communities. Although the Office operates for more than two years, thus two yearly government strategies should have been published, but these have not been published on the website of the Prime Minister.

All this shows well, that the full implementation of specific legal commitments is not yet complete and often delayed.

2.4. The situation of communities and municipalities in Kosovo

The administrative structure of independent Kosovo largely builds on the municipalities, the local self-governments. Following the adoption of the Declaration of Independence, one of the first legal acts adopted in parliament regulated the status of municipalities.³² The law delegates a wide sphere of competencies to the municipalities. Among others, the law requests the protection of communities in municipalities³³ and – in coherence with the law on the use of language – guarantees the linguistic rights of minority communities as well.³⁴ In accordance with the Constitution of Kosovo and in line with the principle of subsidiarity, municipalities obtained relatively wide authorities: within their jurisdiction they can decide on local economic development plans, on environmental and urban planning, construction permits and regulations, cultural and free-time activities, primary health care assistance, etc.³⁵ Furthermore their delegated competencies cover the management of real estate property registration, citizens' registration, firms registration, the distribution of social assistance and aid (except for pensions), forest management, etc. on the territory of the municipality. Besides that, the law states that the

³¹ Information received during personal interviews from Bosnian, Turkish and Egyptian members of the Consultative Council of Communities in March 2009.

³² Law on Local Self-Government 03/L-040 <www.assembly-kosova.org> last accessed on 10.06.2010.

³³ The preamble of the law makes direct references to the Council of Europe Framework Convention for the Protection of National Minorities and also to the European Charter of Regional or Minority Languages. Moreover it states that municipalities are required to establish their regulations and follow their local policies in a way which creates conditions for communities to express, preserve and develop their national, ethnic, cultural, religious and linguistic identities. (Art. 4.3.)

³⁴ Art. 9.

³⁵ Art. 17.

municipalities of Northern-Mitrovica, Graçanicë/Gracanica and Shtrëpcë/Štrpce are entitled to maintain higher level health services (i.e. hospitals)³⁶ and in Northern-Mitrovica the municipality has special rights in the organisation and accreditation of university education in the municipality.³⁷ In addition the law guarantees special competencies in the fields of culture and the preservation of cultural heritage for municipalities with Serbian majority.³⁸

Certainly the most important regulations of the law regard the establishment of the fundamental conditions of territorial self-government, like the level of budgetary autonomy of municipalities, however the legal arrangement applied by the law in this regard is rather vague: as a matter of fact it does not clearly design the proportions between the three sources of municipality income, i.e. own sources, central government's budgetary transfers and other incomes. The representatives of minority communities often complained that they have no influence on the distribution of budgetary sources, and many times they do not even get the most basic information on such matters from the municipality. Moreover the distribution of financial sources from the national budget between municipalities is often considered to lack transparency and being motivated by party political preferences.³⁹

From a legal point of view, the domestic legal regulations in Kosovo, - besides Kosovo's international obligations in this field to implement the two Council of Europe treaties, the Language Charter and the FCNM – offer a broad range of rights for non-Albanian communities. Nevertheless two main concerns need to be highlighted:

1. The institutional background for the effective implementation of the laws is not functioning properly: at the level of the central government sometimes even the competent ministries ignore the rights of communities in their actions (such criticism was formulated for example in regard to the use of language rights in hospitals under the control of the Ministry of Health); on the other hand the municipalities follow very different practices and usually the control of the central administration on the implementation of community rights is weak, while many times the level of effective protection for communities in the municipality depends on the goodwill of local leaders.
2. According the law not only the Consultative Council of Communities has the right to voice the opinions and concerns of minority communities, but the seats reserved for them at municipalities, like the position of deputy mayor and the representatives of communities in municipality assembly should also facilitate their involvement in local decision-making processes. However in practice they are rarely involved in the preparation of decisions and many times the local representatives of communities face difficulties in getting information from the administration of municipality. As a matter of fact in light of the existing legislation on the rights of communities in Kosovo does not offer cultural or political self-government for minority communities, their representatives by law have only rights to be consulted which can be easily ignored by local municipality officers. The only exceptions are of course those municipalities where a minority community forms the majority, but even here the competencies of these municipalities are the same as in any other non-minority municipality. But it affects only the Serbian and Turkish communities (the municipality of Mamusha has a Turkish majority). For the other minority communities only consultative rights are assured by the law.

³⁶ Which also includes the right to manage among others the training or the salaries of the personnel. (see Art. 20.)

³⁷ This provision clearly was intended to secure the maintenance of the existing Northern-Mitrovica University, a former branch of the University of Prishtina, which after 1999 has become an independent university.

³⁸ Arts. 21-22.

³⁹ Information received during personal interviews from local community representatives in Prizren/Prizren and Peje/Pec in March 2009 and in April 2010.

3. Main Challenges in Improving the Situation of Minority Communities

The Declaration of Independence, the Constitution of the Republic of Kosovo and the law on the use of languages declare their goals in preserving a multi-lingual, multi-ethnic society in Kosovo. However in practice this is not always reflected in appropriate actions.

The representatives of non-Serbian minority communities (in Dragash, Prizren and Pejë/Peć municipalities) claim that they face serious obstacles in enjoying their constitutional rights. For the Turkish and Bosnian communities the use of their mother tongue in education is often hindered by the restrictions affecting institutions operating in minority languages, many times they lack textbooks and other school materials in their language. In education like in other fields of life linguistic rights are largely dependent on the support given to their use by the municipal authorities, while the central government institutions often fail to exercise effective control over municipal practices in this area.

The representatives of Gorani community complained about the ignorance of municipality to recognize them as a separate community and their children are often forced to follow Serbian schools and use Serbian textbooks. The situation of the Roma, Ashkali and Egyptian communities is a bit different inasmuch, for them not linguistic rights, but open and hidden discrimination is a main problem and they often face – largely as a long lasting memory of the activities of Serbian-assimilated Roma during the 1998-1999 conflict – social exclusion in everyday life.

In the decentralized administrative framework adopted by Kosovo, local self-governments, the municipalities have an outstanding role. The life of local minority communities is largely influenced by the actions of the mayor and its administration. Thus it is still today a vital issue for minority communities to create new municipalities where they could form the majority (e.g. there are initiatives for that in the Bosnian community of Pejë/Peć).

Taking into consideration the relatively low percentage of minority communities in the populations of some municipalities (like Pejë/Peć or Dragash), it is hard to give an objective assessment on the relations between municipality administration and the local minority communities – for personal career interests local minority community representatives may have very good relations with the mayor and its administration without achieving much for improving the situation of their communities. Nevertheless the main problems for non-Serbian minority communities can be clearly identified in the implementation of language rights and in the situation of education on minority languages.

4. The Final Recommendations and some explanatory remarks upon thereto

During the project, besides taking an overview on the existing implementation problems of linguistic rights, the main goal was to identify new fields of action. The two municipalities selected for the project, Prizren/Prizren and Pejë/Peć, have been carefully targeted and during the workshops held with administrative personnel and minority community representatives from these two municipalities (see the previous Interim Reports) the following problem areas have been identified:

- There is apparently low public awareness on the rights of minority communities, and on the existing municipal regulation on minority language rights in particular.
- Because minority communities are relatively small in both municipalities, the thorough implementation of linguistic rights is not a political priority: technical assistance and personal conditions of language services at municipal administration should be developed. Though, as such an improvement requires financial investment (more

translators, multilingual civil servants, professional multilingual online and desk services, etc.) it poses serious challenges for the municipality.

- Professional language training and language services are hardly available for administrative personnel.

The final recommendations and conclusions are built on the experiences of the project workshops and conferences and are formulated in light of the existing legal regulation in force today in Kosovo.

Here below each recommendation is based on three pillars. On the one hand they were drafted with regard to the relevant international (and EU) legal norms and on the other they were prepared on the experience gained after the field-work of the project in question. Last but not least these recommendations are taking into consideration not only the public international law as a whole but the relevant norms of Kosovo including especially the Constitution of Kosovo and the Law on the Use of Languages in Kosovo as well.

1. *Use of term and action “affirmation” and “promotion” instead of “protection” or just “safeguarding” in the legislation and everyday work with regards to the use of languages.*

No doubt the proper legal terminology is essential to create a real minority-friendly legal environment in a multilingual and pluralistic society. Currently the regulations on the use of languages of the two local municipalities use the terms 'protection' and 'safeguarding' and these words seem to be unable to achieve the aims of the Law on the Use of Languages in Kosovo. Therefore we recommend to replace these terms with the expressions of 'affirmation' and 'promotion' instead. It is easy to understand that the terms of 'affirmation' and 'promotion' are on the one hand include the meaning of 'protection' and 'safeguarding' whilst require certain active and positive steps in ensuring the rights of the linguistic communities by the municipalities concerned on the other. The modification of these regulations means only a formal but quite an important measure and this can be done without affording any further financial resources even if much depends on the financial possibilities as regarding to the consequences of this arrangement.

2. *Municipality websites should be updated and well-maintained in all languages.*

According to international documents relevant on this field, accessibility and availability of information in one's native language are fundamental to maintain a democratic and welfare society. Due to this principle it is essential to provide the whole range of information in any of the local languages by means of the official web-pages of the municipalities concerned. Also important to note it is indispensable to keep these websites up-to-date in all the languages being officially in use. In case of not fulfilling this duty many of the citizens can be excluded from the effective communication between the authorities and the members of the local communities.

3. *Measures should be taken in order to maintain the pool of experts for translation and interpretation at the local level.*

Perhaps the most important element of these recommendations is the creation of the necessary professional background, namely either by establishing a special unit of interpreters and

translators at the level of municipalities or through any other proper means. Language rights cannot be guaranteed without creating a single unit of professional interpreters and translators.

- 4. The culture of using different languages on free will by the citizens and the administration should continue and should be stimulated.*

Nobody can be forced either directly or indirectly to use a given language within the framework of a democratic society. The language of communication can be chosen freely by the citizen and the local administration must not pressure anybody to use a different language since the language chosen is usually a core element of a natural person's identity and any kind of compulsion by the authorities on this field can infringe the human dignity of the citizen.

- 5. There should be pragmatic approach towards the usage of languages in public spaces, insignia, street names, etc. The usage of the languages should not provoke any instability or unrest, and in case it does, its use should be postponed until this seems safe. Also usage of only Serbian or Bosnian for street insignia and street names should be sufficient for pragmatic reasons (if the written forms fully coincide in both languages).*

Obviously, it is also essential not to cause instability within the local society or unrest to any of the communities by using street names and other public insignia in local languages. On the other hand in a multilingual environment it is fundamentally important to use public signs in different languages but the local authorities should thoroughly consult with all the communities on that question before choosing a given variation in order to ensure the peaceful coexistence of the language groups.

- 6. There should be some monitoring mechanism that would monitor the implementation of central and local legislation regarding the use of languages.*

It is also out of question to monitor both the central and the local legislation relating the use of languages from time to time so as to control the efficiency of these measures on the one hand and also to adjust the legal environment to the changing circumstances.

- 7. The costs of interpretation and translation can be very high; therefore there should be set priorities with the maximum and minimum timeline, workload and schedule for the interpreters and translators.*

In order to fulfill this goal it is necessary to allocate more financial resources first of all on a central budgetary level.

- 8. Local legislation should foresee the deadline of translation/interpretation from the moment of submission of a request.*

Local municipalities should modify their regulations concerned so as to determine the exact period within which the different forms of translation or interpretation tasks are to be fulfilled according to the legal principles of legal certainty and computability.

9. *Local regulations should enable all citizens to use languages according to the law without having to submit a written or any other request.*

Use of languages in a multiple and democratic society should be an automatism which means the authorities have only one and simple duty relating to this right, namely to react with good faith to a citizen's initiatives.

10. *There should be some PR relating to the rights of communities with regard to their rights of using their languages.*

Accordingly, it is essential not only to ensure and promote the rights of communities but to inform them and their members about the essence of the regulations relating to this topic which requires some PR related activities including – amongst others - advertisements and announcements.

11. *There should be a constant training possibility for the local municipal interpreters.*

An efficient system of public services in all the languages concerned presupposes a permanently functioning framework of training possibilities for interpreters and translators. Perhaps both the development and the maintenance of a system like this should be the responsibility of the central government since only a primary executive authority of a State has tools and financial resources necessary to operate a comprehensive system of training.

12. *Possibility of stimulating the use of languages by all admin workers in the municipality who know certain languages should be reviewed. Maybe even looking through the old system of so called “double language use”*

Municipalities concerned should make either a register or a database of the language proficiency of their public servants so as to be able to map the linguistic capacity of self-governments concerned.

13. *In cooperation with civic society and other interlocutors municipalities should look into possibilities of finding financial means from other sources for the enhancements in the local language use. These possibilities include the use of funds from Instrument of Pre Accession, and other big donors of the donor community in Kosovo.*

Notwithstanding that the financial support of the state budget is vital in developing and maintaining a multilingual public service and to realize the goals of the Law on the Use of Languages in Kosovo at a local level, it is necessary to stress the role of other possible fund-raising actors on this field. Additional financial resources should be integrated in order to create

the prerequisites of efficiency in that sense. Municipalities should map the possibilities of funding by cooperating the key-players of civil society.

14. Local media should be stimulated to publish and have on the air shows and articles, as well as other features in local languages in use.

See the remark of section 2.

15. There should be a mechanism of controlling the quality of translation/interpretation.

The best option of realizing these recommendation is to establish a body composed of linguist-lawyers and lawyer-linguists. Either a University or a state authority could be the host institution of this unit.

16. Reduction of staff in the municipalities makes things difficult in all areas of work, as well as in the use of languages. It would be highly unreasonable to reduce the number of translators and interpreters since their number is already low.

See the remark of section 3.

17. Interpreters and translators should be motivated for the difficulties of their job.

The work of interpreters and translators is quite complex and difficult which requires extraordinary efforts from the public servants in question. Therefore they are needed to be motivated by means of ensuring additional motivating mechanisms such as paying allowances and providing extra benefits including the various types of allocations in-kind.

18. Municipalities should have a translation/interpretation unit managed by a professional linguist not just a group of 2-3 interpreters/translators.

See the remark of section 3.

19. At least one of the State Universities of Kosovo should have a special and distinct department for the training and education of future translators/interpreters.

See the remark of section 15.

20. There should be a follow up with regards to the use of languages in the local level for all over Kosovo. A general survey of municipal workers and clients should be carried out.

See the remarks of section 6 and 12.

21. Finding a way to disburse some small grants for the civil society in the municipalities regarding the use of languages would be an asset.

See the remark of section 13.

22. *A general plan for the use of languages with a practical guideline would be welcome by the municipalities.*

The central authorities of Kosovo should draft a practical guideline for the municipalities in which the government would summarize the possibilities of enforcing the Law on the Use of Languages in Kosovo and besides the municipalities could see clearly the expectations of the executive authorities of the state.

23. *An association of professional interpreters translators could be one of the solutions for the pool of professionals and training, as well as protection of the rights and dignity of the translators/interpreters.*

See the remark of section

Albeit both the establishment and the maintenance of a multilingual system of public service has heavy financial needs it is worth affording the necessary amount of money in a long term. This statement can be proved by citing the case of Finland for instance where both the Finnish and the Swedish languages are recognized as national languages. Summarizing the very essence of the so-called Finnish model of linguistic pluralism, each municipalities has to decide on the question whether it wants to be bilingual or uni-lingual. The government of Finland has a primary responsibility in assisting both financially and any other means the functioning of this system. This means above all that there is a distinct chapter within the state budget from which the municipalities can get financial assistance in order to maintain their bilingual character. In addition the training and education of professional interpreters and translators is ensured by the state as well. Even though it cost much the enterprises and firms prefer this model since they can hire multilingual manpower in Finland. First and last the system of multilingualism is not only a proper method of developing a democratic and peaceful society but by means of that a country can substantiate its economic success in a long term.

5. Summary

The project called “Integration through the Improved Implementation of the Law on the Use of Languages” was focusing on two different municipalities of Kosovo, namely Pejë/Peć and Prizren in which settlement the municipal bodies of self-government had already adopted their local regulations on the implementation of the Law on the Use of Languages in Kosovo. During the events organized in the framework of the project the experts together with the representatives of the municipalities concerned intended to map and discover the overall situation relating to the topic and also to find out the possible obstacles – if any – of enforcing the Law mentioned at a local level.

For the sake of carrying out a successful project, first of all the relevant domestic legal environment was to be analyzed. The Constitution of Kosovo, the Law on the Use of Languages in Kosovo and the regulations of Pejë/Peć and Prizren respectively – amongst other Laws and regulations were thoroughly examined during the project from the perspective of effectiveness and reasonableness. In addition and after first phase of the project came to an end, the conclusions were analyzed by means of public international law. More precisely, the task of the second layer was to clarify the position of Kosovo within the international community on the one hand, and after that, to set out whether the rules of international human rights law including

especially the norms of international minority rights law are applicable to Kosovo or not. In reference to this question and following from the matter of course the project had to touch the issue of the legality of independence and statehood under public international law. Finally the project was concentrating on some field-work activities, so that, the identification of the standing point of the local public servants on this issue.

Lots of challenges can be pointed out by examining the results of the project. First of all there are some troubles with the enforcement of the Law on the Use of Languages in Kosovo due to several reasons. Most importantly the municipalities chosen have serious difficulties with guaranteeing the financial background of the efficient law-enforcement. Even though the ineligible financial situation of self-governments is not a phenomenon of Kosovo, but it is more or less a general symptom of the political transition of the former socialist countries the main responsibility of ensuring the necessary financial resources is lying on the shoulders of the state itself. This means the state including particularly the government in office has capacity to transform the structure of the central budget in order to transfer money enough to municipalities being unable to cover the costs – in the proper sense of the world – of the multilingualism at a local level. Besides there are some elements in which the responsibility of the municipalities is unquestionable. Accordingly, they have to find out the way how they could build a local network of civil organizations and other both for-profit and non-profit actors in order to be assisted by fund-raising activities. Certainly, the issue of multilingualism is not only about money. Contrarily, the financial factors are crucial, but there are some other things must to be taken into account as the question stability and peaceful coexistence. Education and constant training of interpreters and translators is essential in operating a multilingual society. The sector of higher education in close cooperation with the central authorities must develop a stable system of training the professionals of municipalities. That is to say the obstacles of the efficient enforcement of the Use of Languages in Kosovo at the level of municipalities are turning back to one single reason, namely the lack of the necessary prerequisites. Simplifying the question the local self-governments chosen are not able to fulfill the goals of the law properly since – with some exceptions of course – they do not have the necessary means for realizing them.

All in all, the situation of multilingualism is not hopeless in Kosovo, but much more efforts should be taken at a central level in order to realize the ideals of the Constitution of Kosovo.