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COUNTRY REPORT: KOSOVO

Gëzim Krasniqi

Revised and updated November 2012



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European University Institute, Florence
Robert Schuman Centre for Advanced Studies
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Country Report: Kosovo

Gëzim Krasniqi

1 Introduction

After almost fifteen months of unsuccessful negotiations between Kosovar¹ Albanian leaders and Serbia's leadership led by the UN Special Envoy for Kosovo Martti Ahtisaari, Kosovo declared independence from Serbia in February 2008. It has so far gained only partial recognition; some 90 countries have recognised Kosovo as of October 2012. The move was (and remains) vehemently opposed by Serbia, but also by many other countries, including five EU Member States, Russia, and China.

As a new state, Kosovo faces serious political and legal problems regarding its citizenship. The Parliament of Kosovo adopted a new Law on Citizenship only three days after the declaration of independence. However, because of internal and external disagreements about the future of the country and polity, Kosovo faces difficulties in reinforcing both its statehood and in constituting the initial body of its citizens. Serbia's refusal to recognise Kosovo's independence has transformed the country into a territory of overlapping sovereignties: Serbia claims that all citizens of Kosovo are still Serbian citizens. In this situation, the absolute majority of Kosovo Serbs (who make up less than 10 per cent of the overall population) consider themselves to be Serbian citizens alone (although a considerable number of them now accept new Kosovo documents as well). Ethnic Albanians, however, have embraced Kosovo citizenship, but a number of them still keep their Serbian documents and passport for many practical purposes. Dual citizenship is therefore widespread, both with Serbia and with third countries (because of both economic and political emigration from Kosovo). This whole mosaic of problems is further complicated when one considers the consequences of the war in Kosovo (1998-1999), nearly a decade of *de facto* statelessness, and the relatively high number of refugees and internally displaced people (IDPs), most of whom yet have to resolve their citizenship status.

However, in terms of the newly adopted Kosovar citizenship legislation, the country comes very close to what Rogers Brubaker (1992: 277) called the 'new state' model.² It enables all pre-war residents of Kosovo (who were citizens of the Federal Republic of

¹ Kosovo is the international version of the name used to describe this country. In Albanian language, the country is referred to as *Kosovë* or *Kosova*. In Serbian, it is *Kosovo*. In the English language alone, the adjective form of the term is *Kosovar* (mainly in international English) or *Kosovan* (in British English). Throughout this paper I will be using terms Kosovo (as a noun) and Kosovar (as an adjective). However, in cases of reference to official documents, the original version will be used.

² While analysing the emergence of the new states following the demise of the Soviet Union, Brubaker describes two kinds of states in terms of their citizenship policies: new states and restored states. The former category includes those states which previously did not have an independent basis of citizenship (republic-level citizenship – as is the case with the former Yugoslav republics). These states had to define their initial body of citizens primarily in terms of territory (though with some limitations and conditions). The latter category refers to the Baltic States, which were independent before incorporation into the Soviet Union. By claiming continuities of statehood and citizenship, Estonia, Latvia and Lithuania (though Lithuania differs substantially from the other two cases) opted for restoration of citizenship to their interwar citizens and their descendants rather than the creation of new citizenry that would also include permanent residents in these republics. In the case of Kosovo, since the country was not a republic in Yugoslavia, and as such did not have its own republic-level citizenship, it had to build its initial body of citizens mostly on the basis of the principle of territory and residence, with certain conditions and limitations, thus differing substantially from other countries that emerged after the dissolution of Yugoslavia.

Yugoslavia) as well as those persons who habitually resided in Kosovo during the period of the United Nations Mission in Kosovo (UNMIK) administration (1999-2008) to become citizens of Kosovo. In addition, it allows dual and multiple citizenship and it does not contain any provisions reflecting ethnic preference. Likewise, in terms of terminology, the legislation applies the ethnically-neutral terms *shtetas* and *shtetësi* ('citizen' and 'citizenship') which describe the bond between the state (*shtet*) and an individual, without reference to ethnicity. *Kombësia* (nationality) is the term used to designate national belonging of a person, referring only to the ethno/linguistic affiliation and not to a legal tie.

As with other cases of internationally designed states, such as Bosnia and Herzegovina, Kosovo's new legislation is drafted in close coordination with various international institutions present in the country and indeed it reflects their strong political influence. In fact, the Law on Citizenship of Kosovo is part of the so called 'Laws of Ahtisaari's package'³ and in many aspects reflects the vision of the UN Special Envoy for Kosovo (and the international community engaged in the Kosovo status talks) for a multi-ethnic and all inclusive society and a civic state. Likewise, the process of replacing UNMIK documents with Kosovar is almost completed on the basis of the new legislation, and a general census was organised in 2011, which was boycotted by the majority of Kosovo Serbs. Although the citizenship legislation is now complete, including amendments to the law on citizenship and other administrative instructions, Kosovo has yet to finalise the creation of a consolidated Central Civil Status Register.

Nonetheless, Kosovo's weak international position, which is caused by its lack of membership in any major international political organisation, and the fact that Kosovo passport holders are the only ones in the region who cannot travel visa-free to the EU, continues to incite internal debates and raises concerns among the population about the practical value and use of the new Kosovar citizenship, as well as enhancing already existing fears of discrimination and isolation.

2 Historical background

2.1 Before Yugoslavia: the citizenship status of Kosovo inhabitants

The present day-territory of Kosovo was part of the Ottoman Empire for more than five centuries. From 1877 Kosovo, a much larger territory than the current state, formed a separate *Vilayet* (province) within the Empire. This situation lasted until the Balkan Wars (1912-1913) when Kosovo was annexed and divided by the Kingdom of Serbia and the Kingdom of Montenegro. Until the late nineteenth century it was the *millet* system that broadly determined and regulated the relationship not between individuals but between different communities (primarily defined in terms of religion) and the state. The *millet* system created two classes of citizens, with Muslims enjoying more rights than non-Muslims, though the latter were provided with separate legal courts pertaining to personal law under which they were allowed to rule themselves (mainly through their religious leaders). During the

³'Laws of Ahtisaari's package' are those laws deriving from Annex XII (Legislative Agenda) of the Comprehensive Proposal for the Kosovo Status Settlement (widely known as Ahtisaari's plan) that the Assembly of Kosovo undertook to approve immediately after the declaration of independence in order to implement the terms of Ahtisaari's plan. Most of these laws provide wide-ranging rights for minorities living in Kosovo, in particular the Serb minority. In fact, Ahtisaari's plan served as the legal and political basis for the declaration of independence of Kosovo. See *The Comprehensive Proposal for the Kosovo Status Settlement*, 26 March 2007. <http://www.unosek.org/unosek/en/statusproposal.html>. *The Constitution of the Republic of Kosovo*, Pristina, 15 June 2008. <http://www.assembly-kosova.org/?krye=documents&docid=48&lang=en>.

Tanzimat (reforms) period (1839-1876), the Ottoman Government, in an attempt ‘to supersede the ethnic and religious loyalties of the various minority groups’ (Karpas 1972: 261), took several steps to introduce equal citizenship. The 1839 and 1856 Edicts, then the 1867 Ottoman Law on Nationality⁴ and 1876 Ottoman Constitution⁵ recognised Ottoman citizenship for all inhabitants, regardless of their ethnicity and religion, thus almost completely abolishing the *millet* system.

2.2 Citizenship in the first Yugoslavia, 1918-1941

In the period between the Balkan Wars and the creation of the Kingdom of Serbs, Croats and Slovenes in 1918, the inhabitants of the present day territory of Kosovo were *de facto* stateless. *De jure* their status was determined and regulated by the Serbian and the Montenegrin legislation that was in force at the time.⁶ However, due to the start of the First World War and the subsequent occupation of Kosovo by the Austro-Hungarian army, none of these legal provisions had any real effect. After the war, the inhabitants of Kosovo were granted various citizenship rights (voting rights); they only legally became citizens of the Kingdom of Serbs, Croats and Slovenes in 1928 with the adoption of the Citizenship Act of the Kingdom of Serbs, Croats and Slovenes⁷ (Malcolm 1998: 266; Jovanović 2008: 61). The 1928 Law established a single citizenship for the entire Kingdom where every subject had to have a domicile in one of the municipalities. It did not tolerate dual citizenship. The law also contained temporary regulations introduced to regulate the status of inhabitants of the former provinces of the Ottoman Empire annexed by Serbia and Montenegro in 1912-1913.

However, despite the fact that the Kingdom of Serbs, Croats and Slovenes signed the Treaty of Saint Germain,⁸ which represents the cornerstone of the minority rights and obligations that interwar Yugoslavia undertook to comply with and to respect, the new state denied most of the citizenship rights to the Albanians who made up the majority of population in Kosovo. Many were forced to renounce their citizenship and emigrate to Turkey.⁹ Yugoslav state centralism and pursuit of an ideology of national unity (the Yugoslav Kingdom was perceived as the national state of the South-Slavic people) alienated and oppressed Albanians, as well as other non-Slavic minorities, such as Germans, Italians, Hungarians, and Turks.

In the course of the Second World War, most of Kosovo was occupied by Italian forces from 1941 to 1943 and thereafter German forces until the end of the war. Italy initially annexed Albania (1939) to continue with the occupation of the Albanian inhabited regions of Yugoslavia (including most of the territory of Kosovo) and attached it to the former. Thus, Italy extended various citizenship rights of the Kingdom of Albania (whose independence

⁴ See Richard W. Flournoy and Manley O. Hudson (eds.), *A collection of nationality laws of various countries as contained in constitutions, statutes and treaties*. New York: Oxford University Press, 1929.

⁵ Art. 8 of this Constitution stipulates that ‘All subjects of the empire are called Ottomans, without distinction whatever faith they profess; the status of an Ottoman is acquired and lost according to conditions specified by law’. See *The Ottoman Constitution*. 23 December 1876.

<http://www.worldstatesmen.org/OttomanConstitution1876.htm>.

⁶ The Civil Code of Serbia (1844), The Constitution of the Kingdom of Serbia (1903) and The Statute of Montenegro (1905).

⁷ *Official Gazette of the Kingdom of Serbs, Croats and Slovenes*, 245/1928.

⁸ *Treaty between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State*. St. Germain-en-Laye, 10 September 1919. <http://www.austlii.edu.au/au/other/dfat/treaties/1920/14.html>.

⁹ This was regulated with Art. 55, paragraph 4, of the Citizenship Act of the Kingdom of Serbs, Croats and Slovenes, that refers to former Ottoman subjects ‘wishing’ to renounce Yugoslav citizenship. Moreover, on 11 July 1938 the Kingdom of Yugoslavia signed the so called ‘Convention for regulation of emigration of the Turkish population from the region of Southern Serbia in Yugoslavia’ with Turkey which targeted the Muslim population of Kosovo, namely Turks and Albanians.

was formally preserved within the Italian Kingdom) to the people in the territories it occupied in Yugoslavia. Albanian became one of the official languages in Kosovo, a new Albanian-dominated administration was put in place, and Albanian schools were opened.

2.3 Citizenship in the second Yugoslavia, 1945 - 1991

Kosovo was reincorporated into Yugoslavia after the end of the Second World War, this time as an autonomous region (*oblast*) - a lower status than that of a province (*pokrajina*), which Kosovo would not become until 1963¹⁰ - of the People's Republic of Serbia. It is worth noting that it was the first time since the final phase of Ottoman rule that Kosovo had become an administrative unit based on its large Albanian majority (which had been defined as a nationality (*narodnost*) since the early 1960s). The borders established after the war are the current borders of the state of Kosovo. In the 'new Yugoslavia' the citizenship issue was promptly regulated, as the Yugoslav Federation adopted two essential laws defining the subject of citizenship: the Citizenship Law¹¹ and the Law on Deprivation of Citizenship,¹² which especially targeted members of the former Royal Army of Yugoslavia. The new law was based primarily on the principle of *ius sanguinis* (descent) and provided for legal continuity with the pre-war Yugoslav Kingdom citizenship (art. 35). Nonetheless, art. 25, para. 1 enabled acquisition of citizenship for members of one of the peoples of Yugoslavia (South Slavic ethnic groups) through presumption (Medvedović 1998: 26; Ragazzi and Štiks 2009: 340). Undoubtedly, this ethnocentric formulation complicated matters for many non-Slavic people, including non-Slavic people living in Kosovo, who, for reasons related to the destruction brought about by the war, could not prove their Yugoslav citizenship. Many other Albanians could not gain citizenship because of their factual or alleged collaboration with the occupation forces during the Second World War and thus had to flee to Albania or Turkey.

During the entire existence of Socialist Yugoslavia only three laws on citizenship were enacted (1945/46, 1964 and 1976). These corresponded to major constitutional changes at the federal level (Ragazzi and Štiks 2009: 341). The post-war Yugoslav citizenship legislation established a two-level or bifurcated citizenship. The 1946 Yugoslav federal citizenship law states that, 'every citizen of the People's Republic is simultaneously a citizen of the Federal People's Republic of Yugoslavia and every citizen of the Federal People's Republic of Yugoslavia is in principle citizen of a people's republic'.¹³ The last federal citizenship law in Yugoslavia (adopted in 1976),¹⁴ reasserted the primacy of the *ius sanguinis* principle in acquiring Yugoslav citizenship, and made republic-level citizenship conditional upon federal citizenship (republican citizenship would be lost with the loss of federal citizenship). Republican laws on citizenship were enacted shortly after. Despite the fact that the republics had large competences in managing citizens' registers, voting registers, as well

¹⁰ Under the 1946 Yugoslav constitution, Kosovo was an Autonomous Region (*oblast*) of Serbia, whereas Vojvodina was an Autonomous Province (*pokrajina*) of Serbia. With the constitutional changes of 1953 the powers of both Kosovo and Vojvodina were further reduced as they became *de facto* districts of Serbia. In 1963 Kosovo became for the first time an Autonomous Province of Serbia and in the period between 1963 and 1974 its status, together with that of Vojvodina, was elevated several times and it gained many of the republican prerogatives (including the right to adopt its own constitution).

¹¹ Citizenship Act of the Democratic Federative Yugoslavia. *Official Gazette of the Democratic Federative Yugoslavia*, 64/1945.

¹² Law on Deprivation of Citizenship for Officers and Non-Commissioned Officers of the former Yugoslav Army Who do not Want to Return to the Homeland, and for the Members of Military Forces Who Have Served for the Enemy and have Defected Abroad. *Official Gazette of the Democratic Federative Yugoslavia*, 64/1945.

¹³ Law on confirmation and amendment of the Law on citizenship of the Democratic Federative Yugoslavia of 23 August 1945. *Official Gazette of the People's Federal Republic of Yugoslavia*, 54/1946.

¹⁴ *Official Gazette of the Socialist Federal Republic of Yugoslavia*, No. 58 (1976).

as issuing IDs and passports, the republic-level citizenship was not considered to be relevant until the process of dissolution of Yugoslavia started.

As far as Kosovo is concerned, its inhabitants were citizens of both Yugoslavia and Serbia. Their status within Serbia was regulated through the Citizenship Law of the People's Republic of Serbia of 1950¹⁵ and of the Socialist Republic of Serbia in 1965¹⁶ and 1979.¹⁷ After the constitutional changes of 1974, Kosovo became a Socialist Autonomous Province of both Serbia and the Socialist Federal Republic of Yugoslavia (SFRY)¹⁸ with enhanced competences at all levels of governance. Though Kosovo had its own constitution, it did not have a separate law on citizenship (the Law on Citizenship of the Socialist Republic of Serbia from 1979 regulated the status of the Kosovar population as well).¹⁹ However, the newly formed institutions of Kosovo were the only competent authorities to issue Yugoslav passports for the residents of Kosovo with a code (KA) distinct from that of the issuing authority of Serbia,²⁰ certificates of citizenship, and to keep and manage the register of citizens, electoral register etc.²¹ In many aspects, this was a quasi-Kosovar citizenship. The situation would, however, change drastically after 1989 when Kosovo's autonomy was forcibly abolished by Serbia and further complicated after the dissolution of the SFRY.

2.4 Citizenship in the third Yugoslavia, 1992-2006

After the dissolution of the SFRY, the Republic of Serbia and the Republic of Montenegro established the Federal Republic of Yugoslavia (FRY) with Kosovo as an integral part of Serbia.²² Though FRY adopted a new constitution in April 1992, it did not enact a federal law on citizenship until 1996. In the meantime, the citizenship issue was regulated by the 1976 SFRY citizenship law, and the respective Serb (1979) and Montenegrin (1975) republican laws.²³ Because of the overall political situation and the wars in Bosnia and Croatia, the right to citizenship in FRY in the period between 1991 and 1996 was marked 'by insecurity and discrimination' (Svilanović 1998: 244). Despite the lack of legislation to regulate the issue of refugees, thousands of people acquired citizenship, sometimes even at black market prices (Svilanović 1998: 244). Finally, on 16 July 1996 a new Law on Citizenship of the Federal Republic of Yugoslavia²⁴ was enacted, which entered into force on 1 January 1997.

¹⁵ *Official Gazette of the People's Republic of Serbia*, No.5 (1950).

¹⁶ *Official Gazette of the Socialist Republic of Serbia*, No. 13 (1965).

¹⁷ *Official Gazette of the Socialist Republic of Serbia*, No.45 (1979).

¹⁸ Though the 1974 Yugoslav constitution affirmed the full equality of all republics and autonomous provinces and irrespective of the fact that the latter had many republic-level competences, republics were defined as states (art. 3), whereas autonomous provinces were defined as democratic self-governing socio-political communities (art. 4). As such, Kosovo could not have a citizenship law of itself and for itself.

¹⁹ Though the 1976 Law on Citizenship of the Socialist Republic of Serbia does not mention its two autonomous regions, Kosovo and Vojvodina, art. 30 of the law stipulates that 'the present Law shall be applied uniformly on the whole territory of the Republic in accordance with art. 300, para. 1, item 1 of the Constitution of the Socialist Republic of Serbia'.

²⁰ Interestingly, Yugoslav passports issued in Kosovo were written in Albanian as well as in Serbian and French.

²¹ Personal interview with Azem Vllasi, former communist leader of the Autonomous Socialist Province of Kosovo. Pristina, 12 October 2009.

²² Kosovar Albanians were quick to react after the abolition of autonomy and to start a non-violent separatist movement, boycotting the official authorities and establishing their own institutions. Thus, on 2 July 1990 members of the dispersed Assembly of the Socialist Autonomous Province of Kosovo gathered in front of the Assembly building in Pristina and adopted a declaration elevating the status of Kosovo to an independent Republic and a year later (in October 1991) a referendum on independence was organised. Serbia condemned both actions and considered them as illegal actions and no foreign country, apart from Albania, recognised the independence of Kosovo in the early 1990s.

²³ *Official Gazette of the People's Republic of Montenegro*, No. 26 (1975) / 30 (1975).

²⁴ *Official Gazette of the Federal Republic of Yugoslavia*, No.33 (1996).

It has been argued that one of the main aims of this new law was to establish legal continuity²⁵ between SFRY and FRY citizenship (Imeri 2006: 270; Knežević 1998: 235). However, a closer observation of the law reveals that it established legal continuity with selective categories of the SFRY citizens in that it applied primarily to citizens of the Socialist Republic of Serbia and the Socialist Republic of Montenegro. The attempt to establish such legal continuity is also reflected in the ‘Transitional provisions’ (arts. 46-48) of the 1996 Law. Both Serb and Montenegrin citizens were considered FRY citizens *ex lege* regardless of their place of residence. Further, Yugoslav citizenship could be acquired also by SFRY citizens who had citizenship of another republic and who as of 27 April 1992 were residing in the FRY (‘zero option’ principle applied retrospectively), civil and military servicemen of the Yugoslav People’s Army (JNA) and members of their immediate families (art. 47), as well as citizens of the SFRY who, by virtue of their national or religious or political affiliations and endeavours to observe human rights and freedoms, were forced to take refugee status on the territories of the FRY (art. 48, point 1).²⁶

As far as the territory of Kosovo and its population are concerned, the period between 1991 and 1998 can be considered a period of *de facto* statelessness for the majority of population. After 1989, Albanians in Kosovo were deprived of their basic political and civil rights and liberties. Autonomous Kosovo institutions were shut down, people were expelled from their workplaces, and schools and universities that taught in the Albanian language were closed. Thus, although they were legally citizens of the FRY, *de facto* they were stateless. The most targeted group at the beginning of 1990s were young people between the ages of 18 and 22 who wanted to leave the country to avoid serving in the army (which meant going to fight in Bosnia and Croatia). Being unable to obtain a passport (which was made conditional upon the completion of military service),²⁷ many young Albanians emigrated illegally or using documents bought on the black market. Following the abolition of the autonomy of Kosovo in March 1989 and the subsequent degradation of the position of Albanians, a new ‘parallel system’²⁸ was emerging among Kosovar Albanians. Underground ‘state institutions’, a separate system of education where children were taught only in Albanian, a network of information, as well as a network of health centres were established and functioned independently from the Serbian state.

The situation of the majority of the population of Kosovo in the 1990s can best be described by the terms exclusion and self-exclusion. The former included widespread

²⁵ This was part of a broader political strategy of Slobodan Milošević and his allies to consider FRY as the only successor state of the SFRY. Because of the lack of support from international community this became impossible and FRY had to apply for membership in UN (in November 2000) as one of the successor states of SFRY. However, following the logic of legal continuity, FRY authorities continued issuing SFRY passports until late 1990s.

²⁶ This category includes Serb refugees from Croatia and Bosnia. According to the UNHCR information bulletin for Federal Republic of Yugoslavia, during the war in Bosnia and Croatia over 1 million people found refuge in the FRY. Though the 1996 FRY Citizenship Law did not imply ethnic discrimination, the interpretation of the transitional provisions of the law in practice went in favour of ethnic Serbs and Montenegrins. According to data provided by the Ministry of Interior, in less than one year after the entry into force of the FRY Citizenship Law (November 1998), some 83,000 applications (100,000 persons) had been submitted by refugees, of which 25,500 (42,000 persons) had been granted citizenship (UNHCR 1997): see also Knežević 1998: 235 and UNHCR 2000.

²⁷ Those same people who left Kosovo in the 1990s had problems later in renouncing Yugoslav citizenship for the purpose of acquiring another citizenship precisely because of the military obligation. This practice was reaffirmed in the 1996 Law on Yugoslav Citizenship, where art. 20 point 2. forbids loss of citizenship by release for ‘persons subject to military conscription, if the federal authority in charge of defence affairs determine that there are impediments for release related to military obligation’: see also Svilanović (1998: 251).

²⁸ For more on the parallel system of Kosovar Albanians in 1990s, see Maliqi 1998; Judah 2000; Clark 2000; Kostovicova 2005.

discrimination against ethnic Albanians and their effective removal from public life by the Serbian state and its police apparatus. The latter term describes the permanent boycott of the Serb and Yugoslav institutions and elections in Kosovo by Albanians. By the end of the 1990s, following the escalation of the conflict in Kosovo, more than 850,000 Kosovar Albanian refugees escaped or were deported into neighbouring countries and hundreds of thousands of others were internally displaced persons (UNHCR, 1999a). In the meantime, the destruction of identity and property ownership documents of those who were deported became widespread (UNHCR, 1999b). This deportation en masse of people and confiscation of their personal documents was a deliberate attempt by the Serbian state to deprive Kosovar Albanians of key citizenship rights, including the rights to property and residence. It was the sheer scale of the human rights violations being committed in Kosovo which led to the military intervention of the North Atlantic Treaty Organization (NATO) in the FRY in spring 1999.

2.5 Kosovo residents under international administration, 1999 - 2008

On 10 June 1999, after 78 days of the NATO campaign in the FRY,²⁹ the UN Security Council adopted Resolution 1244³⁰ which obliged the FRY to begin and to complete a verifiable phased withdrawal of all military, police and paramilitary forces from Kosovo. The Secretary-General, with the assistance of relevant international organisations, was to establish an international civil presence in Kosovo in order to provide an interim administration under which the people of Kosovo would enjoy substantial autonomy within the Federal Republic of Yugoslavia (art. 10). As the displaced Albanians returned home, many non-Albanian residents of Kosovo left the country or were driven out into neighbouring countries.³¹ The post June 1999 political reality in Kosovo created legal obscurity and problems with regard to various legal issues, including citizenship. Resolution 1244 vested all legislative and executive powers, including administration of the judiciary, in the hands of the Special Representative of the Secretary General (SRSG). The SRSG and the United Nations Interim Administration Mission in Kosovo (UNMIK)³² initiated the process of creating separate Kosovar institutions in all the three fields of governance: legislative, executive and judicial.

In 2001 the SRSG even promulgated a Constitutional Framework for Provisional Self-Government in Kosovo³³ which defined Kosovo as ‘an entity under interim international administration which, with its people, has unique historical, legal, cultural and linguistic attributes.’ This document, which makes no mention of the FRY, was considered unacceptable by the FRY institutions (Stahn 2001: 543-544). Though the FRY had no control over Kosovo, internationally Kosovo was still part of the FRY and its inhabitants were legally Yugoslav citizens. This situation led to the creation of two categories of people: the first category comprised people who were born before 1999 and who had Yugoslav documents; the second category included people who were born after June 1999 and who had

²⁹ NATO’s military campaign was initiated following the refusal of the FRY to accept the internationally brokered peace plan, the Rambouillet Accords, as an interim solution for Kosovo. This plan, which foresaw large scale autonomy for Kosovo as part of the FRY, on the other hand, was approved and signed by the political leaders of Kosovo.

³⁰ *UNSC Res 1244 (10 June 1999) UN Doc S/RES/1244.*

³¹ There is no exact number of the Serb and Roma refugees from Kosovo and very often numbers are used for political propaganda. However, according to the UNHCR, almost 200,000 Serbs and Roma left Kosovo after June 1999. See UNHCR 2000.

³² For a detailed account of the UN administration in Kosovo, its structure, competences and policies, see Reka 2003 and Stahn 2001.

³³ *UNMIK/Reg/2001/9.*

no opportunity to be entered into the Yugoslav register of citizens. In other words, they were stateless.

Thus, UNMIK, the institution mandated to administer Kosovo until the final status settlement, decided to create a separate civil register (Central Civil Register of Kosovo) for the Kosovo residents. UNMIK adopted Regulation No. 2000/13 on the Central Civil Registry³⁴ which in a way became a substitute for citizenship regulations. According to art. 1.1 of this regulation, ‘the Central Civil Registry shall contain a register of the habitual residents of Kosovo.’ The term ‘habitual resident’ was used to describe residents of Kosovo. The two main categories of people that were to be considered habitual residents of Kosovo were: (a) persons born in Kosovo or who have at least one parent born in Kosovo; and (b) persons who could prove that they had resided in Kosovo for at least a continuous period of five years. Section 4 of this regulation also established the procedures for application to be entered into the Central Civil Register of Kosovo. Because most of the pre-1999 civil registration books were destroyed or confiscated by the FRY administration and because many people had their personal documents destroyed, procedures for application for habitual residency in Kosovo were quite simple. State identity cards, passports, documents issued by any UN agency or organ, documents issued by educational, health, political and religious institutions, public utilities and other quasi-official bodies, as well as oral and written statements, could be all used to prove residency.³⁵

In 2000 UNMIK went a step further and promulgated a Regulation on Travel Documents.³⁶ Art. 1.1 of this regulation stipulated that all persons registered in the Central Civil Registry having the status of habitual residents may apply to the same institution for a travel document. Despite the fact that this travel document performed the function of a passport, it was not strictly speaking a passport. Art. 1.2 of the UNMIK Regulation on Travel Documents clearly determines that the travel document does not confer nationality (i.e. citizenship) upon its holder, nor does it affect in any way the holder’s nationality. Thus, a person could have a UNMIK Travel Document and any other state passport without a problem. In practical terms, the UNMIK Travel Document was a poor substitute for state passports because only 37 countries officially recognised it, thus creating travel-related obstacles for their holders. In this way, UNMIK put in place a system of quasi-citizenship in Kosovo. In the period between 2000 and 2008 UNMIK issued some 600,000 Travel Documents for Kosovo residents and around 1,600,000 ID cards.³⁷ The absolute majority of these documents belonged to Albanians as Serbs kept their Yugoslav / Serbian documents. Through its parallel structures in Kosovo or municipal offices in Serbia, Serbian authorities continued to issue passports for Albanians as well even after 1999. In the course of eight years (1999-2007) Serbian authorities claim to have issued 200,000 passports for Kosovo residents.³⁸

Despite the fact that Albanians in Kosovo did not consider Serbia as their own state and were looking forward to independence, nevertheless, they kept applying for Serbian passports for practical and pragmatic reasons. In principle, Kosovar habitual residence and Serbian citizenship³⁹ were not in contradiction. However, during the international

³⁴ UNMIK/REG/2000/13.

³⁵ Since there was evidence that many people used false documents, UNMIK adopted two additional administrative directions on the implementation of the UNMIK Regulation 2000/13 on Central Civil Registry. UNMIK/DIR/2003/26 and UNMIK/DIR/2002/16.

³⁶ UNMIK/REG/2000/18

³⁷ Data provided by the Centre for Documents (Ministry of Internal Affairs of Kosovo). Personal interview in the Centre for Production of Documents (MIA). Pristina, 12 October 2009.

³⁸ See AFP, *Kosovo Albanians shun Serbia, but not its passports*. 8 September 2007. www.balkanpeace.org.

³⁹ The Federal Republic of Yugoslavia was reconstituted as the State Union of Serbia (with Kosovo as its part) and Montenegro in 2003. In 2004 Serbia adopted a new citizenship law, which does not provide any specific

administration in Kosovo, most of the Albanians in Kosovo were *de facto* stateless whereas Kosovo Serbs had Yugoslav and later Serbian citizenship alone.

2.6 Kosovar citizenship after independence

After more than fifteen months of negotiations between Serbia's and Kosovo's delegations presided over by the Special Envoy for Kosovo, Martti Ahtisaari, on 14 March 2007 the Final Comprehensive proposal for a Kosovo Status Settlement, as well as the Report of the Special Envoy of the Secretary-General on Kosovo's Future Status were handed to the Secretary General of the United Nations. Ahtisaari proposed internationally-supervised independence for Kosovo and in his proposal he laid down the contours of the future Kosovar state. Kosovo, the US and most of the EU countries supported the plan whereas Serbia and Russia opposed it. According to the Ahtisaari's proposal, Kosovo should be a multi-ethnic society based upon the equality of all citizens and the highest level of internationally recognised human rights and fundamental freedoms, as well as the promotion and protection of the rights and contributions of all its communities and their members. The newly adopted legislation set up the contours of a de-ethnicised citizenship, both at the micro and macro level. As far as citizenship, understood as a link between the individual and the state, is concerned, the boundaries of the new polity were to be established not according to the principle of origin, but territory. Art. 1.6 of the Annex I (Constitutional Provisions) makes it clear that the future Kosovar Constitution should provide for the right of all citizens of the former Federal Republic of Yugoslavia habitually residing in Kosovo on 1 January 1998 and their direct descendants to have Kosovo citizenship regardless of their current residence and of any other citizenship they may hold. Following almost a year of unsuccessful discussions at the UN Security Council on the adoption of a resolution that would endorse Ahtisaari's Proposal, on 17 February 2008, Kosovo declared independence.

On the other hand, with regard to the other dimension of citizenship which involves institutions, rights and practices, the Kosovo legislation provides extensive rights through which the people of Kosovo, irrespective of their ethnic origin, can exercise full membership of the political community. Art. 2 of the Declaration of Independence, defines Kosovo to be 'a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law' and expresses the commitment 'to protect and promote the rights of all communities in Kosovo and create the conditions necessary for their effective participation in political and decision-making processes.' Subsequently, inhabitants belonging to the same national or ethnic, linguistic, or religious minority groups traditionally present on the territory of Kosovo (*communities*) were granted specific rights, including reserved seats in the parliament and other levels of governance. On the basis of the gender equality principles, the quota for women in the Kosovar parliament is 30 per cent. In addition to this, the new legislation provides for further group-differentiated rights related to territorial self-government; creation of the new Serb-dominated municipalities is one of the main issues in the post-independence political agenda in Kosovo.

Bearing in mind the long period of *de facto* statelessness in Kosovo and taking into consideration the urgent need to regulate the citizenship status of the people in Kosovo, the Parliament of Kosovo adopted a new citizenship law⁴⁰ on 20 February 2008, just three days

provision for the residents of Kosovo, neither does it take into consideration the new reality in Kosovo. In 2006 Montenegro, which in 1999 had approved its new citizenship law in open conflict with the FRY 1996 Citizenship Law, left the Union and declared its independence. Thus, after this period Kosovar residents were in principle Serbian citizens only. See Law on Citizenship of the Republic of Serbia 2004. *Official Gazette of the Republic of Serbia*, No. 135/04.

⁴⁰ Law on Citizenship of Kosova. *Official Gazette of the Republic of Kosovo*, No. 26/2008.

after the declaration of independence and even before the adoption of the constitution. The Kosovar Law on Citizenship is one of those laws belonging to the ‘Ahtisaari package’ and as such it was adopted in a fast-track procedure.⁴¹ Though there was no public debate before or after the approval of this law, it is evident that external influence in drafting of all new laws was essential. In the case of the Law on Citizenship of Kosovo, legal advisers of the ICO-EUSR preparatory team⁴² were involved extensively. European legal advisers involved in the process looked at various citizenship practices in the region and elsewhere and their main aim was to draft a law that enabled wider inclusion into Kosovar citizenship. Undoubtedly, the relatively inclusive nature of the present Kosovar citizenship legislation resulted from Ahtisaari’s provisions, as well as from UNMIK legislation, which has been taken in consideration largely by experts drafting the Kosovar law.

3 The current citizenship regime

The Kosovar citizenship regime is a reflection of the principles of multi-ethnicity and inclusiveness enshrined in the Ahtisaari Plan, the Declaration of Independence and the Kosovar Constitution. In terms of criteria of inclusion, pursuant to art. 1.6 of Annex I of the Ahtisaari Plan, the Kosovar Law on Citizenship enables all pre-war residents of Kosovo (who were citizens of the Federal Republic of Yugoslavia) and their direct descendants to be considered as citizens of Kosovo (arts. 29.1 and 29.2). This provision addresses the problem of the refugees who left Kosovo in 1999 and were not registered as habitual residents during the international administration in Kosovo. In a similar vein, the new law provides that any habitual resident of Kosovo based on UNMIK/Reg/2000/13 is considered *ex lege* a citizen of the Republic of Kosovo (art. 28.1). These two provisions more or less define the scope and character of citizenship in Kosovo, including the body of citizens, inclusiveness, and openness. The latter provision especially facilitates greater inclusiveness when taking in consideration that the procedures for admission into the Kosovar Central Civil Register under UNMIK were simple and many people (especially Albanians from southern Serbia and Macedonia) profited from this opportunity to regularise their status. Both of these provisions were reaffirmed in the Constitution of the Republic of Kosovo,⁴³ which entered into force on 15 June 2008.⁴⁴

⁴¹ Initially the Parliament of Kosovo created an ad hoc commission that would examine all the draft laws deriving from the ‘Ahtisaari package’ and based on the proposal of this commission, the parliament adopted these laws. Only minor amendments were proposed during the parliamentary session. So, in a single day, on 20 February 2008, the Parliament of Kosovo adopted nine laws deriving from the ‘Ahtisaari package’, including the Law on Citizenship of Kosovo. As is apparent from the written transcript of the plenary session, none of these draft laws, including the one on citizenship, were debated before approval. At the end, 77 MPs voted ‘for’ the package of laws, four were ‘against’ and six MPs abstained. See Parliament of Kosovo, *Transcript of the Plenary Session of 20 February 2008* (<http://assembly-kosova.org/?cid=1,177&date=2008-02-20>). However, as part of the initiative to end Kosovo’s supervision in September 2012, the Kosovo Parliament amended all these laws so that they do not refer anymore to the Ahtisaari Plan. See Law No. 04/L-115 on Amending and Supplementing the Laws Related to the Ending of International Supervision of Independence of Kosovo, *Official Gazette of the Republic of Kosovo No. 25 / 7 September 2012*, p. 4.

⁴² The purpose of the ICO-EUSR (International Civilian Office – EU Special Representative) preparatory team was to plan for a possible future international civilian presence in Kosovo after settlement of Kosovo’s final status. The office of ICO was established immediately after the declaration of independence of Kosovo. Its main aim was to ensure full implementation of Kosovo’s status settlement and support Kosovo’s European integration. However, its mission ended in September 2012, when the International Steering Group decided to end the period of Kosovo’s supervised independence. See “Kosovo declared ‘fully independent’”, *BBC*, 10 September 2012. <http://www.bbc.co.uk/news/world-europe-19550809>.

⁴³ See art. 155 of the Constitution of the Republic of Kosovo.

⁴⁴ In September 2012, after more than four years since the declaration of independence and after it has been concluded that the Comprehensive Status Proposal had been substantially implemented, the Kosovo parliament

The law was, however, amended in 2011,⁴⁵ roughly at the same time as the adoption of the new law on foreigners.⁴⁶ These amendments introduced two substantial changes in the law on citizenship. The first regards the residence criteria for naturalisation, which has been increased from five to ten years, thus making the Kosovo law one of the strictest in the region regarding naturalisation of aliens. This change, together with the approval of the new law on foreigners, which for the first time regulates entrance (including the issue of visas)⁴⁷ and stay of foreigners in the territory of Kosovo, in fact reflects the attempt of Kosovo institutions to fulfil the criteria for visa liberalisation with the EU. The other change is related to the status of stateless people. Several paragraphs were added regarding acquisition of citizenship by stateless people, thus widening the scope of the law in the context of reduction of cases of stateless persons.

In terms of the procedures, the basic characteristics of the Kosovar citizenship law are a combination of *ius sanguinis* and *ius soli* principles, prevention of statelessness, absence of provisions granting ethnic preferences, and gender equality of parents who decide about the naturalisation of the child as well as gender equality of spouses. Another crucial characteristic of this law is the unconditional recognition and acceptance of dual and multiple citizenship. Yet a more particular characteristic of the Kosovar citizenship law is that it contains some transitional provisions regulating acquisition of citizenship, namely through arts. 28 and 29 of the law which refer to the acquisition of citizenship by FRY citizens who were Kosovo residents before 1 January 1998 and habitual residents of Kosovo (1999-2008). Persons belonging to the first category can become citizens of Kosovo by registration whereas those belonging to the second category become Kosovar citizens *ex lege*. Though this law foresees facilitated naturalisation for people from the diaspora, it does not define or differentiate them on the basis of ethnicity. According to the law, all people (and their descendants within one generation) who have legal residence in foreign countries and who can prove that they were born and/or maintain family ties in Kosovo are considered to be members of the Kosovar diaspora.

3.1 Acquisition and loss of citizenship

3.1.1 Acquisition of citizenship

Kosovar citizenship is acquired by birth, adoption, naturalisation, on the basis of international treaties and on the basis of transitional provisions. Based on the principle of descent, a child acquires citizenship automatically in cases when both of his or her parents have Kosovar citizenship (in this case *ius soli* does not apply). However, if on the day of the child's birth only one of the parents is a citizen of Kosovo, the child may acquire Kosovar citizenship under the following conditions: a) the child is born in the territory of Kosovo (here we have a

adopted amendments to the Kosovo Constitution replacing or amending all the references to the Ahtisaari Plan or the International Civilian Office, thus paving the way for the end of supervised independence of Kosovo. Amendments on the Constitution of the Republic of Kosovo Regarding the Ending of International Supervision of Independence of Kosovo, *Official Gazette of the Republic of Kosovo No. 25 / 7 September 2012, p. 1.*

⁴⁵ Law No 04/L-059 on Amending and Supplementing the Law No.03/L-034 on Citizenship of Kosovo, *Official Gazette of the Republic of Kosovo, No. 26, Pristina, 25 November 2011.*

⁴⁶ Law No.04/L-069 on Foreigners, *Official Gazette of the Republic of Kosovo, No. 01, Pristina, 12 January 2012.*

⁴⁷ On 16 May 2012, the Kosovo Government decided to introduce the regime of visas for foreigners visiting Kosovo. As of 1 January 2013, citizens of a total of 72 countries will need to apply for entry visas at the diplomatic and consular missions of the Republic of Kosovo, whereas citizens of 14 other countries will get their visas at the Kosovar border. Government of Kosovo, *Decision 02/74*, 16 May 2012.

http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_se_74-.pdf

combination of *ius soli* and *ius sanguinis*) principles); b) the child is born abroad and one parent is stateless or his or her citizenship is unknown; and c) the child is born abroad and only one parent has Kosovar citizenship but both of them give their consent before the child reaches the age of 14. In the case when the consent of parents is needed, the law has retroactive effect.

The *ius soli* principle applies in cases of unknown or stateless parents of the child born or found in Kosovo. However, if one of his/her parents who does not have Kosovar citizenship is found before the child reaches the age of 7, upon the parent's request the citizenship of the child may be forfeited. The territorial principle is also applied in cases when a child is born in the territory of Kosovo and his or her parents have foreign citizenship but have permanent residence permission in Kosovo and, most importantly, give their consent. So, here we have a conditional application of the *ius soli* principle in that the consent of parents is crucial in this case. Acquisition of citizenship by adoption is based on the principle of descent and a child adopted by parents who have Kosovar citizenship acquires the same rights as a natural child. But the law is not explicit in determining cases of adoption when only one parent is a Kosovar citizen.

Kosovar citizenship law provides for regular, facilitated and exceptional naturalisation. Regular naturalisation is used for all foreign persons who apply through the regular procedure for naturalisation. Facilitated naturalisation is a special procedure applied to the Kosovar diaspora,⁴⁸ meaning persons who were born in Kosovo (irrespective of their ethnicity) and who are legal residents of other states as well as their first generation of descendants. Finally, exceptional naturalisation is applied in cases of special economic, social, sporting, cultural, scientific or political interest of the Republic of Kosovo and is issued by the decree of the President of Republic.

As far as regular naturalisation is concerned, there are six main criteria that foreign persons intending to become citizens of Kosovo must meet. These are to be an adult, to have lived in Kosovo for five consecutive years after receiving permanent residence permission⁴⁹ (with the possibility of having been abroad for periods not longer than three months), to accept the constitutional and legal order of the Republic of Kosovo and to be integrated into the society, to have sufficient means of living without resorting to social assistance schemes,

⁴⁸ Apart from this facility, the Kosovar diaspora, which is estimated to number between 700,000 and 900,000 persons, does not enjoy any special rights in Kosovo. As Kosovar citizens they can vote either by coming to Kosovo or by post. The Kosovar Parliament has special seats reserved for minorities but not for the diaspora. In terms of the institutional organisation, the mechanism responsible for diaspora initially was the Office for Non-Residential Issues and Diaspora within the Government of Kosovo, which as of May 2011 has been turned into a separate Ministry. Despite the fact that the Kosovar diaspora is quite big and it played an important role in the past (when it provided essential financial support for the Kosovar Albanian political and military movement in 1990s) and today provides substantial economic support in form of remittances, it did not get a lot of political attention and institutional support in post-independence Kosovo. However, things have changed with the creation of the Ministry of Diaspora in May 2011. Recently, the Minister has hinted that his institution plans to start a process of registration of the Kosovar diaspora and has put forward a proposal for the diaspora to be represented in the Kosovar parliament, holding 3-5 seats. "Makolli kërkon pesë vende për deputetë nga diaspora" [Makolli requests five seats in the parliament for diaspora], *KohaNet*, 3 October 2012. <http://www.koha.net/index.php?page=1,13,117562>. For more information on the Kosovar diaspora see Mustafa et al. 2007.

⁴⁹ Before the amendments, an alien was required to have resided in Kosovo for five consecutive years and have valid residence (which meant short, temporary or permanent) in order to qualify for citizenship. The amended law, however, now requires an alien to have resided five consecutive years in Kosovo after receiving *permanent* (my emphasis) residence permission. According to article 51 of the new Law on Foreigners, permanent stay shall be permitted to the foreigner who: (1) until the day of submission of application for permanent stay, has five (5) years of uninterrupted temporary stay, or (b) has been married for three years to a citizen of the Republic of Kosovo or to a foreigner with a permanent stay permit. This means that an alien should reside for eight or ten consecutive years in Kosovo in order to qualify for naturalisation.

to fulfil all the financial obligations owed to the state, and to possess an elementary knowledge of one of the official languages of Kosovo (Albanian or Serbian). In the case of the naturalisation of spouses, the person married to a Kosovar citizen is required to have resided (possessing any type of residence) in Kosovo for one year and to show that he or she has been married to a Kosovar citizen for at least three years. Both natural and adopted minor children acquire Kosovar citizenship once his or her parent has acquired it. More or less the same facilitated procedure applies also in relation to those persons who have lost Kosovar citizenship and who want to re-acquire it. In those cases, individuals need to declare that they accept the constitutional and legal order of Kosovo, possess sufficient means for living and can prove the fulfilment of all financial obligations toward the state.

The 2011 amendments have introduced a new article (12A) on acquisition of citizenship by stateless people. According to paragraph 1 of article 12A, a stateless person may acquire Kosovo citizenship if he/she resides in the country for five years without interruption, ‘with the permanent residence permission’. This means that a stateless person needs a total of five (as opposed to eight or ten required for foreign citizens) years of residence and permanent residence permission (which one can obtain after five years of continuous residence in the territory of Kosovo) in order to be naturalised into a Kosovar citizen. The right to naturalisation is also given to a child or children of a stateless person who fulfils the criteria for naturalisation, but in cases when the child is between fourteen and eighteen years of age, his/her consent is needed.⁵⁰

Apart from the aforementioned criteria for naturalisation, the law sets out additional general provisions on the naturalisation of foreign persons. Without prejudice to the specific criteria for naturalisation, no foreign citizen is allowed to acquire Kosovar citizenship if he or she has been sentenced for a criminal offence⁵¹ or if the acquisition of citizenship is contrary to the interests of Kosovo, in particular interests related to the internal and external security of Kosovo. By the same token, the competent body will suspend the naturalisation procedure if the applicant is subject to criminal investigation or criminal court proceedings until the investigation or proceeding is completed. A more drastic measure – revocation of the decision on naturalisation – may be taken if the competent authority establishes that the decision was issued on basis of false statements or concealed facts. In the event of revocation of the decision on naturalisation of the parents, the minor child will be subject to revocation of the decision on his or her naturalisation as well. The Kosovar Law on Citizenship does not provide any further explanation on the acquisition of citizenship based on international treaties.

As far as statistics are concerned, little data is available since the Kosovar Office of Citizenship was only established in April 2009. In its first six months, some 90 people applied for acquisition of citizenship and 20 of them had their applications approved.⁵² In 2011 there was an increase in the number of people who acquired Kosovo citizenship. According to the data provided by the Ministry of Interior, in the first five months of 2011, some 224 individuals acquired citizenship.⁵³ Most of those people were Albanians from

⁵⁰ The last paragraph of article 12A stipulates that the criteria for acquisition of citizenship by stateless persons will be further regulated by bylaws issued by the Ministry of Interior. However, no such acts have been approved yet (as of October 2012, a year after the adoption of the amendments).

⁵¹ This does not include criminal offences punished with a fine or six months of imprisonment (if released on parole by court), sentence for criminal offences that are not considered as such in Kosovo, and sentences for criminal offences that has been legitimately expunged from criminal records.

⁵² Personal interview in the Office for Citizenship within Ministry of Internal Affairs of the Republic of Kosovo. Pristina, 13 October 2009.

⁵³ “Mbi 1500 kosovarë heqin dorë nga shtetësia” [Over 1500 Kosovans lose their citizenship], *Kosova Sot*, 24 June 2011. <http://www.kosova-sot.info/politike/kosove/mbi-1500-kosovare-heqin-dore-nga-shtetesia>

South Serbia or Macedonia who had been residing in Kosovo for more than five years. They applied for regular naturalisation.

3.1.2 Modes of loss of citizenship

A citizen of Kosovo cannot be deprived of his or her citizenship of Kosovo except in compliance with the rules set out in the law. According to the law, there are three modes of losing citizenship: by release, by deprivation and based on international treaties. Release from citizenship is a regular case of losing citizenship and is initiated upon the request of the citizen. In addition, the person asking for release should fulfil certain requirements, such as possession of citizenship of another state or a guarantee that he or she will acquire one, fulfilment of all financial obligations towards the state and freedom from any criminal investigation or proceedings. Also minors and adopted minors under fourteen are released from citizenship if this is requested by one parent who has been released from citizenship and provided that there is consent of release by the other parent. Apart from release, competent authorities can issue a guarantee that the applicant will be released from Kosovar citizenship once it is shown that he or she has acquired another citizenship or has such a guarantee. The guarantee is valid for two years from the day it is issued to the person.

There are two situations when applications for release may be refused. The first case is where the person who asks for release from citizenship is a civil servant, judge, public prosecutor, or a member of the police service or Kosovo Security Forces. The second case is when the release is considered to be against the interests of the state, especially related to its internal and external security or international relations. A more drastic measure is the revocation of the decision on release from citizenship, which is applied in cases when the competent authority determines that the decision on release was taken on the basis of false statements or concealed facts.

Deprivation of citizenship is a measure used only in those cases when a citizen is engaged in activities which pose a threat to the national security of Kosovo. This measure may be applied if the person holds citizenship of another country. Threats to national security are defined as membership of organisations the purpose of which is to destroy the constitutional order of Kosovo, engagement in activities related to that purpose, or membership of foreign intelligence or police services that function illegally on the territory of Kosovo.⁵⁴ The decision on deprivation may be issued even without the participation of the person in question. In cases where the person in question participates, the decision on deprivation becomes effective when delivered to him or her. Otherwise, the decision becomes valid on the day it is published in the Official Gazette of the Republic of Kosovo.

In terms of statistics, the number of people who have applied for release from citizenship is quite large. In the first few months after the office of citizenship became operational (April to October 2009), some 1600 Kosovar citizens filed applications for release from citizenship and 540 lost their Kosovar citizenship through release.⁵⁵ Since then, however, there has been a further increase in the number of people who have lost their Kosovar citizenship through release. According to the data provided by the Ministry of Interior, in the first five months of 2011, some 1566 individuals were released from Kosovar

⁵⁴ In principle, this clause would apply in cases of those Kosovar citizens of Serb ethnicity that are members of Serbian police and intelligence services that operate in Kosovo illegally. So far there has not been a single known case when this clause has been used in practice.

⁵⁵ Personal interview in the Office for Citizenship within Ministry of Internal Affairs of the Republic of Kosovo. Pristina, 13 October 2009.

citizenship upon their request.⁵⁶ The absolute majority of those people come from the Kosovar diaspora in Europe, especially from those countries that do not allow dual citizenship.

3.1.3 Dual and multiple citizenship

Kosovo legislation is very tolerant of dual and multiple citizenship. Indeed, the present legislation does not oblige any person to lose his or her citizenship in order to acquire Kosovar citizenship. As already mentioned, this measure was introduced mainly to accommodate the needs of the Serb minority in Kosovo (but also many Albanians living in diaspora in Europe and the US). Though the present number of Kosovar residents who are citizens of two or more countries is not known, it is realistic to assume that the majority of Serbs living in Kosovo (the approximate number of Serbs living in Kosovo is 130,000) will eventually have dual citizenship. Other Serb and Roma refugees from Kosovo who are residing in neighbouring countries and who might return in Kosovo may increase the number of dual citizens even further. In addition, many Albanians from southern Serbia, Albania, Macedonia and Montenegro who have moved to Kosovo to work, study or live in the course of the last decade either have already been registered as habitual residents during the UNMIK period (and now are considered Kosovar citizens) or will apply for Kosovar citizenship through regular naturalisation since many of them satisfy the criteria. At the same time, members of the Kosovar diaspora⁵⁷ who hold citizenship of foreign countries that allow dual citizenship are very likely to apply for Kosovar citizenship.

Thus, one might realistically predict that at the end of post-independence transition in Kosovo and after completion of the process of registration of population and creation of a unified and consolidated register of citizens, the number of Kosovo citizens who hold dual citizenship will be relatively high (up to 20 per cent of the overall population).

3.2 Transitional provisions

Undoubtedly, transitional provisions governing the acquisition of citizenship are crucial in the post-independence phase during the determination of the initial body of Kosovo citizens. These provisions aim to regulate the status of Kosovo residents before January 1998 and habitual residents in the period of international administration in Kosovo (1999-2008). In the case of the former, individuals who on 1 January 1998 were citizens of the FRY and were habitually residing in Kosovo, and the first generation of their descendants, will be registered in the register of citizens upon the application. According to the law, the criteria that will constitute evidence of the citizenship of FRY and habitual residence in Kosovo will be determined in sub-normative acts (i.e. delegated legislation).⁵⁸ However, the law makes it clear that the competent body can also use the UNMIK Regulation No. 2000/13 as criteria to determine habitual residence on 1 January 1998. In the case of habitual residents of Kosovo, however, everyone who is registered in the Central Civil Register pursuant to UNMIK Regulation No. 2000/13 will be considered a citizen of Kosovo and will be registered in the

⁵⁶ “Mbi 1500 kosovarë heqin dorë nga shtetësia” [Over 1500 Kosovans lose their citizenship], *Kosova Sot*, 24 June 2011. <http://www.kosova-sot.info/politike/kosove/mbi-1500-kosovare-heqin-dore-nga-shtetesia>

⁵⁷ According to the officials from the MIA, there is a growing number of Albanians from Turkey, most of whom are first or second generation of Albanian migrants that recently are applying for Kosovar citizenship.

⁵⁸ The Ministry of Internal Affairs of Kosovo has already adopted an administrative instruction ‘On Requirements Composing Evidence of Citizenship of the Former Federal Republic of Yugoslavia and Permanent Residence in the Territory of Kosovo on 1 January 1998.’ See Ministry of Internal Affairs, *Administrative Instruction, No. 05/2009*.

register of citizens. The competent body is allowed to verify the lawfulness of the registration of a person as a habitual resident in Kosovo, and in cases where the competent body determines that the person did not fulfil the legal requirements for registration as habitual resident, he/she will lose Kosovar citizenship and will be deleted from the register of citizens.

3.3 Jurisdiction and procedures

In Kosovo, the Ministry of Internal Affairs (MIA) is the main body that has jurisdiction over citizenship issues. In the same vein, the government, through the MIA, has executive competence with regard to specific conditions and rules of procedure for acquisition and loss of citizenship. So far, the MIA has adopted numerous administrative instructions to facilitate implementation of the citizenship law. Although applications should be filed in the Municipal Offices of Civil Status, it is the Department of Citizenship, Asylum and Migration (Division for Citizenship)⁵⁹ within the MIA that takes the final decision on acquisition or loss of citizenship. In March 2009, the MIA adopted an administrative instruction on establishment and determination of the procedure rules of the Committee of Citizenship and of the Appeals Committee of Citizenship.⁶⁰

There are two main ways to submit the application: a) to the municipal administration, in the territory of which the applicant resides; and b) if the applicant resides outside Kosovo, to the nearest embassy or consular mission of Kosovo. However, both these institutions should forward the application to the competent body in Kosovo, which is the Citizenship Office.

According to the present legislation,⁶¹ the procedure for acquisition of citizenship through naturalisation and release from citizenship is relatively simple and short. Once the application has been submitted to the municipal administration, the latter forwards it to the Department of Citizenship, Asylum and Migration. From the day the application arrives to the Department of Citizenship, Asylum and Migration, the Committee of Citizenship (which has three members) shall take a decision within thirty days. If necessary, this committee may invite the requesting party to submit additional written or oral evidence in support of his or her application. The Committee takes decisions by consensus or majority vote, if need be. The decision of the Committee of Citizenship, with full reasoning, is published as a separate definition signed by the Chairman of the Committee. However, the work of this Committee has recently been at the subject of media attention for alleged irregularities, thus raising questions about the transparency and functionality of these institutional mechanisms that are essential in the process of implementation of the law on citizenship.⁶²

⁵⁹ Initially it was the Office of Citizenship of Kosovo, which became functional on 29 April 2009, which managed the process of acquiring and loss of citizenship. However, as a result of restructuring of the MIA in 2010, it is the Division on Citizenship, within the Department of Citizenship, Asylum and Migration (MIA), that deals with citizenship-related issues. See Ministry of Internal Affairs, *Administrative Instruction No. 16/2010*.

⁶⁰ See Ministry of Internal Affairs, *Administrative Instruction, No. 06/2009*.

⁶¹ Ministry of Internal Affairs, *Administrative Instruction No 17/2009 on Procedures for Acquiring of Citizenship of Kosovo*; Ministry of Internal Affairs, *Administrative Instruction No 04/2009 on Deprivation Procedure of Citizenship of Kosovo with Release*.

⁶² According to the local media, the Kosovo Police Special Anti-Corruption Department has begun an investigation following reports that the work of the Committee of Citizenship has been characterised by irregularities and violation of the law. As a result, the Ministry of Interior has dismissed the members of the Committee of Citizenship, including the chairman, who at the same time used to be the head of the Department of Citizenship, Asylum and Migration. Moreover, the new members of the Committee have reviewed some of the decisions and even revoked them on the grounds that they were taken in violation of the current law and legal procedures. Jeton Llapashtica, "MPB revokon vendimet e veta" [MIA revokes its decisions], *Zëri*, 6 October 2012. <http://www.zeri.info/artikulli/1/1/58874/mpb-revokon-vendimet-e-veta/>

In cases where the requesting party is not satisfied with the decision, he or she can appeal the decision to the Appeal Committee of Citizenship within thirty days from the date of publication of the decision. Then, after reviewing all the facts, the Appeal Committee is obliged to make a decision within thirty days. This decision of the Appeal Committee is final within the context of the administrative procedure, but it can be subject to court review in compliance with the laws in force. Fees are determined by administrative instructions 04/2009 and 17/2009 and are relatively low (150 Euro for adults and 50 Euro for minors, both for acquisition of citizenship through naturalisation and release from citizenship).

In order to create an integrated Central Civil Status Register, a Law on Civil Status⁶³ was adopted in 2011 as well as a number of administrative instructions, issued by the MIA.⁶⁴ This register shall contain details of all the Kosovar citizens, and according to the law, it is kept both by the MIA and the Municipal Offices of Civil Status. This register is unique and is kept both in written form and electronically. Apart from the basic register which contains data related to births, marriages and deaths, the MIA also keeps special evidence of those individuals who acquire citizenship by naturalisation and on the basis of international agreements, as well as evidence of the persons who lose citizenship by release, revocation or on the bases of international agreements. The competent authorities which keep the register of citizens may transmit the data also to other people who according to the law are authorised to have access to it. Data can also be transmitted upon the consent or request of the person in question.

The Ministry of Internal Affairs of Kosovo can also communicate to other state organs information about the citizenship status of registered citizens of Kosovo. This information will be transferred provided that it will be used only by an organ of another state competent for citizenship issues, it is in the favour of the person whose data is being requested, and that the requesting organ guarantees the protection of the citizenship status for foreign citizens as well.

4 Current political debates

In the case of Kosovo citizenship is meant to serve as a link between a war-torn community of people and a new polity based on principles of equality and all-inclusiveness, or, as a tool of political integration within the new political entity, which aims at replacing divisions of ethnicity, religion or social status (Krasniqi 2010a: 1). Therefore, having in mind Kosovo's legal and political conundrum, various aspects of citizenship became part of the political debates initiated in Kosovo following its declaration of independence. In general, debates around citizenship are part of broader debates related to state-building and the consolidation of Kosovo statehood. The most pressing issue for the moment, which causes many citizenship-related problems and debates, is the issue of the consolidation of the body of citizens. The issue is both political and technical and these aspects are interconnected. The political aspect of this problem stems from the very fact that Kosovo as a state and its citizenship are still not accepted by a number of Kosovar residents, especially the Serb community.⁶⁵ In turn, this poses serious problems in relation to the process of the practical

⁶³ Law no. 04/1-003 on Civil Status, *Official Gazette of the Republic of Kosova, No.6, Pristina, 22 July 2011.*

⁶⁴ See *Administrative Instruction, No. 16/2009 - MIA on the Registry of Citizenship of Kosovo; Administrative Instruction No. 18/2012 – MIA on Central Civil Status Registry; Administrative Instruction No. 19/2012 – MIA on Principal Registries of Civil Status and Special Registries; Administrative Instruction No.17/2012- MIA on Civil Status Documents.*

⁶⁵ The number of Kosovar Serbs who applied for and obtained Kosovar documents is increasing. According to the data provided by the Ministry of Internal Affairs of Kosovo, as of August 2012, some 50,000 Serbs have obtained Kosovar documents (mostly IDs, but also passports). See 'Rreth 50 mijë serbë e pranojnë Kosovën'

consolidation of the body of citizens in the new country despite the fact that the new citizenship legislation put in force following the declaration of independence of Kosovo is consolidated and precise.

The technical aspect of the problem is mostly related to the lack of a consolidated database that includes all citizens and persons living in Kosovo. The factors that brought about this situation are manifold. To start with, the last general census in Kosovo was organised in 1981. In 1991, Serbia organised a census in Kosovo but it was boycotted by ethnic Albanians in protest against Serbia's revocation of Kosovo's autonomy. Additionally, voluntary and forced movements of people throughout 1990s, massive deportation of people during 1999 and the migratory path of many post-war refugees went almost entirely unrecorded. UNMIK's initiative to register people in 2000 was a poor substitute for a census, as it allowed individuals to decide whether to present themselves at the registration centres. Many individuals, mainly those from the ranks of the Serb minority, were not registered and today they do not appear in the registers of the Kosovar institutions.⁶⁶ Subsequently, data related to the cases of births, marriages and deaths of Serbs living in those areas that are controlled by ethnic Serb parallel structures supported and financed by Belgrade, was not accessible either for the UNMIK or for Kosovar institutions. In addition, many registration books were either destroyed or confiscated during the war by the Serb forces, thus leaving municipal administrations sometimes even without back-ups. In 2011 Kosovo institutions organised a registration of population, property, and businesses, which was boycotted by Serbs in northern Kosovo as well as other Serbs living in the rest of Kosovo.⁶⁷ Therefore, also the final results have been published recently,⁶⁸ they are incomplete without the data for northern Kosovo.

The above-mentioned problems surrounding civil registration and consolidation of citizens' register are intrinsically related to what Linz and Stephan refer to as 'stateness' problem, which is the existence of a significant proportion of the population that does not accept the boundaries of the territorial state and questions its legitimacy (2001 [1992]: 200). In this case, the boycott by Serbs of the civil registration organised by UNMIK in 2000 and most importantly, the boycott of Kosovar institutions by residents in some Serb-inhabited areas have complicated the government's attempts to consolidate an autonomous Kosovar citizenship. Nonetheless, the participation of Serb residents of Kosovo in the first post-independence municipal elections in Kosovo on 15 November 2009 and a by-election in June

[Some 50 thousand Serbs recognise Kosovo]', *Gazeta Express*, 10 August 2012.

<http://www.gazetaexpress.com/index.php/artikuji/rubrika/C19/C6/?cid=1,15,88753>

⁶⁶ According to the EULEX team providing mentoring, monitoring and advice to MIA's Civil Registration Unit, the number of unregistered people in Kosovo might go up to 100,000. Most of those people are registered only in the registration books of Kosovar residents kept in Serbia. Personal interview in EULEX Office within the Ministry of Internal Affairs of Kosovo. Pristina, 28 October 2009.

⁶⁷ Kosovo Serbs were called by Serbia to boycott the census on the grounds that without the prior return of all the refugees there won't be conditions for a proper census. Faced with this situation, the Kosovo institutions decided to leave northern Kosovo regions out of the census. While Serbs from the northern part of Kosovo boycotted the Kosovo census, they were left out of the Serb census as well. As a result, they collected some 21,000 signatures on a petition asking the Russian Federation to grant them Russian citizenship, a demand played down by Russia. See Gezim Krasniqi, "Whose citizens? Kosovan Serbs between Kosovo, Serbia and Russia", *European Union Democracy Observatory on Citizenship*, 9 December 2011. http://eudo-citizenship.eu/news/citizenship-news/533-whose-citizens-kosovan-serbs-between-kosovo-serbia-and-russia#.UIE-6MXA_h4

⁶⁸ According to the final results, out of a total number of 1,739,825 people living in Kosovo, Albanians make up 92.9% (1,616,869), Serbs 1.46% (25,532), Turks 1% (18,738) Bosniaks 1.58 (27,533) Roma 0.5% (8,824) Ashkali 0.8% (15,436) Egyptians 0.6% (11,524) Gorans 0.69% (10,265) and so on. Kosovo Agency of Statistics, *Kosovo Population and Housing Census 2011 Final Results*, Pristina, 2012. http://esk.rks.gov.net/rekos2011/repository/docs/Final%20Results_ENG.pdf

2010 resulted in the creation of four new Serb-majority municipalities. Serb parties won elections in all the four new municipalities and lost in one (the enhanced municipality of Novo Brdo/Novobërdë). Likewise, Serb parties in Kosovo contested the first national elections in post-independence Kosovo in 2010, and today are represented in the Parliament and the Government of Kosovo. Certainly, this has been a major step toward integration of this community into the political system of Kosovo.

While Serbs south of Mitrovica have made a significant step towards the integration into the Kosovar society and political system, Serbs north of Mitrovica, on the other hand, have cut almost all the ties that bound them to the institutions in Pristina and have strengthened their connections with Serbia. Although in July 2012 Kosovo opened an Administrative Office in North Mitrovica,⁶⁹ which is intended to improve living conditions of citizens in the area, tensions persist in that part of the country as local Serbs refuse to dismantle barricades that were erected in opposition to the presence of Kosovo police and customs officers in the border points with Serbia. Moreover, Serbs from northern Kosovo organised a referendum where the overwhelming majority voted to reject contact with independent Kosovo's institutions, with Serbia, Kosovo and the international community dismissing the vote as irrelevant.

The situation in northern Kosovo and Serbia's (illegal) institutional presence in the territory of Kosovo has resulted in a situation of (informal) overlapping sovereignties and jurisdictions (Krasniqi 2012: 361). The citizenship conundrum in Kosovo as well as the one in northern Kosovo largely depends on the relations between Kosovo and Serbia. Indeed, both countries have engaged in an EU-facilitated technical dialogue following the advisory opinion of the International Court of Justice (ICJ)⁷⁰ on the legality of Kosovo's declaration of independence and the adoption of the UN Resolution 64/298. This led to the conclusion of several bilateral agreements on licence plates, identity cards (which enables Kosovans to travel through Serbia with Kosovo ID cards), university diplomas, Kosovo customs' stamps, border crossings, civil registers⁷¹ and Kosovo's representation in regional meetings.⁷² It is expected that the dialogue will continue at a higher (political) level and eventually lead to some sort of agreement on the normalisation of relations between the two countries.

Another related problem is the issue of statehood and the format of the Kosovar state. Based on the content of the constitution and basic statehood laws, as well as the character of its symbols and the institutional design, Kosovo is at the same time a civic state (with elements of individual liberalism and republicanism) of all the individual citizens (that are equal before the law) and a multi-ethnic state of different communities (Albanian, Serb, Roma, Turkish, Bosniak and Goran), with no clearly defined single nation, regardless of the fact that Albanians are overwhelmingly the majority of the population. This also raises serious question in terms of defining who is the, what Van Dyke calls 'right-and-duty-bearing unit' (1995: 31) – the individual or community? In fact, debates around Kosovo's state-building process and statehood have been characterised by an underlying tension between the

⁶⁹ Fatmir Aliu, "Pristina to Open Office in Serb-run North", *Balkan Insight*, 25 May 2012.

<http://www.balkaninsight.com/en/article/pristina-opens-its-offices-in-the-serb-run-north>

⁷⁰ ICJ, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, *Advisory Opinion*, 22 July 2010.

⁷¹ This agreement foresees the return of certified copies of some 12063 register books from Serbia to Kosovo. Serbian authorities have already handed over the first copies of these registers to the Kosovo authorities. This will certainly facilitate the completion of the Central Civil Status Register of Kosovo, which, according to the officials from the Kosovo Civil Registration Agency, should be done by the end of 2012. "Camaj: Shumë shpejt do të kompletohet gjendja civile", *Bota Sot*, 6 October 2012. <http://www.botasot.info/lajme/190114/camaj-shume-shpejt-do-te-kompletohet-gjendja-civile/>

⁷² Tim Judah, "Belgrade moves closer to Brussels", *The Economist*, 2 March 2012. <http://www.economist.com/blogs/easternapproaches/2012/03/serbias-eu-bid>

ethno-cultural and political aspects of nationhood in the on-going state-building process in Kosovo, as well as the statelessness problem and contested statehood on citizenship policies (Krasniqi 2012a: 2).

A major issue related to citizenship that continues to be debated is the issue of non-Albanian refugees who left Kosovo after the war. In the absence of reliable data, numbers have been used and misused for political purposes. The fact that the exact number of people living in Kosovo in 1998 (before the war) is unknown complicates any attempt to calculate the number of people who left Kosovo in 1999. Notwithstanding the numbers, there are three categories of refugees from Kosovo: Serb refugees, the Roma, Ashkali and Egyptian (RAE) group, and 'double refugees' (Serb refugees from Croatia and Bosnia who were settled in Kosovo before 1998 and who might have left Kosovo again in 1999). Whereas the Serbian Government claims that the number of the Serbs who left Kosovo is around 250,000⁷³ and calls for their collective return, the counterpart in Kosovo has dismissed these claims as exaggerated and has established a strategy for gradual return and integration of refugees. The Kosovar Government has established a special ministry – the Ministry for Returns and Communities - in 2005 in order to facilitate the return and reintegration of these communities. This ministry, which is headed by a person from the Serb community, in cooperation with various local and international institutions and agencies, so far has created conditions and enabled return of some 18,900 non-Albanian refugees.⁷⁴

No exact numbers are available for the RAE refugees either. Most of them live as refugees in Macedonia, Montenegro and Serbia, or in Western countries. Recently the Kosovar government had adopted the Strategy for Integration of Roma, Ashkali and Egyptian Communities in the Republic of Kosovo 2009-2015⁷⁵, in order to improve the position of those already living in Kosovo and to create conditions for the return of the refugees. In fact, the Kosovar government has adopted the Law on Repatriation⁷⁶ and has signed agreements for repatriation with 15 EU and regional countries, including Germany, France, Switzerland, Austria, Sweden etc. In 2009 Germany initiated the return of some 14,000 Kosovar refugees, the absolute majority of whom are from the ranks of RAE communities,⁷⁷ amid protests from human rights groups. In fact, most people (both the majority and the minorities) as well as media and experts in Kosovo have expressed reservations about the repatriation plans since the return of people from abroad will create further difficulties in relation to an already challenging economic situation.⁷⁸ In addition, UNHCR has expressed concerns that many RAE voluntary or forced returnees are at risk of statelessness.⁷⁹ However, as a result of the existence of loopholes in the readmission procedures and Kosovo's ambiguous international

⁷³ UNHCR estimated that the total number of non-Albanian refugees that left Kosovo in 1999 is 200,000. A report from European Stability Initiative estimates that the number of Serbs who left Kosovo is around 65,000. See ESI 2004.

⁷⁴ The number of refugees who have expressed the will to return in Kosovo as part of the return and reintegration strategy of the Kosovar Ministry for Return and Communities increased after the independence of Kosovo. Only in the first 9 months of the year 2009, some 942 families (around 3845 inhabitants) have expressed their will to return. See: Personal interview in the Ministry of Return and Communities. Fushë Kosovë, 13 October 2009.

⁷⁵ Available at: <http://www.web-kfos.org/home/images/stories//rae-eng.pdf>

⁷⁶ Law No.03/L –208 On Readmission, *Official Gazette of the Republic of Kosova / Pristina: Year V / No. 74 / 20 July 2010.*

⁷⁷ See 'Gjermania kthen 14 000 kosovarë [Germany returns 14,000 Kosovars]', *Radio Free Europe*, 14 October 2009. www.evropaelire.org.

⁷⁸ For a detailed analysis of the RAE refugees, their living conditions in Kosovo and repatriation plans see Tmava & Beha 2009.

⁷⁹ In the period from 2006 to 2009, under the UNHCR project for RAE civil registration campaign, some 8,118 RAE individuals were registered, whereas some 1,932 still are considered to be at risk of statelessness. See UNHCR 2009.

status, Germany and other European states that recognise Kosovo as an independent state are returning Kosovo Roma asylum seekers to Serbia, instead of Kosovo.⁸⁰

The third category of refugees, whose situation is less debated, is the category of the doubly displaced people. This is the category of Serb refugees from Bosnia and Croatia who were initially settled in Kosovo and who were then caught in the cross-fire during the war in Kosovo. The number of these refugees that were settled in Kosovo prior to 1998 is estimated to be around 14,000 (UNHCR, 2000). Of these, some 200-600 still live in Kosovo (UNHCR 2000: 2009). Based on Ahtisaari's package and the transitional provisions of the Kosovar Law on Citizenship, these Serb refugees from Croatia and Bosnia in principle are entitled to be considered Kosovar citizens. However, MIA's Administrative Regulation 05/2009 sets the criterion of five years of permanent residence in Kosovo before January 1998 plus possession of FRY citizenship to become a Kosovar citizen. Many refugees who came in Kosovo in 1994 or 1995 will fall short of the five years criterion of permanent residence. It is too early to predict how those cases will be handled.

The third and most debated issue with regard to citizenship in Kosovo is the one related to visa liberalisation and free movement. Despite the fact that Kosovo is part of Europe and hosts the biggest EU mission abroad (EULEX), it remains one of the most isolated countries on earth.⁸¹ Hopes that Kosovo would profit more from a heavy EU presence perished in July 2009 when the European Commission proposed the introduction of new regulations on visas for Western Balkan countries.⁸² This proposal, which was endorsed by the Council of the European Union on 30 November 2009,⁸³ allowed citizens of Macedonia, Montenegro and Serbia, and a year later those of Bosnia Herzegovina and Albania to travel to all countries of the Schengen area without visas. Kosovo as a country was left outside the visa liberalisation process for the Western Balkan countries. At least, the Commission's proposal to add Kosovo to the Schengen 'Black List', as a territory on whose status the EU as whole cannot yet agree, next to the Palestinian Authority and Taiwan, was seen by some as a positive sign that EU treats Kosovo separately from Serbia. Moreover, according to the Commission's proposal and the EU decision, residents of Kosovo holding a Serbian passport issued by the Coordination Directorate in Belgrade will still need a visa to enter Schengen zone. This includes both Serbs and Albanians from Kosovo who have Serbian passports.⁸⁴

Indeed, the differentiated treatment that Kosovo gets from the EU with regard to the visa liberalisation stems from a broader and deeper political problem related to EU internal divergences and lack of consensus when it comes to its relation with Kosovo. The EU has officially adopted a 'status neutral' position toward Kosovo based on the UN Resolution 1244 (which means that the EU considers that Kosovo's status is not settled). Such treatment

⁸⁰ According to human right activists in Serbia, such decisions to return Roma to Serbia, and not to their country of origin (Kosovo) violate the rights that protect refugees and internally displaced people. Marija Ristic, "Western Europe Sends Kosovo Roma to Serbia", *Balkan Insight*, 20 July 2012.

<http://www.balkaninsight.com/en/article/readmission-loop-over-roma-idps-causes-controversy>

⁸¹ According to an ESI working paper, holders of the Kosovar passports can travel to only 5 countries visa free: Albania, Montenegro and Macedonia, Turkey, and Haiti. Even citizens of Afghanistan – the lowest ranked country in the 2008 global Henley & Partners 'Visa Restriction Index' – can travel to more places without a visa (22). See: ESI 2009.

⁸² See: Commission of the European Communities. *Proposal for a Council Regulation 2009/0104 (CNS)*. Brussels, 15 July 2009. www.eur-lex.europa.eu.

⁸³ See IP/09/1852. Brussels, 30 November 2009.

⁸⁴ From August 2008 until July 2009 some 7,141 Kosovars obtained Serb biometric passports. However, in July 2009, following the European Commission's proposal, Serbia stopped issuing Serb passports for Kosovars and initiated the establishment of a specific Coordination Directorate in Belgrade that would issue passport for Kosovar residents. Accordingly, any Kosovar who wants to get a Serb passport must travel to Belgrade, which is not easy at all. See ESI 2009.

made it impossible for Kosovo to have contractual relations with the EU, something that is a *sine qua non* for Kosovo's European perspective. However, things started to progress by the end of 2011, when the EU upgraded its presence in Kosovo through the creation of the EU Office, which was created by unifying the existing European Commission Liaison Office and the Office of the EU Special Representative (EUSR), each of which had a different representative.⁸⁵ Later on, following the agreement⁸⁶ between Serbia and Kosovo on regional representation, the EU managed to build up consensus among its members in allowing Kosovo to progress towards the establishment of contractual relations with the EU. Kosovo will thus follow the same European course as all others in the Western Balkans, in line with its European perspective. In this light, the Commission proposed to launch a feasibility study for a Stabilisation and Association Agreement between Kosovo and the EU, a proposal endorsed by the Council of the European Union on 28 February 2012.⁸⁷ The EU formally launched the "Feasibility Study" during a visit of the Enlargement Commissioner Stephan Füle in Kosovo at the end of March 2012, which corresponded with the launch of the Kosovo's National Council for European Integrations.⁸⁸ In October 2012, the European Commission confirmed that, based on the findings in the study, there is no legal obstacle to conclude a Stabilisation and Association Agreement between the EU and Kosovo and that Kosovo is largely ready to open negotiations for a Stabilisation and Association Agreement.⁸⁹ Without any doubt, this was a milestone in Kosovo's road towards the EU.

As regards the issue of visas, too, Kosovo moved closer to an eventual visa liberalisation with the EU following, first, the launch of the Structured Dialogue on the Rule of Law with the EU on 30 May 2012 in Brussels, and the handing over to the Kosovo Government of the roadmap for visa liberalisation by the European Commissioner for Home Affairs in June 2012.⁹⁰ Although there is no set date when Kosovars can travel to the Schengen area visa-free, the roadmap to visa liberalisation is a major step forward as it sets out reforms that the Kosovo government will need to implement to create a secure environment for visa-free travel. In the context of reforms and conditions, as stated in the Feasibility Study, although Kosovo has started issuing biometric passports and adopted important laws such as the one on readmission and continues to cooperate on readmission issues with EU Member States, it needs to fully implement its law on readmission and ensure the reintegration of the returned persons. However, due to the current crisis within the EU and recent demands by some countries to reintroduce⁹¹ visas for the other Balkan countries as

⁸⁵ Muhamet Brajshori and Ivana Jovanovic, "EU upgrades presence in Kosovo, appoints new representative", *SETimes*, 23 December 2011.

http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2011/12/23/feature-02

⁸⁶ The agreement will allow Kosovo to participate and sign new agreements on its own account and to speak for itself at all regional meetings (before such agreements have been signed by UNMIK on behalf of Kosovo). Kosovo* will be the only denomination to be used and the footnote to be applied to the asterisk will read: "This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence". The text of the agreement is available at:

<http://www.tanjug.rs/news/33920/text-of-kosovos-regional-representation-agreement.htm>

⁸⁷ Council of The European Union, *Council conclusions on Enlargement and the Stabilisation and Association Process*. 3150th General Affairs Council meeting, Brussels, 28 February 2012.

⁸⁸ Fatmir Aliu, "EU Launches Kosovo Feasibility Study", *Balkan Insight*, 27 March 2012.

<http://www.balkaninsight.com/en/article/eu-launches-feasibility-study-with-kosovo>

⁸⁹ European Commission, *Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo** (COM(2012) 602 final). Brussels, 10 October 2012.

⁹⁰ European Commission, Press Release: *Commission delivers visa roadmap to Kosovo government*. Brussels, 14 June 2012. http://europa.eu/rapid/press-release_IP-12-605_en.htm

⁹¹ Benjamin Fox, "Germany and France demand reintroduction of Balkan visas", *EU Observer*, 15 October 2012. <http://euobserver.com/justice/117869>.

a punitive measure to combat a spike in asylum claims from the region, Kosovo citizens might have to wait longer before they can move freely to the EU.

Thus, with Macedonia, Serbia, Montenegro, Albania and Bosnia Herzegovina already on the Schengen 'white list' and with Kosovo Serbs finding ways to obtain a recognised Serb passport (by being registered as residents in Serbia proper), Kosovan Albanians remain the only ones in the Western Balkans to wander around and wait for days and weeks in front of the foreign embassies in Pristina or in the neighbouring countries to get a visa. Consequently, this has pushed people to look for other options, such as getting Serbian⁹² or Albanian passports⁹³ (in legal or illegal ways) so that they can travel visa-free to the EU. Therefore, eventual visa liberalisation for Kosovo citizens would create not only great free movement opportunities for Kosovans, but by adding value to the Kosovo passport, would help a great deal to constitute the Kosovan citizenship regime as a whole.

Conclusion

Without any doubt, the Kosovar citizenship regime is a regime still in the making. As a 'new born' state, Kosovo is still in the process of determination of the citizenship and its body of citizens. Though the legal infrastructure that constitutes the cornerstone of the citizenship regime has been already put in place, implementation of the law and secondary legislation will take much more time and effort. By omitting any principle of ethnic preference, the new legislation in Kosovo affirms democratic statehood and liberal principles of citizenship as opposed to the ethnocentric state building. The main factor that contributed to such development is the involvement of international institutions and actors in the process of definition of Kosovo's final status and its core legislation. By defining Kosovo as 'a state of free citizens' and its society as 'a multi-ethnic society' the Kosovar Constitution sets the basis for a civic state. The formative character of the state of Kosovo becomes visible through the constitution, state symbols and anthem which represent a par excellence example of de-ethnicisation of citizenship in a country that, above all, should be looked at as an attempt to found a new civic state based on a covenant (constitution). In terms of the initial definition of citizenship, Kosovo model comes close to the 'new state model'.

Citizenship was considered of paramount importance during the pre-independence negotiation process and even more so at the moment of the declaration of independence. The fact that the new citizenship law was adopted only three days after the declaration of independence and before the new constitution illustrates this fact. Since the aim of the new law was to create an all-inclusive citizenship regime, it thoroughly affirmed the principle of territory in defining initial citizenship. In those cases when the principle of origin is affirmed, it omits reference to ethnicity. Likewise, it provides for gender equality and allows dual and multiple citizenship. The latter measure is taken in compliance with the wide ranging autonomy extended to the minorities living in Kosovo, in particular the Serb minority, and with attempts to integrate the latter in the political and legal framework of Kosovo. When looked at from the perspective of modern international standards and norms related to citizenship, certainly the Kosovar citizenship regime meets most of the democratic criteria used to define citizenship.

⁹² This has led to an increase in the number of Albanians from Kosovo who pay large amounts of money to people from Serbia in order to get the necessary documents for a Serbian passport that would enable them to travel visa-free to the EU. "Çdo ditë nga 150 shqiptarë të Kosovës kërkojnë dokumente serbe" [Some 150 Kosovo Albanians apply for Serbian documents daily], *KOHAnet*. 24 January 2011. <http://www.koha.net/index.php?cid=1,24,47482>

⁹³ For more on that see Krasniqi (2010).

As regards the issue of amendments in the law on citizenship, they have enhanced the quality of law when it comes to the issue of stateless people and commitment to reduce statelessness. On the other hand, as a result of the change of residence criteria (from five to ten years) for regular naturalisation, the law has certainly become more restrictive. Nonetheless, there is a need for harmonisation of the criteria for acquisition and loss of citizenship as well as the procedures in the lights of the new amendments to the law on citizenship, as well as the adoption of other related laws. Last but not least, the Kosovo institutions should undertake all the necessary steps to increase transparency and efficacy in dealing with applications for naturalisation or release of citizenship.

Notwithstanding the consolidation of democratic institutions in Kosovo, which resulted in the end of “supervised independence”, as well as Kosovo institutions’ commitment to provide for democratic and inclusive citizenship, the issue is not being resolved without controversy. Kosovo’s attempt to establish statehood and an autonomous citizenship are being seriously challenged both internally and externally. Internally, Kosovo faces stateness-related problems, as a considerable number of its residents, namely the majority of the Serb community, question both the state borders and its constitutional and legal order. Internationally, Kosovo’s statehood and sovereignty is questioned by a number of states, including Serbia, Russia, Spain, and Cyprus. The challenges related to the partial international subjectivity of Kosovo is depriving the new country of membership in major international organisations, such as the United Nations, the Council of Europe, and the Organisation for Security and Cooperation in Europe. Consequently, Kosovo cannot become a party to many essential international documents, treaties and conventions related to human rights and citizenship. Hence, though Kosovo has unilaterally embraced most of the international human rights and citizenship-related conventions and documents and has tried to comply with those standards while erecting its core statehood legislation, implementation of the former risks remaining unsupervised by the competent specialised international organisations, bodies and agencies.

In sum, while it is unquestionable that Kosovo has set up the basis of a modern citizenship regime, the process of instituting and consolidating the Kosovar autonomous citizenship regime will largely depend on the overall political and legal developments surrounding Kosovo’s international status. The most pressing issue for the moment remains political and legal integration of the Serb community in northern Kosovo as well as the establishment of good neighbourly relations with Serbia. In this context, the role of the European Union remains crucial in that it is obvious that both Serbia and Kosovo have adopted a clear EU integration agenda. First and foremost, it is essential that the EU has a clear position toward Kosovo as a state and its new citizenship regime in order for the new Kosovar institutions to gain more legitimacy, above all, in the eyes of Kosovo citizens, as well as internationally.

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