INSTITUTIONAL STRENGTHENING OF COMMUNITIES IN KOSOVO AFTER THE DECLARATION OF INDEPENDENCE

Sevdie Kadriu

European University of Tirana, Faculty of Law - Public Law, Albania

Abstract

After the declaration of its Independence in 2008, Kosovo was involved in an important transition process regarding the strengthening of independence and state sovereignty, regarding the establishment of democratic state institutions as a precondition to ensure a stable and multi-ethnic society. One of the essential promises for such a goal to be achieved was and remains the involvement of minorities regardless of the ethnical group they belong to, within the constitutional and legal system o the country as well as their integration in government structures, either local or central.

According to the official data published in 2014 by the Kosovo Statistics Agency, the overall number of people living in Kosovo is 1.815.606 inhabitants.[1] The vast majority of this overall number is composed of Albanians with approximately 90%, whereas the other art, is composed mainly by Serbs with 5%, who mainly reside in Serb enclaves, as well as other ethnical groups composing 5% of the total number.

It is worth mentioning that the majority of representatives of the Serb community lives in the north part of Kosovo, including the municipalities of Leposaviq, Zveçan and North Mitrovica, or is focused in mono-ethnical enclaves within the territory of Kosovo, through various municipalities.

The legal framework related to the protection of the rights of all ethnical groups living in Kosovo is strongly supported by a wide series of central level institutions that carry the primary responsibility for the drafting and implementation of these legal acts serving for the protection and advancing of the rights of communities. In this sense, after the establishment of the Provisional Institutions of Self-Government in Kosovo, in 2002 there was established the counseling office for good governance, human rights, equal possibilities and gender issues, which has functioned within the Office of the Prime Minister and aimed to monitor and provide advise for ministries of that scope, regarding the protection of human rights, encouraging equal possibilities, related to gender issues as well as the advancing of good governance.

Consequently, in 2007, within each Ministry of the Government of Kosovo there are established special units for human rights, that their role has not exclusively been only the monitoring of the compliance of policies, legislation and activities lead by these institutions at international standards in the field of human rights protection, byt also the supervision with regard to the rate of representation of non-majority communities in Kosovo politics and institutional life.

Key words: *communities, rights, representation, advancing, institutions*

INTRODUCTION

In comparison to other countries, the term “community” in the Republic of Kosovo is used to tell two different issues: first, by the term community it is understood a group of people with common ethnic, linguistic, cultural, religious, historic, etc. features, whereas the second, in the legal aspect this term is attributed to minorities or ethnic groups residing in Kosovo. So, the Kosovo legislation defines the term community as: national, ethnic, cultural, linguistic or religious groups traditionally present in the Republic of Kosovo that are not majority. Such groups are the Serbian, Turkish, Bosnian, Roma, Egyptian, Goran, Montenegrin, Croatian communities and other communities. The members of the majority community in the Republic of Kosovo, who as a whole are not the majority in a certain

[1] Kosovo Statistics Agency, Assessment of the Population of Kosovo 2013, September 2014

municipalities also are entitled the rights given by the law.[2] This definition does not exclude the possibility that each member belonging to a community has the right to freely choose if they want to be treated as such, and in such cases, there shall not result any damage or discrimination, if they choose to exercise their rights related to community or not[3].

In this sense, all citizens living in the Republic of Kosovo are equally recognized the fundamental human rights, such as: freedom of thought, of expression, media, gathering in various associations, belief and exercising their religion, general protection against discrimination, the right to life and others. In this group, also the communities that constitute the minority population of Kosovo have the right to freely and undisturbed cultivate and develop their culture, by preserving their identity through the advancing of essential elements related to identity, such as: religion, language, tradition and cultural heritage.

These fundamental rights, including also additional rights of communities and their members, derive from a series of approved legal acts, either in the primary or secondary level, starting from the Constitution of the Republic of Kosovo itself, which in a special chapter comprehensively treats the rights of communities and their members, moving on to the Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo, which together, constitute the legislative framework on the rights of communities.

All the citizens of Kosovo are protected by law against discrimination, either direct or indirect on the grounds of ethnic, cultural, linguistic or religious identity. In this aspect, the Republic of Kosovo guarantees that all the communities are equally entitled to their fundamental rights, by undertaking proper measures for the improvement of situations when these persons may be excluded from the equal exercising of their rights, such as: measures for the promotion of complete equality in all areas of economic, social, political and cultural life including also education, media, health and other public services.[4]

One of the key elements in promotion and protection of the rights of communities in Kosovo is related o the level of their representation in completion of public services, as a necessary condition in this direction based on the general principles of non-discrimination, equal possibilities and equal representation. The communities and their members have the right of proper and proportional representation in the civil service as well as in central and local public administration authorities.[5] Hereinafter, at least 10% of the positions in the central government level should be filled with a staff from non-majority communities living in Kosovo, and that meet the criteria for employment, whereas, in local level authorities the representation of communities should proportionally reflect the demographic composition in the Municipality.[6] Furthermore, Regulation No. 04/2010 on the Procedures of Proper and Proportional Representation of Communities that are non-majority in the Civil Service of Kosovo, which is a derivation of the Law on Civil Service in the Republic of Kosovo, in a more detailed way determines the procedures for the representation of communities in central and local level institutions.

In this direction, beside the overall proportion for the positions reserved for non-majority communities in central level, at least 10% of the positions within the functional categories are reserved for these communities by enabling each institution to determine which of at least two out of four functional categories within the standards should reserve this 10% of the positions for non-majority communities in Kosovo.

[2] Law No. 04/L-020 on amending and supplementing the Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo, article 1, paragraph 1.4
[3] Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo, article 1, paragraph 1.5
[4] Law Nr. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo, article 3, paragraph 3.3
[5] Law No. 03/L-149 on Civil Service of Kosovo, article 5, paragraph 5.1
[6] Same, article 11

Representation of communities in the local government level

When we talk about the participation of minority communities living in the Republic of Kosovo, in the authorities of local government, it can easily be pointed out that the level of their representation in these institutions is impacted a lot by the level of political changes and the level of legislative changes that occurred in Kosovo after the declaration of independence. Thus, in order to advance the participation of communities and simultaneously in order to advance their rights, by means of legislative amendments in particular in the field of local self-government, that happened in the same year when Kosovo declared its independence, there are established several authorities in municipal level, such as: municipal committee for communities, then by the Law on Police[7] there is foreseen the municipal council for security in the community, where, among others there is requested the inclusion of all communities that live in the territory of the respective municipality, even though, according to the studies made, it results that several of the municipalities of Kosovo in this direction with regard to the just representation leaves room for improvement.

The approval of the Law on Local Self-Government in Kosovo[8], also, in the year 2008, created the possibility to establish two additional mechanisms in function of the strengthening of the role of communities in state institutions in the Republic of Kosovo. Hereinafter, by means of this law, there are determined two new positions in the local government level: the position of the deputy president of the municipal assembly for communities and that of the vice-mayor of the municipality for communities. According to the legal provisions it is foreseen that in those municipalities where the non-majority constitutes at least 10% of the overall population of the municipality, which, according to several organizations and international institutions present in Kosovo, this rate of 10% is considered quite high in order to secure the strengthening of effective participation of non-majority communities living in Kosovo.

Another mechanism that existed before the year 2008, and which was not mandatory to be established, such as the case with the above-noted bodies, are also the municipal offices for communities which, the Law on Local Self-Government of Kosovo, leaves to the discretion of municipalities to decide on the establishment of such offices or not by means of their statutes. Also, another position, that of the municipal officer for return who was included within the municipalities even before the approval of the Law on Local Self-Government, is in general preserves as a position, but only with a small number of municipalities this position is clearly specified by means of the municipal statutes.

The effective representation of these non-majority communities that live in the Republic of Kosovo in the political and institutional life is assessed as an essential element for the construction of a democratic and multiethnic society, which constitutes the establishment of suitable conditions for integration in state institutions of Kosovo. The right of representation, as it is well known, is related to internationally recognized standards, as well as with the fundamental rights, such as: complete equality in preservation and development of identity and culture in general of the national minorities.[9] Also, the right of representation of non-majority communities clearly foresees another very important document such as the International Covenant on Civil and Political Rights[10] according to which, non-majority communities have the right and possibility to take part in leading public works, directly or through the legally and democratically elected representatives. Also, another very important document related closely to the issue of representation of non-majority communities is the Declaration of the United Nations on the Right of Persons belonging to ethnical, religious or language minorities, which recognizes the right of these communities for an effective participation in the public life in the country.[11]

[7] Law No. 03/L-035 on Police, 15 June 2008
[8] Law No. 03/L-040 on Local Self-Government, 2008
[9] Framework Convention of the Council of Europe for the Protection of National Minorities, article 13
[10] International Covenant on Civil and Political Right, article 25
[11] Declaration of the General Assembly on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

Committee for communities

Initially, this mechanism was established through UNMIK Regulation No. 2007/30 on Self-Government of Municipalities of Kosovo as the permanent body within municipal assemblies in Kosovo. This Committee cooperated with the Committee for Mediations which was also an authority for the revision of issues referred by the committee for communities and after revision, recommended concrete actions for the municipal assembly. In this sense, while by the approval of the new Law on Local Self-Government in Kosovo in the year 2008, whereas by approving the new Law on Local-Self-Government in Kosovo in the year 2008, the committee for mediation was not foreseen as the permanent mechanism within municipal assemblies, the committee for communities along with the committee for budget and finances is the sole permanent authority within the municipal assemblies of Kosovo. According to the current legislation of this field, these committees for communities are entitled, directly, to give recommendations to their municipal assemblies regarding the measures which I consider to be proper and in order to secure the just application of legal provisions really related to the needs of the citizens belonging to non-majority communities. These measures go in the direction of preserving, advancing and free expression of their ethnical, religious, cultural and linguistic identity[12]. According to the legal provisions in power, this committee consists of members of the municipal assembly and representatives of communities, where they really constitute the majority of this committee, and that in fact according to a bylaw [13] issued in advance by UNMIK, the majority community in the municipality should have less than half of the membership of the committee and that the remaining part of members should rightfully and proportionally reflect the number of other non-majority communities in the municipalities of Kosovo.

In fact, in general, the committees for communities within the municipal assemblies remain the main mandatory mechanisms according to the legal requests for representation of non-majority communities in the local government level. Regardless of the fact the municipalities of the Republic of Kosovo make continuous efforts to ensure the representation of all communities living in the territory of their municipality, they do not always achieve satisfactory results, in particular for those municipalities where there are communities law in number, such as: Roma community, Ashkali community and the Egyptian community, which are represented a lot less than the other communities living and working in Kosovo. The reasons for such a misbalance vary, it may be due to the lack of professional tools and skills up to the lack of will for their empowerment and support. It is not too rare that the competencies and responsibilities of this mechanism, be unclear for the members of this mechanism and in several cases before them there are addressed problems that are outside the mandate of the committee, leaving aside the issues that in fact do fall under the domain of revision by this committee and giving corresponding recommendations for the municipal assemblies.

Deputy president of the municipal assembly for communities

Beside the communities committee, the deputy president of the municipal assembly for communities constitutes the second mechanism for participation of non-majority communities in local level state institutions, foreseen also by the Constitution of the Republic of Kosovo approved in April 2008, as well as the Law on Local Self-Government as a derivation of this Constitution. Through this mechanism, there is aimed the promotion of the dialogue between communities and this position serves as a connective bridge to address the problems and issues of citizens on one side, and the municipal councilors on the other side. Thus, the deputy president of the municipal assembly for communities acts as a mediators between the complaints of citizens of non-majority communities towards other acts and decisions issued by the municipal assemblies and that are considered a violation of the community rights.[14] In case the deputy president of the municipal assembly for communities is not satisfied with the method of approach and responses towards the citizens, he has the right to directly file an appeal before the Constitutional Court of Kosovo, in which case he uses this legal remedy whenever he considers it reasonable, against the municipal assembly itself.

[12] Law No. 03/L-040 on Local Self-Government, article 53
[13] Administrative Instruction No. 2003/02 on the work of the Municipal Committee on Communities
[14] Law No. 03/L-040 on Local Self-Government, article 55

In order to be eligible to nominate a deputy president of the municipal assembly for communities based on the legal provisions it is foreseen that the corresponding municipality should have at least 10% inhabitants living in its territory, and that belong to the non-majority community. Regardless of this legal restriction, in case there is no such percentage of inhabitants, the municipalities may still decide freely to nominate a deputy president of the assembly for communities, if such an action is considered necessary for the protection of interests of the non-majority community living in that municipality.

Vice-mayor of the municipality for communities

Another mechanism established also based on the Law on Local Self-Government in Kosovo since 2008 is also the vice-mayor of municipality for communities, where his role is related to the provision of advices and instructions for the mayor of municipality[15] for issues related to the communities that live in the territory of the respective municipality. Based on the applicable legal provisions, and in the event of electing the vice-mayor of the municipality for communities, there should be met the condition, that within this municipality there shall live at least 10% of the non-majority population. However, in this case as well, there is given the possibility to municipalities to decide even if this criterion is not met, if they need to establish this mechanism within the municipality itself that is in the function of better protection of non-majority community interests.

Due to the fact that the Law on local Self-Government has not clearly defined the mandate of the vice-mayor of the municipality, such as the case with the mandate of the deputy president of the municipal assembly for communities, none of the vice-mayors of the municipalities for communities have a unique description of their work duties. However, in spite of the above, taking into consideration the level of functioning of other mechanisms such as: committee for mediation, offices for communities and return or even working groups for return, the position of the vice-mayor of municipality for communities remains the sole mechanism that in fact may guarantee these communities an approach through him, to the highest executive authority in municipality level, respectively to the mayor of municipality, therefore such an approach goes more in favor of the idea that each municipality, regardless if they reach the percentage of inhabitants that belong to the non-majority community of 10%, to establish the position of the vice-mayor of the municipality for communities, in order to be a strong voice and a successful mediator between these citizens and the mayor of municipality.

Municipal Security Council

Another mechanism foreseen by the Law on Police approved also in 2008[16], is also the municipal security council in communities, which in fact does not represent a new mechanism, but the continuation of those security councils that were foreseen also by the UNMIK Regulation no. 2005/54.[17] According to the applicable provisions, the municipal council for security has a mandate to build the trust between the Kosovo Police and the communities living in municipalities of Kosovo, in order to raise awareness in local level and to identify the disturbances and issues together regarding the public safety, as well as to give the necessary recommendations in forms of action plans to address these issues. Regarding the composition of these councils, while the Law on Police states that, all the communities that live in the municipality should be represented, an administrative instruction issued for this purpose by the Ministry of Internal Affairs in cooperation with the Ministry of Local Government Administration[18], goes one step further by requesting that such representation be in a wider scale, including this council: mayor of municipality, commander of the police station, a representative of each religious community in the municipality, one representative of the security force, one representative of the local community for public safety, a representative of the action team for safety in the community, a representative from the sector of civil emergencies in the Municipality, one representative of each ethnic community and five representatives of civil society.

[15] Same, article 61
[16] Law on Police, article 7
[17] UNMIK Regulation No. 2005/54 on the Framework and Managing Principles of the Kosovo Police Service amended and supplemented by Regulation No. 2008/17
[18] Administrative Instruction No. 08/2009 on the Municipal Councils for Safety in the Community

Conclusion

Based on the above, it can be concluded that the current legislative framework in power in Kosovo, has determined very well the grounds for ensuring and guaranteeing the protection of community rights and their effective representation political and institutional life of Kosovo as well as in the general decision-taking processes in particular in the local level. However, a problem in itself is the fact that this legal framework is not being applied property, a problem which Kosovo faces not only in this field, therefore it is insufficient the fact of approving laws and other bylaws, while those do not find sufficient implementation and in this matter, the existing mechanisms noted in this thesis cannot always provide the necessary protection for the communities and do not guarantee sufficient participation of those in the public life.

Based on this, the Government of the Republic of Kosovo should empower, without further ado, the role of representative mechanisms in particular in the level of local government, through the approval and implementation of various legislation and politics in order to secure the representation and participation in decision-taking of these communities in a rate as high as possible. This can be done thanks to a more effective communication between ministries and other central institutions and local level institutions, in the function of increasing the efficiency of their mechanisms, but also in function of the increase of the quality of general services that the municipalities as sole carriers of local government offer to their citizens.

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