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SERBIAN CULTURAL AND RELIGIOUS HERITAGE IN KOSOVO FROM AHTISAARI'S SPECIAL ZONES TO THE FINAL STATUS



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Serbian Cultural and Religious Heritage in Kosovo from Ahtisaari's Special Zones to the Final Status

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SUMMARY

The analysis identifies protection mechanisms for the Serbian religious and cultural heritage in Kosovo defined by the Ahtisaari Plan as the basic normative framework. The authors start with the claim that the status of cultural heritage was unjustifiably omitted from the Brussels dialogue, and that this topic, due to identity-related sensitivity, can determine the citizens' side when supporting a possible final agreement between Belgrade and Pristina. In the first part, the analysis provides a comprehensive overview of legal guarantees and experience in their implementation, deals in detail with examples of abuse and non-compliance with the adopted normative framework, criticism of the "special" status for Serbian heritage, and open disputes between the Serbian Orthodox Church (SOC) and Kosovo authorities. In the second part, the text provides a comparative overview of the special statuses of holy places in Europe. Since extraterritorial status as the final model for Serbian religious and cultural heritage is often mentioned in public, the analysis deals with models of territorial solutions for smaller units, in the form of enclaves, extraterritorialities and condominiums.

Keywords: Serbian religious and cultural heritage, Ahtisaari Plan, special protective zones for monasteries, Vatican, Mount Athos, enclave/exclave, exterritoriality, condominium.

INTRODUCTION

The status of Serbian cultural and religious heritage has not been the topic of the dialogue between Belgrade and Pristina so far. There are at least three reasons why there was no discussion about sustainable and lasting respect for the cultural and religious identity of the Serbian people in Kosovo. The first is identity-related, and therefore very sensitive, since the cultural heritage is viewed by the Serbian side as the "*cradle of national identity*", and by the Albanian side as part of the "*overall historical and cultural heritage*" of the newly formed state. This leads to another reason, that is status-related, where Belgrade, through the Serbian Orthodox Church (SOC) and UNESCO membership, wants to maintain control and management of cultural heritage, while Pristina, through the legislative framework resulting from Annex V of the Ahtisaari Agreement, shows that the Serbian Orthodox Church was granted special protection status, which makes Kosovo a candidate for UNESCO membership and further on for full international recognition. Although avoiding talks about cultural heritage indicates that the parties have diametrically different negotiating positions that make it impossible to find a compromise, the third reason can be described as tactical. Since the status of cultural heritage is often mentioned as a "*great compromise*" for the final agreement, it is assumed that this topic, due to its sensitivity and complexity, has deliberately not been on the negotiating table so far.

What is problematic about the "*tactical*" reason are the consequences for cultural and religious property, which, despite the international effort to protect them, are viewed through the status dispute. While for Belgrade, monasteries and churches are evidence of the right to a

territory considered a Serbian holy land, for Pristina, Orthodox religious buildings with a special status are symbols of delegitimization of Kosovo's sovereign government. The passing of time has deepened the ethnic distance between Serbs and Albanians and avoiding talks about the status of cultural and religious monuments arouses strong identity feelings that paralyze all previous efforts to reconcile and normalize relations.

The analysis should shed light on the importance of this topic, which is reflected in at least two reasons. The first is the strong emotional charge of this issue in the context of the continuation of negotiations between Belgrade and Pristina and reaching a possible agreement. In the public opinion poll conducted on the territory of the Republic of Serbia last year, 57.1% of citizens stated that the possible jeopardizing of the Serbian cultural and religious heritage in Kosovo could motivate them to political and social activism. Also, among the first three priority issues in the context of the final agreement on the normalization of relations, as many as 82.6% of citizens emphasized the need for an agreement that regulates the status of cultural and religious heritage. The other two topics are guaranteeing and respecting the rights of Kosovo Serbs (89%) and managing natural resources (83.5%). Possible recognition of Kosovo's independence is acceptable for 36.4% of citizens, but one of the conditions is the implementation of extraterritoriality for the monasteries of the Serbian Orthodox Church.¹

Another reason is the diplomatic clash between Belgrade and Pristina at the international level in 2015 due to Kosovo's candidacy for full membership in UNESCO. Serbia insisted that Kosovo's possible membership in international organizations be the product of a negotiation process in which, in the case of UNESCO, the permanent status of cultural heritage would be defined first. Kosovo, on the other hand, considered that it had fulfilled all the obligations from the Ahtisaari package and the set conditions during the period of "*supervised independence*", and legislatively secured a special status for Serbian cultural heritage and acquired all conditions for membership in various international organizations. However, the failed candidacies for Kosovo's membership in UNESCO and later in INTERPOL contaminated the entire negotiation process and affected the previous rights and guarantees for the Serb community in Kosovo. Normative inclusion has been turned into discrimination against the Serbian Orthodox Church and the religious rights of the Serbian community through numerous violations of the adopted legal framework.

Re-voting in international organizations is disastrous for the negotiation efforts made so far. Therefore, the main goal of this analysis is to point out the need for a dialogue about the status of Serbian heritage in the possible continuation of the process and before reaching a final agreement, in order to consider all open issues, experiences of implementing the current normative framework, as well as consequences of possible implementation of exterritoriality,

¹ Normalization of relations between Belgrade and Pristina from citizens perspective - What we know and what we feel? Centar za društveni dijalog i regionalne inicijative, Belgrade, 2019.

enclave system or condominium for Serbian cultural and religious heritage. The clear belief of the authors of the analysis is that overcoming the dispute between Belgrade and Pristina, above all, depends on resolving the status of the Serbian cultural and religious heritage in Kosovo. In order to present the complexity of the problem, the first part of the analysis presents the guarantees arising from the Ahtisaari plan, the Law on Special Protective Zones and the socio-political atmosphere in which the rights of the Serbian Orthodox Church were defined. Also, the analysis deals in detail with examples of abuse and non-compliance with the adopted normative framework, criticism of the “*special*” status for Serbian heritage, as well as open disputes between the Serbian Orthodox Church and local authorities in Kosovo. In the second part, the analysis offers alternative models for cultural and religious heritage through a comparative analysis of the special status of holy places in Europe, as well as examples of territorial solutions for smaller units.

IMPLEMENTATION OF THE AHTISAARI PLAN BETWEEN THE SUPERVISED INDEPENDENCE AND UNSUPERVISED REALISATION

“The Comprehensive Proposal for the Kosovo Status Settlement”, colloquially called *“Ahtisaari Plan”* after the UN Secretary-General's special envoy, became the basis for Kosovo's declaration of independence and constitutional design. With its detailed provisions, the *“Ahtisaari Plan”* aimed to normatively specify all mechanisms for the protection of cultural heritage, oblige Kosovo's political representatives to respect and promote the multicultural character of society in the state-building process and prevent the recurrence of any ethnically or religiously motivated attacks. The adoption of the Law on Protected Areas, the Law on the Historic Center of Prizren and the Law on the Village of Velika Hoca is a direct implementation of the Comprehensive Proposal into the Kosovo legislation.

Annex V is dedicated to the religious and cultural heritage of the Serbian community. It is clearly emphasized that *“Kosovo shall recognize the Serbian Orthodox Church in Kosovo, including monasteries, churches and other sites used for religious purposes, as an integral part of the Serbian Orthodox Church seated in Belgrade.”*² The proposal guarantees the inviolability of the Serbian Orthodox Church's property, as well as the impossibility of its expropriation, and the church retains the full discretion *“in the management of its property and access to its premises.”*³ Regardless of its special status, which includes protection, rights, privileges and immunities, the SOC is obliged to act *“in accordance with Kosovo law.”*⁴

The protection of cultural heritage sites is mentioned as an obligation in almost all international documents after the 1999 conflict. Since the provision of UN Security Council Resolution 1244 on the return of personnel of the FR Yugoslavia with the mission of securing locations of Serbian cultural heritage has never been applied, that role was taken over by the mission of UNMIK and KFOR within NATO. According to the Ahtisaari Plan, the obligation to guarantee the safety of cultural property lies with Kosovo's law enforcement agencies, and especially with the Kosovo Police Service (KPS).⁵ Ahtisaari Plan also includes a comprehensive list of 44 protective zones whose purpose is:

“To provide for the peaceful existence and functioning of the sites to be protected; preserve their historical, cultural and natural environment, including the monastic way of life of the clergy; and prevent adverse development around them, while ensuring the best possible

² Ahtisaari Plan, Annex V, Article 1.2

³ Ibid, Article 1.5

⁴ Ibid, Article 1.1

⁵ Ibid, Article 3.1.1

*conditions for harmonious and sustainable development of the communities inhabiting the areas surrounding such sites”.*⁶

Although special zones are clearly defined with the maps, the territory surrounding the protected facilities has not been expropriated, but restrictions on use have been introduced, with the following activities prohibited: *“exploration of mineral resources; building of power plants or power lines, kilns and factories, and transit roads in rural areas, as well as construction or development leading to deforestation or environmental pollution”.*⁷

The following activities of local self-government or individuals may be limited and conditioned by the consent of the Serbian Orthodox Church:

*„a) Commercial construction or development such as: structures or edifices taller than the monastery/church/cultural monument to be protected, road construction, construction of warehouses, workshops, shops, restaurants, bars, cafes, food stalls and kiosks, petrol and automobile repair stations; supermarkets; night clubs and any other large scale construction in rural areas; b) Public gatherings, recreation and entertainment; c) Urbanization of agricultural land”.*⁸

In case of a dispute, the functioning of the Implementation and Monitoring Council (IMC), composed of representatives of local authorities, the Serbian Orthodox Church and international missions, is envisaged.⁹ In the later decision-making process of the IMC, the question appeared whether it was a body with executive or advisory powers. Representatives of the Kosovo Government insisted on an advisory nature, emphasizing the Government as the ultimate authority. On the other hand, the Serbian Orthodox Church considered that the decisions of the IMC were not subject to the approval of the Government and repeatedly conditioned its participation by the executive power of the Council.

An analysis of the mandate assigned to the IMC shows that the Government of Kosovo is obliged to ensure the implementation of IMC's *“decisions”* and not *“recommendations”*, *“advice”* or *“opinions”*.¹⁰ However, this ambiguous interpretation paralyzed the entire framework of special protection, allowing the Government of Kosovo to define itself as the final decision-making body in a possible dispute, despite the negative attitude of the Serbian Orthodox Church regarding activities in areas designated as Special Protective Zones.

⁶ Ibid, Article 4.1

⁷ Ibid, Article 4.1.1

⁸ Ibid, Article 4.1.2

⁹ Ibid, Article 5

¹⁰ Research Institute of Development and European Affairs, *The issue of Serbian Cultural Heritage in Kosovo in the context of an eventual 'Grand Finale' between Kosovo and Serbia*, Pristina, 2019, pp. 10-11.

Although they did not accept the final version of Ahtisaari Plan, the Serbian Government formulated a number of amendments within the Vienna negotiations. All proposals questioning Kosovo's status as an independent state were rejected. However, the team of authors of the Ahtisaari Plan missed the opportunity to adopt some amendments, such as the request that the urbanization of agricultural land is marked as prohibited, and not as a restricted activity in protective zones.¹¹ This proposal gained special importance after the negative experience that the Serbian Orthodox Church had with endangering the ambient unit of the monastery complexes and the monastic way of life.

Local authorities have often ignored the restrictions and conditions prescribed by the Law on Special Protective Zones. When building a local road, the Municipality of Orahovac entered the protective zone of the Zociste Monastery, without a legally compulsory consent of the Serbian Orthodox Church, or a compensation for the confiscated land, and the authorities of the Municipality of Pec/Peja continued with the construction of a pedestrian and bicycle trail next to the Pec Patriarchate Monastery, despite the negative response of the Serbian Orthodox Church and the absence of a compromise in the mediation process.¹² The dispute between the Visoki Decani Monastery and the municipality of Decani and the Kosovo Privatization Agency over the land located in the immediate vicinity of the monastery, as well as the violation of the special zone Novo Brdo with works on the St. Nikola Church will be elaborated in a special part of this analysis.

Also, it should be kept in mind that the envisaged solution with zones has its practical shortcomings. On the one hand, nobody dealt with the registered property within the zones, and in practice the possibility for owners to use and dispose of it was significantly reduced.¹³ On the other hand, special zones for monasteries are designed to “*preserve their historical identity and natural environment, including the monastic life of the clergy*”,¹⁴ and the possibility of urbanization of agricultural land is left open, which undoubtedly questions the above statement. Therefore, in the possible continuation of negotiations, attention should be paid to the possibility of land expropriation in order to realize the original idea. According to Arraiza, the entire system of special protective zones has resulted in an *ad hoc* arrangement through crucial international intervention for the purpose of protecting them against harmful urbanization, illegal construction, vandalism, and theft.¹⁵

¹¹ Government of Serbia, *Amendments to the “Comprehensive Proposal for the Kosovo Status Settlement”*, 2007

¹² OSCE, *Challenges in the Protection of Immovable Tangible Cultural Heritage in Kosovo*, Pristina, 2014.

¹³ Arraiza, Jose Maria, “A Matter of Balance. Cultural Heritage, Property Rights and Inter-Ethnic Relations in Kosovo”, in: *Seminar on Property and Investment in Jus Post Bellum*, Grotius Centre for International Legal Studies, p. 11.

¹⁴ Ahtisaari Plan, Annex V, Article 4.1

¹⁵ Arraiza, Jose Maria, “A Matter of Balance. Cultural Heritage, Property Rights and Inter-Ethnic Relations in Kosovo”, in: *Seminar on Property and Investment in Jus Post Bellum*, Grotius Centre for International Legal Studies, p. 6.

Ahtisaari Plan also envisions the restitution of SOC's property in Kosovo, which has not been initiated to date: *“Kosovo shall also address property restitution issues, including those related to the Serbian Orthodox Church, as a matter of priority. Kosovo shall establish an independent mechanism to formulate the policy, legislative and institutional framework for addressing property restitution issues. Representatives of the international community shall be invited to participate in such a mechanism, which shall include representatives of non-majority Communities.”*¹⁶

¹⁶ Ahtisaari Plan, Annex V, Article 6.1

SERBIAN RELIGIOUS AND CULTURAL HERITAGE – DENYING THE RIGHT TO THE ASSIGNED STATUS

In addition to arising as an obligation from the Ahtisaari Plan, the Law on Protective Areas, the Law on the Historic Center of Prizren and the Law on the Village of Velika Hoca are of particular importance for the multiethnic character of Kosovo, as “*recognition of a group's cultural heritage symbolizes the recognition of the group's cultural identity, as well as its historical presence in a certain territory*”.¹⁷ Studying the socio-political atmosphere before the adoption of the two mentioned laws, Loncar concludes that strong oppositions are a consequence of “*the perception that Serbs and the Serbian Orthodox Church are the main threat to Kosovo's statehood.*”¹⁸

The exclusive character and property rights that alienate cultural heritage from the citizens of Kosovo were attributed to the Serbian community, and the debate already included a recognizable narrative about Orthodox churches built on the foundations of Illyrian-Albanian temples and the unacceptable option of the Orthodox Church in Kosovo having a Serbian ethnic prefix. The common denominator of the discussions of political representatives on the draft laws is the mentioning of the Serbian community exclusively in the context of hostility and guilt, instead of a minority group that is provided with protection for endangered cultural heritage.¹⁹

Several analyses coming from academia or civil society organizations in Kosovo are dominated by a one-sided approach proposing a review of the application of Annex V as a sustainable model for the preservation of cultural property. Thus, the term “*special*” in the context of protective areas is interpreted as discriminatory because it creates the perception that these places are “*more valuable*” than other cultural heritage sites in Kosovo.²⁰ Also, Hoxha realizes that the situation with the cultural heritage in Kosovo is alarming, but as one of the priorities in the future he sees the request for “*access to Orthodox monasteries and churches*”.²¹ In the situation when various construction works harshly violate special protective zones, the unprofessionalism of the Serbian Orthodox Church in the practice of preserving the facilities it manages is emphasized. In this way, a public perception is created in Kosovo in which the Serbian Orthodox Church is presented as an actor that threatens, and not the one that is endangered.

¹⁷ Lončar, Jelena, *Cultural Heritage in Kosovo: Strengthening Exclusion through Inclusive Legislation*, in: *Figuring out the Enemy: Re-Imagining Serbian-Albanian Relations*, edited by Aleksandar Pavlović, Adriana Zaharijević, Rigels Halili, and Draško Gazela Pudar, Belgrade, 2015, p. 412.

¹⁸ *Ibid*, p. 415.

¹⁹ *Ibid*, p. 417,421.

²⁰ Hisari, Lorika and Fouseki, Kalliopi, *Post-War Cultural Heritage Preservation in Kosovo: Rethinking the Implementation of Ahtisaari Plan Annex V*, *Heritage* 2020, 3(1), p. 102,111.

²¹ Hoxha, Gjejlane, *Legal protection of Cultural Heritage in Kosovo-past, present and future*, *Balkanlarda Osmanlı Vakıfları ve Eserleri Uluslararası Sempozyumu*, 2012, p. 236.

It is also a paradox to accuse international pressure of being one-sided in preserving Serbian cultural heritage, ignoring *“the damage, vandalism and looting of Kosovo's cultural heritage during 1998/99 by Serbian forces.”*²² Until 2011, 70% of the planned reconstruction of SOC buildings damaged during the March 2004 riots was realized from the Kosovo budget, and after the abolition of Kosovo's supervised independence, continuation of reconstruction was not possible because *“SOC did not agree with the new format proposed by the Kosovo Government.”*²³ The authorities in Pristina had and still have full authority to equally commit to the restoration and preservation of the entire cultural heritage in Kosovo, and the intention of international actors was to provide special guarantees for cultural assets that were attacked in the post-conflict period and are still considered endangered. As the analysis dedicated to cultural objects concludes: *“the aesthetic value, the significance of the Serbian identity and the vulnerability of the Serbian religious and cultural heritage in Kosovo have led to the international community granting it the status of excellence in the new state of Kosovo.”*²⁴

There are also narratives, which, through quasi-historical interpretations in the context of the current systemic discrimination of the Serbian community and its religious and cultural heritage, have a clear political background of derogating from the rights that the Serbian Orthodox Church at least normatively has in Kosovo. *“The cultural heritage of Kosovo does not belong to Albanians, just as the Orthodox churches do not belong to Serbs ... At the time of the construction of the Pec Patriarchate or the Gračanica Monastery, there were no Serbs there, only the Orthodox. Albanian ancestors were Orthodox and Serbian ancestors were Orthodox.”*²⁵

In one of the latest analyzes, the adjective *“Serbian”* for cultural heritage is interpreted as *“ethnicization of cultural heritage monuments”*, referring to the already mentioned *“universal”* Christian character of buildings at the time when they were created.²⁶ It is this narrative about the non-Serbian *“original”* origin of monasteries and churches, that raises tensions in Serbia and the belief that Pristina is essentially not even interested in their protection, and that the existing framework is in itself unsustainable. Also, there was criticism due to the presence of the police and the army near the cultural heritage objects, which is *“a picture that tore them away from all cultural, historical and religious properties”*.²⁷ Special zones are seen as a form of isolation *“contrary to all principles and standards of active and*

²² Hisari, Lorika and Fouseki, Kalliopi, *Post-War Cultural Heritage Preservation in Kosovo: Rethinking the Implementation of Ahtisaari Plan Annex V*, *Heritage*2020,3(1), p. 103.

²³Research Institute of Development and European Affairs, *The issue of Serbian Cultural Heritage in Kosovo in the context of an eventual ‘Grand Finale’ between Kosovo and Serbia*, Pristina, 2019, p. 14.

²⁴ *Ibid*, p. 2

²⁵ Artan Krasnići in *„Buđenje kulturne baštine Kosova“*, author: Valmir Mehmetaj, available at <https://bit.ly/2zgHChH>, last accessed on 8 May 2020

²⁶ Emancipimi Civil Ma Ndryshe, *An Analysis of Numerous and Continuous Faults in Cultural Heritage*; Series analysis “what went wrong?”, Prishtina, 2013, p. 15.

²⁷ *Ibid*, p. 21.

effective protection of cultural heritage”.²⁸ Based on this analysis, it could be concluded that members of KFOR and KPS are controlling access to religious and cultural facilities on their own initiative, and not because those facilities include four monasteries that have been on the UNESCO World List of Endangered Cultural Heritage Sites since 2004.²⁹ This is due to the fact that ethnically motivated riots took place in the same year, which included attacks on more than thirty Orthodox buildings.³⁰ Although the riots of that scale have not been repeated, the Serbian Orthodox Church continued to face threats to the security of religious and cultural buildings, and the disruption of the historical and natural ambient unit by various illegal construction works.

In the semi-annual reports on the progress of negotiations since 2015, the Office for Kosovo and Metohija cited attacks on members of the Serb community. Incidents such as the graffiti “*ISIS*” and “*Caliphate is coming*” on monastic ancillary facilities, threats by people owning weapons, theft and destruction of movable monastic property, and injuries to believers³¹ show a publicly disputed gap between Kosovo's inclusive normative framework and the real feelings of threat.

Although the law on cultural heritage has not yet been adopted, which could overcome the identified shortcomings in the implementation of the legal framework for Serbian cultural and religious heritage, a positive step forward is the adoption of the Kosovo Cultural Heritage Strategy. Among other things, the Strategy states the following:

*“The Constitution and other relevant documents, including the 7 October 2015 Letter of the Kosovo Institutions addressed to UNESCO National Delegations outlining Kosovo’s commitments with regard to the protection of religious and cultural heritage on the basis of the CSP Annex V provisions, form the institutional base on drafting of this National Cultural Heritage Strategy 2017-2027.”*³²

This Strategy is currently the only document of the Government of Kosovo in force which clearly emphasizes the full discretion of the Serbian Orthodox Church:

“Regarding the management and maintenance of sites which constitute the ownership of the Serbian Orthodox Church, the latter shall exercise full discretion in the management of and access to its cultural properties, including the conservation and restoration of monuments in line with international standards, acting in accordance with Kosovo laws. In addition, the

²⁸ Ibid, p. 21.

²⁹ UNESCO, *List of World Heritage in Danger*, dostupno na <https://bit.ly/3bcINvJ>, Last accessed on 8 May 2020

³⁰ Arraiza, Jose Maria, “A Matter of Balance. Cultural Heritage, Property Rights and Inter-Ethnic Relations in Kosovo”, in: *Seminar on Property and Investment in Jus Post Bellum*, Grotius Centre for International Legal Studies, p. 4.

³¹ Kancelarija za KiM, *Izveštaj o napretku u dijalogu Beograda i Prištine za 2015, 2016, 2017 i 2018*.

³² Ministarstvo kulture, omladine i sporta Kosova, „*Nacionalna strategija za kulturno nasleđe 2017-2027*”, p. 15.

*process of reconstruction of monuments is to be concluded on the basis of the CoE "Technical Assessment Report on the Programme of Reconstruction of Serbian Orthodox Religious Sites Damaged in March 2004 in Kosovo" issued in April 2012."*³³

³³ Ibid, p. 31.

MAIN DISPUTES BETWEEN THE SERBIAN ORTHODOX CHURCH AND THE KOSOVO GOVERNMENT

One of the questions that is asked during every debate on the Serbian cultural heritage is the exact number of monasteries, churches and other buildings owned by the Serbian Orthodox Church. Svirca claims that in order to promote rights to the territory of Kosovo, Serbian political representatives in various public appearances mention the figure of over a thousand Serbian Orthodox buildings, while the UNMIK mission, in cooperation with the OSCE, listed 114 SOC's buildings, including chapels and half-destroyed buildings.³⁴ On the other hand, the plan submitted by the Office for Kosovo and Metohija in 2018 to the representatives of the European Union, which requires guarantees to the Serbian Orthodox Church that it has the full right to dispose of its property for an unlimited period of established legal protection regime, mentions 44 facilities.³⁵ Although the plan is not public, this figure probably corresponds to the list of 44 facilities with special protective zones mentioned in the Ahtisaari Plan.³⁶ They include the locations with a special dispute between the Serbian Orthodox Church and the authorities in Kosovo.

Visoki Decani Monastery

One of the biggest problems of the Serbian Orthodox Church with the authorities in Kosovo is related to the issue of ownership of the land of the Visoki Decani Monastery. The land includes two plots of 23 hectares, which represent a nationalized part of the overall property in 1946, and which were returned to the monastery by the Government of Serbia in the process of restitution in 1997. The plots in question were used by two social enterprises during socialism. After the war, at the intervention of UNMIK, the dispute over land ownership was referred to the court. By a decision from 2012, the Supreme Court of Kosovo ruled in favor of the monastery. However, due to public pressure, in 2015, the Appellate Council of the Supreme Court revoked the decision and decided that the Supreme Court did not have jurisdiction and returned the case for retrial to the Primary Court in Peja/Pec.³⁷

Serbian Orthodox Church appealed to the Constitutional Court of Kosovo, which in 2016 found a violation of the applicant's rights and confirmed the original decision of the Supreme Court from 2012 that the land belonged to the monastery.³⁸ Although the Constitutional Court

³⁴ Svirca, Baki, Sacred Places and Religious Institutions in Kosova-Comparative Legal and Religious Approach, in: *Between Cultural Diversity and Common Heritage Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, edited by Silvio Ferrari and Andrea Benzo, 2014, p. 261.

³⁵ Večernje novosti, *Zaštita za 44 svetinje i spomenika*, 10 October 2018, available at <https://bit.ly/2yBVpzi>, last accessed on 8 May 2020

³⁶ Ahtisaari Plan, Annex V, Article 4.

³⁷ Research Institute of Development and European Affairs, *The issue of Serbian Cultural Heritage in Kosovo in the context of an eventual 'Grand Finale' between Kosovo and Serbia*, Pristina, 2019, p. 16.

³⁸ Constitutional Court of the Republic of Kosovo, AGJ943/16 Judgment 1-18, Pristina, 2016.

defined this decision as final and binding, it has not been implemented to date, and the main obstacle is the local authorities of the municipality of Decani. Obstruction of the implementation of the court decision provoked a reaction from international representatives, including the EU mission in Kosovo, which publicly called on the Kosovo authorities to respect the rule of law, stating that the decision³⁹ must be implemented without delay.

The second dispute concerns the plan of the Government of Kosovo to build the main international road Decani-Plav, which would pass through the special protective zone of the monastery. The planned 35km road would use the route of the existing 4.5km rural road that runs right in front of the monastery's main entrance.⁴⁰ The works have been temporarily stopped due to international pressure, but the local authorities of Decani are announcing the continuation, even though the Law on Special Zones prohibits the construction of transit roads.⁴¹

Novo Brdo

In June 2019, Ramush Haradinaj, the Prime Minister of Kosovo at the time, announced a project of special importance for Kosovo's culture and history - the reconstruction of the St. Nikola Church in Novo Brdo, which would be supported by the German Government. The Ministry of Culture, Youth and Sports of the Government of Kosovo presented the remains of the Novo Brdo Church as a building considered to be a three-nave Catholic cathedral. However, since this is a special protective zone, the German ambassador Christian Heldt soon denied the announcement, and stated that nothing would be done in Novo Brdo without the consent of the Serbian Orthodox Church.⁴²

During his visit to Novo Brdo, whose fortification's name was changed to Artana after the war, Kadri Veselji, the President of the Assembly of Kosovo at the time, announced extensive work on the restoration of the fortress and stated that *"Serbia is trying to assimilate our culture and heritage in vain."*⁴³ In addition to the obvious falsification of the interpretation of the monumental heritage, this is a flagrant violation of the Law on Special Protective Zones, and the dispute with the Serbian Orthodox Church is still ongoing.

³⁹ The European Union Office in Kosovo" EU is concerned by a lack of implementation of Constitutional Court ruling on the land dispute case in Decan/e", April 2017

⁴⁰ Research Institute of Development and European Affairs, *The issue of Serbian Cultural Heritage in Kosovo in the context of an eventual 'Grand Finale' between Kosovo and Serbia*, Pristina, 2019, p. 5

⁴¹ Ahtisarijev plan, Aneks V, član 4.1.1

⁴² Tasić, J. „Haradinaj proglasio pravoslavnu crkvu Svetog Nikole u Novom Brdu za rimokatoličku katedralu”, *Danas*, 7 June 2019, available at <https://bit.ly/3ch6Kn8>, last accessed on 8 May 2020

⁴³ RTS, „Veselji: Novo Brdo dragulj naše kulturne baštine”, 17 August 2019, available at <https://bit.ly/2WevSVV>, last accessed on 8 May 2020

Monastery of the Holy Archangels near Prizren

The Ministry of Culture of Kosovo has twice blocked the continuation of works on the renovation of the St. Nicholas Church within the complex of the Monastery of the Holy Archangels, near Prizren. Representatives of the Diocese of Raska and Prizren stated that this is a “*new strategy of institutional suppression of the freedoms and rights of the Serbian Orthodox Church*”⁴⁴ since an agreement on the renovation of the temple was reached at the Council for Implementation and Supervision. In addition to the representatives of the Serbian Orthodox Church, two representatives of the Kosovo Government participate in the work of the Council - the Minister of Culture and the Minister of Spatial Planning, as well as the heads of EU and OSCE offices in Kosovo.

Despite the agreement, the Ministry of Culture did not issue a building permit and instead issued an order to suspend the works that had to start due to the deadline for using the funds from the international donation. The Kosovo Institute for Protection of Cultural Monuments did not give its consent for this project since the church was damaged in 1615 and only about 20% of the original structure remains to this day. Therefore, we cannot talk about rehabilitation as restoration, but only as reconstruction, which requires respecting special international rules in the treatment of ancient buildings. Also, the monastery complex is not registered in the cadastre as the property of the Serbian Orthodox Church, but as owned by the Regional Center for Cultural Heritage from Prizren.⁴⁵

Since the dispute has not been resolved over time, this explanation raises two questions. First, if the documentation on the reconstruction plan is inadequate, why there was no joint study prepared by the representatives of the Serbian Orthodox Church and the Kosovo Institute for Protection of Cultural Monuments, in order to eliminate the shortcomings and enable the continued use of international donation? Second, if the monastery complex is clearly marked on the map of Ahtisaari's Plan as a special protective zone, where, in accordance with Kosovo laws, the Serbian Orthodox Church is guaranteed freedom to manage religious buildings and their renovation, how is it possible that the property is mysteriously registered in the cadastre as the property of another institution?

Church of Christ the Saviour in Pristina

Recent excavations in the courtyard of the Church of Christ the Savior in Pristina, in search of mass graves, have actualized the status of this unfinished religious building. The construction of the church began during the 1990s on the land that was then legally assigned

⁴⁴ Saopštenje Eparhije raško-prizrenske - Kosovsko Ministarstvo kulture zabranilo dalje radove na obnovi manastira Sv. Arhangela kod Prizrena, 12 October 2016, available at <https://bit.ly/2L8s42c>, last accessed on 8 May 2020

⁴⁵ Research Institute of Development and European Affairs, *The issue of Serbian Cultural Heritage in Kosovo in the context of an eventual 'Grand Finale' between Kosovo and Serbia*, Pristina, 2019, p. 18

to the Serbian Orthodox Church. However, the University of Prishtina considers this facility controversial because it is in an area that is entirely intended for a university campus. For that reason, the Rectorate initiated a lawsuit which ended with a verdict of the Court of Appeals of Kosovo in favor of the Serbian Orthodox Church.⁴⁶

The church was presented to the public as “Milosevic's”, over the years it was a public toilet, a shelter for the homeless, a studio for recording videos and a facility used by extreme climbers. After the tires were set on fire inside the temple, Kosovo institutions banned the action of cleaning the temple, initiated by Bishop Teodosije, although the court decision confirmed the ownership of the Serbian Orthodox Church.⁴⁷ While the Albanian side considers the location and the building itself disputable, with the initiative to turn the unfinished church into a memorial center for Albanian victims, Zivojin Rakocevic, a journalist and the director of the Cultural Center in Gracanica, points out that the Serbian side has a different point of view: *“It is deeply disturbing that none of the Albanians want to stand in front of that Temple and say, ‘You have no right to do this’. The Church of Christ the Savior was built as a need of 40,000 Serbs who lived in Pristina. It turned into their representative, it testifies that they were there and invites them to return.”*⁴⁸

⁴⁶ Ibid, p. 17.

⁴⁷ Kossev, „Vladika Teodosije sa monasima oćistio Hram Hrista Spasa i monasi prvi put u njemu zapojali od '99”, 11 September 2016, available at <https://bit.ly/3cfd4eZ>, last accesses on 8 May 2020

⁴⁸ Kosovo Online, „Rakoćević: Na Hramu Hrista Spasa u Prištini lomi se sudbina odnosa Srba i Albanaca”, 28 November 2019, available at <https://bit.ly/2YL4HUg>, last accesses on 8 May 2020

INTERNATIONAL LAW AND PROTECTION OF HOLY PLACES

After the first part, which is dedicated to the application of the current normative framework derived from the Ahtisaari Plan, the continuation of this analysis will present European experiences in special protection of holy places, which can be applied in the possible redefinition of the status of Serbian religious and cultural heritage in Kosovo. Since territorial solutions are often mentioned in the proposals for SOC's facilities, a comparative analysis of known models will be presented further on.

International law does not provide a univocal regime for the protection of holy places, as existing conventions of global⁴⁹ and European⁵⁰ significance do not provide a single regime for their protection.⁵¹ Therefore, in most cases, regimes established by the state on whose territory the holy sites are located, or which are the product of a bilateral agreement, are in force. As Kosovo is not a member of the UN, UNESCO and the Council of Europe, international protection regimes are not *de facto* in place in a systematic sense. On the other hand, as explained earlier, the protection regime established by the Ahtisaari Plan and the subsequent Constitution of Kosovo is not fully implemented, and moreover is often questioned by the public in Kosovo. In that context, the aim of this study is to provide an overview of other existing models, which already exist in Europe, for the issue of protection of Serbian cultural and religious heritage, as well as further functioning of the Serbian Orthodox Church on the territory of Kosovo.

There are two illustrative examples that show how the extraterritorial status of churches and sacral buildings can be successfully regulated: the Vatican City and the Monastic State of Mount Athos in Greece. These two models are different, and it is certainly not possible to fully apply them in case of the Serbian Orthodox Church in Kosovo. However, some of the specific solutions defined in these models may be of interest for application in the future regulation of the status of the Serbian Orthodox Church in Kosovo.

⁴⁹ UNESCO Convention concerning the Protection of World Cultural and Natural Heritage from 1972, The Convention for the Protection of Cultural Property in the Event of Armed Conflict from 1954 (with the 1999 Protocol), The UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

⁵⁰ Convention for the Protection of the Architectural Heritage of Europe from 1985 and the Council of Europe's European Convention on the Protection of the Archaeological Heritage from 1992

⁵¹ Leanza, Umberto. "General Problems of International Law Concerning Sacred Places." In *Cultural Diversity and Law: Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean*. Ashgate Publishing Limited, 2014, p. 40.

EXAMPLES OF TERRITORIAL SOLUTIONS FOR THE ISSUE OF HOLY PLACES IN EUROPE

Athos (Holy Mountain)

The Monastic State of Mount Athos on the Athos Peninsula in Greece is a unique example of an autonomous monastic republic within a modern secular state. For more than 1000 years, Athos has been the center of Orthodox monasticism and it is of exceptional importance for several Orthodox churches. It gradually gained special status in the Byzantine Empire through numerous material, as well as legal privileges that eventually regulated a kind of self-government. This practice continued more or less under the Ottoman Empire. The special status of the Holy Mountain was then recognized throughout the international agreements signed after the First World War. Taking into account historical privileges, the status of the Monastic State of Mount Athos is regulated by the Constitution of Greece,⁵² the Constituent Charter of Mount Athos from 1925, as well as the Final Documents on the Accession of Greece to the European Community from 1981.

The peninsula with 20 monasteries and its territory enjoys self-government which is formally part of the Republic of Greece.⁵³ Mount Athos is under the direct spiritual jurisdiction of the Ecumenical Patriarchate in Istanbul, while practical management, based on traditional provisions derived from monastic types, Byzantine and Ottoman privileges, is entrusted to Mount Athos institutions. The state, through the function of the governor (and the deputy) who are employees of the Ministry of Foreign Affairs of Greece and whose headquarters are in the city of Karyes on the Athos peninsula, for its part performs somewhat limited supervision of the functioning of Mount Athos self-government, as well as protection of public order to a certain extent.⁵⁴ In other words, the secular and spiritual spheres on the peninsula are clearly divided. The institutions of Mount Athos (in the domains of the legislature and the judiciary) and the Ecumenical Patriarchate are in charge of the spiritual sphere and relations between monasteries and monks, while the Governor supervises the implementation and informs the Ministry of Foreign Affairs.⁵⁵ For the secular sphere, with the additional role of the institutions of Mount Athos, the state is in charge through the governor and the deputy, the courts outside Mount Athos and the police.

Mount Athos institutions are:

⁵² Constitution of the Republic of Greece, Article 105, related to the previous Article 104 of the Constitution from 1927

⁵³ For the list of monasteries, with the dates of establishment, see: "MountAthos – TheEcumenicalPatriarchate." Home – The Ecumenical Patriarchate, available at <https://bit.ly/2WfQfSG>, last accessed on 8 May 2020

⁵⁴ Constitution of the Republic of Greece, Article 105

⁵⁵ Leanza, Umberto. *op.cit.*, 46

1. **Holy Community (Protos):** the body that manages the Holy Mountain, makes decisions which all monasteries are obliged to abide by. It consists of one representative of each of the monasteries, who are elected each year. The Holy Community is at the same time a second instance court. This institution regularly meets three times a week.
2. **Holy administration (Epistasia)** - the executive committee of the Holy Community, consisting of 4 representatives (monasteries are divided into 5 groups, and one member comes from each group). The *epistasia* is managed by the *protoepistat*, that is, the president. *Epistasia* takes care of the execution of the decisions of the Holy Community, performs the function of the police administration and the first instance court for misdemeanors (both for monks and laity), takes care of issues for which municipalities are otherwise in charge (cleaning and sanitary supervision, condition of roads, lighting, etc.), and oversees public order and morals in Karyes and the port of Daphne.⁵⁶ They have their own “police” squad under their command, which monitors public order and peace, and can request the intervention of the Greek police;
3. **Sacred Synaxis** - meets twice a year and consists of representatives of the monasteries on the Holy Mountain (abbots or pro-abbots) and makes canonical decisions. Decisions that affect secular issues are confirmed by the Minister of Foreign Affairs, while the Ecumenical Patriarch confirms the spiritual ones, both without the right to make changes.⁵⁷

As we have already seen, the Holy Mountain enjoys judicial autonomy in certain domains, and the institutions that perform the duty of the courts are the elders of the monastery, the Holy Community, the *Epistasia* and finally the Ecumenical Patriarch. Serious offenses and criminal offenses are prosecuted in state courts, with the obligation to conduct an investigation on the Holy Mountain, in cooperation with the *Epistasia*. Offenses from general criminal law, as well as market and other offenses committed by both monks and laity are prosecuted by the courts of Mount Athos. All canonical violations are processed by the courts of Mount Athos, i.e. the Holy Synod of the Ecumenical Patriarchate.

Also, apart from self-government, Mount Athos has a number of spiritual, financial and special privileges, of which the most important are:⁵⁸

- The EU legal framework is largely not applied in the territory of Mount Athos, which is based on Joint Declaration no. 4 which is an integral part of the Final Document on the Accession of Greece to the European Community from 1981,
- Mount Athos enjoys numerous financial privileges, the scope of which is determined by the Greek Parliament.

⁵⁶ Administration of the Mount Athos today, available at <https://bit.ly/2LcFev2>, last accessed on 8 May 2020

⁵⁷ Папастатис, Хараламбос К. “Савремени Правни Статус Свете Горе.” *Зборник Радова Византолошког Института* XLI (2004): 530.

⁵⁸ Папастатис, Хараламбос К. “Савремени Правни Статус Свете Горе.” *Зборник Радова Византолошког Института* XLI (2004): 531-536.

- The land belongs entirely to the monasteries of Mount Athos, and it cannot be expropriated,
- There are restrictions for living on the Holy Mountain: monks and novices who belong to the monasteries of Mount Athos must be Orthodox and cannot leave Athos without written permission; persons wishing to visit the Holy Mountain must obtain a permit from the offices of the Epistasia in Thessaloniki or Ouranopolis; female persons are forbidden to enter the Holy Mountain; lay people can obtain a permanent residence permit for professional reasons, if approved by the institutions of Mount Athos; foreigners who become novices, become monks or monks who move to one of the monasteries on Mount Athos automatically receive Greek citizenship, etc.⁵⁹
- It is forbidden to sell real estate, but only to exchange them between monasteries. Monasteries oversee the protection of monastic treasures,
- Trade is prohibited except with items necessary for the life of the whole community, except in Karyes and Daphne,
- Establishing associations is not allowed,
- Any kind of proselytism or propaganda is forbidden.

Vatican City

The Vatican City State is a significantly different example from Athos, but, in essence, it is also a church entity. The Vatican enjoys independence and statehood in a certain compact territory and owns property that enjoys extraterritorial rights in the territory of the city of Rome, as well as outside it. The City of Vatican was established by the Lateran Treaties of 1929, which solved the problem created by the annexation of the remnants of the papal state or the region of Lazio with the city of Rome to the united Kingdom of Italy in 1870. The Pope then declared himself a Vatican prisoner and took a very hostile attitude towards the new Italian state. The Lateran Treaty established an independent and sovereign state, the City of Vatican, whose territory covers less than half a square kilometer, including the St. Peter's Basilica, the square, as well as buildings and land in the immediate vicinity. This recognized the need for the seat of the Holy See, as the center of the Roman Catholic Church, to be in an independent state. Here we will only consider the elements contained in the first part of the Treaty, the Treaty of Conciliation, which consists of 27 articles, while the analysis will not cover the other two parts: the Financial Convention and the Concordat.

The Lateran Treaty established the Vatican City State and regulated relations between the Italian state and the Holy See:

- An independent and sovereign state, the Vatican City, is established, which is the full property, exclusive and absolute dominion of the Holy See, which enjoys full sovereignty over it.⁶⁰ Italy has recognized the full sovereignty of the Holy See in

⁵⁹ Constitution of the Republic of Greece, Article 105

⁶⁰ Lateran Treaty, Preamble and Article 3

international affairs, in accordance with the traditions and activities of the church abroad.⁶¹ At the same time, Roman Catholicism is recognized as the only state religion in Italy,⁶²

- The Holy See enjoys full sovereignty and jurisdiction over the Vatican City, and the Italian Government is forbidden to intervene in any case,⁶³
- St. Peter's Square remains open to the public and the Italian police is in charge of public order (except in the case of special ceremonies), whose jurisdiction ends in the St. Peter's Basilica (except in the case of a request from the Holy See), which, however, also remains open to the public,⁶⁴
- Italy undertakes to provide the Vatican City with: connections to public utilities as well as railway; telegraphic, telephone and postal connections. A special agreement regulates the movement of Vatican road vehicles and planes through Italian territory.⁶⁵ It is prohibited for airplanes to fly over the territory of the Vatican City (Article 7),⁶⁶
- All persons who have permanent residence in the territory of the Vatican City are under the sovereignty of the Holy See, and in case their status changes, and they do not have another citizenship, they are treated as Italian citizens. The persons who are the subjects of the sovereignty of the Holy See are subject to Italian laws on the territory of Italy, and in case of foreign citizens, the law of their countries of origin.⁶⁷ All employees of the Holy See will be treated as Italian citizens on the territory of Italy. All of them, as well as secular persons employed in the Vatican City who are considered necessary, are exempt from military service, jury service, and other obligations of a personal nature. Cardinals permanently residing in Rome are treated as citizens.⁶⁸ The same article defines that the Churches, whose task is to participate without the Vatican in the execution of acts originating from the Holy See, will not be exposed to any obstacles, investigations or harassment by the Italian authorities,
- Italy will not interfere in the work of the central bodies of the Roman Catholic Church, except on the issue of conversion of real estate purposes,⁶⁹
- The situation is regulated in case the suspects in both countries flee to the territory of the other, i.e. the obligation to extradite, as well as the possibility for the Holy See to call Italy for help in case of offenses committed in the Vatican City,⁷⁰
- All diplomatic missions to the Holy See, even if located on Italian territory, will be treated in accordance with international law and will enjoy immunity,

⁶¹ Ibid, Article 2

⁶² This article was later repealed through the additional Treaty from 1984

⁶³ Ibid, Article 4

⁶⁴ Ibid, Article 3

⁶⁵ Ibid, Article 6

⁶⁶ Ibid, Article 7

⁶⁷ Ibid, Article 9

⁶⁸ Ibid, Article 21

⁶⁹ Ibid, Article 11

⁷⁰ Ibid, Article 22

- The Italian government is committed to prohibiting any construction in the territory surrounding the Vatican City, and is obliged to demolish certain existing buildings in those places,⁷¹
- Articles 13, 14 and 15 define the extraterritorial possessions of the Holy See in Rome and outside of Rome: Archbasilica of Saint John Lateran, The Basilica of Saint Mary Major, and Saint Paul's Outside the Walls, The Papal Palace of Castel Gandolfo (outside Rome), the Lateran Palace, the Lateran University, the Holy Stairs, the Palace of Saint Callixtus, Office of Papal Charities, the Palace of the Propagation of the Faith, The Palace of the Holy Office, the Palace of the Congregation for the Oriental Churches, etc. Also, in the possession of the Holy See, without the right of extraterritoriality, are several other estates inside and outside Rome,
- Article 21 additionally defines the situation in case the Pope's position is vacant, and special provisions regarding the meeting of the Conclave and the obligation of the Italian state to enable a smooth session of the Conclave,
- The unequivocal neutrality of the Vatican City in international relations is proclaimed.⁷²

It should be kept in mind that the Basic Agreement between the Holy See and Israel, i.e. the 1993 concordat envisages a kind of sovereignty in the practice of the Roman Catholic Church over some of the Christian holy places in Israel.⁷³

Parallel analysis

Although probably neither of these two examples can be taken as a model, primarily because in both cases the basis is the existence of a compact territory, which is not the case with the Serbian religious and cultural heritage in Kosovo, there are parallel aspects that could be useful in the case of Serbian religious and cultural heritage on the territory of Kosovo:

- The example of the Holy Mountain shows that it is possible to have a supreme spiritual authority over the autonomous territory, whose seat is outside the home country. While the Holy Mountain is separated from the church system in the rest of Greece and subordinated directly to the Ecumenical Patriarch in Istanbul, the Vatican is the center of the international Roman Catholic Church, and at the same time secular authority over the Vatican City and extraterritorial possessions, and spiritual authority over the Roman Catholic Church throughout Italy,
- Both the Holy Mountain and the Vatican City define the ways in which foreigners, who are monks, members of the clergy or employees of churches/monasteries, regulate their status in relation to the state that surrounds them (Vatican) or of which they are a part (Holy Mountain);

⁷¹ Ibid, Article 7

⁷² Ibid, Article 24

⁷³ Leanza, Umberto. *op.cit.*, 42

- While the Vatican City has a fully independent judiciary and full sovereignty, the Holy Mountain has legislative autonomy on spiritual matters, as well as judicial autonomy on monasticism and the work of the laity, while Greece has jurisdiction over serious crimes,
- In addition to its sovereignty over the Vatican City, the Holy See also owns a number of extraterritorial possessions inside and outside the city of Rome, which are not territorially connected to the Vatican, as well as several possessions that do not have extraterritorial status,
- The sale of real estate on the Holy Mountain is prohibited, and in the Vatican their conversion is not allowed without the consent of Italy, while Italy is also obliged to ensure a ban on new construction in the parts of Rome that surround the Vatican,
- The public parts of the Vatican City, as well as the extraterritorial possessions and property of the Holy See, are integrated into their environment, i.e. Rome and other cities. In other words, there is a direct connection with the immediate environment,
- Italy's obligation to provide the Vatican with access to communication links, as well as connection to city installations, is defined,
- Both the Vatican City and Mount Athos are on the UNESCO World Heritage List.

EXAMPLES OF TERRITORIAL SOLUTIONS FOR SMALLER UNITS

Enclaves

The first possible option as a territorial answer to the question of Serbian religious and cultural heritage, as well as the future functioning of the Serbian Orthodox Church on the territory of Kosovo, are enclaves or exclaves. These two terms, which essentially mean the same thing - a territory or part of the territory of one country surrounded by the territory of another country (in the case of enclaves and exclaves) or other states (in the case of exclaves). There are also internal enclaves/exclaves within countries with different levels of government, with internal enclaves/exclaves. In any case, enclaves/exclaves exist as separate units of the home country (except in cases where enclaves are the country itself), where the legal framework of the home countries applies, usually with specific solutions that make everyday life easier for the population living in them. In other words, there may be special exemptions or incentives from the home country for citizens living in enclaves/exclaves: e.g. reduced taxes, customs benefits, etc. There are also often agreements with countries surrounding enclaves/exclaves to allow for better functioning in practice, such as border passes or the construction of a road/rail link connecting the enclave/exclave with the home territory (the case of the so-called pene-enclaves).

Enclaves are not uncommon, even though they seem to be at first glance. The previously mentioned example of the Vatican is precisely the example of an enclave that is at the same time a country. The same is the case with another micro country that is surrounded by Italy, San Marino. Enclaves/exclaves are relatively common in Europe as well. For example, the Autonomous Republic of Nakhchivan is an exclave of Azerbaijan surrounded by Armenia, Turkey and Iran, with about 400 thousand inhabitants and a territory of 5500km. Baarle-Hertog is a Belgian municipality consisting of 22 small enclaves/exclaves within the Netherlands, while within some of the Belgian enclaves/exclaves there are 6 Dutch (counter) enclaves/exclaves belonging to the municipality of Barle-Nassau. Most citizens living in these enclaves have both Dutch and Belgian citizenship.⁷⁴ The largest exclave in Europe is the Kaliningrad region, which is an integral part of the Russian Federation, and surrounded by Poland and Lithuania, but since it has access to the sea, it is defined as a semi-exclave. The Kaliningrad region has slightly less than a million inhabitants, while its size covers 15 thousand square kilometers. Of the more important ones in Europe, there are several other enclaves/exclaves of Spain, Italy, Russia, Great Britain, and Germany.

Perhaps the most historically famous enclave is West Berlin, which belonged to West Germany although surrounded by East Germany, to be connected at one point by a closed highway to the home country.

⁷⁴ Eames, Andrew. "Travel - Europe's Strange Border Anomaly." BBC, 11 December 2017, available at <https://bbc.in/2xLvULJ>, last accessed on 8 May 2020

There are currently two enclaves/exclaves in the Balkans. The village of Sastavci, with about 1,400 inhabitants, belongs to the municipality of Rudo in Bosnia and Herzegovina, but is surrounded by the municipality of Priboj in Serbia. Brezovica Žumberačka is part of the village of Brezovica on Metlika, but legally it is a Croatian exclave/enclave in Slovenia, with around 30 inhabitants.⁷⁵

So evidently, enclaves are not so unusual as solutions for contentious territorial issues, although they potentially bring with them a whole group of challenges. However, in the context of the issue of Serbian cultural and religious heritage, it can prove to be an interesting solution for the most important monasteries and churches, of course by finding an adequate model for integration with the immediate environment, openness and security (in every sense), as well as other necessary direct arrangements. With the application of this approach, Serbia could remain the holder of the heritage on the UNESCO list, if the comprehensive agreement would include a chair for Pristina in the UN and other international organizations.

Extraterritoriality (as a territorial concept) and the territory owned by different entity

Extraterritoriality (in the territorial sense) is a concept that is most often associated with diplomatic missions, usually denoting the part of the territory where the laws of the host country do not apply, and which is governed by another country. In other words, the host country retains all sovereign rights on the territory where extraterritoriality applies, but its legislative framework does not apply. Apart from diplomatic missions, extraterritoriality is a solution that also applies to the headquarters and missions of international organizations, such as the UN headquarters in New York and Geneva, and the NATO headquarters in Brussels. We have also seen examples that the Vatican City has a whole range of extraterritorial possessions in the city of Rome and Italy, which are even larger than the Vatican itself (the Papal Palace of Castel Gandolfo itself is slightly larger than the territory of the Vatican City). Perhaps the most interesting example of extraterritoriality, bordering with the case of condominium (which we will analyse later), is the seat of the Order of the Knights of Malta, i.e. the Sovereign Military Hospitaller Order of Saint John of Jerusalem, of Rhodes and of Malta, which is recognized as a sovereign subject under international law, but which does not have its own territory. During the re-establishment of the order in 1834,⁷⁶ a new center of the order was established in Rome, in the Palazzo Malta (Magistral Palace), which was granted extraterritoriality in 1869 by the papal state. The Italian state also recognizes the extraterritoriality of the Palazzo Malta (as well as Villa Malta), but also the right of the order to enjoy sovereignty in their seat that coexists with the Italian one.⁷⁷ In 2001, Malta granted the Order the right to use the upper part of the Fort St. Angelo in the city of Birgu for 99

⁷⁵ Jan S. Krogh's Geosite: Brezovica, available at <https://bit.ly/2zj68Pe>, last accessed on 8 May 2020

⁷⁶ The order was abolished after the conquest of Malta by Napoleon in 1798

⁷⁷ Klieger, P. Christiaan. *The Microstates of Europe: Designer Nations in a Post-Modern World*. Lexington Books, 2012. 95-96

years, with limited extraterritoriality. This fortress was the seat of the Order, during their control of Malta from 1530 to 1798.⁷⁸

Also, other sovereign entities may have the right of control in certain aspects over certain micro-territorial units or buildings, however they still fall under the sovereignty of the host country: such as significant tombs, churches, castles, etc. In the case of the Vatican City, there are also several churches on the territory of Italy, which are owned by the Holy See, but without the right of extraterritoriality.

Extraterritoriality may be the solution to the issue of Serbian religious and cultural heritage, but in this case the property would be owned by Pristina, which would probably not be acceptable to the Serbian Orthodox Church or Belgrade.

Dual sovereignty - condominium

Finally, we come to the last example of the legal situation that could be of interest for resolving the issue of Serbian religious and cultural heritage in Kosovo - a condominium or dual sovereignty over a certain territory. In history, we have examples of the condominium model being used when there is a misunderstanding about border issues and when other attempts have mostly failed.⁷⁹ This model allows for joint sovereignty/jurisdiction to define governance mechanisms in a way that all parties are formally satisfied. Condominiums are not common, especially because states are not too willing to share sovereignty, but they can be a long-term solution to complex misunderstandings about borders.⁸⁰ In most cases, today's condominiums refer primarily to uninhabited territories or bodies of water, over which the parties share sovereignty, such as the Pheasant Island on the Bidasoa River, which is a condominium of France and Spain, or parts of the Parana River, which are a condominium between Brazil and Paraguay in South America.

However, there are several cases of condominiums of settlements. The most famous case of a condominium we know is the internal condominium within Bosnia and Herzegovina, Brcko District, which is a part of both entities, the Federation of Bosnia and Herzegovina and Republika Srpska. After 2006, the district's international supervisor ended the use of entity laws, as well as the existence of borders between the entities within the district itself, and declared that the district relied on its own laws, as well as the laws of Bosnia and

⁷⁸ Cahoon, Ben, *Sovereign Military Order of Malta*, available at <https://bit.ly/35Ibdg>, last accessed on 8 May 2020

⁷⁹ Samuels, Joel H. "Condominium Arrangements in International Practice: Reviving an Abandoned Concept of Boundary Dispute Resolution." *Michigan Journal of International Law*. 2008, 29 (4), p. 738.

⁸⁰ Ibid.

Herzegovina.⁸¹ In other words, the district is formally part of both entities, but in practice it functions as an autonomous entity within Bosnia and Herzegovina.

As for historic condominiums, a few examples should be pointed out:

1. Condominium of Great Britain and France over the colony of New Hebrides, established in 1906, and abolished in 1980 when the New Hebrides became an independent state of Vanuatu. The condominium functioned in such a way that the citizens of France and Great Britain were under the jurisdiction of the home countries, while they jointly managed the local population, through joint local institutions, including the court.⁸² The costs of their part of the administration were financed by each of the sovereigns, while the local revenues went to the joint condominium fund.⁸³
2. Schleswig-Holstein Condominium - After Prussia and Austria defeated Denmark in the war around Schleswig-Holstein in 1864, Denmark handed over the two provinces to the joint administration of Austria and Prussia. The condominium over these two provinces was organized in such a way that Holstein was ruled by Austria, while Schleswig was ruled by Prussia, and the sovereignty was formally shared. After the war between Austria and Prussia in 1866, Austria ceded rights to Schleswig-Holstein.
3. Sudan Condominium: Sudan was formally a condominium of Great Britain and Egypt in the period 1899-1956. However, apart from the flag and limited local influence, Egypt did not participate in the management and control of Sudan in practice, and mostly everything was left to British officials.

These examples show that condominiums can function in practice, but also that if the territory is inhabited, they must have local institutions that ensure local autonomous management, while the territory in question remains under the joint sovereignty of the two sides. Also, the example of Brcko shows that condominiums can exist within one state.

Certainly, if a possible comprehensive agreement would include a seat in the UN and other international organizations for Pristina, an adequate solution would have to be found regarding the representation in UNESCO.

⁸¹ Supervisor's Order repealing the entity laws in the Brčko District and declaring the cessation of the legal significance of the inter-entity border in the District, 2006, available at <https://bit.ly/2zj6rJS>, last accessed on 8 May 2020

⁸² Samuels, Joel H. *op.cit.* 738.

⁸³ *Ibid*

CONCLUSION – SCOPE OF IMPLEMENTATION OF NORMATIVE FRAMEWORK FOR SERBIAN RELIGIOUS AND CULTURAL HERITAGE OF KOSOVO

Through the implementation of the Ahtisaari Plan, Kosovo has normatively provided a high level of protection for Serbian religious and cultural heritage within the legal framework. However, legal guarantees in the post-conflict period have not led to the building of interethnic trust and the creation of preconditions for reconciliation. In the political sense, the basic motive for the adoption of all the mentioned laws was the fulfillment of the conditions for the end of supervised independence. In addition to the threat, the justification for the adoption of legislative proposals by Kosovo's leaders was the framework of independence, i.e. possible negative consequences for the international position of legitimizing statehood.⁸⁴ Therefore, there was no opportunity for real interethnic dialogue to accept Serbian religious and cultural facilities as the heritage of a minority community that is a full-fledged part of the Kosovo society.

Jeopardizing the security of Orthodox buildings as well as non-compliance with the Law on Special Protective Areas by local authorities have created a long-standing gap between the prescribed norms and their application in practice. In the process of monitoring the implementation of this law, the OSCE Mission in Kosovo highlighted several problems and challenges in preserving Serbian cultural heritage. First, the legal framework is vague in some details, especially in the division of responsibilities between institutions responsible for cultural heritage. The combination of limited capacities and the absence of political will made it impossible to include cultural heritage in local spatial plans and full protection from illegal construction.⁸⁵

Serbian cultural and religious heritage was not the subject of the dialogue in Brussels, nor was it mentioned as an issue in the opening of Chapter 35 in Serbia's accession negotiations with the EU. However, with Kosovo's failed application for UNESCO membership in 2015, the issue of cultural heritage status remains open, but is likely to be found as an issue in the final agreement on the normalization of relations.

In the dialogue process so far, the focus has been on integrating northern Kosovo into Pristina's institutions and securing some kind of autonomy for the Serb community through the Community / Association of Serb Municipalities. However, "normalization" has shifted to creative solutions. For this reason, the analysis also contains models of territorial solutions for heritage, based on three reasons: 1) the model of enclaves / exclaves or extraterritoriality

⁸⁴Lončar, Jelena, *Cultural Heritage in Kosovo: Strengthening Exclusion through Inclusive Legislation*, in: *Figuring out the Enemy: Re-Imagining Serbian-Albanian Relations*, edited by Aleksandar Pavlović, Adriana Zaharijević, Rigels Halili, and Draško Gazela Pudar, Belgrade, 2015, p. 419.

⁸⁵ OSCE, *"Challenges in the Protection of Immovable Tangible Cultural Heritage in Kosovo"*, Pristina, 2014.

is very often mentioned in public as a model for the final status of heritage, especially after the UNESCO vote and Serbia's fears of a scenario where monasteries in Kosovo would no longer be considered its cultural heritage; 2) religious buildings and cultural monuments carry with them a contingent of identity related emotions that significantly influence the formation of citizens' attitudes about the final agreement, regardless of the apparent dominance of other topics in the status dispute; 3) the current obstruction of the application of valid legal acts in Kosovo (Law on Special Protective Areas, Law on Cultural Heritage and Law on Freedom of Religion) strengthens the arguments in favor of the new status framework.

Possible implementation of one of the three models: enclave/exclave, extraterritoriality or condominium could not include all Serbian religious and cultural heritage, but a list of the most important facilities, which would be defined by a special annex to the agreement, while the status of other religious and cultural facilities would be covered by a single legal solution in Kosovo, through a contractual relationship between the Serbian Orthodox Church and the authorities in Pristina, and confirmed through a possible comprehensive Agreement on the Normalization of Relations. In any case, any agreement would imply the obligation of Belgrade and Pristina to cooperate substantially on the issue of holy places, ensure real integration of religious and cultural sites into the immediate environment, and ensure protection and security through a functional mechanism of communication and cooperation.

RECOMMENDATIONS

- In the continuation of the dialogue between Belgrade and Pristina, it is necessary to open the topic of the position and future status of Serbian religious and cultural heritage in Kosovo,
- It is necessary to initiate a comprehensive and professional analysis of the legal framework and enforcement of laws related to the protection of Serbian religious and cultural heritage, which would lead to the formulation of a new unique legal solution,
- In addition to the existing normative framework for Serbian religious and cultural heritage and a possible unified law, it is necessary to confirm the guarantees of the special status in the form of agreements between the Serbian Orthodox Church and the authorities in Pristina, as well between Belgrade and Pristina, within a possible final agreement on normalization,
- Regardless of the model used in defining the status of Serbian religious and cultural heritage, it is necessary that the Serbian Orthodox Church based in Belgrade, i.e. the Diocese of Raska and Prizren, whose supreme authority is the Patriarch and the Holy Synod of the SOC, has *de facto* and *de jure* administration over them,
- Towards the reach of the final status, it is necessary to ensure that Serbian religious and cultural heritage continues to achieve social integration with the immediate environment and the majority population living in the area, respecting the principle of cultural heritage as a civilizational heritage regardless of religious and ethnic differences,
- In the public socio-political discourse, it is necessary to avoid pseudo-historical interpretations in Kosovo, various forms of pressure and challenging of the legitimate rights of the Serbian Orthodox Church over Serbian religious and cultural heritage in Kosovo,
- A precondition for a long-term agreement is resolving all property and legal relations, especially property that falls under the territory of special protective zones, in order to protect the “historical identity and natural environment, including the monastic life of the clergy” of Serbian religious and cultural heritage. In that sense, it is necessary to consider the possibility of expropriation of land on the territory of special protective zones, but also to start the process of restitution of the Serbian Orthodox Church’s property in Kosovo, as envisaged by the Ahtisaari plan,
- When defining the final status of Serbian religious and cultural heritage, it is necessary to provide effective guarantees for implementation within the set deadlines. In that sense, guarantees and sanctioning mechanisms by international actors are necessary.



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