

The Security of Minorities and the Status of Kosova

By Xhavit Shala

The Kosova government¹, despite unemployment and poverty, has set aside in its budget an amount of 4,350,000.00 Euro² to finance three projects to encourage the return of those displaced by the war in three communes of Kosova. Those displaced are Serbs, Roma, Ashkalis, Egyptians and Albanians. The action of the Kosovar government speaks of its serious commitment to fulfill one of the most important standards required of it, that is the sustainable return of persons displaced by the war.³

Nevertheless, in order for the return process to be sustainable and continued, those who are returning must be guaranteed all of their rights and freedoms, in accordance with the International Convention on Minority Rights. The members of ethnic minorities must be guaranteed security within such parameters that they can feel equal citizens of Kosova. A decision by the Kosovar Parliament to turn into law the idea proposed by the Albanian Prime Minister Berisha in "Opinion" talk-show to declare a general amnesty for crimes committed by members of displaced families from Kosova, with the expectation only of those crimes punishable by International Conventions, such as crimes against humanity or genocide. This would provide another incentive to the Kosova minorities to return and reduce the possibility of them being manipulated.⁴

The minorities should be guaranteed the right to their properties, including not only the right to possess it without any violation but also to sell it at market value should some of them decide not to return to Kosova. The right for work, business, education, culture and media in their mother tongue, protection of cultural monuments, freedom of religion, of movement and representation in the respective governmental institution in Kosova, are all rights that must be guaranteed by law. However, the minorities' rights cannot be realized completely for as much as they will not be cooperative in fulfilling those rights. As soon as the Serb community is convinced that Kosova is their country, it will be much better for them. Just as in the case of the Serbs in Bosnia and Croatia, they will also realize that Belgrade used them to reach its political goals, for their electoral campaigns or internal fights for power.⁵

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² KosovaLive- 20 December 2005

³ The article was published first in "Korrieri" newspaper 11.01.2006;
<http://www.acnss.com/html/studime/minoritetet.htm>

⁴ During the Opinion TV show in Klan TV, Prime Minister Sali Berisha suggested that an amnesty be declared by the Kosova Assembly. "It will be an action that will tell everyone, will every Serb that they can return to Kosova." Lajmet.net on 08 01 2006.

⁵ Patrick Moore: "Kosova Serbs will see that Belgrade has used them for political objectives"-Interview for Radio "Free Europe" on December 31, 2005.

Many Kosovar families still feel the pain and grief over the family members that were murdered or who disappeared during the war. The century old Serb genocide cannot be erased easily from their memory. But in order for the Kosovars to reach their final goal, the independence of Kosova, they cannot allow themselves to fall for traps similar to that of March 2004. The March incidents pushed the status talks back harming the interests of Kosova and serving those of Serbia. Repressing any tendency for revenge and awareness for the need to respect minority rights would release positive energies in Kosova. Freedom, security and respect of minorities' rights, will not only indicate the value of our citizenship in front of Europe and the world, but it is also a decisive factor that will make Kosova's path towards independence easier.

Minority rights can be protected better in an independent state, with strict laws and a consolidated democracy. Even though it is not recognized as an independent state and does not have yet all its institutions, Kosova must make all efforts to respect minority rights according to the standards of independent states and consolidated democracies.⁶ Under these circumstances, the recognition and strengthening of an independent Kosova state and the security and protection of minority rights are two issues that are positively connected with one another. Guarantying the rights and security for minorities means investing for the independent state of Kosova.

Establishment of a regime of special rights for minorities would be a way to protect and guarantee these rights. This system should include criminal and civilian laws, which make it mandatory for public institutions and individuals to respect minority rights and prevent any maltreatment. Kosova's Criminal Code should include very strict criminal provisions against those who incite hatred or who instigate conflicts based on ethnic, racial or religious grounds. Ways and methods must be found so that the newly created institutions of Kosova can take and implement harsh measures against any perpetrator of crimes against ethnic minorities. The Kosovar delegation must plan not only for the introduction of this special regime of rights but also prepare a mechanism that ensure implementation of these rights, a mechanism that the Serb delegation and the internationals may demand.

Proportional representation or co-governance in the political institutions is another possibility to protect minorities and their rights in Kosova. While it needs to be seen as part of the general program for the protection of minority rights, this does not mean that it is ensured to work. The international experience in such cases has shown that co-governance in executive bodies often leads to paralysis in decision-making, as the case of Bosnia so often proved.

The decentralization process is recognized as another opportunity to protect minorities. It includes the devolution of political decision-making to the lowest practical level, aiming to get closer to citizens the decision-making processes, effective public administration and other public services. Ambassador Kai Eide and Contact Group, paid special

⁶ "The return should be sustainable and a right guaranteed by law to every person who left Kosova because of the War or as a result of the developments that took place in Kosova after the war," the Minister for Local Government, Lutfi Haziri said - Prishtina, 21 December 2005 (KosovaLive)

importance to the decentralization process in their recommendations.⁷ Despite the debates, it seems that the inclusion of decentralization into negotiation topics might be favorable for Kosova. Acceptable solution for the Serbian community in Kosova, provided through the decentralization, process could force the Serb negotiators to give up their original demands for the creation of two entities (enclaves) in Kosova. According to Serb press reports, the decentralization process will be an area of special focus⁸ for the Serb negotiators. Nevertheless, it should be taken into account that given the fact that Kosova will be a new state it is necessary to have a powerful central government. Under these circumstances, it is necessary to ensure an adequate relationship between the different government levels and stop any attempt of cantonizing Kosova.

Kosova politicians are convinced that the freedom, security and respect for minority rights are all decisive factors that will push Kosova's progress towards independence forward. In view of the positive and negative aspects that each system for the protection of minorities offers, the Kosova authorities may have to prepare a plan that could bring together several of the points we delineated above. This action plan must provide the necessary guarantees to the Serb minority must be accepted by the international community and should guarantee the recognition of Kosova as a sovereign and independent state with full control over all of its territory.

⁷ Principle no. 4 established by the Contact Group says, "The solution must offer mechanisms that will ensure the participation of all of Kosova's communities in the governing of Kosova, at a local and a central level." (http://www.unosek.org/docref/2005-10-07_-_Contact_Group_-_Ten_Guiding_principles_for_Ahtisaari_-_albanian.pdf)

⁸ Serb President Boris Tadic said during a speech at the French Institute for International Relations, that the process of decentralization is a key for the success of the talks. A Serb entity should exist within the Institutions of Kosova, an entity that would keep institutional ties with Serbia and exercise full powers in such areas as health, education, justice and security. Paris, December 21, 2005 (Beta News Agency)