UDK: 327.7/.8(497.115)
https://doi.org/10.2298/FID2003340C
Original Scientific Article
Received: 19.06.2020. Accepted: 10.08.2020.

PHILOSOPHY AND SOCIETY
VOL. 31, NO. 3, 277–448

Jelena Ćeriman and Aleksandar Pavlović

BEYOND THE TERRITORY PRINCIPLE: NON-TERRITORIAL APPROACH TO THE KOSOVO QUESTION(S)

ABSTRACT
This article presents an attempt to approach the dispute over Kosovo between Serbs and Albanians from a non-territorial perspective, with particular focus on the preservation of the Serbian cultural and religious heritage. First, we argue that the Kosovo issue is at present commonly understood as an either-or territorial dispute over sovereignty and recognition between Serbian and Kosovo Albanian politicians. However, we claim that a lasting resolution to the Kosovo issue actually needs to account for at least three separate aspects: 1) status of Northern Kosovo which is ethnically Serbian and still maintains various ties with the Serbian state, 2) status of Serbian cultural and religious heritage, chiefly UNESCO world heritage Serbian medieval monasteries and churches and 3) the fact that the Serbian population in central Kosovo, i.e. south of the river Ibar, where most of the mentioned monasteries and churches are located, are located in small municipalities or enclaves of Serbs surrounded by vast Albanian populations. We examine the applicability of the non–territorial approach (NTA) to the Kosovo issue by analyzing the normative framework directly regulating the Serbian cultural and religious heritage in Kosovo, its preservation and protection, particularly of Serbian Orthodox monasteries, churches and other historical and cultural sites, while comparing these regulations to the existing normative NTAs in Croatia and Montenegro. Arguably, since most Serbian monasteries and churches are not included in any sovereignty negotiations, we point to the potential to combine territorial and non–territorial approaches, regardless of the continued obstacles in implementation arising from continued contestation of Kosovo's sovereign status.

KEYWORDS
Non-Territorial Approach (NTA), territorial approach (TA), Serbian-Albanian relations, Serbian cultural and religious heritage, Kosovo

1. Introduction

This article approaches the Kosovo issue(s) between Serbs and Albanians from a non-territorial perspective, with particular focus on cultural and religious heritage since the main discourse of this conflict is the discourse of enemies with different religious beliefs, language and ethnicity (Pavlović et al. 2015).[1]

1 The first draft of this article originated during Aleksandar Pavlović's short research stay at the University of Derby and University of Glasgow from mid–February to

Jelena Ćeriman: Research Associate, Institute for Philosophy and Social Theory, University of Belgrade; jelena.ceriman@instifdt.bg.ac.rs.
Aleksandar Pavlović: Research Associate, Institute for Philosophy and Social Theory, University of Belgrade; aleksandar.pavlovic@instifdt.bg.ac.rs.

On the first glance, such endeavour may seem counterintuitive. The NTA arrangements are not novel (see: Križanić and Lončar 2012), they have been employed rather successfully in Balkans and in Serbia, for instance, in the case of Hungarian minority in Serbian northern province of Vojvodina (Beretka 2013, Korhecz 2014). However, in ongoing debate Kosovo issue(s) appears as essentially a territorial one, and therefore cannot be resolved effectively by a non-territorial approach. In other words, is it not too late to talk about the NTA arrangements?

In approaching the Kosovo issue(s) from an NTA perspective, it is instructive to have in mind first that NTA should not be viewed as a universally applicable solution to all issues related to accommodating minorities and diversities within a polity. While the recent expansion in understanding of this term surely makes it a useful framework within which to consider a whole range of issues across different contexts, from socio-linguistic, over political and cultural to religious identity (see Malloy, Osipov and Vizi 2015), it still should not be viewed as an universal, ready-made solution to one and all problems of accommodating diversities. What is more, more often than not, the NTA approach in its practical and policy use is seldom found in its pure form, and is more commonly mixed and matched with a TA (territorial approach) in accommodating minority or collective rights by the central authorities. Broadly speaking, TA would be better suited for minorities that inhabit a relatively compact territory where they present a clear majority. As Sherrill Stroschein (Stroschein 2015: 24) reminds us, this dichotomy can actually apply to the same ethnic group with a single state: “Minorities in enclaves, or regions where their numbers constitute a local majority, tend to favour TA as a means for them to govern their own affairs within that TA territory - as is the case of the German-speaking minority in Alto Adige (South Tyrol) in northern Italy.” Ultimately, it leads to what Stroschein calls the “mini-state” approach, “one that reproduces state administrative duties at a local level that is under the political control of the minority group” (ibid, 24). The ‘mini-states’ produced by TA can thus favour self-governance at the expense of minority participation in the main state. However, while this can seem as a favourable solution from the perspective of minorities, the majority population and state authorities can see it as a potential threat to the central authority.

As it appears, the present situation in Kosovo exemplifies the clash between local and central authorities appropriately, and one could easily summarize the present years-long stalemate in Serbia-Kosovo negotiation from this vintage point. Namely, the overall political framework that was supposed to regulate both intra and extra Serbian-Albanian relations and issues in Kosovo has been

mid–March 2020. The author is deeply indebted to David Smith and Robert Hudson who provided guidance and made a number of useful references and remarks, and to COST action ENTAN that enabled this stay through its STSM scheme. Further development of the aricle included comparative analysis of normative frameworks in the region which was particular contribution of Jelena Ćeriman.

the 2013 Brussels Agreement. Both parties ratified it, with Serbia agreeing not to block, or encourage others to block, Kosovo on its EU path, while Kosovo officials agreed to grant a substantial autonomy to the Kosovo Serbs. In Serbian interpretation, Association/Community of Serb majority municipalities should precisely have wide authority and replicate the state authorities by having the President, vice President, Assembly, Council as well as its own official symbols (coat of arms and flag).[2] However, Kosovo Albanians apparently saw this as a threat, and in the following years consistently tried to downplay its role. In 2015, the Kosovo government issued its official stanza claiming it to have a consulting character, and being not (much) more than a non–profit organization.[3] While there are still some hopes for reviving this Agreement, most recent authors already concluded that the Association "not only failed to produce the expected results, but also inflamed certain aspects of the conflict further entrenching Kosovo's stalemate" (Kartsonagi 2020: 104).

To complicate matters further, we submit that, even if this Agreement following from a TA approach is taken as a framework for solving the question of Kosovo Serbs, it would not be easy to implement in the case of the Serbian community south of the River Ibar, nor to apply it to the question of Serbian religious and cultural heritage. Namely, as scholars readily observed, TA is less useful for a minority population scattered within a country or a wider region, whose goals can differ from those of the members of the same ethnic group constituting a majority within a compact area or a region (Stroschein 2015: 24). Therefore, in this article we advocate moving from the purely territorial and sovereignty approach to North Kosovo, to the NTA approach to Serbian enclaves and heritage in Kosovo, as a welcome change in the halted Serbian-Albanian dialogue. In this regard, we relied on the recent works of Stroschein (Stroschein 2015) and Palermo (Palermo 2015), both of which argued that the non-territorial autonomy is not a one-size-fits-all solution, and

2 Such interpretation is rather grounded in the text of the Agreement (Brussels Agreement 2013):
"1. There will be an Association/Community of Serb majority municipalities in Kosovo. Membership will be open to any other municipality provided the members are in agreement.
2. The Community/Association will be created by statute. Its dissolution shall only take place by a decision of the participating municipalities. Legal guarantees will be provided by applicable law and constitutional law (including the 2/3 majority rule).
3. The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo municipalities e.g. President, vice President, Assembly, Council.
4. (...) The Association/Community will have full overview of the areas of economic development, education, health, urban and rural planning."

3 Republic of Kosovo, 'Brussels Agreements Implementation State of Play, March—September 2015', *Report submitted to the European Union/European External Action Service by the Government of the Republic of Kosova*, Pristina, 2015, pp. 23–24. For a detailed analysis of this Agreement and the EU policy in this respect, see: Kartsonaki 2020: 103–120.

that it should better be seen not as a conceptual opposite to territorial autonomy, but as something that complements it, as is indeed the case in practice across a range of contemporary contexts in Europe and beyond.

Like Stroschein, Palermo recently argues that "[t]he conferment of a territorial self–government for minority groups, however, does not address the whole matter of autonomy and might even be detrimental to the overall management of complexity, because it risks replicating the state pattern at a lower level. Territoriality alone-in terms of (absolute or partial) control of a territory by a group-is thus a far too simple solution for a far too complex problem" (Palermo 2015: 20). Thus, even though he recognizes that "territorial solutions are indeed necessary devices to address the minority issues" (Palermo 2015: 14), he goes further in order to explore various arrangements between ethnicity and territory in managing diversity. He distinguishes an autonomy granted to a certain territory/territorial unit, from an autonomy granted to a specific ethnic group, that is, between autonomy granted *to a territory* and all of its inhabitants ('autonomy to') and autonomy granted *to an ethnic group* that constitutes the majority within a territory ('autonomy for'). Whereas the latter approach strengthens ethnic-based claims to ownership and excludes local 'minorities within minorities', the former offers the possibility to develop pluralistic regional identities and institutional arrangements that accommodate all communities through a combination of territorial and non-territorial approaches. We understand the concept of NTA exactly as an arrangement that considers a tailored approach to the realisation of the weakening of ethnic tensions between Serbs and Albanians in Kosovo, since the NTA implies a form of cultural self–government without challenging the sovereignty of the state (Bauer 2000) and can therefore help in maintaining cultural diversity and overcoming the limitations of territorial autonomy without violating the principle of territoriality (Nimni 2007; Goemans 2013). Such arrangements require careful crafting and raise a host of issues to be worked through in practice, not least in the spheres of language use and education (for instance, how to negotiate the teaching of contested histories in schools?) (Palermo 2015). Also, the issue of national cultural autonomy has been a rather lively and fruitful field in Europe in recent decades (see: Smith and Hiden 2012), in particular the revival of Karl Renner's ideas of "extraterritorial cultural autonomy" (see: Smith and Hiden 2012:112), especially in Central and Eastern Europe and the Baltic states (Smith 2013: 27–55). Hence, we believe that it is worth considering if NTA perspective can bring some added value in the discussion over Kosovo issue(s).

In the first chapter of this paper, we contextualize the issue of preservation of Serbian religious and cultural heritage in Kosovo, and propose application of the NTA approach in the Serbian-Albanian dialogue, which focuses on this heritage. It is followed by description of used methodology, followed by an analysis of normative framework and its shortcomings regarding Serbian religious and cultural heritage in Kosovo, as well as a comparison of this legislation to the existing NTA solutions in Croatia and Montenegro. In the concluding chapter of this paper we summarize findings of our analysis.

2. Contextualization: Breaking Down the Kosovo Issue(s)

The Kosovo issue(s) could be summarized as follows: Serbian claims are essentially based in history – Kosovo has been an autonomous part of Serbia in the former Yugoslavia; it has numerous Serbian medieval churches and monasteries of outstanding value (some are on the UNESCO list of World heritage), witnessing about centennial Serbian presence in Kosovo; Kosovo was ruled by Serbian medieval rulers, and is the place of the decisive battle in which medieval Serbia perished under the hand of the Turks, who ruled for the next five centuries. Albanian claims are based in demographics – Albanians comprised clear majority of population in Kosovo at least from the late 19th century onwards and are at present close to 90% of the population. The Albanians boycotted Serbian institutions under Slobodan Milošević's oppressive rule of the then Serbian province of Kosovo in the 1990s; an armed conflict between the insurgents and Serbian police followed, ending by NATO bombing the then Yugoslavia and ending Serbian sovereignty over Kosovo in 1999. In 2008, Kosovo unilaterally declared its independence – which Serbia considers illegal – and has since been recognized by 23 out of 28 EU countries and altogether by approximately half of all countries in the world; it is a member of a number international bodies, but not of UNESCO, Interpol and UN (for a more in–depth overview of Kosovo history, see: Vickers 1998, Mertus 1999; for an insight into a contemporary political situation, see: Judah 2008). In short, the Kosovo conflict appears to be fundamentally a territorial one – it can be either Albanian or Serbian, function under either Kosovo state sovereignty or Serbian state sovereignty; no other option or middle ground is plausible. Amongst many ideas circulating in the media and public over the ultimate resolution to the Kosovo issue, one of the two most commonly mentioned would be the option where Northern Kosovo with 4 municipalities which have almost 100% Serbian majority is ceded to Serbia, with Serbia then recognizing Kosovo and agreeing to its seed in the UN and membership in international organizations. However, most Albanian, Serbian and EU leaders have so far vigorously opposed this option on the grounds of either protecting the territorial unity of Kosovo or preventing the precedent that would open up the Pandora box of border disputes in the Balkans. The second option has been to form a strongly connected Community of Serbian municipalities in Kosovo, with significant autonomy and legislative functions and ability to maintain various ties with Serbia (comparable to the post–Dayton model of the Republic of Srpska in Bosnia) (for the discussion of both option see: Vladisavljević 2012: 46–62). However, Kosovo Albanian politicians have so far also resisted having broader autonomous Serbian units in Kosovo.

As we submit, the Kosovo issue actually comprises three related, but separate problems. First, the ultimate status of Northern Kosovo, which still has a stable Serbian majority and where the presence of Kosovo state is at best mildly felt. As mentioned, this issue has been a subject of debates, proposals for land swaps, for its formal accession to Serbia in exchange for Serbian

recognition of Kosovo independence and the like (see: Santora 2018); hence, it is at present the least rewarding to be observed from an NTA perspective. While Northern Kosovo and its issues have a huge presence in Serbian media and politics, the Serbs living in the municipalities and enclaves scattered in central and southern parts of Kosovo receive far less attention. Their political leaders are used to cooperate with the Kosovo state structures, and generally speaking, international and Kosovo state authorities and institutions have established a more solid presence there. In addition, most of the aforementioned outstanding Serbian orthodox churches and monasteries, that the Serbs have great affection for, are located either within these enclaves or in places nowadays inhabited solely by Albanians.

One of the main reasons for the insufficiency of the TA approach to Kosovo as envisaged by the Brussels Agreement is that it fails to account for the rather drastic recent and ongoing demographic shift among the Kosovo Serbs. Namely, while in the pre-1999 period the majority of Kosovo Serbs lived south of the river Ibar, their numbers significantly dropped and are constantly going down in recent years. Putting exact figures to these claims proves to be quite challenging given the problematic validity of population censuses and estimates conducted in the last decades. The last fully reliable insight into the population of Kosovo was the 1981 census, which showed some 230 000 Serbs and Montenegrins (15%) and over 1 200 000 Albanians (77%) in the total of over 1 500 000 inhabitants (Popis 1991). The census of 1991 showed the figure of 215 000 Serbs and Montenegrins. Albanians massively boycotted this census and thus the official Yugoslav statistics recorded only 9 000 Albanians (Popis 1993). However, since at the time Kosovo Albanians still controlled some institutions, they issued their estimate made by the Statistical Office of the Autonomous Province of Kosovo, with close to 1 600 000 Albanians or nearly 90% of the population. Since then, the only census in Kosovo was the one from 2011, conducted by the now independent Kosovo institutions, which this time the Serbs boycotted heavily (see: Musaj 2015). Without fully reliable data, scholarly articles seem to be a more useful source of estimation than the official documents. Vladisavljević thus make a reference to "well over 100,000 Serbs expelled from Kosovo after the war" (Vladisavljević 2012: 32), which seems closer to the actual figure, while Fridman and the European Centre for Minority Issues mention the remaining number of Serbs living in Kosovo nowadays to be at 130 000 and 140 000 (Fridman 2015: 176; Minority Communities 2012: 4). All things considered, it seems reasonable to suggest that nearly half of Kosovo Serbs fled from Kosovo after 1999. Initially, it were urban Serbs that suffered the most – once thriving Serbian population from Prishtina, Prizren and other major cities, accounting for some 40% of the overall Serbian Kosovo population, were expelled. Also, another several thousand of rural Serbs from isolated Serbian villages and enclaves in Metohija were expelled during the 2004 riots (called Pogrom in Serbia), thus turning the whole Metohija/Dukagjin into almost ethnically clean territory apart from some enclave villages, such as Goraždevac, Velika Hoča and parts of Orahovac. Finally, yet another conclusion that can be

derived from the previous discussion is that the territorial distribution of the Serbian community changed rather drastically in the post-1999 period: while previously some three-quarter of Kosovo Serbs lived south of the river Ibar, nowadays a majority of Kosovo Serbs are located in the Northern Kosovo, with a clear tendency that such trend will continue in the future.

To respond to dire situation of the Kosovo Serbs south of Ibar river, especially after the 2004 ethnic violence, international community and Kosovo institutions made a number of legal provisions. One of the key measures was the territorial redistribution of Kosovo. In terms of territorial distribution, Kosovo in the former Yugoslavia, as well as in the years after 1999, had 30 municipalities. Five of these had Serbian majority according to the 1991 census: Leposavić, Zvečan, Zubin Potok, Štrpce and Novo Brdo. This distribution to 30 municipalities held till 2008, when new administrative division has been introduced, with 38 municipalities, 10 of which have Serbian majority: Leposavić, Zvečan, Zubin Potok, Severna Mitrovica, Gračanica, Novo Brdo, Ranilug, Parteš, Klokot and Štrpce. Apart from these municipalities, Serbian population is nearly absent from all other parts of Kosovo, with only a handful of Serbs residing nowadays in the largest cities of Priština and Prizren, and some remaining in the village enclaves such as Goraždevac or Velika Hoča in Metohija.

Much of Serbian cultural and religious heritage is situated in the majority Albanian inhabited areas and outside the municipalities with a majority of Serbian population. There are four Serbian Orthodox sites in Kosovo which have been recognized by the UNESCO as part of the World Heritage: Dečani Monastery, Patriarchate of Peć, Bogorodica Ljeviška (Our Lady of Ljeviš) and Gračanica Monastery. Apart from Gračanica, which lies within the Serb majority enclave in central Kosovo, all others are situated in the almost exclusively Albanian municipalities of Peć, Dečani and Prizren respectively. Serbian heritage has so far been essentially a divisive issue – Kosovo officials trying to register these monasteries in UNESCO as Kosovo heritage, and Serbian officials making efforts to block and prevent them in doing so. For Kosovo, the UNESCO membership would represent an important step towards full international recognition which is still hampered by the Russian veto of the UN seat. Similarly, Serbian state officials and media commonly presented the question of Serbian cultural heritage in Kosovo as the matter of national sovereignty (Pudar Draško, Pavlović and Lončar 2020).

If one wishes to apply the NTA approach to Kosovo, the first big question is the autonomy from whom and for whom. The position of the Serbian Orthodox Church, several political parties and, mutatis mutandis, mainstream Serbian politics is that it is the Albanians that should enjoy autonomy within Serbia (Zlatanović 2018: 88–94). For the Kosovo Albanians it is the other way round – Serbs and their heritage can at best enjoy autonomy within the Kosovo state (Szpala 2018). Even though Serbian officially lost sovereignty over entire Kosovo after the NATO bombing in 1999, Northern Kosovo effectively kept close ties with Serbia to this day. Until 2012, there was no border control between central Serbia and Northern Kosovo. Serbian state institutions

were fully functional there, including educational system, hospitals and medical staff. Legal disputes were settled at Serbian courts and uniformed Serbian policemen were also present there, alongside UNMIK personnel. From 2012 some elements of the Kosovo state are present in the North as well – border crossings have been established, Serbian policemen wear official Kosovo uniforms, and Kosovo police sometimes intervenes in the North, but this area and its population – almost exclusively Serbian – preserve institutional ties with the Serbian state and retain many symbols of Serbian statehood. In distinction, Serbian enclaves and population south of Ibar river are more firmly connected to the Kosovo state – they have Kosovo identity cards, drive cars with Kosovo plates, and most official buildings and institutions in their towns or villages have Kosovo state symbols and function under Kosovo sovereignty.

The international community had a large influence on the status of Serbian heritage in Kosovo. While countries differed in recognizing Kosovo independence or not, international players seemed dedicated to provide security to endangered Serbian religious sites in Kosovo, especially after these being attacked in 2004, and continue to do so (Arraiza, internet). With that goal, international community put a pressure on Kosovo Albanians to adopt a number of laws granting special status to Serbian churches, monasteries and heritage sites (Lončar 2019). More so, in formulating the policy "standards before status", they actually conditioned the recognition of Kosovo independence by a number of legal demands and provisions, and adoption of favourable laws for the Serbian church and heritage featured prominently among them. In effect, this means that most of those legislation granting the protection of cultural and religious heritage has been effectively imposed on Kosovo Albanian political structures.

In approaching this issue here, we are following the factual situation that could be described as follows – no matter what the ultimate agreement might involve, crucial Serbian monasteries are located in the regions with almost exclusively Albanian population – this is the situation with the monastery of Dečani, Patriarchy of Peć, and Our Ladies of Ljeviška and other monuments in Prizren; true, Gračanica and Velika Hoča are located within Serbian enclaves, but these are little more than small islands of Serbian population. This means most of Serbian heritage in Kosovo would effectively remain outside of the territory covered by any association of Serb municipalities. Although Serbian government is continually contesting Kosovo's status, in all the aforementioned locations the Kosovo state has undisputed sovereignty, and it is certain that such situation is not going to change having in mind demographic estimates and current political dominance of the Kosovo institutions held by Kosovo Albanian political structures.

Therefore, as we believe, moving from the purely territorial and sovereignty approach to North Kosovo to the NTA approach to Serbian heritage in the entire Kosovo might actually be a much needed change in the Serbian-Albanian dialogue.

3. Methodology

The aim of our paper is to point out the possibilities of including NTA perspective in resolving the issue of Kosovo, with a special focus on the preservation of the Serbian cultural and religious heritage in this territory. Our starting point is that the Kosovo issue is at present commonly understood as an either–or territorial dispute between Serbia and Kosovo, a „zero sum game" over sovereignty and recognition between Serbian and Kosovo Albanian politicians. However, having in mind the status of the Northern Kosovo which is ethnically Serbian and still maintains various ties with the Serbian state, and the status of Serbian cultural and religious heritage, chiefly UNESCO world heritage Serbian medieval monasteries and churches, as well as the fact that Serbian population in central Kosovo i.e. south of the river Ibar, where most of the mentioned monasteries and churches are located, are inhabiting small municipalities or enclaves of Serbs surrounded by vast Albanian population, we argue that a combination of territorial and non–territorial approaches might be particularly valuable for the Serbian–Albanian dialogue, i.e. solution of the Kosovo issue.

Following Palermo's stand that "although territory is still (and will always be) an unavoidable term of reference for the very recognition of minority positions, its practical meaning and its scope are (...) changing because of the evolution of the overall legal environment" (Palermo 2015: 27–28), we tend to examine the possibilities in normative framework regarding Serbian cultural and religious heritage in Kosovo for overcoming territorial perspective, or rather inclusion of non–territorial approach to the Kosovo issue in Serbian-Albanian dialogue.

For this purpose, in the first step of the content analysis we analyse the following documents: the Cultural Heritage Law (2006), the Constitution of the Republic of Kosovo (2008), and the Law on Special Protective Zones (2008), the Law on Historic Centre of Prizren (2012), and the Law on the Village of Hoçë e Madhe / Velika Hoča (2012). More specifically, we focus our analysis on the legal aspects of the preservation and protection of Serbian cultural and religious heritage in Kosovo, particularly of Serbian Orthodox Monasteries, Churches and other historical and cultural sites. In this step of the analysis, we identify possible inclusion of the NTA perspective in the above mentioned normative framework. As mentioned earlier, we understand the NTA concept as a form of cultural self-government (Bauer 2000) that can help in maintaining cultural diversity and overcoming the limitations of territorial autonomy without violating the principle of territoriality (Nimni 2007; Goemans 2013). Basically, this can be achieved through allocation of power from the central authority (state) to specific communities in order for these communities to make decisions in certain policy fields. During the first step of the analysis, we are looking for the presence and possibilities of allocation of power from the central government of Kosovo to the Serb communities in Kosovo regarding the Serbian cultural and religious heritage in this territory.

The second step of the content analysis involves analysis of the existing NTA solutions in legal arrangements elsewhere, concretely in Croatia and Montenegro. These two countries were chosen given the common socialist, post–socialist and post–Yugoslav past, but also as an example of Southeast European countries where NTA entities have come to life in practice in the form of National Councils of National Minorities. In addition, a conflict between the Montenegrin authorities and the Serbian Orthodox Church over the Serbian cultural and religious heritage is currently ongoing in Montenegro, and it is important to compare the way in which NTA perspective is included in resolving this issue in Montenegro and in Kosovo. National Councils of National Minorities represent bodies of self–governance on the entire territory of a specific state and therefore they are representing and protecting the interests of members of minority groups regardless of their place of residence (Beretka, 2013). Therefore, their existence is based purely on the non-territorial autonomy principle. For the purpose of the comparative analysis in this paper we analyse Constitution of the Republic of Croatia ("Narodne novine No. 56/90, 135/97, 8/98 – consolidated text, 113/2000, 124/2000 – consolidated text, 28/2001, 41/2001 – consolidated text, 55/2001 – correction, 76/2010, 85/2010, 5/2014), Constitutional Law on the Rights of National Minorities of the Republic of Croatia ("Narodne novine" No. 155/2002, 47/2010), and the Law on the Legal Status of Religious Communities ("Narodne novine" no. 83/02, 73/13), and available documentation on the official website of the Serb National Council in Croatia (SNC) (https://snv.hr/eng), as well as the Constitution of the Republic of Montenegro ("Službeni list CG" No. 1/2007, 38/2013 – Amendments I–XVI), Law on Minority Rights and Freedoms (Official Gazette of the Republic of Montenegro No. 031/06, 051/06, 038/07, Official Gazette of Montenegro, No. 002/11, 008/11, 031/17), and the draft of the Law on Freedom of Religion (internet).

Third step of the analysis includes comparison of the named legislation and their shortcomings in Kosovo and in Croatia and Montenegro regarding preservation of Serbian religious and cultural heritage.

4. Analysis

In this chapter our focus is given to the analysis of normative arrangements and its shortcomings regarding preservation of Serbian religious and cultural heritage in Kosovo and their comparisons with the NTA normative solutions in Croatia and Montenegro regarding this topic.

The main conclusion of the analysis is that NTA arrangements, specifically the national councils of the Serbian national minority in all three analysed countries, are not seen as a solution to the issue of preserving the Serbian cultural and religious heritage. Reasons for such situation range from the complete absence of norms that would define the function of the Council in the protection

of Serbian heritage (such as the case of Kosovo) to the insufficient application of the developed normative framework in practice (as in the case of Croatia).

4.1 Normative Framework regarding Serbian Religious and Cultural Heritage in Kosovo

When it comes to the Serbian National Council of Kosovo and Metohija, the analysis has shown that this body is not recognized in the normative framework of the Republic of Kosovo as an actor that has a role in preservation of the Serbian religious and cultural heritage. It is the same case with the Association of Serb Municipalities, which is a self-governing association of municipalities with a Serb majority population in Kosovo. Concretely, both institutions were proclaimed by Serbs in North Kosovo which problematized their legitimacy and caused a denial from the Kosovo Republic. Therefore, they are not official Kosovo institutions, but on the contrary, they are their alternative and a main rival. The Community was expected to be officially established within Kosovo's legal framework in 2015, but it was postponed over conflicts regarding 2013 Agreement, which was proclaimed unconstitutional by the Constitutional Court of Kosovo (Bajrami 2013).

The protection of cultural and religious sites in Kosovo has been guaranteed by the Cultural Heritage Law, the Constitution of Kosovo, and the Law on Special Protective Zones, the Law on Historic Centre of Prizren, and the Law on the Village of Velika Hoča / Hoçë e Madhe. They guarantee the preservation and protection of cultural and religious heritage, particularly "Serbian Orthodox Monasteries, Churches, other religious sites, as well as historical and cultural sites of special significance for the Kosovo Serb community, as well as other communities in Republic of Kosovo" (Law on Special Protective Zones, 2008, Art. 1).

Effectively, these laws were essentially enforced upon Albanians by the international community as a condition for recognizing their independence. Thus, most of the Kosovo laws clearly follow from the regulations drafted by Martti Ahtisaari, the United Nations Secretary General Special Envoy, introduced in 2007 the Comprehensive Proposal for Kosovo Status Settlement (hereafter the Ahtisaari Plan). The Ahtisaari Plan additionally strengthened the guarantees for minority protection including multicultural rights, considerable autonomy on the local level and protection of cultural heritage. The need to protect Orthodox religious sites was explicitly acknowledged in the Annex 5 of the Ahtisaari Plan. Annex 5 of the Ahtisaari Plan states that: "The Serbian Orthodox Church in Kosovo shall be afforded the protection and enjoyment of its rights, and [that] those Serbian cultural sites which are considered to have special significance for Kosovo Serbs will be provided with security by the Kosovo police force" (Beha, 2014, p. 95).

Kosovo was asked to recognise the Serbian Orthodox Church in Kosovo as an integral part of the Serbian Orthodox Church in Belgrade rather than as a separate institution (Article 1.2). This provision establishes its solid presence

– and by extension the presence of Serbia as well in Kosovo, particularly because the Serbian Orthodox Church has also had political relevance in Kosovo. It was guaranteed the protection of its property, freedom of movement to the clergy, but also fiscal incentives such as customs duty and tax privileges, which were not granted to other religious communities. In addition, the Ahtisaari Plan stipulates that Kosovo authorities have access to the property of the Serbian Orthodox Church "only with consent from the Church, in the event of a judicial order issued relating to alleged illegal activities, or in the event of imminent danger to life or health" (Article 1.5).

Besides that, the Ahtisaari plan allows for a selected number of Serbian Orthodox monasteries and churches to be labelled "Special Protective Zones" with the aim 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 conditions for harmonious and sustainable development of the communities inhabiting the areas surrounding such sites" (Article 4.1).

The plan lists dozens of sites belonging to the Serbian Orthodox Church, where any construction, industrial or property development are prohibited and sets the area that these zones will span over. It also clearly suggests that the Serbian Orthodox Church is the highest authority in the special protective zones, whose agreement is needed for any commercial construction or development, public gatherings, recreation and entertainment or urbanization of agricultural land (Article 4.1.2). In addition, Kosovo Police Service was made responsible for the security of religious sites (Article 3.1.1).

The provisions of the Ahtisaari Plan have been included in the new Kosovo Constitution and legislative framework adopted since 2008. It was agreed that in the event of conflict the Ahtisaari plan shall prevail over the Kosovo Constitution (Beha, 2014). The Kosovo Constitution, written in the following year and inaugurated in the months after the Kosovo unilaterally proclaimed independence, contains elements related to the status of Serbian religious and cultural heritage in the following articles:

Article 9: "The Republic of Kosovo ensures the preservation and protection of its cultural and religious heritage."

Article 58, Amendment 5: "The Republic of Kosovo shall promote the preservation of the cultural and religious heritage of all communities as an integral part of the heritage of Kosovo. The Republic of Kosovo shall have a special duty to ensure an effective protection of the entirety of sites and monuments of cultural and religious significance to the communities."

In addition, Article 81 stipulates that the Laws on protection of cultural heritage constitute the Legislation of vital interest. Such laws require for its adoption, amendment and repeal both the majority of the Assembly deputies in general, and the majority of those seats reserved for minority ethnic communities. In effect, this means that the minority favourable laws regulating, in this case, Serbian religious and cultural heritage, cannot be adopted or changed

without the consent of the local Serbs, and that Kosovo state representatives cannot enter the property of the Serbian Orthodox Church without its consent.

While these laws appear favourable for the Serbs, especially the Church, some also pointed out the downsides of this issue. For one thing, the legislation lacks provisions related to funding and sanctions for the violation of the laws, which may significantly affect their implementation. In addition, it seems that the legislation particularly focus on the protection of the sites rather than inter-ethnic reconciliation. This is visible, first, in its content which is not concerned with opening the sites to the public, education of the Kosovo citizens about the importance of the Orthodox religious sites or inter-ethnic and inter-religious communication and reconciliation. While there were some efforts to frame cultural heritage as a common patrimony of all Kosovo citizens, these efforts gradually evaded after the March 2004 attacks on the Serbian cultural heritage. Second, the lack of support for inter-ethnic communication and reconciliation is visible in the way the legislation was designed exclusively by the international actors without the inclusion of local actors (see Lončar, 2016b). Since current legislation was designed by international actors and imposed on the Kosovo institutions, it does not reflect either the feelings of Albanians towards minority cultural heritage or sentiments of minorities towards integration in the Kosovo society. All in all, the normative framework that now regulates cultural heritage is a result of international pressures and conditionality for gaining full independence. However, while international actors had crucial role in initiating and passing the laws, they were not successful in securing their full implementation or changing the "hearts and minds" of the Kosovar citizens and their attitudes towards minorities. The question of legal status that Serbian cultural heritage enjoys in Kosovo seems to be virtually absent from public discourse on both sides, although it is precisely the legal status of Serbian monasteries in Kosovo, rather than the sovereignty issue, that determines their destiny. Shifting the focus from the question of sovereignty to the legal status of cultural heritage in Kosovo thus seems to be the most productive option in the long run. However, for the moment, both sides are investing considerable efforts into proving their exclusive right to heritage, instead of negotiating for a full implementation of the favourable legislative and avoid instrumentalizing the rich and rightfully important Serbian religious and cultural heritage in Kosovo.

4.2 NTA Normative Arrangements in Croatia Regarding Serbian Religious and Cultural Heritage

When it comes to the question of NTA normative arrangements in Croatia regarding Serbian religious and cultural heritage, for the purpose of this paper we analyse: Constitution of the Republic of Croatia, Constitutional Law on the Rights of National Minorities of the Republic of Croatia, and the Law on the Legal Status of Religious Communities, as well as available documentation on the official website of the Serb National Council in Croatia (SNC). Unlike

the normative framework in Kosovo, the normative framework in Croatia provides a good basis for the participation of the Council of the Serbian national minority (as an NTA solution) in the preservation of cultural and religious heritage, but the full application of the norms is mostly absent.

In the preamble of the Constitution of the Republic of Croatia, the Republic is established as "a nation-state of the Croatian people and a state of the members of other nations and minorities who are its citizens", among others, Serbs. All minorities are guaranteed equality with citizens of Croatian nationality, as well as the realization of their rights as members of national minority groups. Article 15 of the Constitution emphasizing that members of all nations and minorities "shall be guaranteed freedom to express their nationality, freedom to use their language and script, and cultural autonomy." Religious freedoms are prescribed in Article 41 of the Constitution which states the equality of religious communities before the law and separation from the state.

Although Constitutional Law on the Rights of National Minorities is the main law regulating directly the rights of minorities in Croatia, it was politically controversial and much–discussed law (amended and suspended several times). However, its adoption was one of Croatia's international obligations upon entry into the Council of Europe and also an obligation for the implementation of the European Union Association and Stabilization Agreement, so the legislators at the Law's drafting phase endeavoured to apply the most generally accepted standards in minority protection (Petričušić 2004). In this law, in Article 7 it is stipulated that the Republic of Croatia "ensure the exercise of special rights and freedoms of national minority members they enjoy individually or jointly with other members of the same national minority or, where so provided in this Constitutional Law or a special law, jointly with members of other national minorities, in particular with regard to: (...) cultural autonomy through the preservation, development and expression of their own culture, preservation and protection of their cultural heritage and tradition; practising their religion and establishing their religious communities together with other members of the same religion; (...) representation in the Parliament and in local government bodies, in administrative and juridical bodies; participation of the members of national minorities in public life and local self–government through the Council and representatives of national minorities." Serbian minority is satisfying the threshold of 1,5% of the entire population in Croatia, which is granting it the maximal political participation. i.e. maximum number of the representative seats stipulated in this Law by the Article 19. Regarding promotion, preservation and protection of the position of national minorities in the society, members of national minority groups can elect, under the conditions defined in this law, their minority self–governments or minority representatives in the self–government units (Article 23). Article 25 introduces Councils for national minorities as non–profit legal persons. According to this law, the self–government unit's administration should "seek opinions and proposals of the minority self–government formed in its area regarding the provisions regulating minority rights and freedoms" (Article 32). This law

also introduces institution of Committee for national minorities with an aim to "consider and propose ways of regulating and addressing issues related to the exercise and safeguarding of minority rights and freedoms" (Article 35). In order to fulfil this purpose, Committee will co–operate with government and self–government bodies, and all legal entities (i.e. international organisations and institutions and/or authorities of the countries of origin of the national minorities) that are engaged in activities related to the exercise of minority rights and freedoms (ibid).

On the other hand, the Law on the Legal Status of Religious Communities (Narodne novine no. 83/02, 73/13) does not in any way mention the Councils of national minorities as actors for the preservation of religious and cultural heritage in Croatia, and thus also the Serbian heritage. However, this law provides that religious communities will receive means from the state budget in an amount that will be determined depending on the type and significance of religious facilities (cultural, historical, artistic, religious and the like) and activity of the religious community in the fields of upbringing, education, welfare, health and culture according to its contribution to national culture, as well as its humanitarian and other generally useful activity of the religious community (Article 17). In practice, this actually means that the Serbian Orthodox Church, that is, the dioceses, independently take care of the preservation of sacral heritage on their territories. In that sense, they directly cooperate with the relevant ministry. Although the Council of the Serbian National Minority was instructed in the pace of renovation of religious and cultural facilities, they do not have access to the reports on these activities, which are collectively collected by the Ministry of Culture of the Republic of Croatia and which are not publicly available.

The Serb National Council (SNC) on its website states that it is "a national co-ordination of Serb national minority councils"[4], and that it is "democratically elected political, consulting and coordinating body acting as self-government of Serbs in the Republic of Croatia concerning the issues of their human, civil and national rights, as well the issues of their identity, participation and integration in the Croatian society". This is also defined in the SNC Statute (Chapter 2, Article 8 and 9, source: official website). However, when it comes to the reconstruction and protection of memorial places their "contribution mostly lies in initiating processes or research" due to the "lack of current capacity and resources" (source: official website). The last available Work programme on their website is for 2018 and it transfers unfinished activities from previous years regarding preservation of the Serbian cultural heritage. Given the unavailability of Work programmes for 2019 and 2020, as well as unavailability of reports on activities carried out, it is not possible to conclude the degree of progress or involvement of SNC in the protection of Serbian religious and cultural heritage in Croatia.

4 There are 94 councils with the total of 1581 councilors in the Republic of Croatia.

4.3 NTA Normative Arrangements in Montenegro regarding Serbian Religious and Cultural Heritage

When it comes to the question of NTA normative arrangements in Montenegro regarding Serbian religious and cultural heritage for the purpose of this paper we analysed: Constitution of the Republic of Montenegro, Law on Minority Rights and Freedoms, Law on Religious Communities and Law on Freedom of Religion. One of the aspects of this analysis was on the role of the Serbian Orthodox Church in Montenegro in preserving the cultural and religious heritage, since the analysis of the normative framework in Kosovo pointed to the Serbian Orthodox Church as one of the key actors in resolving this issue. However, the analysis of the normative framework in Montenegro pointed to similar problems that the Serbian Orthodox Church has in Kosovo, although the conflict in Montenegro occurs between religious communities with very close cultural characteristics.

In Montenegro, the current dispute between the Serbian Orthodox Church and Montenegrin authorities over religious and cultural heritage has begun in 2015 over a public debate on the draft of the Law on Freedom of Religion, adopted in 2019. Namely, the conflict arose over a provision that all religious buildings built before 1918, which are now ruled by the Serbian Orthodox Church, must be returned to the Montenegrin state ownership. This refers to all religious buildings or lands that was acquired from public revenues and were in the state ownership before 1918, when Montenegro became a part of the Kingdom of Serbs, Croats and Slovenes (later Kingdom of Yugoslavia). This, however, will not apply to buildings or land for which there is an evidence of religious communities' ownership. Serbian Orthodox Church, however, believes that this Law is unconstitutional and discriminatory towards that particular religious community, and that its provisions try to seize the property of the Serbian Orthodox Church in Montenegro. Concretely, Article 52 of the Law stipulate that: "Religious buildings and land used by religious communities on the territory of Montenegro, and for which it is determined that they were built, i.e. obtained from public revenues of the state or were in the state ownership until December 1, 1918, as cultural heritage of Montenegro, are state property", as well as: "religious buildings which are determined to have been built by joint investments of citizens until December 1, 1918 are state property", which will, based on Article 53, within one year from the Law enforcement implement the administrative body responsible for property affairs which will "determine religious buildings and land that are... state property, register them and submit a request for registration of state property rights in the cadastre".

The conflict reflects the absolute application of the TA approach in practice as it puts territorial principle and statehood on the first place by stipulated in the Article 14, paragraph 1 of the Law that: "A religious community, i.e. an organizational part of a religious community whose seat is abroad (...) acquires the status of a legal entity by entry in the register of religious communities maintained by the Ministry." And, in Article 16, paragraph 1 of the Law that:

"The application for registration of a religious community shall be submitted to the Ministry by a person authorized to represent the religious community", and in paragraph 2: "The application referred to in paragraph 1 of this Article shall contain: 1) community which must be different from the names of other religious communities and must not contain the official name of another state and its characteristics". Thus, as none of the three major religious communities – Orthodox, Roman Catholic and Muslim, is domiciled in the territory of Montenegro, i.e. they are all part of religious communities based abroad, they are all placed in an inferior position in relation to the Montenegrin Orthodox Church, which, de facto, and now de jure, is a state project of the ruling political structure and has been already "established (...) on the territory of Montenegro". This means that all three religious communities must submit an application for registration to the relevant Ministry although they have existed for centuries. Since disputed provisions provoked numerous reactions, even a lawsuit for verification of the constitutionality of the Law before the Constitutional Court in Montenegro and Court for Human Rights in Strasbourg, the Government of the Republic of Montenegro decided to temporarily suspend application of the Law on Freedom of Religion.

When it comes to National councils of national minorities in Montenegro, Constitution of the Republic of Montenegro in Chapter V Minority Rights, Article 79 stipulates establishment of a council of national minorities in order to protect and promote their special rights. This provision is further elaborated in the Law on Minority Rights and Freedoms according to which councils play an important role in preservation of national identity of a specific minority group, as well as in the improvement of rights and freedoms of minority nation and their members (Article 33). Law also defines: criteria for representation of minority nations in public services, authorities of state administration and local government (Article 25, 28 and 29), an obligation to submit each year "a work report with a report on financial operations and report of independent auditor" to the "competent working body of the Parliament" (Article 33a), and functions of the councils, among which is a submission of the "initiative to the President of Montenegro to refuse to promulgate a law which is violating the rights of minority nations and other minority national communities and their members" (Article 35), criteria for allocation of the funds to the councils (Article 36i) etc. Based on this law, the Serbian National Council of Montenegro was established in 2008, when the Serbian people in Montenegro faced the need to define their national status after the declaration of independence of the Republic of Montenegro in 2006. Since its establishment, the work of the Serbian National Council of Montenegro is characterized by strong disagreements and divisions over the issue of the constitutivity of the Serbian community in Montenegro, which has led to huge difficulties in the realization of Serbian national interests in Montenegro, bearing in mind divisions that also arose among members of the Council due to a political activity of the president of the Council, Momčilo Vuksanović. Although conceived as a supra-party and supra-territorial organization, in the following years from the establishment

the Council turned its activities and narrative towards political action, accusing a good part of the representatives of the Serbian community in Montenegro, primarily intellectuals, being guilty for a "difficult position of the Serbian people in Montenegro", since they are "a group that predominantly vote for certain political options because of their civic and Euro-Atlantic blindness, not realizing that the concept of the civil state of Montenegro actually represents a sure path to assimilation and disappearance of Serbs" (Ministarstvo za ljudska i manjinska prava, 2017: 43). Also, Council reports that "Serbian government has similar attitude towards Serbs in Montenegro, and it does not make the least effort to provide to the compatriots, who are in Montenegro linguistic and religious majority, long–acquired rights and equal status" (ibid). Having in mind Councils' narrative represented in the report submitted to the Ministry, in the end we can question whether activities of the Council are much closer to the TA than to the NTA model regarding interests of Serbs, as well as the very preservation and protection of the Serbian cultural and religious heritage in Montenegro.

Conclusion

This article discussed a possibility of de–territorializing the Kosovo issue and applicability of the NTA arrangements in approaching the issue of Serbian cultural and religious heritage. As we claimed, the predominant framework in approaching the Kosovo issue so far was TA approach, as exemplified by the 2013 Brussels Agreement. Following Stroschein and Palermo (Stroschein 2015; Palermo 2015) we submitted that, even if this Agreement would be taken as a framework for resolving the question of rights of Kosovo Serbs it would be hard to implement it in the case of Serbian religious and cultural heritage. Namely, as scholars readily observed, TA is less useful for a minority population scattered within a country or a wider region, and can hardly be applied to the case of Serbian heritage located in the areas with an absolute Albanian majority. Thereby, we advocated for moving from the purely territorial and sovereignty approach to North Kosovo, to the NTA approach to Serbian heritage in Kosovo, as a welcome change in the halted Serbian-Albanian dialogue. We examined NTA forms through the councils of Serbian national minority, which in practice in Croatia and Montenegro, as well as in the examined normative framework in Kosovo do not have great influence and level of power, and therefore do not influence preservation of cultural and religious heritage in any of these countries. Croatian normative documents, however, especially Constitutional Law on the Rights of National Minorities, all in all, has established a good normative framework for activities of Councils of national minorities, granting them greater political participation on both state and local levels. However, even the most advanced protection of minority heritage foreseen by the legal instruments is not sufficient without full implementation in practice, which is seriously lacking in Croatia.

The biggest challenge in such situation, as Palermo (ibid, 29) notes, is to move beyond traditional understandings of autonomy that have too often been "trapped in the Westphalian nation state discourse... [Autonomy is] seen in terms of something 'belonging' to groups competing for ownership of a territory". What is needed is not to deterritorialise group-based identity claims entirely, but to embed them firmly within a democratic pluralist framework that allows for dialogue and an agreed devolution of power according to the most appropriate format (territorial, non–territorial, or both). This has been a particular challenge in Central and Eastern Europe and the Balkans. Each examined case in this paper is, however, governed by its own particular context, and in this regard one has to consider not only domestic political configurations but also the geostrategic situation of the state in question (see: Andeva, internet: 39–42). Thereby, we pointed to the potential to combine territorial and non–territorial approaches as a means of caring for the needs of Kosovo's residual Serb population and their heritage, while notwithstanding the continued obstacles to implementation of this approach arising from continued contestation of state sovereign status.

References

Andeva, Marina (ed.) (2020), *Non–Territorial Autonomy in Theory and Practice: A 2020 Report*, Skopje: University of American College Skopje (UCAS), (internet) available at: https://entan.org/wp–content/uploads/2020/05/NTA–in–Theory–and–Practice–A–2020–Report_final.pdf (accessed 24.6.2020)

Arraiza, Jose Maria (2014), "A Matter of Balance. Cultural Heritage, Property Rights and Inter–ethnic Relations in Kosovo", (internet) available at: https://www.academia.edu/8566507/A_matter_of_balance._Cultural_heritage_property_rights_and_inter–ethnic_relations_in_Kosovo (accessed 08.07.2020)

Bajrami, Agron (2013), *Analysis of Serbian Municipalities: From a tool of integration to a disaster in the making election*, Prishtina: Group for Legal and Political Studies, https://www.files.ethz.ch/isn/175329/Policy%20Note%2005%20 2013.pdf (accessed 08.07.2020)

Bataković, Dušan (ed.) (2007), *Kosovo and Metohija: Living in the Enclave*. Belgrade: Institute for Balkan Studies.

Bauer, Otto (2000), *The Question of Nationalities and Social Democracy*. Minneapolis: University of Minnesota Press.

Beha, Adem (2014), "Minority Rights: An Opportunity for Adjustment of Ethnic Relations in Kosovo", *Journal on Ethnopolitics and Minority Issues in Europe* 13(4): 85–110.

Beretka, Katinka (2013), "National Councils of National Minorities in Serbia", in Nimni, Ephraim, Alexander Osipov and David Smith (eds.), *The Challenge of Non–Territorial Autonomy: Theory and Practice*, Oxford, Bern and Berlin: Peter Lang, pp. 181–196.

Brussels Agreement (2013), *First Agreement of Principles Governing the Normalization of Relations*, (internet) available at: http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20 sporazuma.pdf (accessed 01.03.2020)

Constitution of the Republic of Croatia, "Narodne novine No. 56/90, 135/97, 8/98 – consolidated text, 113/2000, 124/2000 – consolidated text, 28/2001, 41/2001 – consolidated text, 55/2001 – correction, 76/2010, 85/2010, 5/2014. (internet) available at: https://www.wipo.int/edocs/lexdocs/laws/en/hr/hr060en.pdf (accessed 20.06.2020)

Constitution of the Republic of Kosovo (2008). (internet) available at:
http://www.kuvendikosoves.org/common/docs/Constitution1%20of%20the%20 Republic%20of%20Kosovo.pdf (accessed 20.11.2019)

Constitution of the Republic of Montenegro, "Službeni list CG" No. 1/2007, 38/2013 – Amendments I–XVI, (intenet) available at: https://www.paragraf.me/propisi–crnegore/ustav–crne–gore.html (accessed 20.06.2020)

Constitutional Law on the Rights of National Minorities of the Republic of Croatia, "Narodne novine" No. 155/2002, 47/2010. (internet) available at: http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Constitutional–Law–on–the–Rights–NM.pdf (accessed 20.06.2020)

Cultural Heritage Law (2006), Law No. 02/L–88, 9 October 2006. (internet) available at: http://chwb.org/kosovo/wp-content/uploads/sites/3/2015/06/2006_02-L88_en.pdf (accessed 20.11.2019)

ELECTIONS IN KOSOVO 2000 – 2014, Prishtina: Central Election Commission 2017: 35–36. (internet) available at: http://www.kqz–ks.org/wp–content/uploads/2018/02/Zgjedhjet–ne–Kosove–2000–2014_en.pdf (accessed 20.11.2019)

Estimation of Kosovo Population in 2011 (2013), Pristina: Kosovo Agency of Statistics, (internet) available at: https://ask.rks–gov.net/media/2129/estimation–of–kosovo–population–2011.pdf (accessed 24.02.2020)

Fridman, Orli (2015), "Unstructured Daily Encounters: Serbs in Kosovo after the 2008 Declaration of Independence", *Contemporary Southeastern Europe* 2(1): 173–90.

Goemans, Piet (2013), "National Cultural Autonomy: Otto Bauer's Challenge to Liberal Nationalism", in Nimni, E., A. Osipov and D. Smith (eds.), *The Challenge of Non–Territorial Autonomy: Theory and Practice,* pp. 25–39.

Judah, Tim (2008), *Kosovo, War and Revenge*. New Haven: Yale University Press.

Kartsonaki, Argyro (2020) "Playing with Fire: An Assessment of the EU's Approach of Constructive Ambiguity on Kosovo's Blended Conflict", *Journal of Balkan and Near Eastern Studies* 22(1): 103–120.

Korhecz, Tamás (2014), "Non–Territorial Autonomy in Practice: The Hungarian National Council in Serbia", in Kántor, Zoltán (ed.), *Autonomies in Europe: Solutions and Challenges*, Budapest: L'Harmattan, pp. 151–163.

Law on Historic Centre of Prizren (2012). Law No. 04/L–066, 20 April 2012. http://old.kuvendikosoves.org/common/docs/ligjet/Zakon%20o%20 Istorijskom%20Centru%20Prizrena.pdf (accessed 20.06.2020)

Law on Minority Rights and Freedoms, Official Gazette of the Republic of Montenegro, No. 031/06, 051/06, 038/07, Official Gazette of Montenegro, No. 002/11, 008/11, 031/17. (internet) available at: http://www.mmp.gov.me/biblioteka/zakoni (accessed 20.06.2020).

Law on Freedom of Religion or Beliefs and Legal Status of Religious Communities (draft) (internet) available at: http://www.mmp.gov.me/biblioteka (accessed 20.06.2020).

Law on Special Protective Zones (2008). Law No. 03/L–039 (internet) available at: https://www.ecoi.net/en/file/local/1235900/1504_1220513623_law-on-special-protective-zones.pdf (accessed 20.11.2019).

Law on the Legal Status of Religious Communities (2013), "Narodne novine" no. 83/02, 73/13.
Law on the Village of Hoçë e Madhe/Velika Hoča (2012). Law No. 04/L–062, 20 April 2012, http://old.kuvendikosoves.org/common/docs/ligjet/Zakon%20o%20selu%20velika%20Hoca.pdf (accessed 20.06.2020)
Lončar, Jelena (2016a), "Kulturna baština na Kosovu: isključivanje manjina kroz inkluzivno zakonodavstvo", in A. Pavlović et al. (Eds.), *Figura neprijatelja: preosmišljavanje srpsko-albanskih odnosa*, Beograd: KPZ Beton/IFDT, pp. 409–427.
—. (2016b), "State–building and local resistance in Kosovo: Minority exclusion through inclusive legislation", *Communist and Post–Communist Studies* 49(3): 279–290.
Mehmeti, Leandrit and Branislav Radeljić (eds.) (2016), *Kosovo and Serbia: Contested Opinions and Shared Consequences*, Pittsburgh: University of Pittsburgh Press
Mertus, Julie (1999), *Kosovo: How Myths and Truths Started a War*. Berkeley: University of California Press
Ministarstvo za ljudska i manjinska prava (2017), *Izvještaj o razvoju i zaštiti prava manjinskih naroda i drugih manjinskih nacionalnih zajednica u 2016. Godini*, Podgorica: Ministarstvo za ljudska i manjinska prava Republike Crne Gore.
Minority Communities in the 2011 Kosovo Census Results (2012). European Centre for Minority Issues Kosovo, (internet) available at: https://web.archive.org/web/20140103200754/http://www.ecmikosovo.org/wp–content/Publications/Policy_briefs/2012–12_ECMI_Kosovo_Policy_Brief_–_Minority_Communities_in_the_2011_Kosovo_Census_Results_Analysis_and_Recommendations/eng.pdf (accessed 01.03.2020)
MUNICIPAL PROFILES 2018, OSCE mission in Kosovo, (internet), available at: https://www.osce.org/mission–in–kosovo/410279?download=true (accessed 01.03.2020)
Musaj, Mehmet (2015), "Kosovo 2011 Census: Contested Census within a Contested State", *Contemporary Southeastern Europe*, 2(2): 84–98, (internet) available at: http://www.suedosteuropa.uni–graz.at/cse/en/musaj (accessed 01.03.2020).
Nimni, Ephraim (2007), "National–Cultural Autonomy as an Alternative to Minority Territorial Nationalism", *Ethnopolitics* 6(3): 345–364.
Palermo, Francesco (2015), "Owned or Shared? Territorial Autonomy in the Minority Discourse", in Malloy, Tove H. and Francesco Palermo (eds.), *Minority Accommodation through Territorial and Non–territorial Autonomy*, Oxford: Oxford University Press, pp. 13–32.
Pavlović, Aleksandar et al. (eds.) (2015), *Figura neprijatelja: preosmišljavanje srpsko–albanskih odnosa*, Beograd: Institut za filozofiju i društvenu teoriju and Beton
Pavlović-Križanić, Tatijana and Jelena Lončar (2012), *Evaulacija rada pet nacionalnih saveta u Srbiji*, Novi Sad: Centar za regionalizam.
Pudar Draško, Gazela, Aleksandar Pavlović and Lončar, Jelena, "A Battle for Sovereignty: Who Owns Cultural Heritage in Kosovo?" (unpublished)
Petričušić, Antonija (2004), "Constitutional Law on the Rights of National Minorities in the Republic of Croatia", *European Yearbook of Minority Issues* 2(3): 607–629.
Popis (1991), *Nacionalni sastav stanovništva SFR Jugoslavije. Popis stanovništva prema nacionalnom sastavu i tipu naselja u 1981. godini. Podaci po naseljima i opštinama, knj. I,* Beograd: Savezni zavod za statistiku, Savremena administracija.
Popis (1993), *Stanovništvo. Nacionalna pripadnost, podaci po naseljima i opštinama 1. Popis stanovništva, domaćinstava, stanova i poljoprivrednih gazdinstava u 1991. godini,* Beograd: Savezna republika Jugoslavija, Savezni zavod za statistiku.

Rakitić, Dušan (2014), "Envisaging a Legal Framework for Ensuring Sustainable Preservation of Holy Places with Regard to the Case of Kosovo and Metohija", in Ferrari, Silvio and Andrea Benzo (eds.), *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean,* London: Ashgate, pp. 191–243.

Santora, Marc (2018), "Talk of Ethnic Partition of Kosovo Revives Old Balkan Ghosts", *The New York Times*, September 19, (internet) available at: https://www.nytimes.com/2018/09/19/world/europe/kosovo–partition–aleksandar–vucic.html (accessed 24.03.2020)

Smith, David. J. (2013), "Non–territorial Autonomy and Political Community in Contemporary Central and Eastern Europe", *Journal on Ethnopolitics and Minority Issues in Europe* 12(1): 27–55.

Smith, David and John Hiden (2012), *Ethnic Diversity and the Nation State: National Cultural Autonomy Revisited*. New York: Routledge.

Stroschein, Sherrill (2015), "Reconfiguring State–Minority Negotiations for Better Outcomes", in Malloy, Tove H. Tove H. Malloy, Alexander Osipov and Balázs Vizi (eds.), *Managing Diversity Through Non–Territorial Autonomy. Assessing Advantages, Deficiencies, and Risks*, New York: Oxford University Press, pp. 19–30.

Surlić, Stefan (2017), "Constitutional Design and Cultural Cleavage: UNESCO and the Struggle for Cultural Heritage in Kosovo", *Croatian Political Science Review* 54(4): 109–125.

Szpala, Marta (2018), "Serbia–Kosovo negotiations – playing for time under pressure from the West", OSW Commentary, No. 281, 1–7, (internet) available at: https://core.ac.uk/reader/162642046 (accessed 24.06.2020)

UN Security Council (2007), *Comprehensive Proposal for the Kosovo Status Settlement*, 26 March 2007, UN Doc. S/2007/168/Add.1. (internet) available at: https://reliefweb.int/report/serbia/comprehensive-proposal-kosovo-status-settlement-s2007168add1 (accessed 24.06.2020)

VANREDNI IZBORI ZA PREDSEDNIKA OPŠTINE 2019, Central Electoral Commission 2019, (internet) available at: http://www.kqz–ks.org/wp–content/uploads/2019/05/2.–Statistikat–sipas–komunave–2.pdf (accessed 28.06.2020)

Vickers, Miranda (1998), *Between Serb and Albanian: The History of Kosovo*. London: Hurst.

Vladisavljević, Nebojša (2012), "Kosovo and Two Dimensions of the Contemporary Serb–Albanian Conflict", in Hudson, Robert and Glenn Bowman (eds.) *After Yugoslavia: Identities and Politics within the Successor States*, New York: Palgrave Macmillan, pp. 26–42.

Zlatanović, Sanja (2018), *Etnička identifikacija na posleratnom području: srpska zajednica jugoistočnog Kosova*, Beograd: Etnografski institut SANU.

Jelena Ćeriman i Aleksandar Pavlović

Izvan teritorijalnog pristupa: neteritorijalni pristup kosovskom pitanju

Apstrakt

Tekst se fokusira na neteritorijalni pristup (NTA) sporu oko Kosova između Srba i Albanaca, posmatrano preko srpskog kulturno-religijskog nasleđa na ovoj teritoriji. Polazno stanovište je da se kosovsko pitanje uobičajeno shvata kao teritorijalni spor između srpskih i kosovsko-albanskih političara oko priznanja suvereniteta. Stav autora je da trajno rešenje kosovskog pitanja mora obuhvatiti najmanje tri odvojena aspekta: 1) status Severnog Kosova koji je etnički srpski i još uvek održava veze sa Srbijom, 2) status srpskog kulturno-religijskog nasleđa, odnosno srpskih srednjovekovnih manastira i crkava koji su uglavnom prepoznati kao svetska baština UNESCO-a i 3) činjenicu da srpsko stanovništvo na centralnom Kosovu, tj. južno od reke Ibar gde se nalazi većina pomenutih manastira i crkava, naseljava male opštine ili enklave Srba okružene većinskim albanskim stanovništvom. Primenljivost NTA koncepta na kosovsko pitanje analizira se preko normativnog okvira koji se direktno odnosi na srpsko kulturno-religijsko nasleđe na Kosovu, odnosno na očuvanje i zaštitu srpskih pravoslavnih manastira, crkava i drugih istorijskih i kulturnih mesta na Kosovu, komparirano sa NTA rešenjima koja se odnose na očuvanje srpskog kulturno-religijskog nasleđa u normativnom okviru Hrvatske i Crne Gore. S obzirom da lokacije na kojima se nalazi većina srpskih manastira i crkava nisu uključene u pregovore o suverenosti Kosova, namera je da se ukaže na potencijale koji dolaze iz kombinovanja teritorijalnog i neteritorijalnog pristupa, bez obzira na stalne prepreke za sprovođenje takve zamisli koja prevashodno proizlazi iz stalnog osporavanja suverenog statusa Kosova.

Ključne reči: Neteritorijalni pristup (NTA), teritorijalni pristup (TA), srpsko-albanski odnosi, srpska kulturno-religijska baština, Kosovo