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**REFRAMING AHTISAARI PROVISIONS:
THE ISSUE OF CULTURAL AND RELIGIOUS
HERITAGE AND FINAL POST CONFLICT
SETTLEMENT BETWEEN BELGRADE AND
PRISTINA**

Resume

The paper identifies protection mechanisms for the Serbian religious and cultural heritage in Kosovo defined by the Ahtisaari Plan as the basic normative framework and analyses its application. The authors start with the claim that the status of cultural and religious 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 holy places in Europe. Since extraterritorial status as the final model for Serbian religious and cultural heritage is often mentioned in public in Serbia, the paper tried to offer several models of territorial solutions for smaller units, in the form of

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enclaves, extraterritoriality, and condominiums, that could be potentially applied in the case of the Serb cultural and religious heritage in Kosovo.

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

INTRODUCTION

The analysis shed light on the importance of this topic, by answering the key question: Why are the current status and protection mechanisms for Serbian religious and cultural facilities in Kosovo not proving to be permanent and effective? The argument is based on two key reasons. The first is the strong emotional charge of this issue, which puts the feeling of endangered identity in the focus of political debate. The position of cultural and religious heritage is still considered to be disputable, which is directly reflected in the prospects of reaching an acceptable political 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 (Centre for social dialogue and regional initiatives ([CDDRI] 2019).

The second reason is non-compliance with existing protection mechanisms guaranteed by the Ahtisaari plan and Kosovo's adopted legal framework. The reason for this is the dispute over jurisdiction over the preservation of cultural heritage, which grew into a 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.

Despite the lack of a unified international practice in securing special status for cultural and religious heritage, the paper advocates the need for reframing Ahtisaari provisions to consider all open issues, experiences of implementing the current normative framework, as well as consequences of a possible implementation of extritoriality, enclave system or condominium for Serbian cultural and religious heritage in comparison with the experiences of the Vatican and Athos. The clear belief of the authors of the paper 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.

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 dispute between the Serbian Orthodox Church and local authorities in Kosovo. In the second part, the paper 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.

SACRED SPACES AND CULTURAL HERITAGE PROTECTION

Sacred spaces and places, often connected with the cultural heritage, are frequently points where state and ethnic disputes find more reasons to dwell. The issue of Serbian religious and cultural heritage in Kosovo is by far not the unique case in the world, and there are several other examples where to a certain extent similar processes are occurring, especially in the post-conflict period where inter-religious disputes do not bypass sacred sites and places, viewing their status as crucial to building national and state identity.

However, one should not lose sight of the fact that “identity is needed to create heritage”, since “meaning” gives value to heritage, distinguishing between historical items that constitute cultural identity and those that are not of such importance (Van der Auwera 2012a, 55). In the case of heritage in Kosovo, “meaning” takes on a special dimension, since the Serbian Orthodox Church has a historically confirmed role in defining the borderlines of the overall Serbian identity, so monasteries are not just religious and cultural objects but beacons of national identification. As Defreese points out, “the close association between the Serbian state and the Orthodox Church has contributed to the targeting of several sites including Decani Monastery as symbolic emblems of the national identity of Serbia and consequently, Serbia’s sovereignty of Kosovo” (Defreese 2009, 261).

On the other hand, the Albanian majority in Kosovo does not identify with the Serbian cultural heritage as religious objects, as the vast majority are of the Islamic faith. Mechanisms for special protection and preservation of the cultural heritage of Kosovo’s minority ethnic community were adopted under international pressure, but their implementation through the joint participation of the Serbian Orthodox Church and Kosovo authorities did not alleviate the sense of endangered sovereignty or create a universal sense of heritage for all members. Therefore, interpretations are becoming more and more pronounced, as explained in more detail in a later chapter and which, in the “defense” of the national space, dispute that these monuments belong to Serbian and Orthodox culture, emphasizing that they are temples of ancient Albanians.

In this way, the universal value of the cultural heritage in Kosovo is transferred to the level of contemporary religious and ethnic conflict, which undermines the right of the other party to uniqueness and survival in a given territory. As Stoyanov has outlined, “the emergence (and re-emergence) of such inter-confessional fault-lines and flashpoints at sacred sites sometimes signal the violent termination of religious coexistence and/or sharing at the respective sites or the appearance of new religious authorities and actors seeking to ‘purge’ the sacred space (which they claim to legitimately own and manage) from ‘alien’ religious presence and practices” (Stoyanov 2014, 25). These two created interpretations put the cultural heritage at the basis of the status dispute, i.e., the conflict of identity and rights to the territory. Meanwhile, while the Serb-Albanian conflict is frozen, the “meaning” of the sacred sites is going through social interaction and “results in the contemporary character of heritage, since heritage is created, formed, and managed through the questions of the present” (Van der Auwera 2012b, 55).

The international law does not define a widely accepted and standardized regime for holy places but relies on different arrangements that vary from case to case – bilateral international agreements, official agreements between the religious communities and states in question, peace agreements to unilaterally introduced regimes of protections by the states themselves. Through the World Heritage Sites program, UNESCO marks monuments of various cultural, ethnic, and religious groups and thus points out their universal civilizational significance. Although this emphasizes the national, but also the international obligation for preservation and protection, “there is the inherent tension between the universal and inclusive values that the conventions and protocols of UNESCO aspire to and the nationalist and chauvinistic agendas of the state in whose territory such sites are located” (Dumper & Larkin 2012, 27). Also, there are initiatives to standardize an international regime of protection of holy sites that would be either regional or universal, most prominent being the draft Code on Holy Sites produced in 2009, but with little success so far (Benzo 2014, 19-20). In apparent lack of the international or regional regime that would define a code of conduct of states or responsible authorities, monitoring bodies, and clear sanctions if the rules of the code are not observed, it is left to states and authorities to manage them.

The state is still the basic subject of cultural heritage protection. However, if the regime of protection or its implementation is perceived as poor on the state-level or is the subject of politicization by the dominant groups or even the majority of the political elite, it leaves ample space for the instrumentalization of different political goals of the other interested parties, hence contributing to a potential increase of tension and conflict (frozen, “smoldering” or in full force). This conclusion is also valid for the case of religious and cultural heritage in Kosovo.

As Leanza has outlined, the concept of full state sovereignty over certain territories necessarily reinforces opposing actions: “on the one hand the maintenance of the acquired sovereignty and on the other hand the effort to gain self-government and thus to revolt against the territorial State” (Leanza 2014a, 38). Also, the inability to reconcile these two tendencies often harbors the risk of “attempts to establish ad hoc regimes not based on the principle of sovereignty but, on the contrary, on some kinds of self-government or self-administration to guarantee free access to and free utilization of the holy places as well as freedom of religion” (Leanza 2014b, 38.).

With the cessation of supervised independence, any idea of “self-government” for minority communities is interpreted by Albanian political representatives as an act against the sovereignty and unity of Kosovo. The normative framework of special protection for Serbian cultural heritage was adopted as a condition for achieving independence, only to be later interpreted as legally redundant and nationally threatening. A strong international presence continues to guarantee the status granted, but the question of what the position of Serbian Orthodox monasteries will be is justified if external interest declines, and in the meantime, no final agreement is reached between Belgrade and Pristina.

After analyzing such cases like the Vatican City, Mount Atos, and Mecca, for the case of religious heritage on Kosovo, Leanza concludes that the regime provided by the Ahtisaari Plan, which was incorporated in the Constitution of Kosovo, “appears to be slightly weak for various reasons”:

“...firstly the contents of the regime have to be taken into consideration: a simple duty to preserve religious monuments and to maintain them in their current conditions and nothing

more is different from what we have seen before for the Vatican or for Mount Athos. Secondly, it should be considered that no international binding instrument (either bilateral or multilateral) – except the UNESCO Convention of 1972 – establishes a discipline for these religious monuments meaning that the effectiveness of protection may be at risk. Thirdly, the situation in the field, after massive violations of human rights in a sort of ethnic cleansing, is very delicate and maybe only the deployment of KFOR can avert possible attacks or the destruction of the Orthodox monuments” (Leanza 2014c, 50).

However, in the case of continuous dispute, Serb religious and cultural heritage continues to be a chip in a conflict that is still ongoing and the current regime of their protection did not prove to be sufficient, as it will be presented later in the text, and a possible solution could be a new regime, that could contribute to the removal of identity-related issues from the process of final conflict settlement.

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

“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 Centre 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” (Ahtisaari Plan 2007a, Annex V, Art. 1.2). 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” (Ahtisaari Plan 2007b, Annex V, Art. 1.5). Regardless of its special status, which includes protection, rights, privileges and immunities, the SOC is obliged to act “under Kosovo law” (Ahtisaari Plan 2007c, Annex V, Art. 1.1).

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) (Ahtisaari Plan 2007d, Annex V, Art. 3.1.1).

One of the questions that are 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 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 (Svirca 2014, 261). Ahtisaari Plan 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...” (Ahtisaari Plan 2007e, Annex V, Art. 4.1).

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; construction 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” (Ahtisaari Plan 2007f, Annex V, Art. 4.1.1). Commercial construction or development such as road construction, construction of warehouses, workshops, shops, restaurants... public gatherings, recreation, and entertainment, or urbanization of agricultural land may be limited and conditioned by the consent of the Serbian Orthodox Church (Ahtisaari Plan 2007g, Annex V, Art. 4.1.2).

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 (Ahtisaari Plan 2007h, Annex V, Art. 5). In the later decision-making process of the IMC, the question appeared whether it was a body with the 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” (Research Institute of Development and European Affairs [RIDEA] 2019a, 10-11). 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.

Although they did not accept the final version of the Ahtisaari Plan, the Serbian Government formulated several 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 (Government of Serbia 2007). 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 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 (OSCE 2014).

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 (Arraiza 2014a, 11). 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” (Ahtisaari Plan 2007i, Annex V, Art. 4.1), and the possibility of urbanization of agricultural land is left open, which undoubtedly questions the above statement. Therefore, attention should be paid to the possibility of land expropriation to realize the original idea. 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” (Ahtisaari Plan 2007j, Annex V, Art. 6.1). According to Arraiza, the entire system of special protective zones has resulted in an ad hoc arrangement through crucial international intervention to protect them against harmful urbanization, illegal construction, vandalism, and theft (Arraiza 2014b, 6).

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 Centre of Prizren and the Law on the Village of Velika Hoca are of particular importance for the multi-ethnic 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" (Lončar 2015a, 412). Studying the socio-political atmosphere before the adoption of the two mentioned laws, Lončar 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" (Lončar 2015b, 415).

The exclusive character and property rights that alienate the 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 (Lončar 2015c, 417–421).

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 (Hisari and Fouseki 2020a, 102–111). 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" (Hoxha 2012, 236). 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, 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.

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" (Hisari and Fouseki 2020b, 103). 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, the continuation of reconstruction was not possible because "SOC did not agree with the new format proposed by the Kosovo Government" (RIDEA 2019b, 14). 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 international actors intended 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" (RIDEA 2019c, 2).

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. Krasniqi states: "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" (Mehmetaj 2010).

In one of the latest analyses, 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 (Emancipimi Civil Ma Ndryshem 2013a, 15). 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" (Emancipimi Civil Ma Ndryshem 2013b, 21). Special zones are seen as a form of isolation "contrary to all principles and standards of active and effective protection of cultural heritage" (Emancipimi Civil Ma Ndryshem 2013c, 21).

Based on this analysis, it could be concluded that members of KFOR and KPS are controlling access to religious and cultural facilities on their initiative, and not because those facilities include four monasteries that have been on the UNESCO World List of Endangered Cultural Heritage Sites since 2004 (UNESCO 2020). This is because ethnically motivated riots took place in the same year, which included attacks on more than thirty Orthodox buildings (Arraiza 2014c, 4). 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 believers (The Serbian government’s Office for Kosovo Report 2015, 2016, 2017 and 2018a) 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. This Strategy is currently the only document of the Government of Kosovo in force that 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 under Kosovo laws” (National Strategy for Cultural Heritage 2016).

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 (RIDEA 2019d, 16).

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 (Constitutional Court of the Republic of Kosovo 2016, AGJ943/16 Judgment 1–18). Although the Constitutional Court 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 decision must be implemented without delay (The European Union Office in Kosovo 2017).

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 (RIDEA 2019e, 5). 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 (Ahtisaari Plan 2007I, Aneks V, Art. 4.1.1)

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

After the first part, which is dedicated to the application of the current normative framework derived from the Ahtisaari Plan, the continuation of this paper 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 global (UNESCO Conventions 1954, 1970, 1972) and European (European Conventions 1985, 1992) significance do not provide a single regime for their protection (Leanza 2014d, 40). 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 is often questioned by the public in Kosovo. In that context, this study aims 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.

Two illustrative examples 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 the 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.

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 a special status in the Byzantine Empire through numerous materials, 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 (Constitution of the Republic of Greece 2019a, Art. 105), 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 (The Ecumenical Patriarchate 2020). 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 (Constitution of the Republic of Greece 2019b, Art. 105). In other words, the secular and spiritual spheres on the peninsula are 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 (Leanza 2014e, 46). 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 has three principal institutions. The first one is Holy Community (*Protos*), the body that manages the Holy Mountain, makes decisions that 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. Second is 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 (Administration of the Mount Athos 2020). They have their own “police” squad under their command, which monitors public order and peace, and can request the intervention of the Greek police. And finally, there is Sacred Synaxis which 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 (Papastatis 2004a, 530).

Apart from self-government, Mount Athos has several spiritual, financial, and special privileges (Papastatis 2004b, 531–536). First, 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 also enjoys numerous financial privileges, the scope of which is determined by the Greek Parliament. The land belongs entirely to the monasteries of Mount Athos, and it cannot be expropriated. It is forbidden to sell real estate, but only to exchange them between monasteries. There are restrictions for living on the Holy Mountain, as monks and novices who belong to the monasteries of Mount Athos must be Orthodox and cannot leave Athos without written permission. Regarding persons wishing to visit the Holy Mountain, they must obtain a permit from the offices of the Epistasia in Thessaloniki or Ouranopolis, while female persons are forbidden to enter the Holy Mountain. Laypeople can obtain a permanent residence permit for professional reasons if approved by the institutions of Mount Athos. And finally, foreigners who become novices, become monks or monks who move to one of the monasteries on Mount Athos automatically receive Greek citizenship, etc (Constitution of the Republic of Greece 2019c, Art.105).

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 Vatican City, whose territory covers less than half a square kilometre, 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. The Vatican City is established as an independent and sovereign state, as the full property, exclusive and absolute dominion of the Holy See, which enjoys full sovereignty over it (Lateran Treaty 1929a, Preamble and Art. 3). Italy has recognized the full sovereignty of the Holy See in international affairs, following the traditions and activities of the church abroad (Lateran Treaty 1929b, Preamble and Art. 2). The Holy See enjoys full sovereignty and jurisdiction over the Vatican City, and the Italian Government is forbidden to intervene in any case (Lateran Treaty 1929d, Preamble and Art. 4). St. Peter's Square remains open to the public and the Italian police are 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 (Lateran Treaty 1929e, Preamble and Art. 3). 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's road vehicles and planes through Italian territory (Lateran Treaty 1929f, Preamble and Art. 6). It is prohibited for airplanes to fly over the territory of Vatican City (Lateran Treaty 1929g, Preamble and Art. 7).

Residential issues are also precisely regulated. 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 the case of foreign citizens, the law of their countries of origin (Lateran Treaty 1929h, Preamble and Art. 9). 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 considered as necessary, are exempt from military service, jury service, and other obligations of a personal nature. Cardinals permanently residing in Rome are treated as citizens (Lateran Treaty 1929i, Preamble and Art. 21). 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 (Lateran Treaty 1929j, Preamble and Art. 11). 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 (Lateran Treaty 1929k, Preamble and Art. 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 (Lateran Treaty 1929l, Preamble and Art. 7).

Articles 13, 14, and 15 define the extraterritorial possessions of the Holy See in Rome and outside of Rome. 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. Finally, the unequivocal neutrality of the Vatican City in international relations is proclaimed (Lateran Treaty 1929m, Preamble and Art. 24).

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. Firstly, the example of the Holy Mountain shows that it is possible to have 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. Secondly, both the Holy Mountain and the Vatican City define how foreigners, who are monks, members of the clergy, or employees of churches/monasteries, regulate their status concerning the state that surrounds them (Vatican) or of which they are a part (Holy Mountain). Thirdly, 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. Fourthly, in addition to its sovereignty over the Vatican City, the Holy See also owns many 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. Fifthly, 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. Sixthly, 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. Seventhly, Italy's obligation to provide the Vatican with access to communication links, as well as connection to city installations, is defined. And finally, both the Vatican City and Mount Athos are on the UNESCO World Heritage List.

EXAMPLES OF TERRITORIAL SOLUTIONS FOR SMALLER UNITS

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). 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.

Enclaves are not uncommon, even though they seem to be at first glance. For example, 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 (Eames 2017). 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 (Jan S. Krogh's Geosite: Brezovica 2020).

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.

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. 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 of Belgrade.

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 (Samuels 2008a, 738). 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 (Samuels 2008b, 738). In most cases, today's condominiums refer primarily to uninhabited territories or bodies of water, over which the parties share sovereignty.

CONCLUSION

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 (Lončar 2015d, 419). 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 (OSCE 2014.).

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 paper also contains models of territorial solutions for heritage, based on three reasons: 1) the model of enclaves/exclaves or extraterritoriality 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 the citizens' attitudes in Serbia 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 favour of the new status framework.

The paper aimed to point out that the status of Serbian cultural heritage in Kosovo includes but also goes beyond the issues of protection, preservation, and unhindered use in religious rites. Cultural heritage has a deeply political context, which has so far been neglected in Serbian-Albanian relations, with the conviction that a broader status agreement will relativize cultural and identity issues. The key finding of the analysis is that the current constitutional and legal guarantees cannot be permanent and effective in the full protection of the Serbian cultural heritage in Kosovo. Within the existing framework, cultural heritage is placed on the one hand in the narrative of the threatening element of the state-building process in Kosovo, and on the other hand, in the narrative of the “cradle” of Serbian statehood.

The literature so far dedicated to holy places and cultural heritage in the post-conflict period indicates the absence of a universal normative framework and protection mechanisms. At the same time, the state is emphasized as the main proponent of protection, despite the development of various international instruments. Therefore, the basic intention of the author was to offer more creative solutions that go beyond the absolute sovereignty of a state over cultural goods located on its territory.

The paper argues for the need to consider contextual specificities, and therefore the presented comparative experiences can only be partly or to some extent applied in the case of the Kosovo cultural heritage. Universal solutions cannot be applied to the negotiations between Belgrade and Pristina, but mechanisms agreed through dialogue that will permanently accommodate differences, and at the same time deliver cultural heritage from the field of mutually exclusive identity determinations. Therefore, future research should be directed towards the most adequate legal and political framework for a lasting and sustainable status of the Serbian cultural heritage in Kosovo.

Rethinking the existing framework for Serbian religious and cultural heritage in Kosovo would make it possible to respect the identity of the Serb minority community and free the political space in Kosovo from linking this very sensitive issue with achievements in the state-building process. Also, any form of self-government in the presented comparative experience would preserve the cultural heritage from “tactical” motives in the

final status settlement between Belgrade and Pristina, protecting the civilizational value of cultural monuments as a factor of interethnic and interreligious coexistence and integration.

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ПРЕОБЛИКОВАЊЕ ОДРЕДБИ АХТИСАРИЈЕВОГ ПЛАНА: КУЛТУРНО И ВЕРСКО НАСЛЕЂЕ И ПОСТКОНФЛИКТНИ СПОРАЗУМ БЕОГРАДА И ПРИШТИНЕ

Сажетак

Рад идентификује механизме заштите српског верског и културног наслеђа на Косову дефинисане Ахтисаријевим планом и анализира њихову досадашњу примену. Аутори имају за циљ да укажу на то да статус српског културног наслеђа на Косову укључује али и надилази питања заштите, очувања и неометане употребе у верским обредима. Културно наслеђе има дубоко политички контекст, који је до сада био занемарен у српско-албанским односима, са уверењем да ће шири споразум о статусу релативизовати питања културе и идентитета. У првом делу анализа даје свеобухватан преглед правних гаранција и искуства у њиховој примени, детаљно се бави примерима злоупотребе и непоштовања усвојеног нормативног оквира, критиком „посебног” статуса за српско наслеђе и отвореним споровима између Српске православне цркве (СПЦ) и власти у Приштини. Кључни налаз анализе је да садашње уставне и законске гаранције не могу бити трајне и ефикасне у потпуној заштити српског културног наслеђа на Косову, као и да постоји дугогодишњи јаз између прописаних норми и њихове примене у пракси. У другом делу, текст даје

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упоредни преглед посебних статуса светих места у Европи. Будући да се екстериторијални статус често помиње као коначни модел за српско верско и културно наслеђе, рад је покушао да понуди и неколико модела територијалних решења за мање јединице, у облику енклава, екстериторијалности и кондоминијума. На крају, аутори врше преглед досадашње литературе посвећене културном наслеђу у постконфликтном периоду и указују на одсуство универзалног нормативног оквира и механизма заштите упркос развоју различитих међународних инструмената.

Кључне речи: Српско верско и културно наслеђе, Косово, Ахтисаријев план, посебне заштитне зоне за манастире, Ватикан, Света Гора, енклава/ексклава, екстериторијалност, кондоминијум

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