



 CISBalk

 CIG Council for Inclusive Governance

THE ISSUE OF SERBIAN CULTURAL AND RELIGIOUS HERITAGE IN KOSOVO – THE ROAD TO A SUSTAINABLE MODEL

B | T | D The Balkan Trust for Democracy
A PROJECT OF THE GERMAN MARSHALL FUND

 Norway

 Nacionalni konvent o Evropskoj uniji

 inter
Institute for Territorial Economic Development
Policy Research - Assessment - Consultancy - Development

Publisher

National Convention on the European Union
Working Group for Chapter 35

Authors

Stefan Surlić, PhD, Centre for Interdisciplinary Studies of the Balkans
(CISBalk)

Igor Novaković, PhD, Council for Inclusive Governance (CIG)

Year

2022

The publication was produced within the project "Support to Monitoring the Dialogue between Belgrade and Pristina" financed by the Embassy of the Kingdom of Norway in Belgrade and the Balkan Trust for Democracy of the German Marshall Fund of the United States. The opinions and views expressed in this publication are those of the authors and do not necessarily reflect the official views of the Embassy of the Kingdom of Norway in Belgrade, Balkan Trust for Democracy of the German Marshall Fund of the United States, National Convention on the European Union, or the Institute for Territorial Economic Development.

The issue of Serbian cultural and religious heritage in Kosovo – the road to a sustainable model

Stefan Surlić, PhD, Centre for Interdisciplinary Studies of the Balkans (CISBalk)

Igor Novaković, PhD, Council for Inclusive Governance (CIG)

December 2022

CONTENTS

<i>RELEVANCY OF THE TOPIC IN THE NORMALIZATION OF RELATIONS</i>	<i>1</i>
<i>A NEW MODEL FOLLOWING “AHTISAARI +”</i>	<i>4</i>
<i>SOFT EXTERRITORIALITY</i>	<i>9</i>
<i>TOWARDS A COMPREHENSIVE MODEL – PROPERTY RIGHTS</i>	<i>11</i>
<i>INSTEAD OF A CONCLUSION – WHAT DO ALL SIDES GET IN THE END?.</i>	<i>13</i>

RELEVANCY OF THE TOPIC IN THE NORMALIZATION OF RELATIONS

The recent statements of Prime Minister Albin Kurti about “Orthodox fundamentalism” which, supported by “fascist Russia, wants to divide the Balkans and Europe”, in which Orthodoxy is labeled as an exponent of Russian influence, as well as the decision not to allow Patriarch Porfirije of the Serbian Orthodox Church to enter the territory of Kosovo, show how much the issue of religious rights and cultural heritage is important and urgent in current relations between Serbs and Albanians.

If we conditionally consider the text that appeared in the media, which is claimed to be a “German-French” proposal for an agreement, it is encouraging that the topic of the status of the Church is mentioned in point 7. The alleged agreement contains the following wording – “the parties will formalize the status of the Serbian Orthodox Church in Kosovo and ensure a high level of protection of Serbian religious and cultural heritage, in accordance with existing European models”. With that in mind, the main intention of the following lines is to offer a model for a permanent solution of this issue, and to point out the negative consequences of possibly omitting the topic of religious and cultural heritage in the dialogue.

Several studies indicate the importance that Serbian cultural heritage has for the citizens of Serbia. In the survey conducted by CDDRI¹ in 2021, respondents recognized several goals of the future final agreement between Belgrade and Pristina: ensuring protection and special rights for the Serb community in Kosovo (89%), and to add the request for the formation of the Community of Serb Municipalities (74.4 %), management of natural resources (83.5%), **status of cultural and religious heritage (82.6%)**, as well as achieving permanent peace between Serbs and Albanians (75.2%). The results of the 2022 survey show that the citizens mostly agreed with

¹ Stavovi građana Srbije o Kosovu (The views of Serbian citizens about Kosovo), available at <https://cddri.rs/wp-content/uploads/2021/06/Stavovi-gradjana-Srbije-o-Kosovu.pdf>.

the following national interests: Physical security of the Serbs in Kosovo and the possibility to live and work normally (73.1%), **preservation of the cultural and historical heritage and spiritual heritage of the Serbs in Kosovo (65.8%), as well as the preservation of Orthodox monasteries (68.1%).**²

On the other hand, research conducted in Kosovo shows that the majority of Albanians are in favour of an agreement that would mean formal recognition by Serbia (75%), while the option of non-recognition by Serbia with membership in international organizations, with the formation of the Community of Municipalities with a Serbian majority and **a special status for monasteries** was supported by only 9% of Kosovo citizens. Also, 43% do not believe in peace between the two societies in the near future, while 74% support the dialogue between Serbia and Kosovo.³ These data indicate a broad social consensus among Kosovo Albanians on the topic of cultural heritage as irrelevant without the political condition of formal recognition of independence by Belgrade. Therefore, the conclusion can be drawn that even the political elite in Pristina has no interest in providing long-term special status for the protection and preservation of Serbian religious and cultural heritage when there is no social demand among the people for that.

The current lack of respect of the rights from the Ahtisaari package points to the need to find a sustainable model for the status of the Serbian Orthodox Church and Serbian cultural heritage in Kosovo, which would be pursued **independently from the status dispute that exists between Belgrade and Pristina.**

There are two very pragmatic reasons for this. First, although cultural heritage is one of the most important and sensitive topics according to all

² Kako građani vide nacionalne interese Srbije (How do the citizens see national interests of Serbia), available at <https://nationals.rs/kako-gradani-vide-nacionalne-interese-srbije/>

³ Barometer 2021, available at https://qkss.org/images/uploads/files/Barometer_2021_Kosovo_4_Eng_%282%29.pdf.

surveys of the opinions of Serbian citizens, **Belgrade has no interest in accepting any idea that the status of Serbian monasteries and churches is offered as part of the final compromise.** Cultural and religious rights cannot be subject to political compromises. On the other hand, **Pristina does not see the Serbian Orthodox Church as a religious organization, but as a direct exponent of the state of Serbia,** and according to the latest statements, it is assumed - also of Russia. Therefore, it is of crucial importance to rescue the topic of cultural and religious heritage from the currently contaminated area of dialogue on the normalization of relations.

The topic of cultural heritage should be permanently depoliticized, and this is possible only through **a special internationally binding agreement between the EU (with the consent of the U.S.) and the authorities in Pristina, which would be simultaneously incorporated into the valid normative framework in Kosovo.**

A NEW MODEL FOLLOWING “AHTISAARI +”

The need for a new model is very evident. Kosovo has so far shown an absence of full will to respect its own laws, Ahtisaari’s framework including the freedom of movement of ecclesiastical persons, as well as court rulings protecting the property rights of the Church, and it even seems possible that in the future Pristina will suspend the right to a special status of the Church.

Possible future proposal should be an **upgrade of Annex 5 of Ahtisaari’s plan** since the designed mechanisms did not achieve full protection of the special status for the Church and cultural heritage.

It is necessary to formulate a clear request to the European officials who lead the dialogue so that the status of the Serbian Orthodox Church and cultural heritage is on the list of priorities in the comprehensive normalization of relations. The proposal would be formulated independently of the entire process and would mean confirmation of the sovereign right of the Church in areas of vital importance for its smooth functioning and sustainable protection of Serbian cultural heritage.

The previous practice of Kosovo institutions forced the conclusion that any new model of cultural heritage protection should **exclude the possibility of arbitrary action by the authorities in Pristina**.

Many years of institutional practice are supported by an extreme discourse which, in its basis, has a rather discriminatory attitude towards the cultural identity of the minority Serb community in Kosovo, and such practice should be completely prevented by the new model.

It is necessary that the issue of cultural and religious heritage **is not currently raised as part of the final agreement** due to the stalling of the dialogue process. The proposal should be such that it does not presume the issue of status and that it is **applicable regardless of the outcome of the comprehensive normalization of relations**.

The reason for the separate process is because the protection of Serbian cultural and religious heritage is directly suspended due to the non-enforcement of the existing legal framework and because in this topic Pristina sees blackmailing potential for negotiations with Belgrade. Postponing the resolution of this issue would represent **a great danger for further protection and preservation** of the cultural and religious uniqueness of the Serb community in Kosovo. There is a clear intention to gradually stop applying the current legal framework, to adapt and change it to achieve full control over something that is already formulated as the “cultural heritage of Kosovo”.

It is necessary to define, with international mediation, **a comprehensive document** that would regulate relations between the authorities in Pristina, on the one hand, and the Serbian Orthodox Church, on the other. It is necessary that the provisions of that **international agreement with clear guarantees be later incorporated into the constitutional-legal framework in Kosovo without the right to arbitrary changes.**

A comprehensive document that would be incorporated into the legal system that is valid on the territory of Kosovo would have to consider the preservation of cultural identity, historical continuity, the canonical connection of the Eparchy of Raška and Prizren with the Patriarchate of the Serbian Orthodox Church, which has its centuries-old seat in Peć. Inviolable protection of property rights, religious freedom, economic, customs and other commissions, as well as a system of protected zones that would continue to exist, are necessary for the functioning of the Serbian Orthodox Church.

Although most of these requirements are defined in the Ahtisaari plan, the previous period has given rise to several concrete problems that should be eliminated by the future comprehensive agreement: first, **some provisions of the Ahtisaari plan have not been respected at all**, second, **certain provisions have been regulated by the law but not implemented**, third, **some provisions are interpreted incorrectly or ambiguously**; fourth, **certain important issues are not at all covered by Ahtisaari’s plan or the existing legal framework in Kosovo.**

A few illustrative examples. Article 1.6 of Annex 5 stipulates that the Serbian Orthodox Church in Kosovo has **full discretion in the management of its property, reconstruction of its property and access to its premises and facilities**. This provision is not at all incorporated into the constitutional and legal framework in Kosovo, and there are intentions to further challenge this right to the Serbian Orthodox Church with new laws, primarily on cultural heritage.

Article 1.6 of Annex 5 states that the authorities in Pristina **cannot arbitrarily prohibit the entry or stay in Kosovo of priests, novices, monks, nuns, laymen or other invited persons and members of the Serbian Orthodox Church**. Although this provision was rewritten in the adopted Law on Religious Freedoms, the recent case of banning the entry of Patriarch Porfirije shows the randomness of the application of the current norms.

Many years of endangerment of special protected zones have been described in more detail in earlier analyses⁴, and it happens despite the foreseen mechanisms for overcoming disputes. Most laws concerning cultural heritage fall under laws of “vital interest”, but the main weakness

⁴ Surlić Stefan, Novaković Igor, (2020) Srpska kulturna i verska baština na Kosovu od Ahtisarijevih zaštićenih zona do finalnog statusa, Nacionalni konvent za EU (Serbian Cultural and Religious Heritage in Kosovo from Ahtisaari’s Special Zones to the Final Status), Working Group for Chapter 35.

is still the unwillingness of the authorities to respect the adopted legal framework.

Based on past experiences, the biggest challenge for Ahtisaari's "package" was the implementation mechanism. Therefore, in the event of an agreement on a new model for the country's cultural heritage, the guarantors (most likely the EU) would have an important role in ensuring a sustainable control mechanism for the implementation of what was agreed upon.

The main request of the Serbian Orthodox Church to international actors should be strong **guarantees** that the agreement will be respected. Those guarantees must contain two key elements: 1) **a body that will have executive powers** in resolving disputes between the Church and Kosovo's local and central institutions, 2) **security forces** that would execute the decisions of the foreseen body (special police unit, international forces, mixed units...)

According to Ahtisaari's plan, in the event of a dispute, the functioning of the Council for Implementation and Monitoring composed of representatives of the local government, Serbian Orthodox Church, and international missions is foreseen, which makes decisions by consensus. In the later decision-making process of the Council, the question arose as to whether it is a body with executive or advisory powers. Representatives of the Government of Kosovo insisted on an advisory character, emphasizing the Government as the final authority. On the other hand, Serbian Orthodox Church considered that the decisions of the Council are not subject to government's approval and repeatedly insisted that the adopted decisions have an executive character, i.e. that they are not subject to subsequent changes by the executive.

Analyzing the mandate assigned to the Council shows that the Government of Kosovo has an obligation to ensure the implementation of "decisions" of the Council, not "recommendations", "advice" or "opinions". However, this double interpretation paralyzed the entire framework of special

protection, allowing the Government of Kosovo to, by its own decision, define itself as the final adjudicating body in any dispute, despite the negative attitude of the Serbian Orthodox Church regarding activities in areas designated as special protected zones.

Despite the negative experience, the Council for Implementation and Monitoring can have its role in the newly designed “Ahtisaari +” model. It is necessary that this body, which primarily deals with the respect of special zones, **be transformed into a committee for the implementation** of the entire mechanism for the protection of the Serbian Orthodox Church and Serbian cultural heritage, **to have executive powers**, and to be officialized as **the final adjudicating body in any dispute**.

SOFT EXTERRITORIALITY

As already mentioned, with the mediation and guarantees of the EU and U.S. representatives, Serbian cultural and religious heritage in Kosovo requires a new model for three key reasons: first, inconsistent application, ambiguous interpretation as well as complete disregard for certain rights arising from Annex 5 of the Ahtisaari plan. Second, the absence of a single legally binding document that would regulate all the rights and obligations of the Serbian Orthodox Church in the territory of Kosovo. Third, the absence of an effective international mechanism for applying the special status of Serbian cultural and religious heritage. Finally, the absence of a **certain form of territoriality** for localities that have a very significant religious, cultural and identity component for the Serbian community and the Serbian Orthodox Church.

A sustainable model of protection can be applied in a combination of “**soft extraterritoriality**” enjoyed by diplomatic missions, military bases, the Holy See (Lateran Treaty), the headquarters of the Sovereign Military Order of Malta, Mount Athos in Greece. These are undoubtedly European and sustainable models of **special status** that, with political will, can be easily applied in Kosovo. Soft extraterritoriality would mean that the host political system retains all sovereign rights over the territory where extraterritoriality is applied, but its legislative framework is not applied or is significantly limited.

It is necessary that the current normative **model of special protected zones be strengthened by the application of soft extraterritoriality** to prevent the further practice of jeopardizing special religious and cultural sites. A special status would not deviate from the already mentioned European models that have proven to be applicable.

Together with that, the **creative mechanism of the condominium** could be applied in the context of **care about the heritage - preservation and protection**. Pristina would have a general legislative framework on

cultural heritage and religious rights, but they would renounce the right to take care of Serbian cultural heritage, and Belgrade would leave its jurisdiction to the Church in coordination with the Institute for the Protection of Cultural Monuments and other relevant institutions.

This would also mean **the official renunciation of the authorities in Pristina from the competence and responsibility for the care of the Serbian cultural and religious heritage in Kosovo** both within the internal executive and legislative framework and at the international level in case of achieving membership in UNESCO and other relevant bodies, agencies, committees.

TOWARDS A COMPREHENSIVE MODEL – PROPERTY RIGHTS

Three important prerequisites for a comprehensive model of protection and preservation of cultural and religious heritage are related to property rights:

- 1) determining the list of **objects that would enjoy special international protection with the generally accepted categorization of different objects and localities** by importance.

UNMIK mission, in cooperation with the OSCE, listed 114 buildings of the Serbian Orthodox Church, including chapels and half-demolished buildings. In the plan submitted by the Office for Kosovo and Metohija to the representatives of the European Union in 2018, in which guarantees are requested to the Serbian Orthodox Church that it has the full right to dispose of its property for an unlimited period of the established legal protection regime, 44 objects are listed. Although the plan is not public, this figure probably coincides with the list of 44 facilities with special protection zones mentioned in Ahtisaari's plan. They include the locations with a special dispute between the Serbian Orthodox Church and the authorities in Kosovo.

- 2) settlement of **current property disputes and disputes regarding jurisdiction** (Visoki Dečani Monastery, Christ the Savior Temple in Priština, St. Archangel Monastery near Prizren, Novo Brdo, etc.).

The new comprehensive model would enable more precise wording regarding the competences, rights and obligations of the Church and the central authorities in Kosovo. The document would also include the obligation of Pristina to **implement all court decisions** confirming the property rights of the Serbian Orthodox Church.

- 3) Ahtisaari's plan envisages **the restitution of the Serbian Orthodox Church's property in Kosovo**, which has not even been initiated to

date. It is necessary in a comprehensive model to insist that this provision be implemented.

“One of the priorities in Kosovo will be issues related to restitution of property, including those related to property issues of the Serbian Orthodox Church. Kosovo will establish independent mechanisms to create a political, legislative, and institutional framework for resolving restitution issues. Representatives of the international community will be invited to participate in such mechanisms, which will also include representatives of non-majority communities”.

The process of restitution should begin with the prohibition of further privatization of confiscated, nationalized, or expropriated property claimed by the Serbian Orthodox Church. At the same time, local and central authorities would be obliged to stop further or new construction until the end of the restitution process in establishing new property rights. A special emphasis would be on the land and property located within the already defined special protected zones.

INSTEAD OF A CONCLUSION – WHAT DO ALL SIDES GET IN THE END?

The first challenge for a permanent solution to the status of the Church and Serbian cultural heritage is certainly the legal nature of the document. The most realistic scenario is an agreement between the EU (with the consent of the U.S.) and the authorities in Pristina, which would entail the incorporation of the agreement into the current legal system in Kosovo. A direct agreement between Belgrade and Pristina does not seem certain and possible at the moment since the dialogue is at a standstill and the dispute over the final status of Kosovo is paralyzing possible agreements in other spheres.

For reaching this type of agreement, Belgrade would be accused of recognizing Kosovo's independence with "soft extraterritoriality" for cultural and religious heritage. Also, they are not interested in the final compromise being reduced to concessions in the identity sphere. On the other hand, Pristina is also not interested in discussing this topic with Belgrade because the prevailing narrative is that the issue has already been resolved and that it belongs to the domain of caring for the overall cultural heritage of Kosovo. In the end, Serbian Orthodox Church cannot be a contracting party directly with Pristina at this moment because it would be accused of undermining the interests of Serbia in the process of dialogue and achieving the comprehensive normalization of Serbian-Albanian relations.

European Union is not only the only, but also the most desirable party in the contractual relationship because it can be expected that the authorities in Pristina would have less room for maneuver to deny the process and challenge the agreed rights for Serbian religious and cultural heritage.

With this approach, Belgrade does not have to make any compromises regarding political and other issues due to the position of the Church, because it would be resolved outside the contaminated space of the

Brussels dialogue. On the other hand, by resolving the issues surrounding the preservation and protection of cultural and religious heritage through an agreement with which the Serbian Orthodox Church agrees, Belgrade frees itself from a very sensitive identity issue, and thus gains wider room for maneuver to reach painful compromises in the final agreement with Pristina. Also, with this model of soft extraterritoriality and condominium, the relevant institutions of Serbia reserve the right to deal with the protection of Serbian cultural heritage in Kosovo.

By adopting the new mechanism, Pristina would show that it can accept a model that already exists in organized democracies such as Italy and Greece, and that it is ready to institutionally protect religious and cultural pluralism in an efficient way. The idea of soft extraterritoriality implies that heritage would exist in Kosovo regardless of the current dialogue process and the possible final agreement on status. By respecting the special status of the Serbian Orthodox Church and the Serbian cultural heritage, the authorities in Pristina would reduce identity tensions, contribute to the construction of a multi-ethnic society, and ensure the right of the Serbian community to a socially integrated cultural distinctiveness.

For the European Union and the USA, the issue based on European principles and good practice of protection and preservation of cultural heritage valuable for the entire civilization would be resolved. The sensitive issue would be saved from the political process of defining the final status of Kosovo thus providing a lasting contribution to the reconciliation between Serbs and Albanians. Indirectly, solving this issue would relax the further normalization of relations between Belgrade and Pristina, reduce destabilizing influences and open the way to a final agreement.



NATIONAL CONVENTION ON THE
EUROPEAN UNION
KNEZA MILOŠA 4
11000 BELGRADE

WWW.EUKONVENT.ORG
OFFICE@EUKONVENT.ORG



INSTITUTE FOR TERRITORIAL
ECONOMIC DEVELOPMENT (INTER)
VLAJKOVIĆEVA 29
11000 BELGRADE

WWW.REGIONALNIRAZVOJ.ORG
OFFICE@REGIONALNIRAZVOJ.ORG