

**POLITICAL RIGHTS OF MINORITIES IN ALBANIA, BOSNIA
AND HERZEGOVINA AND KOSOVO**

A COMPARATIVE ANALYSIS WITH EU LAW

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EXECUTIVE SUMMARY

The lack of sufficient legal protection for minorities affects the stability and democracy of a country. Meanwhile, at the regional level, it represents a probable reason to incite conflict with neighboring states, from where minorities originate of. Minority rights are one of the issues concerning transition countries like Albania, Bosnia and Herzegovina and Kosovo. This thesis aims to evaluate how Albania, Bosnia and Herzegovina and Kosovo comply with the European Union law for minority shielding, particularly political rights. Afterwards, I compare the three countries' legal framework. Providing these comparisons helped me identify the shortcomings of the laws, which is the first step towards improvement. Seeking to ensure minorities equal political participation and representation, which brings the region one step closer to much-needed stability is the substantial purpose of this thesis. The nucleus of this study embodies a comparison of mainly constitutional provisions and related legislative acts, by limiting itself to the 'black letter' legal analysis, and not their implementation. In conclusion, this study finds that all three countries, to different extents, should provide a better legal framework to secure political rights of minorities in order to fully comply with European standards.

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1. Introduction

Minority protection is considered essential for a country's stability, democracy, security, and peace.¹ The term *minority*, according to the Office of the High Commissioner for Human Rights, is defined as “*An ethnic, religious or linguistic minority is any group of persons which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these.*”

The legal term ‘minority rights’ invokes “the rights of minorities as groups, but also the rights of those individuals within them.”² Minority rights fall essentially into four main categories: existence (the right to exist, and to be recognized as the groups they define themselves to be), identity (the identity they choose is fully recognized, in particular that their culture, language and religion can be freely practiced, and indeed is recognized and supported by the authorities), anti-discrimination (discrimination is one of the major problems suffered by minorities, in which they are treated differently due to their ethnicity, religion or language, often referred as multiple or intersectional discrimination) and participation (the right of everyone to influence the decisions that affect them).³ This study is focused on the last category, precisely on the right to political participation. It is important to realize the distinction between political rights grouped with civil rights and political rights in their autonomous meaning. The latter refers “specifically to the democratic vision of human rights, encompassing the right to participate in government, the right to vote and the right to participate in government”⁴ and is the primary subject of this thesis.

¹ Council of Europe, *Framework Convention for the Protection of National Minorities*, 1 February 1995, ETS 157.

² Clive Baldwin, Chris Chapman, and Zoë Gray. *Minority Rights: The Key to Conflict Prevention*. Minority Rights Group International Report, 2005/06,[6]. London: Minority Rights Group International, 2007. 2.

³ Ibid. p.5

⁴ Schabas, William A., “Political rights”, in *The Customary International Law of Human Rights* (Oxford, 2021; Oxford Academic, 2021): 264.

The choice of countries I compare is primarily based on the fact that the three states belong to the same region, and their inner security and relations they have with each other, and their neighboring countries affects the stability of the whole region. Furthermore, what strongly relates to the three countries, except being transitional countries with several minority groups within their borders, is their aim in becoming part of the European Union (EU). With regard to the matter, the Union considers that ‘minority protection and participation are inherent in the EU's founding principles.’⁵ Additionally, one of the criteria that define whether a country is eligible to join the European Union, the first Copenhagen criterion, requires “respect for and protection of minorities”⁶.

As per the choice of political rights, I consider political participation and representation vital for a community. When minorities have the opportunity to be involved in the way in which the country is governed, they can improve their close environment, and at the same time contribute to shaping a better society. Equal opportunities increase the chances of everybody's voice being heard. Based on preliminary research, I observed that Bosnia and Herzegovina, Kosovo and Albania, do not provide comprehensive protection for minorities' political rights, respectively in different levels.

The underlying hypothesis of my thesis is that driven by the fact that these countries aspire to join the European Union, they will proceed with the needed legal changes in order to fully comply with the Copenhagen political criterion related to minority protection. First, I describe the EU legal framework in relation to the protection of rights of minorities so as to understand if the Union has a clear standard about the protection of minorities. Subsequently, I evaluate each country's legal framework in relation to the EU based on the European Commission

⁵ Boris Tsilevich, “EU Enlargement and the Protection of National Minorities: Opportunities, Myths, and Prospects”, *Open Society Foundation*, October 1, 2001, 1

⁶ “EUR-Lex – Accession criteria Copenhagen - EN - EUR-Lex.” Accessed June 16, 2023. <https://eur-lex.europa.eu/EN/legal-content/glossary/accession-criteria-copenhagen-criteria.html>.

Progress Reports. Next, by creating sub-categories I make a comparison between the regulations of BiH, Kosovo and Albania. In conclusion, based on my research I conclude if the laws of these countries protect political rights of minorities sufficiently or not. Indirectly, such an investigation is a contribution to the accession process of these three countries.

1.1. Relevance of the project

Minority protection is crucial to prevent conflicts among neighboring countries, especially in a period when Europe is confronting the war in Ukraine. A greater commitment to understanding and implementing minority rights at local, national, regional, and international levels, with the full inclusion and participation of minority groups, is imperative to conflict prevention.⁷ While I was doing my research for minority protection in transition countries like Bosnia and Herzegovina (hereinafter BiH), Kosovo, and Albania, I noticed that issues concerning political rights and the participation of minorities in decision-making arose.

In ethnically diverse societies like the above-mentioned countries, in a situation of absence or insufficiency of minority rights protection, conflicts may arise. Another concern is that the ‘Kin-State’ may intervene to protect its ‘diaspora’. Before demonstrating the implications of it, it is important to define the terms. “For a minority the Kin-State is a State in which their ethnic kin compose a titular majority”⁸ “the kinship implies a close, ethno-cultural affinity”.⁹ The conduct of states toward kinship and the purpose behind it varies. The influence can be strong, as in the “nationalist type”,¹⁰ “geopolitical type”¹¹ or the least controlling, the “normative

⁷ Clive Baldwin, Chris Chapman, and Zoë Gray. *Minority Rights: The Key to Conflict Prevention*. Minority Rights Group International Report, 2005/06,[6]. London: Minority Rights Group International, 2007, 3.

⁸ Natalie Sabanadze, "Minorities and Kin-States", *Helsinki Monitor* 17, 3 (2006): 1.

⁹ Ibid.

¹⁰ These States pursue policies that are influenced as much by issues of kin-minorities as by internal political considerations. Natalie Sabanadze, "Minorities and Kin-States", *Helsinki Monitor* 17, 3 (2006): 5.

¹¹ when a State uses kin-minorities in another State as a means of influencing or pressuring that State and boosting its own geopolitical interests. Ibid., 6.

type”.¹² Kin-state involvement, unless finely balanced and coordinated with the home-state, may “encourage charges of treason and disloyalty against the minority community and lead to an anti-minority backlash.”¹³

With diverse minorities inside their borders, a practical demonstration of different forms of kin-state involvement can be seen in Albania, Bosnia and Herzegovina and Kosovo. For Albania, the main minority-related influence would be from Greece. The Greek minority represents the largest minority group in Albania, about 0.87 % of the population.¹⁴ Throughout the years, Athens has had an active policy agenda and constant communications with the Greek minority in Albania. A publication of “Minority Rights Group International” in 2008 declares that violent incidents have declined in recent years, the ethnic Greek minority has pursued grievances with the government regarding electoral zones, Greek-language education, property rights and government documents.¹⁵

Meanwhile in Kosovo, the largest minority group are Serbians. Republic of Serbia persists in the establishment of “Association Community of Serb-Majority Municipalities.”¹⁶ The war in Kosovo¹⁷ ended almost 24 years ago, but the tension between Kosovo and Serbia continues, marking a perpetual non-armed conflict that disestablishes the Balkan region.

¹² This is when States pursue policies aimed at promoting the rights of their kinminorities in home-states either in co-operation with respective governments or via international institutions. Their aim is to improve the rights of minorities in general as well as those of a specific kin-minority and to enhance overall standards of minority protection. Ibid., 7.

¹³ Natalie Sabanadze, “Minorities and Kin-States”, *Helsinki Monitor* 17, 3 (2006): 11.

¹⁴ INSTAT, “CENSUS I POPULLSISË DHE BANESAVE 2011” [POPULATION AND HOUSING CENSUS 2011], 2012, 71. census I 2011

¹⁵ Minority Rights Group International (MRG) works to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG publishes Reports, Training Manuals, Briefing Papers and Workshop Reports covering a broad range of issues concerning the rights of minorities and indigenous peoples. Website: www.minorityrights.org/

¹⁶ To understand better what the Association Community of Serb-Majority Municipalities does, please refer to <https://dialogue-info.com/association-community-of-serb-majority-municipalities/>

¹⁷ See Britannica, T. Editors of Encyclopaedia. “Kosovo conflict.” *Encyclopedia Britannica*, June 14, 2023. <https://www.britannica.com/event/Kosovo-conflict>.

Equally important, the setting in Bosnia and Herzegovina constitutes a considerable concern for the region. The Dayton Peace Agreement reached on Nov. 21, 1995, by the presidents of Bosnia and Herzegovina, Croatia, and Serbia, ended the war in BiH and sustained a single state made up of two parts, the Bosniak-Croat federation, and the Bosnian Serb Republic, with Sarajevo remaining as the undivided capital city.¹⁸ Republika Srpska, as one of the two entities of Bosnia, has maintained close ties with neighboring Serbia.

1.2. Methodological approach

The nucleus of this thesis embodies a comparison of mainly constitutional provisions, but also related to the primary legislation. This study limits itself to the “black letter” analysis, enabling an evaluation of the constitutional provisions and associated legislation, and not their application in practice, a study reserved for the future.

1.3. Literature review

There are existing studies concerned with minority rights in the European Union. Within the EU there are several reports from different institutions or agencies that review the legal framework of the Union associated with minority protection. For example, in 2011, the Fundamental Rights Agency (hereinafter FRA), responding to a request from the European Parliament, published a report outlining developments of 2008-2010 that crucially affect persons belonging to minorities.¹⁹ In 2017 a study, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) presented the state of play regarding the main challenges characterizing the protection of ethnic, religious and linguistic

¹⁸ Clinton, Bill, "Dayton Accords". *Encyclopedia Britannica*, (10 Jan. 2023). <https://www.britannica.com/event/Dayton-Accords>. Accessed 11 April 2023.

¹⁹ European Union, ed. *Respect for and Protection of Persons Belonging to Minorities: 2008 - 2010*. Equality. (Luxembourg: Office for Official Publ. of the Europ. Union, 2011).

minorities in a selection of 11 European countries²⁰ and addressed the problem of the lack of a scrutiny mechanism after accession process.

Besides institutional reports, several scholars have published books and articles from a variety of perspectives linked with the protection of human rights and minority rights in the legal framework of the Union. Andrew Williams, in his book “EU Human Rights Policies, A study in Irony” analyzes “the nature and causes of the ‘bifurcation’ in the EU’s approach to human rights.”²¹ Through his study, the author is trying to reveal the distinct approach towards human rights that the EU has in and outside its borders and calls it an ‘ironical condition.’ This dual attitude continues when narrowing the focus to minority rights and their protection. The demarcation that different authors express between what is required by existing member states and candidate countries is noticeable. Tawhida Ahmed’s chapter in “Cultural Governance and the European Union” acknowledges the “dichotomy between internal and external obligations in the field of minority protection.”²² Besides, he describes a comprehensive view of the current position of minority rights protection in the EU, mentions “the omissions in EU law towards minority protection”²³ but also, the existence of numerous avenues in the EU through which minority rights can be pursued.”²⁴ Similarly, A. Aslı Bilgin in “Minority Protection in the European Union: To Protect or Not to Protect?” demonstrates the lack of “specific legal basis for the protection of minority rights” but involves minority protection under the value of diversity in the Union.²⁵ Other studies, like the book: *Minority Protection and the Enlarged*

²⁰ See Carrera, Sergio, Elspeth Guild, Lina Vosyliūtė, and Petra Bárd. *Towards a Comprehensive EU Protection System for Minorities: Study*. (Brussels: Policy Department C: Citizens’ Rights and Constitutional Affairs, European Parliament, 2017).

²¹ Williams, Andrew. *EU Human Rights Policies: A Study in Irony*. (Oxford Studies in European Law. Oxford: Oxford Univ. Press, 2005): 12.

²² Tawhida Ahmed. “The EU’s Relationship with Minority Rights.” In *Cultural Governance and the European Union*, edited by Evangelia Psychogiopoulou, Palgrave Studies in European Union Politics. Palgrave Macmillan, London, 2015, 179.

²³ Ibid. 179

²⁴ ibid

²⁵ See Aslı Bilgin, A. “Minority Protection in the European Union: To Protect or Not to Protect?”, *International Journal on Minority and Group Rights* 26, 1 (2019).

European Union: The Way Forward, add a crucial element to the literature, minority protection in a post -2004 enlarged Union. A team of experts provides several policy proposals for the internal protection of minorities within the EU, after the 2004 enlargement. From a general perspective, it can be observed that the presence of several authors adds value to the study, by providing a variety of perspectives for minority-related issues interconnected with the main topic “what scope is there, and should there be for an internal minority protection policy in the Enlarged European Union?”²⁶ What I consider to be important is the future oriented approach the book has, taking into consideration the integration of Western Balkans and Turkey. Nevertheless, the presence of several authors causes time after time a repetition of issues like the question of monitoring human rights and minority rights. While most of the above-mentioned authors have seen minority rights protection from the EU perspective and its influence towards member states and candidate countries, Timofey Agarin and Karl Cordell, in their book:” *Minority rights and minority protection in Europe bring a new angle*. ”First and foremost, this book seeks to assess the underpinnings of minority rights protection in post-communist Europe and to evaluate the impact of the domestic institutions on the operation of the European minority rights regime.”²⁷ By taking into consideration the impact of domestic institutional dynamics directed toward the Union, the book complements the existing literature.

For what concerns the situation of minorities and in particular political rights within three comparators, I observed that Bosnia and Herzegovina is the most analyzed state among academics. For example, Amila Kurtovic, in her thesis about “Political Rights of Minorities in Divided Societies” compares Bosnia and Herzegovina and South Tyrol with another

²⁶ Kristin Henrard, “I Book Review: Minority Protection and the Enlarged European Union: The Way Forward,” *Netherlands Quarterly of Human Rights*, 23(2), (2005): 314.

²⁷ Timofey Agarin and Karl Cordell. *Minority Rights and Minority Protection in Europe* (London ; New York: Rowman & Littlefield International, 2016), 2.

international organization, the Council of Europe.²⁸ Concerning Albania, in the last years the EU membership focus is shifted towards judiciary, fight against corruption and organized crime, intelligence services and public administration leaving aside minority issues. Unfortunately, thorny situations continue to be present, as the last local elections demonstrated. Last, the rights of minorities in Kosovo, indisputably the Serb minority, have always been a controversial affair. The tense setting in Northern Kosovo after 23 April 2023 elections demonstrates the importance and relevance of speaking for political rights of minorities in the country. The presence of these escalating situations makes the topic highly relevant and justify the examination of this field by scholars.

²⁸ Amalia Kurtovic, "Political Rights of Minorities in Divided Societies : A Comparative Analysis of Bosnia and Herzegovina and South Tyrol, in Italy with Particular Reference to the Council of Europe Legal Framework," CEU Legal Studies Department Master Theses: 2016/29 (Central European University, 2023).

2. EU LAW

In this chapter I describe the legal framework of the EU for the protection of minority rights and unfold the requirements of minority protection for the candidate countries that Copenhagen criteria demands.

2.1. Legal framework on minority rights in the European Union

Initially, united only by economic objectives, the six initiator states of the European Coal and Steel Community did not include any provision related with human rights in general, not to mention minorities' rights and their protection in the founding treaties. The predominant 'aims' and 'values' have been and persist to be market integration and economic progress. The common free market was presented in the Treaty of Rome. Belgium, Germany, France, Italy, Luxembourg, and the Netherlands united to "work together towards integration and economic growth and created a common market based on the free movement of goods, people, services and capital."²⁹"Today, the single market continues to be the driving force for the EU to address new challenges"³⁰ and it is considered "the backbone of Europe's resilience, allowing it to emerge stronger from the COVID-19 pandemic and the current energy crisis."³¹ Further down the line, other policy fields have been included, and additional values have emerged within the EU. Since the 2009 Lisbon amendments, the EU Treaties express an even stronger commitment to human rights in general (being 'deeply rooted in human rights', Piris, 2010: 71), but also to minority protection.³²

²⁹ See European Union, *Treaty Establishing the European Community (Consolidated Version)*, Rome Treaty, 25 March 1957, Articles 2 and 3.

³⁰ Ibid. Article 4.

³¹ "30th anniversary of the single market." Accessed June 16, 2023. https://single-market-economy.ec.europa.eu/single-market/30th-anniversary_en.

³² Psychogiopoulou, Evangelia, ed. *Cultural governance and the European Union: protecting and promoting cultural diversity in Europe*. Springer, 2016, 37.

The process of the introduction of minority rights can be explained in two different phases called internal and external.³³ While the internal phase is directed towards Member States and the institutions of the EU, the external phase concerns third countries including the candidate ones.³⁴ For this academic work's purposes, this chapter will focus on the external phase, although part of the legal framework established for internal purposes applies to the external dimension and vice versa. Furthermore, as I explained in the introduction, the focal point will be on minorities' political rights.

The division of competences within the European Union is clarified by the Treaty of Lisbon. When referring to the enumerated areas in Article 3 TFEU, the competences are divided into three main categories: *Article 3 TFEU*, the exclusive competences of the EU where EU alone adopts binding legislation; *Article 4 TFEU*, shared competences where both the EU and its Member States can adopt legally binding acts; *Article 6 TFEU*, supporting competences where EU can only intervene to support, coordinate or complement the action of the Member States. The protection of minorities does not fall under the EU exclusive competences. Minority protection is a horizontal task and a continuing process that involves a variety of players in different contexts.³⁵

When considering the European Union Treaties, the Maastricht Treaty (1992) was the first legally binding document to introduce an article for human rights.³⁶ The Amsterdam Treaty, (1997) amended Maastricht Treaty and was designed to get the EU ready for its future

³³ Ashı Bilgin, A. "Minority Protection in the European Union: To Protect or Not to Protect?", *International Journal on Minority and Group Rights* 26, 1 (2019): 93.

³⁴ Ibid.

³⁵ European Union, ed. *Respect for and Protection of Persons Belonging to Minorities: 2008 - 2010*. Equality. (Luxembourg: Office for Official Publ. of the Europ. Union, 2011), 11.

³⁶ See European Union, *Treaty on European Union (Consolidated Version)*, *Treaty of Maastricht*, 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002, Article F.

enlargement.³⁷ In the Article F of the Maastricht Treaty, where respect for fundamental rights is mentioned, principles of ‘liberty, democracy, and the rule of law’³⁸ were added.

The first explicit reference to minorities in the EU primary law was on the Treaty of Lisbon (2009). When reading Article 2 TEU minority protection is a founding value of the EU. Article 2 TEU cements the EU’s express commitment to minority protection but remains a provision to be elaborated by EU institutions.³⁹ Not long ago, the EU Commission invoked it as self-standing plea in an infringement proceeding over Hungarian LGBTIQIA+ rights violations.⁴⁰ This proclamation, which is also contested by several legal practitioners,⁴¹ has its own advantages and disadvantages. From a minority rights perspective it is positive because it justifies an extensive reading of other specific provisions, meaning a wider possibility for protection. Now, we must wait for the European Court of Justice stance on the matter.

Article 7 adds more seriousness to Article 2 and binds Member States (MS) to respect these values. When it is considered that “there is a clear risk of a serious breach by a Member State of the values referred to in Article 2”⁴² it may lead in the decision “to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council”.⁴³ Although the concept of ‘serious and persistent breach’ is not defined in the Treaty, the Council,

³⁷ Ibid.

³⁸ Ibid., Point 8.

³⁹ Psychogiopoulou, Evangelia, ed. *Cultural governance and the European Union: protecting and promoting cultural diversity in Europe*. Springer, 2016.

⁴⁰ EU Law Live. “Op-Ed: ‘Berlaymont Is Back: The Commission Invokes Article 2 TEU as Self-Standing Plea in Infringement Proceedings over Hungarian LGBTIQ Rights Violations’ by Luke Dimitrios Spieker,” February 22, 2023. <https://eulawlive.com/op-ed-berlaymont-is-back-the-commission-invokes-article-2-teu-as-self-standing-plea-in-infringement-proceedings-over-hungarian-lgbtq-rights-violations-by-luke-dimitrios-spieker/>.

⁴¹ See The European Court of Justice, A.B. and Others v Krajowa Rada Sądownictwa and Others, Case C-824/18, 2 March 2021, Para. 35.

⁴² European Union, *Treaty on European Union (Consolidated Version)*, Treaty of Maastricht, 7 February 1992, Official Journal of the European Communities C 325/5, Article 7.

⁴³ Ibid., Para. 3.

acting by unanimity, has a discretionary power to suspend certain rights of the Member States by a qualified majority.⁴⁴

Furthermore, what can also be taken from the Lisbon Treaty, concerning minorities, is that the EU Charter of Fundamental Rights became legally binding. The Charter in Article 21 explicitly prohibits discrimination on grounds of “membership of a national minority”, in addition to race, ethnic or social origin, language, religion or belief. Also, under Article 22, the Charter expresses the respect towards cultural, religious, and linguistic diversity. Substantively, the above-mentioned Article 21 of the EU Charter is the predominant legally binding tool for minority protection. Inspired by Article 14 of ECHR, Article 21 adds elements of equality under its realm, but also is a self-standing right (controversially from Article 14 of the Convention that is applicable only in combination with another provision). The catch holds on the fact that Article 21 is embraced mostly as a principle which does not offer a legal basis for the adoption of EU legislation and only applies when member states implement EU law.

Meanwhile, Article 20 of the Treaty on Functioning of the European Union (TFEU) establishes the citizenship of the Union, additional to the national citizenship. Among others, the provision protects “the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State.”⁴⁵ As per political rights, in Article 22 (1) the EU ensures equal treatment for the residents that hold EU citizenship of the right to vote and to stand as a candidate at municipal elections in the Member State in which she resides.

⁴⁴ Aslı Bilgin, A. "Minority Protection in the European Union: To Protect or Not to Protect?", *International Journal on Minority and Group Rights* 26, 1 (2019): 99.

⁴⁵ European Union, *Treaty on European Union (Consolidated Version)*, *Treaty of Maastricht*, 7 February 1992, Official Journal of the European Communities C 325/5, Article 20(c).

Another point of departure for creating legal acts within the EU is the European Citizens Initiative,⁴⁶ for the purpose of implementing the Treaties. Under ECI the proposals for law reforms to make minority protection within the Union more concrete have not been absent. First conceived in 2010 under the auspices of the Federal Union of European Nationalities (FUEN), the Minority Safe Pack Initiative (MSPI) originally consisted of a set of 11 proposals with the broad aim of enabling the members of national minorities to live in their traditional homelands, learn in their mother tongues, preserve and develop their identities and cultures, and to achieve equality.⁴⁷ After MSPI organizers managed to accumulate 1,123,422 validated signatures and pass the national threshold in 11 Member States, it got supported in the Parliament. In 2021 the Commission rejected the proposals, declaring that “no additional legal act is necessary” to achieve its objectives. In November 2022, the General Court upheld that decision,⁴⁸ demonstrating once again the strong position of the Commission among the EU institutions.

2.2. Secondary legislation

As I mentioned earlier in the literature review section, there are several indirect avenues in the EU through which minority rights can be pursued. One of the key areas in minority protection, that is more significant than others, is the anti-discrimination law. During the last decade, discrimination has also been addressed, by secondary law, namely the Race Equality Directive and the Employment Equality Directive.⁴⁹ Based on Article 13 TEC (Article 19 TFEU) the Council adopted the Race Equality Directive (Directive 2000/43/EC, 29 June 2000) which

⁴⁶ Ibid., Article 11(4).

⁴⁷ European Law Blog. “Case T-158/21 Minority SafePack: No Hope for Minority Rights in EU Law?,” January 30, 2023. <https://europeanlawblog.eu/2023/01/30/case-t-158-21-minority-safepack-no-hope-for-minority-rights-in-eu-law/>.

⁴⁸ The European Court of Justice, Citizens’ Committee of the European Citizens’ Initiative “Minority SafePack – one million signatures for diversity in Europe”, Case T-158/21, 9 November 2022, Para. 93. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62021TJ0158>

⁴⁹ European Union, ed. *Respect for and Protection of Persons Belonging to Minorities: 2008 - 2010*. Equality. (Luxembourg: Office for Official Publ. of the Europ. Union, 2011), 7.

implemented the principle of equal treatment between persons irrespective of racial or ethnic origin. When searching through the document, no direct reference is made to the rights of minorities, addressing individual protection. The Directive strives against ethnic discrimination in a wide range of fields, including employment, training, social protection, education, housing and access to public goods and services.⁵⁰ Both with the Employment Equity Directive, non-discrimination is the legal principle. Nevertheless, the minimum requirements that the Directives put in place “not only serves the non-discrimination principle but also indirectly the protection of minority rights.”⁵¹

2.3. Accession criteria/Copenhagen criteria

Any country that aims to become a member of the European Union is required to fulfill the principles of the Charter of the EU, mentioned in Article 6 of the Treaty on the European Union and Article 49 of the TEU. These criteria, known as the Copenhagen criteria, were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995.⁵² The accession criteria are:⁵³ 1. Political Criteria: Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. 2. Economic Criteria: Existence of a functioning market economy, Capacity to cope with competitive pressure and market forces. 3. Administrative Criteria: Take on the obligations of membership (Acquis Communautaire).

After monitoring the candidate country for its compliance with the conditions, the EU can decide when a candidate country meets the Copenhagen Criteria. For the Western Balkan

⁵⁰ Ashı Bilgin, A. "Minority Protection in the European Union: To Protect or Not to Protect?", *International Journal on Minority and Group Rights* 26, 1 (2019): 95.

⁵¹ Ibid.

⁵² “EUR-Lex – Accession criteria Copenhagen - EN - EUR-Lex.” Accessed June 16, 2023. <https://eur-lex.europa.eu/EN/legal-content/glossary/accession-criteria-copenhagen-criteria.html>.

⁵³ “European Commission - Enlargement - Accession criteria.” Accessed June 16, 2023. https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/glossary/accession-criteria_en.

countries, in addition to the three Copenhagen Criteria, the EU has also set other membership conditions in the Stabilization and Association Process that focus on establishing good neighborly relations and regional cooperation.⁵⁴

Conditionality is widely seen as a primary means of ‘democracy promotion’ and ‘Europeanisation’ in CEE and the political criterion generally, but in particular the reference to national minorities, defies these basic principles of conditionality.⁵⁵ These generic concepts, democracy, the rule of law and the respect and protection of national minorities leave a wide scope for interpretation. Besides, they are not based on the *acquis* as such, putting in question the Union’s impact on minority rights, especially when there is no internal consensus.

For the European Commission to evaluate the minority protection criterion, it based its “monitoring exercise on a set of values and non-EU documents, namely the European Convention on Human Rights (which by now has become part of the *acquis*), the major OSCE documents of the early 1990s and the UN Declarations.”⁵⁶ Though not a source of inspiration and legitimacy at the outset of the accession process, over time the FCNM of 1995 became the Commission’s primary instrument for translating the minority criterion into practice⁵⁷.²³

Observing the presence of non-EU based documents as standard of evaluation for the candidate countries and having lack of unanimity among existing member states for the protection of minorities.⁵⁸ I conclude that the result is an ambiguous minority protection standard that

⁵⁴ Dren Gerguri and Afrim Hoti, “The Copenhagen Political Criteria for joining the EU: The case of Kosovo”, *Teorija in Praksa* let. 54, (6/2017): 1011.

⁵⁵ Gwendolyn Sasse, “EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy,” EUI Working Papers RSCAS No. 2005/16, 10.

⁵⁶ *Ibid.* 5.

⁵⁷ *ibid.*

⁵⁸ See Open Society Foundation, “Monitoring Minority Protection in EU Member States (Full Report)”, 2003. <https://www.opensocietyfoundations.org/publications/monitoring-minority-protection-eu-member-states>

undoubtedly will create difficulties when evaluating candidate countries. To review more in depth the minority protection criterion, I will be elaborating it in each of the three comparators.

3. BOSNIA AND HERZEGOVINA

3.1. Introduction

Bosnia and Herzegovina represents a complex setting that holds a considerable amount of difficulties. At the same time, the situation in BiH is such an engaging field of research and one of my main incentives for this thesis's topic. The main challenge of Bosnia and Herzegovina consists in removing the constitutionalized discrimination towards "others" installed since the Dayton Agreement. Many citizens are excluded from participation in economic and political life, and from receiving social protection, because they do not belong to an ethnic group which is dominant in the area where they live or wish to return to, regardless of whether the group they belong to has constituent status or not.⁵⁹ Taking into consideration the divided society that exists in Bosnia, I emphasize that this research has its focus on political rights of minorities that are not part of constituent groups.

Firstly, in this chapter, I give some data regarding the composition of the population in Bosnia and Herzegovina. Then, I briefly describe historical constitutionalism and how they reached today's constitution and the specificities the 1995's Constitution holds. Subsequently, I discuss the constitutional provisions that affect political rights of minorities and the primary legislation concerned on the issue. In conclusion of the chapter, I mention the international agreements that Bosnia and Herzegovina has ratified and put obligations for the protection of minorities. Here, my focal point is identifying and analyzing bilateral agreements between the EU and Bosnia, and Commission annual Progress-Reports. Identifying what these reports discuss and

⁵⁹ Minority Rights Group International, "The status of constituent peoples and minorities in Bosnia and Herzegovina" (April 2003).

conclude for the protection of political rights of minorities will help me generate an adequate comparison between Bosnia and the Union's requisite stated in the first Copenhagen criterion.

3.2. Population composition

Bosnia and Herzegovina is a federal country situated in the western Balkan Peninsula of Europe and incorporates two autonomous political entities: the Republika Srpska (Bosnian Serb Republic), located in the north and east, and the Federation of Bosnia and Herzegovina, occupying the western and central areas.⁶⁰ According to Minority Rights Group International (MRG) the population in BiH consists of: Bosnians 2.1 million (48%), Serbs 1.7 million (37%), Croats 637,000 (14%), Roma 30,000-50,000. Besides Roma, minorities present in BiH, who under the constitution are categorized as "others", include Jews, Albanians, Montenegrins, Ukrainians and Turks. Altogether, around 3.7 % of the population.⁶¹

3.3. Constitutional background

The federation of Bosnia and Herzegovina represents a special constitutional setting, also for as it concerns to minorities and their political rights. However, before evaluating the provisions of the Constitution, context is needed.

Bosnia and Herzegovina consists of two Entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. The Constitution of Bosnia and Herzegovina is an annex to the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina ("the Dayton Agreement") that put an end to the 3 1/2-year-long Bosnian War, initialed at Dayton on 21 November 1995 and signed in Paris on 14 December 1995.⁶² Part of a peace treaty, the

⁶⁰ Pickering, P. , Lampe, . John R. and Malcolm, . Noel R.. "Bosnia and Herzegovina." *Encyclopedia Britannica*, May 31, 2023. <https://www.britannica.com/place/Bosnia-and-Herzegovina>.

⁶¹ Agency for Statistics of Bosnia and Herzegovina, "CENSUS OF POPULATION, HOUSEHOLDS AND DWELLINGS IN BOSNIA AND HERZEGOVINA, 2013," Sarajevo, June 2016, 54.

⁶² Clinton, Bill, "Dayton Accords". *Encyclopedia Britannica*, (10 Jan. 2023). <https://www.britannica.com/event/Dayton-Accords>. Accessed 11 April 2023.

Constitution was drafted and approved without the usual standard procedures which could have provided democratic legitimacy. It constitutes the unique case of a constitution which was never officially published in the official languages of the country concerned but was agreed and published in a foreign language, English.⁶³

In the Preamble of the Constitution, Bosniacs, Croats and Serbs are described as “constituent peoples”. The Constitution makes a distinction between “constituent peoples” (persons who declare affiliation with Bosniacs, Croats and Serbs) and “others” (members of ethnic minorities and persons who do not declare affiliation with any particular group because of intermarriage, mixed parenthood, or other reasons). The consequences of this distinction become of great importance when it comes to being entitled to run for the House of Peoples (the second chamber of the State Parliament) and the Presidency (the collective Head of State). Article IV and article V of the Constitution state that only persons declaring affiliation with a “constituent people” are entitled to run for these two central institutions.⁶⁴ Consequently, it demonstrates a form of institutionalized discrimination towards national or ethnic minorities. I evaluate that if it is given the proper importance, another provision which could balance the above-mentioned discriminatory articles, is Article II § 2 of the Constitution, which prioritizes European Convention for the Protection of Human Rights in the hierarchy of laws and declares its direct application.

⁶³ The European Court of Human Rights, *Sejdić and Finci v. Bosnia and Herzegovina* [GC], Application nos. 27996/06 and 34836/06, 22 December 2009, Para.6.

⁶⁴ Article IV par.1 and Article V par.1 of Annex 4 of the Dayton Agreement (the Constitution of Bosnia and Herzegovina) https://www.constituteproject.org/constitution/Bosnia_Herzegovina_2009.pdf?lang=en

3.4. Primary Law

In accordance with Articles IV and V of the Constitution of BiH, the Election Act 2001⁶⁵ requires the political candidates, among other requirements, to “declare affiliation with a particular ‘constituent people’ or the group of “others”.”⁶⁶

3.5. International Agreements

Bosnia and Herzegovina has ratified all major European and international human rights instruments, most of which are included in its Constitution⁶⁷. Bosnia ratified the European Convention on Human Rights when it became a member of the Council of Europe in 2002. In doing so, Bosnia undertook to “review within one year, with the assistance of the European Commission for Democracy through Law (Venice Commission), the electoral legislation in the light of Council of Europe standards, and to revise it where necessary” (see Opinion 234(2002) of the Parliamentary Assembly of the Council of Europe of 22 January 2002, paragraph 15(iv)(b)). In addition, in 2010 BiH ratified, without reservations, the Council of Europe's Framework Convention for the Protection of National Minorities and European Charter for Regional or Minority Languages.

The Framework Convention declares that “protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights”.⁶⁸ Besides, it prohibits any discrimination based on belonging to a national minority and requires the member states to adopt adequate measures in order to

⁶⁵ *Bosnia and Herzegovina: Election Law (2001)*, 2001, available at: <https://www.refworld.org/docid/5b30f1f64.html> [accessed 2 June 2023]

⁶⁶ *Ibid.*, Section 4.19.

⁶⁷ European Commission, “Bosnia and Herzegovina 2020 Report”, (Brussels, 6 October 2020), 26.

⁶⁸ Council of Europe, *Framework Convention for the Protection of National Minorities*, 1 February 1995, ETS 157, Article 1.

promote an effective measures for equality between the persons belonging to a national minority and those belonging to the majority.⁶⁹

Nevertheless, even in the following years, the required review of the legislation did not happen. In 2009, in *Sejdić and Finci v. Bosnia and Herzegovina*, the European Court of Human Rights found Bosnia in violation of the Right to Free Elections, Article 3 of Protocol No. 1 for not allowing two Bosnian nationals, that described themselves as Roma and Jew respectively, to stand in elections for the state Presidency and the House of People.⁷⁰ By 14 votes to 3, the Court concluded that the applicants' continued ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina lacks an objective and reasonable justification and has therefore breached Article 14 taken in conjunction with Article 3 of Protocol No. 1.⁷¹ The same direction was followed for the lack of eligibility for the state presidency but relying on Article 1 of Protocol 12 to the ECHR. Its implementation requires a reformation of the Constitution and the electoral law, in order to stop this ethnically grounded discrimination. Efforts were made by the EU and the Council of Europe to bring about the implementation of this judgment, where a mechanism of parallel conditionality has been deployed in an effort to push for democratization reforms in the BiH pre-accession and accession processes.⁷²

3.6. The relationship of Bosnia and Herzegovina with the European Union

It was the European Council summit in June 2003 held in Thessaloniki that would pin down Bosnia and Herzegovina, along with other Western Balkans countries, as potential candidate

⁶⁹ Ibid., Article 4.

⁷⁰ The European Court of Human Rights, *Sejdić and Finci v. Bosnia and Herzegovina* [GC], Application nos. 27996/06 and 34836/06, 22 December 2009.

⁷¹ Ibid.

⁷² Vollath, Dietmar Koster, Julie Ward, Milan Brglez, Bettina Klemen Groselj. "Parliamentary Question | Implementation of the ECtHR Judgment in the Case of *Sejdić and Finci v. Bosnia and Herzegovina* | E-004474/2019 | European Parliament." Accessed June 16, 2023.
https://www.europarl.europa.eu/doceo/document/E-9-2019-004474_EN.html.

for EU membership.⁷³ On 1 June 2015 the Stabilization and Association Agreement (SAA) was ratified and entered into force, and in February 2016, Bosnia submitted its application for membership in the Union. Bosnia was recognized as a candidate country in December 2022.

Since the final decision for *Sejdić and Finci*, the European Union and its Member States have made continuous attempts to engage in negotiations for the judgment implementation and constitutional reforms. Until today, all these have been unsuccessful tentative, as there is a lack of consensus between the representatives from the major political parties.

In order to generate an adequate comparison between what I evaluated in the previous paragraphs about the legal protection of political rights of minorities in Bosnia and the Union's requisite behind the first Copenhagen criterion, I first identify if there are any relevant points in the Stabilization and Association Agreement (SAA) between the European Communities as one part and Bosnia and Herzegovina, the other. Subsequently, I review several annual progress reports adopted by the Commission of the European Union. These reports are part of the "Enlargement Package" which examines the progress made by the candidate countries and potential candidates, the challenges encountered and reforms to be addressed and sets out proposals for the way forward.⁷⁴ Part of the package are the Reports in which the Commission services present their detailed annual assessment of the state of play of the reform progress in each candidate country and potential candidate over the last year.

In Stabilization Association Agreement (SAA), only the general principle, "respecting and protecting the minorities" is present. Article 5 of the Agreement mentions it simply as a focal point for the Stabilization and Association process. As per the Progress Reports, I start the

⁷³ European Commission, "The Thessaloniki Summit: a milestone in the European Union's relations with the Western Balkans." Accessed June 16, 2023. https://ec.europa.eu/commission/presscorner/detail/en/IP_03_860.

⁷⁴ See European Neighbourhood Policy and Enlargement Negotiations (DG NEAR), Strategy and Reports. Available at https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/strategy-and-reports_en#:~:text=It%20examines%20the%20progress%20made,proposals%20for%20the%20way%20forward.

observation with the one of 2005, then 5-year gap until subsequently reaching 2022 in a way that will be easier to distinguish the progress and what has remained in stagnation.

The 2005 Progress Report notices both the rigid rules in force at State level that exclude persons belonging to national minorities from access to certain posts at State and Entity levels. It considers it an obstacle to the enjoyment of individual human rights by all citizens of Bosnia and Herzegovina, and to Bosnia and Herzegovina's evolution towards a State based on citizenship rather than on ethnic representation.⁷⁵

The 2010 Report speaks about the final reference to Sejdic and Finci judgement and an action plan adopted by the Council of Ministers, in the order referring the implementation of the ECtHR decision. Unfortunately, there was no progress and the working group failed to reach an agreement.⁷⁶

Repeating itself, in 2025, the Commission states that the Constitution remains in breach of the European Convention on Human Rights. The Sejdić and Finci ruling of the European Court of Human Rights has still not been implemented. This leads to situation when people who do not belong to one of the three constituent people are not allowed to be elected in the House of Peoples and the Presidency of Bosnia and Herzegovina.⁷⁷

Different words and phrases, but same result of Progress Report was communicated in the consecutive years, including 2022. Furthermore, the list of unimplemented related judgments of ECtHR grows. The participation in political and public life of members of national minorities

⁷⁵ European Commission, *Bosnia and Herzegovina - 2005 Progress Report*, 9 November 2005, SEC (2005) 1422. Available at: <https://www.refworld.org/docid/439569054.html> [accessed 13 June 2023]

⁷⁶ European Commission, "BOSNIA AND HERZEGOVINA 2010 PROGRESS REPORT", Brussels, 09 November 2010 SEC(2010) 1331. 8.

⁷⁷ European Commission, "BOSNIA AND HERZEGOVINA 2015 REPORT", Brussels, 10.11.2015 SWD(2015) 214, 24.

remains low and no progress was made towards adopting a countrywide strategy on national minorities.⁷⁸

In conclusion, it can be easily observed that for decades now, minorities, or as the Bosnian constitution recognizes them, “the others” are excluded from the right to be elected in the two main political institutions of the country. First, I find the term “others” problematic and restrictive itself. Then, another disadvantage is that the BiH constitution puts these groups of people, which makes the document incompatible with ECHR and, as mentioned at the end of Chapter 2, ECHR is a monitoring tool of the EU. As a result, until the judgment is implemented and the constitutional reform is done, BiH does not comply with the first Copenhagen criterion.

⁷⁸ European Commission, “BOSNIA AND HERZEGOVINA 2022 REPORT”, Brussels, 12.10.2022 SWD(2022) 336, 26.

4. KOSOVO

4.1. Introduction

In parallel with the first discussed state, Kosovo likewise represents a complex challenge. The direct conflict with Serbia ended in June 1999, but the tensions between the two countries continue to be combustible. The current situation between Kosovo and Serbia can best be described as “continuation of war by other means”, a very fragile peace that needs constant attention and maintenance.⁷⁹ The nowadays agitation, caused by local elections in North Kosovo is a demonstration of it and a bell of alarm for the international community to keep its close attention in the region. The dispute between the two countries remains of high relevance for stability in the Balkans and is seen as a way to diminish and insulate the influence of Russia in the region.⁸⁰

Firstly, I give data about the composition of the population in the Republic of Kosovo. Then, I briefly describe the historical constitutionalism and how today’s constitution is reached. Subsequently, I take into evaluation the constitutional provisions that affect the political rights of minorities accompanied by primary legislation. To conclude, I mention the international agreements and international organizations Kosovo is part of, focusing on the ones that put obligations for protection of minorities. Similar to the previous chapter, my focal point is on identifying and analyzing the Commission’s annual Progress-Reports. As a result, I provide a comparison between Kosovo and the Union’s “standards.”

⁷⁹ Morina, Engjellushe. “The Time to Incentivize the Kosovo-Serbia Dialogue Is Now.” *Balkan Insight* (blog), May 17, 2022. <https://balkaninsight.com/2022/05/17/the-time-to-incentivize-the-kosovo-serbia-dialogue-is-now/>.

⁸⁰ Ibid.

4.2. Population composition

On 17 February 2008, Kosovo became the newest state in the European continent by declaring its independence from the neighboring Serbia. With a population of approximately two million, precisely 1,739,825 individuals according to the 2011 census, 1,616,869 or 93 % are ethnic Albanians. The main minority groups are Bosniaks (1.6 per cent), then 1.5 per cent Serbs, Turkish (1.1 per cent), Ashkali (0.9 per cent), Egyptian (0.7 per cent), Gorani (0.6 per cent), and Roma (0.5 per cent).⁸¹ However, because North Kosovo was excluded from the census, the true proportion of some minorities – particularly Serbs, who in some areas of the north comprise the majority of the population – may be underestimated.⁸² Furthermore, the census was widely boycotted by Serbs living in southern Kosovo.”⁸³

According to estimates based on 2010 and 2013 OSCE data, 146,128 Serbs were living in Kosovo, making up 7.8 per cent of the total population, a much larger proportion than the 1.5 per cent estimate in the 2011 census: of these, 70,430 were in northern Kosovo and 75,698 in southern Kosovo, with a total of 10 municipalities where Serbs are a majority.⁸⁴

4.3. Constitutional background

The political system of Kosovo belongs to the power-sharing democracies, based on a system of governance derived from the consensus theory and the Comprehensive Proposal for the Ahtisaari's Kosovo Status Agreement.⁸⁵ The arrangement of minority rights and in particular minority political rights in the Constitution of Kosovo have been subject of ongoing debates

⁸¹ Agjencia e Statistikave të Kosovës, “Regjistrimi i Popullsisë, Ekonomive Familjare dhe Banesave në Kosovë 2011” [Population, Household and Housing Census in Kosovo 2011], 2011, 60.

⁸² Minority Rights Group International, “Kosovo (Unrecognized State) - World Directory of Minorities & Indigenous Peoples,” June 19, 2015. <https://minorityrights.org/country/kosovo/>.

⁸³ Minority Rights Group International. “Serbs,” June 19, 2015. <https://minorityrights.org/minorities/serbs-3/>

⁸⁴ Minority Rights Group International, “Kosovo (Unrecognized State) - World Directory of Minorities & Indigenous Peoples,” June 19, 2015. <https://minorityrights.org/country/kosovo/>.

⁸⁵ Selimi, Behar. “MINORITY VETO RIGHTS IN KOSOVO’S DEMOCRACY.” *The Age of Human Rights Journal*, no. 12 (June 13, 2019): 148.

and challenges. The constitutional narrative begins with Resolution 1244, adopted by the United Nations Security Council in June 1999. This Resolution formed the basis for the constitutional developments in Kosovo. In May 2001, the UNMIK created a Constitutional Framework for Provisional Self-Government.⁸⁶ According to the Framework, the Assembly would have 120 seats, twenty were reserved for ethnic minorities, including ten for Serbs. However, the Serbs did not have the power to veto laws passed by the ethnic Albanian majority.⁸⁷

Nowadays Constitution, was approved by Kosovo's Assembly in April 2008 and a significant reference point was "Ahtisaari Plan"⁸⁸. The Plan consisted of a set of general principles and twelve annexes that included minority rights among other constitutional issues. The Constitution was drafted by a small, expert commission coupled with significant involvement by the international community.⁸⁹

The whole Chapter III is dedicated to the rights of the part of the population that is not in the majority, and the first notable concept I observed is the use of the term "communities" instead of minorities. After research in both English and Albanian, it seems that this constitutional choice is not much elaborated, and I find it important to make a brief analysis. Starting with the definition of words, "community" is defined as "the people living in one particular area or people who are considered as a unit because of their common interests, social group, or nationality"⁹⁰ meanwhile the same dictionary explains the term minority as "any small group in society that is different from the rest because of their race, religion, or political beliefs,

⁸⁶ ConstitutionNet. "Constitutional History of Kosovo." Accessed June 17, 2023. <https://constitutionnet.org/country/europe-kosovo>

⁸⁷ See Division of Public Information, United Nations Interim Administration Mission in Kosovo, "Constitutional Framework for Provisional Self-Government in Kosovo", 15 May 2001. Available at <https://www.esiweb.org/pdf/bridges/kosovo/12/1.pdf>

⁸⁸ The Ahtisaari Plan, formally the Comprehensive Proposal for the Kosovo Status Settlement (CSP), is a status settlement proposed by former President of Finland Martti Ahtisaari covering a wide range of issues related to the status of Kosovo.

⁸⁹ ConstitutionNet. "Constitutional History of Kosovo." Accessed June 17, 2023. <https://constitutionnet.org/country/europe-kosovo>.

⁹⁰ Cambridge dictionary, "Community," May 31, 2023. <https://dictionary.cambridge.org/dictionary/english/community>

or a person who belongs to such a group.”⁹¹ Choosing “community” instead of “minority “ is more inclusive, implying the reader of the Constitution that these groups are integral part of the Kosovo’s society. If the word minority is related directly with the numbers, community goes beyond numbers, with a wider sense of inclusivity and cooperative environment.

Chapter III of the Constitution starts with an explanation as it follows: *1. Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo (Communities) shall have specific rights as set forth in this Constitution in addition to the human rights and fundamental freedoms provided in chapter II of this Constitution.*⁹²

Article 60 about the creation of a Consultative Council for Communities, under the authority of the President, in which all Communities shall be represented. As Article 6 of the Statute of this Council states, among other competences, the Consultative Council provides a mechanism for the exchange of ideas between the Communities and the Government.

Within the structure of the legislative institution, the Assembly of Kosovo, minimally 20 seats are reserved for minority community members, of whom 10 should be of the Serb community.⁹³ One of the competences of the Assembly is the amendment of the Constitution. What I consider important to emphasize here is the fact that the amendments can be done only if it is decided by two thirds (2/3) of all its deputies including two thirds (2/3) of all deputies holding seats reserved and guaranteed for representatives of communities.⁹⁴

The Assembly of Kosovo has one President of the Assembly and five Deputy Presidents elected out of 120 deputies. Constitution, in Article 67 para.4 determines that two Deputy Presidents

⁹¹ Cambridge dictionary, “Minority,” May 31, 2023. <https://dictionary.cambridge.org/dictionary/english/minority>

⁹² Constitution of the Republic of Kosovo, June 2008, Article 57.

⁹³ Ibid. Article 64, Para 2

⁹⁴ Ibid. Article 65, Para. 2.

represent non-majority communities in the Assembly, from which one shall belong to the deputies of the Assembly holding seats reserved or guaranteed for the Serb community, and one Deputy shall belong to deputies of the Assembly holding seats reserved or guaranteed for other communities that are not in the majority.

Like most of the Parliamentary models, the deputies of the Assembly of Kosovo constitute permanent committees, operational committees and ad hoc committees. Article 78 of the Constitution states that one of the permanent committees will be “the Committee on Rights and Interests of Communities.” In the committee’s composition, two-thirds of the members represent Communities, of which one third are exclusively for the Serbian Community. For the executive branch, the Government of the Republic of Kosovo has an undetermined number of Ministers, but what is guaranteed is the fact that “there shall be at least one Minister from the Kosovo Serb Community and one Minister from another Kosovo non-majority Community”.⁹⁵ Additionally, the provision declares that if there are more than twelve Ministers overall, the Government shall have a third Minister representing a Kosovo non-majority Community.

Finally, at the local level of governance, Article 62 of the Constitution ensures that in municipalities where at least ten per cent of the residents belong to Communities, a post of Vice President of the Municipal Assembly for Communities shall be reserved for a representative of these communities.⁹⁶ Besides, Communities representation in the executive body of these municipalities is guaranteed.⁹⁷

⁹⁵ Ibid. Article 96, Para.3.

⁹⁶ Ibid. Article 62. Para. 1.

⁹⁷ Ibid. Article 62. Para. 5.

Furthermore, the communities are provided with the veto right, but I will develop this important point in the comparative chapter.

4.4. Primary legislation

In compatibility with constitutional provisions, in June 2008 the Assembly of Kosovo adopted the “Law on the Protection and Promotion of the Rights of Communities and their members in Kosovo⁹⁸,” (the Law). Given the fact that the provisions of the Constitution itself are quite descriptive, I observed that the Law was repeating the Constitution, by adding details seldomly. Generally, this is what can also be noticed in political participation, covered by Article 11 of the Law.

4.5. International Agreements:

International organizations and international agreements have been playing a crucial role before and after the declaration of independence of Kosovo. Serbia, together with five EU member states Spain, Slovakia, Cyprus, Romania and Greece do not recognize Kosovo as an independent state. Russia, an ally of Serbia, has vetoed Kosovo’s membership in the United Nations.⁹⁹ Non-recognition as a sovereign state brings implications when becoming part of international organizations.

As Constitution implies, Kosovo has integrated the European Convention on Human Rights into its domestic legal system and has undertaken continuous measures to harmonize its legal framework with European norms. Article 22 of the Constitution establishes the direct

⁹⁸ Kosovo, Law on the Protection and Promotion of the Rights of Communities and Their Members in Kosovo, No. 03/L-047, 13 March 2008.

⁹⁹ Aljazeera. “Which Countries Recognise Kosovo’s Statehood?” Accessed June 17, 2023. <https://www.aljazeera.com/news/2023/2/17/mapping-the-countries-that-recognise-kosovo-as-a-state-2>.

applicability of the ECHR, the Council of Europe Framework Convention for the Protection of National Minorities, and several other international treaties within Kosovo's legal order.¹⁰⁰

On May 12, 2022, Kosovo submitted its application for membership to the Council of Europe. Almost one year later, with 33 affirmative votes, seven against and five abstentions, the Council of Europe Committee of Ministers accepted Kosovo's membership application and initiated the accession process by requesting PACE to prepare an opinion on membership.¹⁰¹ Kosovo's cooperation with human rights bodies is limited since Kosovo is not a member of the UN nor of the Council of Europe. Consequently, Kosovo's citizens do not have the possibility to lodge a complaint with the European Court of Human Rights against Kosovo's authorities.¹⁰²

Kosovo is a member of the Venice Commission.

4.6. Relationship of Kosovo with the European Union

The EU is a strategic partner for Kosovo and becoming part of the Union is considered a national priority of the country, which is under the status of potential candidate. European Union has been serving as a mediator and facilitator for the dialogue process between Kosovo and Serbia. Under the framework of UN Security Council Resolution 1244, in 2008 the European Union Rule of Law Mission in Kosovo (EULEX) was launched. EULEX's overall mission is to support relevant rule of law institutions in Kosovo on their path towards increased effectiveness, sustainability, multi-ethnicity and accountability, free from political interference and in full compliance with international human rights standards and best European practices.¹⁰³

¹⁰⁰ Constitution of the Republic of Kosovo, June 2008, Article 22.

¹⁰¹ European Western Balkans. "Ministerial Committee of the Council of Europe Accepts Kosovo's Application for Membership," April 25, 2023. <https://europeanwesternbalkans.com/2023/04/25/ministerial-committee-of-the-council-of-europe-accepts-kosovos-application-for-membership/>.

¹⁰² Commission of the European Communities, "Enlargement Strategy and Main Challenges 2009-2010", Brussels, 14 October 2009, SEC(2009) 1340, 11.

¹⁰³ "What Is EULEX? - EULEX - European Union Rule of Law Mission in Kosovo." Accessed June 17, 2023. <https://www.eulex-kosovo.eu/?page=2,16>.

Kosovo and the EU signed the Stabilisation and Association Agreement (SAA) on February 2016. On 15 December 2022, Kosovo's Prime Minister submitted Kosovo's application for European Union membership.

After reviewing Kosovo's relationship with the Union, I examine the Progress Reports of the Commission, starting one year after the independence of the country, following with 2019 and finalizing with the latest report, the one from 2022.

The 2009 Progress Report acknowledged the continued effort of the authorities of Kosovo to improve the protection, integration and representation of minority communities, but overall noticed limited progress was achieved. Most importantly, the Report emphasized the compatibility of the Constitution of Kosovo with European standards, which require stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.¹⁰⁴

Meanwhile, in 2014 the Report comments on the local elections held in Kosovo, with the facilitation of the OSCE,¹⁰⁵ and the slowed progress of the dialogue with Serbia. "Kosovo has a good legal framework for safeguarding and protecting its minorities, but implementation needs to improve."¹⁰⁶ The Report points out the stability of the security situation for the communities, except for some incidents targeted to Kosovo Serbs.¹⁰⁷

The latest report evaluates the 2021 municipal elections as "well-organized, transparent and competitive", with a vibrant campaign "and a plurality of contestants offered voters a real choice, with the exception of the Kosovo-Serb municipalities, where political competition was

¹⁰⁴ Commission of the European Communities, "Enlargement Strategy and Main Challenges 2009-2010", Brussels, 14 October 2009, SEC(2009) 1340, 6.

¹⁰⁵ European Commission, "Kosovo Progress Report", October 2014, 6.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid. 20.

limited.”¹⁰⁸ The Report notes that the 2015 Law for Antidiscrimination “is broadly in line with European and international standards, but its implementation remains limited.”¹⁰⁹ The established legal framework for the protection of non-majority communities and their rights is considered “adequate, but better institutional coordination and communication between the different levels of government is needed”¹¹⁰ However, some gaps are identified by the report, mainly for “property, personal documentation, language rights, quality education, employment, and social welfare”¹¹¹, but nothing pointing out political rights.

After reviewing the respective reports, I conclude that Kosovo’s legal framework for protecting the political rights of minorities is in harmony with the protection required by the Union. Differently from Bosnia and Herzegovina, no constitutional or law reforms are needed, but as Report emphasizes, the effort of Kosovo’s institutions should be placed on implementation.

¹⁰⁸ European Commission, “2022 Communication on EU Enlargement policy”, Brussels, 12 October 2022, SWD(2022) 334 (final), 8.

¹⁰⁹ Ibid. 36.

¹¹⁰ Ibid. 39.

¹¹¹ Ibid.

5. ALBANIA:

5.1. Introduction

Albania is a Unitary Parliamentary Republic located in southern Europe, in the western part of the Balkan Peninsula. After almost 50 years under the communist regime and controlled economy the country transitioned into democracy and capitalism. The transition has had many challenges and is considered not to be over yet. Albania's foreign policy is oriented to be fully engaged in strengthening the good neighborly relations and regional integration.¹¹² With the same structure as the two previous chapters, I set out the data from the latest population census, then review the constitutional provisions related with the protection of political rights of minorities and primary legislation. Subsequently, I mention the international obligations connected with minorities. I finalize the chapter with keynotes from the EU reports, mostly generated after election processes, and some conclusions on Albania's compliance with the EU regarding the issue under discussion.

5.2. Composition of the population

In the last population registration conducted by the Institute of Statistics in 2011, the Albanian population was 2,821,977 inhabitants.¹¹³ Minorities resulted in 52,700 individuals in Albania, or 1.9% of the country's population. Based on the data extracted from this census on the resident population, according to ethnicity, it results: Albanians 98.1%, Greeks 0.9%, other 1% (including Vlach, Roma, Macedonians, Montenegrin, Roma and Egyptian). Albania's commitment towards the protection of national minorities beginnings after the First World War,

¹¹² Ministry for Europe and Foreign Affairs. "Albania in the Region." Accessed June 17, 2023. <https://punetejashtme.gov.al/en/shqiperia-ne-rajon/>.

¹¹³ INSTAT, "CENSUS I POPULLSISË DHE BANESAVE 2011" [POPULATION AND HOUSING CENSUS 2011], 2012.

with its admission to the League of Nations (December 1920).¹¹⁴ In October 1921, Albania made a declaration through which the state would guarantee respect for the rights of national minorities within its territory in accordance with the provisions of peace treaties concluded after the First War.¹¹⁵

5.3. Constitutional background

The Constitution of 1998 is mostly characterized by simple and short sentences, giving space for the relevant law. Different from the two other comparators, the Albanian constitution does not have any specific provision towards minorities, to distinguish their position, for better or worse. One of the grounding principles of the constitution is the coexistence and understanding of Albanians with minorities, which the state has the duty of respecting and protecting them.¹¹⁶ What can be observed in Article 20, about protecting national minorities is the “full equality before the law the human rights and freedoms. Minorities can freely express their ethnic, cultural, religious and linguistic belonging, can use their mother tongue freely, as well as unite in organizations and associations for the protection of their interests and identity.”¹¹⁷ Regarding to political rights, the Constitution customizes the right to elect and to be elected solely with citizenship, and the age of 18.

5.4. Primary legislation

In November 2017, Law no. 96/2017 "On the protection of national minorities in the Republic of Albania" entered into power. This law drafted for the first time in Albania was based on the Framework Convention for the Protection of National Minorities, under the commitments for the country's European integration process. A broad consultation process took place involving

¹¹⁴ See Deona Cali Kalaja, “The admission of Albania in the League of Nations,” *Journal of Liberty and International Affairs* Vol. 1, No. 3, (2016): 55.

¹¹⁵ See League of Nations, “Declaration Concerning the Protection of Minorities in Albania,” Treaty series, Vol. 9, 1922, p. 175-179, Geneva, 2 October 1921.

¹¹⁶ Republic of Albania, Amended Constitution of the Republic of Albania, 21 April 2008, Article 3.

¹¹⁷ Ibid. Article 20.

independent institutions, minorities' associations, civil society and international organizations.¹¹⁸ Before this law entered into force, Albania recognized two categories of minorities: national minorities where the Greek, Macedonian and Montenegrin communities were included, and linguistic ones where Roma and Aromanians participated. Because the former group benefited from constitutional protection and the latter only from the legislation, it was considered an unequal treatment. The annual Report in 2016 from EU Commission stated that Albania should aim to ensure equal access to rights for persons from all minorities.¹¹⁹ 2018's progress report considered the adoption of this law as an important step that "abolished the differentiation between national minorities and ethno-linguistic communities, and introduced the principle of self-identification."¹²⁰ For a more detailed comparison with EU standards, I discuss the Commission's Reports in the coming sections.

Law no. 96/2017 "On the protection of national minorities in the Republic of Albania" ensures for persons belonging to national minorities the right to equal and effective participation in the public, economic, social and cultural life of the country, in particular, in issues related to them. Besides, the law establishes the creation of the Committee for National Minorities¹²¹, as a central institution subordinate to the Prime Minister, in order to ensure the protection and promotion of the rights and interests of national minorities. Article 15 par.4 "Use of language" among others ensures that: In local self-government units where persons belonging to national minorities make up over 20% of the total population of this unit, they have the right to receive

¹¹⁸ European Commission, "2016 Communication on EU Enlargement Policy," Brussels, 9 November 2016, SWD(2016) 364, Chapter 23: Judiciary and fundamental rights.

¹¹⁹ Ibid.

¹²⁰ European Commission, "2018 Communication on EU Enlargement Policy" Strasbourg, 17 April 2018, SWD(2018) 151, 30. Available at: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-10/20180417-albania-report.pdf>

¹²¹ Parliament of Republic of Albania, Law on the Protection of National Minorities in the Republic of Albania" No. 96/2017, 13 October 2018, Article 18.

information on the developments of the electoral process, in both the Albanian language and in their mother language.

5.5. International Agreements

Since 13 June 1995, Albania is part of the Council of Europe and consequently obliged by the European Convention on Human Rights. The Convention is directly applicable and has priority over the laws of the country that are incompatible with it.¹²² Furthermore, Albania has ratified Protocol No.1 to the Convention, taking this way a wider obligation for respecting the right to free elections, stated in Article 3 of this Protocol.

5.6. Relationship of Albania with the European Union

Albania applied for EU membership in April 2009 and was granted EU candidate status in June 2014. In July 2022 EU opened accession negotiations with Albania and North Macedonia.

Regarding the reports, I will mainly focus on reviewing the ones before and after legislative changes.

The 2015 Report stated that overall “respect for and protection of minorities, and inter-ethnic relations remained good, but the legal and policy framework still needs improving”¹²³, and recommendations of the Advisory Committee of the Framework Convention for the Protection of National Minorities were mentioned. The emphasis was put on drafting a specific legislation that provides equal treatment of national and ethno-linguistic minorities. Besides, the fact that Albania had not adopted the European Charter for regional and minority languages in the time of speaking was a drawback.

¹²² Republic of Albania, Amended Constitution of the Republic of Albania, 21 April 2008, Article 122.

¹²³ European Commission, “Albania Report 2015,” Brussels, 10 November 2015, SWD(2015) 213, 60.

2019-report assessed positively the country's commitment in promoting and protecting minority rights through the adoption of the Law on the Protection of National Minorities in 2017. Nevertheless, the absence of the adoption of the full package of related secondary legislation, in line with European standards was noticed¹²⁴. Besides, the report states that increasing the capacity of the State Committee on National Minorities and providing sufficient financial resources is needed¹²⁵.

As per the report conducted in 2022, there is some progression in comparison with 2019, but “the adoption of the implementing legislation on the most sensitive issues is still pending.”¹²⁶ Also, the housing census was postponed and the Commission evaluates “it is important for Albania to conduct the national census in a smooth and transparent manner and in line with international standards important.”¹²⁷ Favorably, the state Committee on National Minorities was created.

In short, what I conclude from the Reports was that after adoption of the Law on the Protection of National Minorities in 2017, Albania has a primary legislation that fits with the European standards. The drawback stands in adopting the full package of secondary legislation and overall the implementation of it.

¹²⁴ See European Commission, “Albania 2019 Report,” Brussels, 29 May 2019, SWD(2019) 215, 30.

¹²⁵ Ibid.

¹²⁶ European Commission, “Albania 2022 Report” Brussels, 12 October 2022, SWD(2022) 332, 26. Available at: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf>

¹²⁷ Ibid. 36.

6. A COMPARATIVE ANALYSIS BETWEEN THE THREE COUNTRIES

In this chapter I produce a comparison between the three countries' constitutional provisions and primary legislation for the protection of political rights. In order to have a comprehensive and clear understanding of their differences and similarities, I framed the comparison under several subcategories as it follows.

The country's context and the relationship it has with the national minorities

It is probably the primary distinction among the three comparators, which determines and impacts the legislation related to the political rights of minorities. The context of Bosnia and Herzegovina is related to the post-war situation. It is associated with tension among the two entities and the fear of losing their position if anything changes politically.¹²⁸ The fear of losing the balance of powers between the entities and the representation of the three constituent groups if the others are granted with representation in the House of Peoples and Presidency makes the achievement of an agreement between political parties difficult. The result is the absence of implementation of the Sejdić-Finci judgement. All peoples in Bosnia and Herzegovina can be considered minorities, as all face marginalization in areas where their ethnicity is not dominant.¹²⁹

Meanwhile, in Kosovo's reality, the Serbian minority it is not just a simple minority group. The history of their relationship is strongly debated and much contested, and the purpose of this thesis is not to keep stances on the matter. Besides, the choice of Kosovo is to treat equally all communities that are part of the population that is not the majority by having reserved seats in

¹²⁸ See Florian Bieber, "Ungovernable Bosnia? From the Ruling of the European Court of Human Rights on the Sejdić-Finci Case to the Government Crisis," *Geographical Overview / Western Balkans*, (Mediterranean Yearbook 2014): 186-189.

¹²⁹ "Bosnia and Herzegovina - World Directory of Minorities & Indigenous Peoples." Accessed June 17, 2023. <https://vpn.ceu.edu/+CSCO+0075676763663A2F2F7A7661626576676C6576747567662E626574++/country/bosnia-and-herzegovina/>.

the Assembly or as per it belongs the veto right. In the meantime, Albania represents the less complicated case among the three countries because it belongs to its relationship with national minorities.

The Constitutional background

As the Constitution of Bosnia and Herzegovina declares, there is a distinction between the constituent people and the others and political representation in the House of People and the Presidency is interconnected with being part of constituent groups.

The Constitution of Kosovo, on the other hand, first gives a definition of the term communities. Then a chapter is dedicated to the rights of the communities that are not a majority within the country, where there are additional rights for the communities besides the right of every citizen.

Meanwhile, Albania's Constitution does not define the term minority. The coexistence with, and understanding of Albanians for, minorities is one of the bases of the state, as Article 3 declares. Then Article 20 provides full equality before the law for national minorities.

The Veto Right

The veto right exists in Bosnia and Herzegovina and in order for any decision to be adopted, "agreement of all three parties is required."¹³⁰ But it is important to emphasize that the veto right is specified only for three constituent people.

As per Kosovo, the minority veto "can be realized in two cases and within two types of the majority."¹³¹ First, the Constitution recognizes the right of minority communities to object

¹³⁰ ¹³⁰ "Protection of the Vital National Interest in Bosnia and Herzegovina," December 4, 2017. <https://esthinktank.com/2017/12/04/protection-of-the-vital-national-interest-in-bosnia-and-herzegovina/>.

¹³¹ Selimi, Behar. "MINORITY VETO RIGHTS IN KOSOVO'S DEMOCRACY." *The Age of Human Rights Journal*, no. 12 (June 13, 2019): 150.

adoption of legislation that may violate their vital interests.¹³² Additionally, the Constitution of Kosovo, in Article 114, requires that 2/3 of the members of the parliament vote for amending the Constitution, including 2/3 of the members of the parliament representing the non-majority communities¹³³ On the other hand, there is no veto right provided for the minorities in Albania.

Reserved seats in the Assembly

Bosnia and Herzegovina provides reserved seats for only constituent people, as can be observed in the constitutional provisions that demonstrate the structure of the House of Peoples and House of Representatives.¹³⁴ Controversially, there are ten reserved seats for Serbs and ten seats for other communities in the Assembly of Kosovo.¹³⁵ Albania has no reserved seats in the Assembly for national or ethnic minorities.

¹³² Constitution of the Republic of Kosovo, June 2008, Article 81.

¹³³ Selimi, Behar. "MINORITY VETO RIGHTS IN KOSOVO'S DEMOCRACY." *The Age of Human Rights Journal*, no. 12 (June 13, 2019): 151.

¹³⁴ *Constitution of Bosnia and Herzegovina (as Amended in 2009)*, 26 March 2009, Article 4.

¹³⁵ Constitution of the Republic of Kosovo, June 2008, Article 64.

CONCLUSION

This thesis has aimed to evaluate the compliance of the legal framework of Bosnia and Herzegovina, Kosovo and Albania with the EU standard of protection of political rights of minorities in order to identify the shortcomings of the respective laws. The purpose of this identification is to improve the legal framework, ensuring more equality for the national minorities, which helps the peace and stability of the region. My first conclusion is that the EU does not have a clear standard for the protection of minorities within its borders. As a result, it is difficult for the Union to be concrete and precise when evaluating the candidate countries.

Secondly, my research found that all three countries, to different extents, should provide a better legal framework to secure the political rights of minorities in order to comply with European standards. Starting from Bosnia and Herzegovina which should reform its Constitution and consequently the elections law. Meanwhile, as the EU reports helped me understand, Kosovo and Albania's constitutional and primary law is in harmony with European standards, but secondary legislation needs to be adopted. Implementation was also emphasized, but as I stated in the beginning, it is not part of this research. Finally, comparing Bosnia and Herzegovina, Kosovo, and Albania between them, I conclude that although they are in the same region and with the common aim of becoming part of the European Union, they represent different situations and relationships with minorities. These differences should be embraced. The countries should learn from the best practices of one another and strive to give the best legal protection to minorities. Consequently, the region is one step closer to stability.

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