

# Obligations Arising from Public International Law Relating to the Rights of Minorities – Some Observations on the Case of Kosovo\*

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*This article intends to highlight certain questions relevant to the understanding of the current international legal situation of Kosovo particularly in fields of ensuring human and minority rights and international treaty obligations relating thereto. Additionally some pieces of Kosovo's domestic legislation on minority issues shall also be reviewed. This article's main question is how a State with limited recognition and restricted capacity to accede international treaties shall manage obligations arising primarily from treaties for stabilizing and improving her status within the international community.*

*Keywords: Kosovo, minority rights, human rights, public international law, EU law, treaty obligations, unilateral acts of States, recognition of States*

## 1. Regulating the Status of Minorities in the Post-Socialist Region of Europe by Means of International Legal Norms - A Brief Historical Overview

After the communist regimes of certain Central and Eastern European countries<sup>1</sup> had been collapsed, some atavistic, even already forgotten but still unresolved questions popped up on the agenda of these former COMECON<sup>2</sup> States and their societies. Furthermore some federal States in the region in question had been broken off and split up around the year of 1990, for instance the Soviet Union in 1991, Czechoslovakia in 1993, and Yugoslavia through the nineties ending with the secession of Kosovo from Serbia in 2008. By this process described above, a lot of new states were created without any previous or

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<sup>1</sup> Such as the German Democratic Republic, Czechoslovakia, Poland, the Soviet Union, Hungary, Yugoslavia, Albania and Bulgaria.

<sup>2</sup> Council for Mutual Economic Assistance was established in 1949 by states from the Eastern bloc, led by the Soviet Union.

only a very limited and short-term statehood in the past. In these newly emerged countries political and legal institutions are often weak and many of them maintain as a final goal to establish a homogenous nation-state, regardless of the cultural diversity of their societies. In addition (national and/or ethnic) minority groups living in these States are also mobilised on ethnic basis and are politically active. Many of them started to represent their interests and campaigned for more rights either by moderate or more radical ways. Both phenomena, i.e. the wish to become a nation-state and the movements of minority groups have common roots. According to Claus Offe, this process was about the decision on identity, citizenship, State and borders of the State and the nation<sup>3</sup>. That means, the ‘politics of identity’ had a key-role in forming the political framework of not only the movements of minorities but political parties of the – sometimes new – majorities as well. In some cases the campaign for a nation-state caused bloody and serious clashes between groups having distinct identity and different cultural or linguistic factors<sup>4</sup>. During the 1990s the issue of minorities was being become a question of state security and regional stability besides the connotations relating to its human rights dimension. These facts endorsed the rethinking of tools used in Western European states (e.g. the relationship between majority and minority, the problems of kin-states and kin-minorities, various types of autonomy etc.) Furthermore in former communist states of Central and Eastern Europe the issue of national and ethnic minorities had been smothered artificially during so many decades, and was treated as a taboo, and that is why – *inter alia* – the problems were exploded so dramatically in the nineties. This process was emptying in the emergence of racial and/or ethnic extremism, and in some cases the belief in national superiority was fostered by implicit or explicit governmental measures. 1989 was an important cornerstone not only from the aspect of Central and Eastern Europe but from the view of Europe as a whole as well regarding to the issue of minorities at least. Nevertheless there was a rather impressive development of rules on minority affairs on the international level till the downfall of communist regimes but after these events the issue of regulating minority rights on an international plane got an additional impetus. Testifying this, it is enough to refer to the law-making process made under the aegis of the Council of Europe and also to the efforts made by the CSCE (later known as the OSCE) on these matters.

## 2. General Remarks on the Current International Legal Status of Kosovo

Taking into consideration the complexity of minority issues in the context of Kosovo, it is inevitable to assess briefly the question of Kosovo’s present status under international law. As it is well-known Kosovo declared her independence by seceding from Serbia in 2008 and this unilateral act is still a subject of much debate among the members of international community. 110 UN member states have recognized the independence of Kosovo so far of which 23 states are members of the EU as well.<sup>5</sup> This means approximately 57 % of the UN members and 82 % of the EU members are now officially recognizing Kosovo as an independent subject of the international legal system.

Public international law has a quite dubious viewpoint relating to the issue of state-recognition in general, since there are no really obvious norms on this field, only customary international law regulates this issue and that is why – *inter alia* – the question of Kosovo’s unilateral declaration of independence is regarded as an issue still under debate. Proving this statement it is enough to refer the request for an advisory opinion from the International Court of Justice by the UN General Assembly in 2008 on the ‘Accordance

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<sup>3</sup> Offe, Claus: ‘Capitalism by democratic design? Democratic theory facing the triple transition in East Central Europe’ in: *Social Research*, 1991. Vol. 58, no. 4. p. 869.

<sup>4</sup> See the case of Yugoslavia, the Republic of Moldova, or Chechnya for instance.

<sup>5</sup> <http://www.kosovothanksyou.com/> (15/08/14).

with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo'. In theory the International Court of Justice could have withheld giving an advisory opinion at any time during the advisory process under certain circumstances. In addition the question of state-recognition is being complicated due to some facts notably its inter se characteristics so that the legal consequences of state-recognition arising only between the states concerned which means the unilateral act of recognition cannot create rights and obligations to third legal subjects. Therefore without judging the validity and legality of the unilateral declaration of independence by Kosovo under international legal norms, the current situation can be described as follows. The Republic of Kosovo is regarded as an independent and sovereign member of the international community by States already recognized its statehood and Kosovo can do any legal and non-legal state acts relating to these countries. Since Kosovo can be considered as an unrecognized State by several other states that expressly refused to recognize the independence of Kosovo so that it has neither international legal personality nor international legal capacity regarding to these States in question. Summing up the facts, Kosovo has an entire international legal capacity (including the most important possibilities namely the conclusion of international treaties and the establishment of diplomatic and consular relations etc.) towards states who already recognized its independence. While contrarily, Kosovo has quite a limited international legal capacity towards countries, which refused to recognize her statehood.

In principle recognition *in se* is not a necessary requirement of independence or statehood. The criteria of statehood is laid down in Article 1 of the Montevideo Convention on Rights and Duties of States (1933)<sup>6</sup> which identifies the basic requirements in the possession of a permanent population, defined territory, government and the capacity to enter into relations with other states. Kosovo in principle meets these conditions; however there are strong limitations in its administrative and military competences: Kosovo does not have its own military, security is guaranteed by NATO KFOR and even if with rather limited mission, the presence of UN Mission in Kosovo and EULEX also pose a limitation to Kosovo's sovereignty. Furthermore the lack of general consensus considering Kosovo's statehood among European states impedes the country from joining international organisations – thus limiting its ability to fully participate in international relations. So, even if theoretically Kosovo could be regarded as an independent state, in fact it is exposed to serious limitations in exercising the rights and duties deriving from that statehood under international law. This is particularly relevant for undertaking international obligations in the field of human or minority rights. Kosovo could not yet join the most relevant international treaties in this field and even if Kosovar authorities declared their unilateral obligation to observe the duties deriving from these treaties Kosovo cannot fully participate in the monitoring procedures.

Despite the pending discussion on the international recognition of Kosovo's statehood, it is quite obvious for the moment, that the government of Kosovo and the Assembly of Kosovo exercise almost full<sup>7</sup> administrative and legal jurisdiction over the territory and population of Kosovo. This means for instance that the implementation of the legislation on linguistic rights of communities is the responsibility of central and local state authorities in Kosovo.

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<sup>6</sup> See: Convention on Rights and Duties and States, Article 1. <http://www.oas.org/juridico/english/treaties/a-40.html> Last accessed on 28.09.2014.

<sup>7</sup> Due to the Serb enclaves in the North, with limited territorial authority and due to the presence of UNMIK, KFOR and EULEX with limitations on security, police and judicial competencies.

### 3. Communities, Minorities in Kosovo and Note on Terminology

The questions related to the co-existence and rights of ethnic and national communities has been determining for Kosovo society in the past decades. Obviously in the light of the 1998-1999 war, and the heavy conflicts – occasionally erupted in open violent acts, like in 2004 – between the Serbian and Albanian population of Kosovo, issues related to the situation of minorities in general have always been highly sensitive. In this aspect, the independence of Kosovo, declared in 2008 was closely linked to the fate of minorities in independent Kosovo.<sup>8</sup> As a matter of fact, already under international administration (under UNMIK<sup>9</sup> between 1999 and 2008) the legislation of Kosovo was designed to reflect a tolerant, multi-ethnic, multi-lingual society. The Constitution of the Republic of Kosovo, adopted after obtaining independence, declares amongst others, that “*The Republic of Kosovo ensures appropriate conditions enabling communities, and their members to preserve, protect and develop their identities.*”<sup>10</sup> Art. 5 of the Constitution generously established two (Albanian and Serbian) official languages at national level and other languages with official status at local level.

Probably the most visible sign of this multi-ethnic approach to stabilizing Kosovar society is the legal terminology used for national and ethnic minority groups. While international documents and the most widespread practice in domestic legislation of European states is to use the term of “minority” for groups which differ from the majority in their linguistic, cultural, national or ethnic identity and which enjoy specific rights,<sup>11</sup> the Assembly of Kosovo refrained to use this term, which may have negative connotations for minorities (especially for the Serbians) and opted for the use of ‘communities’ suggesting even by this terminology the equality between Albanian and non-Albanian populations of the country.<sup>12</sup>

In this article, thus the terms ‘community’, ‘minority community’ and ‘minority’ will be used alternatively.

### 4. Attitudes of Kosovo Relating to Norms of International Minority Rights Law

Following from the legal situation described above, the Republic of Kosovo – with some minor exceptions – has no really possibility to accede to international organizations. Obviously one of the most challenging issues are that the majority of the relevant multilateral international conventions relating to minority rights were elaborated by international organizations whose members are divided upon the

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<sup>8</sup> See among others the so-called Ahtisaari-plan: United Nations Comprehensive Proposal for the Kosovo Status Settlement, 27 March 2007. S/2007/168/Add.1.

<sup>9</sup> United Nations Interim Administration Mission in Kosovo. See more at [www.unmikonline.org](http://www.unmikonline.org)

<sup>10</sup> Art. 58.1. of the Constitution of the Republic of Kosovo. Entered into force on 15 June 2008.

<sup>11</sup> To cite the most acknowledged definition of the term offered by Francesco Capotorti, UN Special Rapporteur in 1979: „a minority is a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their cultures, traditions, religion or language.” UN Doc E/CN.4/Sub.2/384/Rev.1. 1979. 5-12.

<sup>12</sup> However there is a broader use of the term ‘community’ in Kosovo, besides referring to the minorities of the country, it is also used as referring to *all* ethnic, linguistic groups in Kosovo, regardless of their numerical position. Cf.: *Communities in Kosovo. A guidebook for professionals working with communities in Kosovo.* (Pristina, ECMI Kosovo, 2009).

question of the legality of the declaration of independence by Kosovo. Due to these facts Kosovo is usually not allowed to accede to international organizations – mainly due to political and not legal reasons – dealing with – amongst others – minority rights which leads to problems relating to the recognition of the binding force of international conventions containing minority rights including particularly the International Covenant on Civil and Political Rights (adopted by the UN in 1966) and the relevant instruments of the Council of Europe such as the European Charter for Regional and Minority Languages of 1992 and the 1995 Framework Convention for the Protection of National Minorities. According to the mechanisms relating to CoE legal instruments only member states are allowed to accede to its treaties and perhaps that is why Kosovo could not become a state party to the international legal texts drafted by the Council of Europe so far. Nevertheless, already before declaring independence, there seemed to be a need for establishing an independent and unbiased overview of the situation of minorities in Kosovo based on the existing international minority rights standards. For this purpose, the UNMIK concluded an agreement with the Council of Europe in 2004 on extending CoE monitoring activities to Kosovo in relation to the Framework Convention.<sup>13</sup> The agreement was based on the declared willingness of UNMIK and the provisional self-government institutions in Kosovo in implementing the FCNM on the territory of Kosovo. Still today the implementation of FCNM in Kosovo is based on this agreement and even if today the Kosovar government takes overwhelming part in delivering the deriving obligations, the regular “state report” on the progress of implementation is prepared and submitted by UNMIK.

In spite of other possible ways of acceding to these treaties Kosovo chose an interesting but fairly not optimal method to be bound by these instruments, namely certain unilateral declarations made by the official State authorities. In fact acceding to treaties is not the only possible way to undertake international obligations. According to the 'Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations' drafted by the International Law Commission of the United Nations in 2006: (Similarly to the capacity of concluding treaties) 'Any State possesses capacity to undertake legal obligations through unilateral declarations'<sup>14</sup> and 'declarations publicly made and manifesting the will to be bound may have the effect of creating legal obligations. When the conditions for this are met, the binding character of such declarations is based on good faith; States concerned may then take them into consideration and rely on them; such States are entitled to require that such obligations be respected.'<sup>15</sup> In theory this means Kosovo can undertake obligations arising from an international convention by declaring unilaterally her intentions to do so without formally acceding any of these instruments. Accordingly, the Constitution of Kosovo in its article 22 declares the following:

'Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are *directly applicable* (emphasis added) in the Republic of Kosovo and, in the case of conflict, has priority over provisions of laws and other acts of public institutions:

- Universal Declaration of Human Rights;
- European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;

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<sup>13</sup> Agreement between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe on technical arrangements related to the Framework Convention for the Protection of National Minorities. 2004.

<sup>14</sup> See the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations of 2006 by the ILC. Section 2.

<sup>15</sup> See the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations of 2006 by the ILC. Section 1.

- *International Covenant on Civil and Political Rights and its Protocols;*
- *Council of Europe Framework Convention for the Protection of National Minorities;*
- *Convention on the Elimination of All Forms of Racial Discrimination;*
- Convention on the Elimination of All Forms of Discrimination Against Women;
- Convention on the Rights of the Child;
- Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment; (emphasis added)

Furthermore the Law on the Use of Languages in Kosovo in its – legally non-binding – preamble states:

'(It is) Based on the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages,' in addition the Parliament of Kosovo 'is taking into account the Hague Recommendations regarding the Education Rights of National Minorities and the Oslo Recommendations regarding the Linguistic Rights of National Minorities, the Guidelines on the use of Minority Languages in the Broadcast Media (...)'.

However the preamble of the Law on the Use of Languages in Kosovo may not be considered as a legal declaration since the parliament wished only to note that during the drafting process of the law in question several relevant international norms were being taken into consideration. The case of the Constitution is slightly different though because of the declarative character of its article quoted above. After all the only question is whether domestic laws such as the Constitution of Kosovo can be considered as legally binding unilateral declarations under international law, or not? According to the current international norms on this field the answer can be both in the positive and in the negative. No doubt that the Constitution was issued by a law-making body namely the Assembly of Kosovo and not by a person representing the state in its international relations. Even though a parliament has quite restricted powers and possibilities on this field, it is clear enough that Kosovo intends to take into consideration the rules of international minority rights law including language rights as well.

## 5. Principle of Non-discrimination and Language Rights – Kosovar Domestic Legislations Based on International and/or European Rules and Standards

The situation of national minority communities in Kosovo has become a key issue in legislation both before and after obtaining independence. Already under UNMIK administration, the provisional institutions of self-government in Kosovo, i.e. both the provisional Assembly of Kosovo and the provisional government actively worked on the establishment of a coherent legal framework for the equal rights of communities in Kosovo.<sup>16</sup> Still under UNMIK administration, the Assembly of Kosovo adopted the Anti-discrimination Law<sup>17</sup> and the Law on the Use of Languages.<sup>18</sup> Both pieces of legislation rely on the acknowledged principles of equality and minority language rights as formulated in international and EU documents. The anti-discrimination law reflects the most important elements of non-discrimination

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<sup>16</sup> See on detail: Aleksandra Dimitrijević: *Minority Rights in the Context of Kosovo*. Pristina, 2004.

<sup>17</sup> The Anti-Discrimination Law 2004/3.

<sup>18</sup> Law on the Use of Languages 02/L-37.

legislation adopted within the EU (see the so-called Employment Directive<sup>19</sup> and the Race Directive<sup>20</sup>): such as the definition of the concept of discrimination, the definition of protected groups and personal characteristics, the judicial procedure applicable for the violation of the law, including the procedures of issuing fines, etc. This law prohibits discrimination based on – among others – national or ethnic origin, language, and its area of application extends to both the public and the private sectors, the procedure for evaluating complaints is entrusted on independent bodies. Although from the perspective of persons belonging to minorities, the legal regulation of the prohibition of discrimination can only be tested in its implementation, which may raise concerns regarding the effective competencies of the authorities designated by the law for implementation. Nevertheless one of the main positive elements in this law is that not only individuals, but also civil organizations, NGOs representing the victims are entitled to turn to the authorities for requesting investigation of complaints of discrimination. The main obstacle for the thorough activation of the anti-discrimination law, however, lies in the low level of citizens' awareness of their rights and in the malfunctions of the institutional guarantees of the rule of law.

Furthermore, it shall be underlined that the prohibition of discrimination is always the first step only in safeguarding the identity of minority communities. As it was formulated already by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (later, until 2006 known as the Sub-Commission on the Promotion and Protection of Human Rights)<sup>21</sup> there shall be a clear distinction between the concepts of 'prevention of discrimination' and 'protection of minorities': *“Prevention of discrimination is the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish. Protection of minorities is the protection of the non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population.”*<sup>22</sup>

Even if in the context of Kosovo, as it was explained above, the constitutional framework does not use the phrase 'minorities', but recognizes communities in Kosovo, it is still obvious that all the non-Albanian communities are in non-dominant, minority position. Thus for fulfilling the constitutional commitments of Kosovo to treat all communities equally, there is a need to go beyond the prohibition of discrimination and to guarantee specific rights for non-dominant communities.

In this context, the other law, which was adopted for the protection of minority communities before gaining independence, the law on the use of languages is of outstanding importance for the recognition of minority or community rights in Kosovo. The law recognized Albanian and Serbian languages as official languages; it declares the full equality of the two languages on the entire territory of Kosovo.<sup>23</sup> Besides the regulation of official languages, the law recognizes the right of citizens' who speak other than the official languages to preserve their linguistic identity. At municipal level, the law recognizes Bosnian, Roma and Turkish languages as official languages if the number of people speaking one of these languages reaches 3% of the population in the municipality. Albanian and Serbian languages enjoy equal status in all Kosovo institutions, thus at the level of central institutions as well: at government or parliamentary sessions both national official languages can be freely used, and “every person has the right to communicate with, and to receive available services and public documents from, the central institutions

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<sup>19</sup> 2000/78/EC Directive.

<sup>20</sup> 2000/43/EC Directive.

<sup>21</sup> This UN body ceased to exist in 2006 and it was replaced by the Human Rights Council Advisory Committee.

<sup>22</sup> U.N. Doc. E/CN.4/52, Section V.

<sup>23</sup> Art. 1 (ii). of the Law on the Use of Languages.

of Kosovo in any of the official languages”.<sup>24</sup> In a similar way, at municipal level, the official languages of the municipality can be used equally in the communication with municipal institutions, in official documents and in their contacts with citizens. Municipal regulations and decisions shall be issued in all official languages of the municipality.<sup>25</sup> Furthermore the law regulates the use of languages in public enterprises, in judicial proceedings, in education and media. For supervising the implementation of the regulations on the use of languages, the law requires the Government of Kosovo to establish a Language Commission. The main task of Language Commission is to supervise the effective use of official languages in public institutions, and to overview the implementation of the language rights of communities, to issue recommendations and proposals, and to report on the violation of language rights to the government and the parliament.<sup>26</sup> The composition of the Language Commission is based on the administrative instruction issued by the Prime Minister (however no information was available for us on the work of the Commission).

In general this language law reflects the main principles acknowledged at international level for the protection of persons who speak minority languages and the regulation is in full coherence with the constitutional and international obligations of Kosovo.<sup>27</sup> Nevertheless the main problems in the effective implementation of the law are the lack of appropriate social and political awareness and the administrative obstacles in implementation: *e.g.* the functioning and efficiency of the Language Commission was for long doubtful.<sup>28</sup>

## 6. Conclusions

Even if the issue of guaranteeing minority rights has a core character in securing both the internal social stability and improving the international leeway of Kosovo, it is not an easy task to undertake international obligations on this field in case of a statehood being disputed. The still inevitable importance of minority rights and the balance between the communities living in Kosovo is clearly understood – amongst others – if one reads the provisions of the 2013 Brussels Agreement signed by the prime ministers of Kosovo and Serbia. The vast majority of the contemporary international legal obligations on minority rights are of a treaty-based character. This looks rather problematic if the communities of Kosovo are at stake. Lack of unanimous recognition, Kosovo is hardly able to undertake obligations stemming from international treaties. As regard to the most important international treaties elaborated under the auspices of the United Nations for instance, a State may accede to these conventions *typically* if she is already a member of the UN. Kosovo’s eventual UN membership seems to be uncertain at the moment since two of the permanent members of the Security Council – the Russian Federation and the People’s Republic of China – oppose the recognition of Kosovo as a State, yet. In addition the decision on membership is considered as an ‘important question’ by the General Assembly’s Rules of Procedure and it needs a two-thirds majority of affirmative votes. Nonetheless there are other ways to become a party to these conventions too. In case of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and under its article 11 for example “[a]ny non-member State to which an invitation to sign has

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<sup>24</sup> Art. 4.

<sup>25</sup> Arts. 7-8.

<sup>26</sup> Art. 32.

<sup>27</sup> Art. 58.2 of the Constitution of the Republic of Kosova prescribes the respect for the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter of Regional or Minority Languages. <<http://kushtetutakosoves.info/>> Last accessed on 10.05.2010.

<sup>28</sup> *The Beginning of Implementation of the Law on the Promotion and Protection of Rights of Communities and Their Members in the Republic of Kosovo*. Humanitarian Law Centre, Belgrade, December 2008. p. 86.



been addressed by the General Assembly “may also become a party to this convention. Since a qualified majority is not required in this case, a resolution could in theory be adopted by the General Assembly because the majority of the UN members have already recognized Kosovo as a sovereign State. The other relevant universal treaties contain the same clause as well. However the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter: ICERD) and the 1966 International Covenant on Civil and Political Rights (hereinafter: ICCPR) allows other ways to become a party of these treaties, respectively. On the one hand a State which is not a member of the UN but party to the Statute of the International Court of Justice may also accede to these treaties. Otherwise the procedural preconditions of being a party to the ICJ’s Statute are very similar what we saw in the case of the admittance to the UN. Despite these facts, Kosovo – in theory - could accede to both of the conventions mentioned above. According to the relevant provisions of them, members of any of the UN’s specialized agencies are also allowed to sign these treaties and Kosovo is a member of the International Monetary Fund and the organizations of the World Bank Group including the IBRD, the IFC and the IDA since 2009. Theoretically there are no major legal obstacles in front of the accession of Kosovo to both the ICCPR and the ICERD. More precisely, the obstacles – if any – are rather of a political than of a legal nature. Likewise the UN, Kosovo has no prospects to join the rest of the specialized agencies of the UN except the WHO and the WIPO. The application to the WHO is decided upon by a simple majority vote of the Health Assembly, whilst the membership in WIPO is possible also on the basis of a membership in any of the specialized agencies. Interestingly, Kosovo seems not to be interested in joining the latter two organizations as well as to accede to the ICCPR and the ICERD and considers the unilateral declarations on these issues as appropriate instead.

As regard to the CoE’s two main international treaties on minority rights, only CoE members are allowed to accede them as a rule. In theory Kosovo could join the Council of Europe – from a legal aspect at least – since approximately 72 percent of the CoE members already recognize her independence and statehood. According to the London Statute of the CoE the Committee of Ministers is authorized to send an invitation to European States for joining the organization by a decision of a two-thirds majority. No doubt, Kosovo makes efforts to join the CoE however lack of success so far and presumably because of political-diplomatic reasons. Though the substance of the relevant international treaties is applicable in Kosovo due to certain unilateral declarations of hers, the interest of the international community and certainly the minorities living in Kosovo would be the formal accession of Kosovo to as many of the treaties in question as possible because of the following reasons. Firstly, democratic principles and values such as the principle of diversity, rule of law including legal certainty require a clear and transparent legal framework and background in Kosovo. Additionally without formally accepting these treaties the international monitoring mechanisms are not able to work thoroughly and properly in Kosovo. Even if – as in the case of the FCNM – there is a provisional solution for monitoring the implementation of a certain international standards, these are only single cases<sup>29</sup> and do not offer a solution: it is still difficult to assess Kosovo’s responsibility in fulfilling international obligations.

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<sup>29</sup> There is not a similar procedure for monitoring the implementation of the Language Charter.

*Review*

## Christoph Grabenwarter: The European Convention on Human Rights – A Commentary<sup>1</sup>

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The Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR), is the most influential international treaty yet to have been concluded under the aegis of the Council of Europe. Since entering into force on 3 September 1953, this treaty has become the single most important guarantor of respect for and observance of human rights in Europe. Thanks to the mechanisms by which it is enforced and the practice of the institutions established in its wake, it has proved highly effective in the protection of human rights. The importance of the Convention is underscored by the fact that states wishing to become members of the Council of Europe must first sign the Convention and accept both the right of individual application and the jurisdiction of the European Court of Human Rights.<sup>2</sup> Based in Strasbourg, this Court guarantees that the human rights enshrined in the Convention are upheld. Procedures regarding infringements of human rights can be brought before the Court both by the signatory states of the Convention and by individual persons. Since the signatory states generally comply with the Court's judgements, a common regional human rights protection norm system has evolved. Accordingly, the Strasbourg Court is often called the 'constitutional court of Europe'.<sup>3</sup>

Although several English-language commentaries on this influential Convention already exist, a concise yet comprehensive handbook-style commentary was lacking until very recently. This gap has now been filled by Dr. Christoph Grabenwarter's *European Convention on Human Rights – Commentary*. Published in early 2014, its aim is to help those who work with the Convention to understand the workings of the ECHR and the Court's case law.<sup>4</sup> Christoph Grabenwarter, university professor of Public Law, Business Law and International Law at the Vienna University of Economics and Business, and judge at the Austrian Constitutional Court, is also the author of a German-language textbook on the

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<sup>1</sup> Christoph Grabenwarter, *European Convention on Human Rights – Commentary*, München 2014.

<sup>2</sup> Cf. Parliamentary Assembly of the Council of Europe, Resolution 1031 (1994) on the honouring of commitments entered into by member states when joining the Council of Europe, par. 9.

<sup>3</sup> Conway W. Henderson, *Understanding International Law*, Chichester 2010, p. 308.

<sup>4</sup> Cf. the preface of the commentary (Christoph Grabenwarter, *European Convention on Human Rights – Commentary*, München 2014, p. V).