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# REPORT ON CITIZENSHIP LAW: KOSOVO

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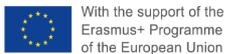
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# Report on Citizenship Law

## Kosovo<sup>1</sup>

*Gëzim Krasniqi\**

### 1. Introduction

After almost fifteen months of unsuccessful negotiations between Kosovar<sup>2</sup> Albanian leaders and Serbia's leadership led by the UN Special Envoy for Kosovo Martti Ahtisaari, Kosovo declared independence from Serbia in February 2008. It has so far gained only partial recognition; 117<sup>3</sup> countries have recognised Kosovo as of December 2020. Kosovo's independence was (and remains) vehemently opposed by Serbia, but also by many other countries, including five EU Member States, Russia, and China.

The Parliament of Kosovo adopted a new Law on Citizenship only three days after the declaration of independence. However, because of internal and external disagreements about the future of the country and polity, Kosovo still faces difficulties in reinforcing both its statehood and in constituting the body of its citizens. Serbia's refusal to recognise Kosovo's independence has transformed the country into a territory of overlapping sovereignties. In this situation, the absolute majority of Kosovo Serbs (who make up less than 10 per cent of the overall population) consider themselves to be Serbian citizens alone (although a considerable number of them now accept new Kosovo documents as well). Ethnic Albanians as well as other ethnic groups have embraced Kosovo citizenship. Dual citizenship both with Serbia and with third countries (because of both economic and political emigration from Kosovo) is commonplace. This whole mosaic of problems is further complicated when one considers the consequences of the war in Kosovo (1998-1999), nearly a decade of *de facto* statelessness, and the relatively high number of refugees and internally displaced people (IDPs), most of whom yet have to resolve their citizenship status.

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<sup>1</sup> The report on citizenship laws in Kosovo was first published in 2009. It was subsequently revised by the author in November 2012, December 2014 and December 2020. The present version of the report covers citizenship-related legislative developments in Kosovo up to December 2020.

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<sup>2</sup> Kosovo is the international version of the name used to describe this country. In Albanian language, the country is referred to as *Kosovë* or *Kosova*. In Serbian, it is *Kosovo*. In the English language alone, the adjective form of the term is *Kosovar* (mainly in international English) or *Kosovan* (in British English). Throughout this paper I will be using terms Kosovo (as a noun) and Kosovar (as an adjective). However, in cases of reference to official documents, the original version will be used.

<sup>3</sup> The exact number is difficult to establish given that Serbia claims that more than a dozen countries have in the meantime revoked decisions to recognise Kosovo's independence. See Agata Palickova, "15 countries, and counting, revoke recognition of Kosovo, Serbia says," *Euractiv*. 27 August 2019. <https://www.euractiv.com/section/enlargement/news/15-countries-and-counting-revoke-recognition-of-kosovo-serbia-says/>

However, in terms of the post-independence Kosovar citizenship legislation, the country comes very close to what Rogers Brubaker called the ‘new state’ model.<sup>4</sup> It has enabled all pre-war residents of Kosovo (who were citizens of the Federal Republic of Yugoslavia) as well as those persons who habitually resided in Kosovo during the period of the United Nations Mission in Kosovo (UNMIK) administration (1999-2008) to become citizens of Kosovo. In addition, it has permitted dual and multiple citizenship and it does not contain any provisions formally reflecting ethnic preference. Likewise, in terms of terminology, the legislation applies the ethnically-neutral terms *shtetas* and *shtetësi* (‘citizen’ and ‘citizenship’) which describe the bond between the state (*shtet*) and an individual, without reference to ethnicity. *Kombësia* (nationality) is the term used to designate national belonging of a person, referring only to the ethno/linguistic affiliation and not to a legal tie.

As with other cases of internationally designed states, such as Bosnia and Herzegovina, Kosovo’s legislation was drafted in close coordination with various international institutions present in the country and indeed it reflects their strong political influence. In fact, the first Law on Citizenship of Kosovo (2008) was part of the so called ‘Laws of Ahtisaari’s package’<sup>5</sup> and in many aspects reflects the vision of the UN Special Envoy for Kosovo (and the international community engaged in the Kosovo status talks) for a multi-ethnic and all-inclusive society and a civic state. Likewise, the process of replacing UNMIK documents with Kosovar ones is almost completed, and a general census was organised in 2011, which was boycotted by the majority of Kosovo Serbs. By the same vein, Kosovo authorities have taken the necessary legal and administrative steps to create a consolidated and digitalised Central Civil Status Register.

Nonetheless, Kosovo’s weak international position, which is caused by its lack of membership in any major international political organisation, and the fact that Kosovo passport holders are the only ones in the region who cannot travel visa-free to the EU, continues to incite internal debates and raises concerns among the population about the practical value and use of the new Kosovar citizenship, as well as enhancing already existing fears of discrimination and isolation.

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<sup>4</sup> While analysing the emergence of the new states following the demise of the Soviet Union, Brubaker describes two kinds of states in terms of their citizenship policies: new states and restored states. The former category includes those states which previously did not have an independent basis of citizenship (republic-level citizenship – as is the case with the former Yugoslav republics). These states had to define their initial body of citizens primarily in terms of territory (though with some limitations and conditions). The latter category refers to the Baltic States, which were independent before incorporation into the Soviet Union. By claiming continuities of statehood and citizenship, Estonia, Latvia and Lithuania (though Lithuania differs substantially from the other two cases) opted for restoration of citizenship to their interwar citizens and their descendants rather than the creation of new citizenry that would also include permanent residents in these republics. In the case of Kosovo, since the country was not a republic in Yugoslavia, and as such did not have its own republic-level citizenship, it had to build its initial body of citizens mostly on the basis of the principle of territory and residence, with certain conditions and limitations, thus differing substantially from other countries that emerged after the dissolution of Yugoslavia. Brubaker, R. (1992), ‘Citizenship struggles in Soviet successor states,’ *International Migration Review* 26 (2) Special Issue: The New Europe and International Migration, p. 277.

<sup>5</sup> ‘Laws of Ahtisaari’s package’ are those laws deriving from Annex XII (Legislative Agenda) of the Comprehensive Proposal for the Kosovo Status Settlement (widely known as Ahtisaari’s plan) that the Assembly of Kosovo undertook to approve immediately after the declaration of independence in order to implement the terms of Ahtisaari’s plan. Most of these laws provide wide-ranging rights for minorities living in Kosovo, in particular the Serb minority. In fact, Ahtisaari’s plan served as the legal and political basis for the declaration of independence of Kosovo. See *The Comprehensive Proposal for the Kosovo Status Settlement*, 26 March 2007. <http://www.unosek.org/unosek/en/statusproposal.html>. *The Constitution of the Republic of Kosovo*, Pristina, 15 June 2008. <http://www.assembly-kosova.org/?krye=documents&docid=48&lang=en>.

## 2. Historical background

### 2.1 Before Yugoslavia: the citizenship status of Kosovo inhabitants

The present day-territory of Kosovo was part of the Ottoman Empire for more than five centuries. From 1877 Kosovo, a much larger territory than the current state, formed a separate *Vilayet* (province) within the Empire. This situation lasted until the Balkan Wars (1912-1913) when Kosovo was annexed and divided by the Kingdom of Serbia and the Kingdom of Montenegro. Until the late nineteenth century, the *millet* system broadly determined and regulated the relationship not between individuals but between different communities (primarily defined in terms of religion) and the state. The *millet* system created two classes of citizens. Muslims enjoyed more rights than non-Muslims, but the non-Muslims were provided with separate legal courts pertaining to personal law under which they were allowed to rule themselves (mainly through their religious leaders). During the *Tanzimat* (reforms) period (1839-1876), the Ottoman Government, in an attempt ‘to supersede the ethnic and religious loyalties of the various minority groups’<sup>6</sup>, took several steps to introduce equal citizenship. The 1839 and 1856 Edicts, then the 1867 Ottoman Law on Nationality<sup>7</sup> and 1876 Ottoman Constitution<sup>8</sup> recognised Ottoman citizenship for all inhabitants, regardless of their ethnicity and religion, thus almost completely abolishing the *millet* system.

### 2.2 Citizenship in the first Yugoslavia, 1918-1941

In the period between the Balkan Wars and the creation of the Kingdom of Serbs, Croats and Slovenes in 1918, the inhabitants of the present-day territory of Kosovo were *de facto* stateless. *De jure* their status was determined and regulated by the Serbian and the Montenegrin legislation that was in force at the time.<sup>9</sup> However, due to the start of the First World War and the subsequent occupation of Kosovo by the Austro-Hungarian army, none of these legal provisions had any real effect. After the war, the inhabitants of Kosovo were granted various citizenship rights (voting rights); they only legally became citizens of the Kingdom of Serbs, Croats and Slovenes in 1928 with the adoption of the Citizenship Act of the Kingdom of Serbs, Croats and Slovenes<sup>10</sup>. The 1928 Law established a single citizenship for the entire Kingdom whereby every subject had to have a domicile in one of the municipalities. It did not tolerate dual citizenship. The law also contained temporary regulations introduced to regulate the status of inhabitants of the former provinces of the Ottoman Empire annexed by Serbia and Montenegro in 1912-1913.

<sup>6</sup> Karpat, K. (1972), ‘The Transformation of the Ottoman State, 1789-1908’, *International Journal of Middle East Studies* 3 (3): p. 261.

<sup>7</sup> See Richard W. Flounoy and Manley O. Hudson (eds.), *A collection of nationality laws of various countries as contained in constitutions, statutes and treaties*. New York: Oxford University Press, 1929.

<sup>8</sup> Art. 8 of this Constitution stipulates that ‘All subjects of the empire are called Ottomans, without distinction whatever faith they profess; the status of an Ottoman is acquired and lost according to conditions specified by law’. See *The Ottoman Constitution*. 23 December 1876. <http://www.worldstatesmen.org/OttomanConstitution1876.htm>.

<sup>9</sup> The Civil Code of Serbia (1844), The Constitution of the Kingdom of Serbia (1903) and The Statute of Montenegro (1905).

<sup>10</sup> *Official Gazette of the Kingdom of Serbs, Croats and Slovenes*, 245/1928. Malcolm, N. (1998), *Kosovo: a short history*. London: Macmillan, p. 266; Jovanović, V. (2008), ‘In search of homeland? Muslim migration from Yugoslavia to Turkey 1918–1941’, *Currents of History* (1-2), p. 61.

However, despite the fact that the Kingdom of Serbs, Croats and Slovenes signed the Treaty of Saint Germain,<sup>11</sup> which represents the cornerstone of the minority rights and obligations that interwar Yugoslavia undertook to comply with and to respect, the new state denied most of the citizenship rights to the Albanians who made up the majority of population in Kosovo. Many were forced to renounce their citizenship and emigrate to Turkey.<sup>12</sup> Yugoslav state centralism and pursuit of an ideology of national unity (the Yugoslav Kingdom was perceived as the national state of the South-Slavic people) alienated and oppressed Albanians, as well as other non-Slavic minorities, such as Germans, Italians, Hungarians, and Turks.

In the course of the Second World War, most of Kosovo was occupied by Italian forces from 1941 to 1943 and thereafter German forces until the end of the war. Italy initially annexed Albania (1939) to continue with the occupation of the Albanian inhabited regions of Yugoslavia (including most of the territory of Kosovo) and attached it to the former. Thus, Italy extended various citizenship rights of the Kingdom of Albania (whose independence was formally preserved within the Italian Kingdom) to the people in the territories it occupied in Yugoslavia. Albanian became one of the official languages in Kosovo, a new Albanian-dominated administration was put in place, and Albanian schools were opened.

### 2.3 Citizenship in the second Yugoslavia, 1945 – 1991

Kosovo was reincorporated into Yugoslavia after the end of the Second World War, this time as an autonomous region (*oblast*) - a lower status than that of a province (*pokrajina*), which Kosovo would not become until 1963<sup>13</sup> - of the People's Republic of Serbia. It is worth noting that it was the first time since the final phase of Ottoman rule that Kosovo had become an administrative unit based on its large Albanian majority (which had been defined as a nationality (*narodnost*) since the early 1960s). The borders established after the war are the current borders of the state of Kosovo. In the 'new Yugoslavia' the citizenship issue was promptly regulated, as the Yugoslav Federation adopted two essential laws defining the subject of citizenship: the Citizenship Law<sup>14</sup> and the Law on Deprivation of Citizenship,<sup>15</sup> which especially targeted members of the former Royal Army of Yugoslavia. The new law was based primarily on the principle of *ius sanguinis* (descent) and provided for legal continuity with the pre-war Yugoslav Kingdom citizenship (art. 35). Nonetheless, art. 25, para. 1 enabled acquisition of citizenship for members of one of the peoples of Yugoslavia (South Slavic ethnic groups) through presumption.<sup>16</sup> Undoubtedly, this ethnocentric formulation complicated matters for many non-Slavic people, including non-Slavic people living in Kosovo, who, for reasons related to the destruction brought about by the war, could not prove their Yugoslav citizenship. Many other Albanians could not gain citizenship because of their factual or alleged collaboration with the occupation forces during the Second World War and thus had to flee to Albania or Turkey.

<sup>11</sup> *Treaty between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State*. St. Germain-en-Laye, 10 September 1919. <http://www.austlii.edu.au/au/other/dfat/treaties/1920/14.html>.

<sup>12</sup> This was regulated with Art. 55, paragraph 4, of the Citizenship Act of the Kingdom of Serbs, Croats and Slovenes, that refers to former Ottoman subjects 'wishing' to renounce Yugoslav citizenship. Moreover, on 11 July 1938 the Kingdom of Yugoslavia signed the so called 'Convention for regulation of emigration of the Turkish population from the region of Southern Serbia in Yugoslavia' with Turkey which targeted the Muslim population of Kosovo, namely Turks and Albanians.

<sup>13</sup> Under the 1946 Yugoslav constitution, Kosovo was an Autonomous Region (*oblast*) of Serbia, whereas Vojvodina was an Autonomous Province (*pokrajina*) of Serbia. With the constitutional changes of 1953 the

During the entire existence of Socialist Yugoslavia only three laws on citizenship were enacted (1945/46, 1964 and 1976). These corresponded to major constitutional changes at the federal level.<sup>17</sup> The post-war Yugoslav citizenship legislation established a two-level or bifurcated citizenship. The 1946 Yugoslav federal citizenship law states that, ‘every citizen of the People’s Republic is simultaneously a citizen of the Federal People’s Republic of Yugoslavia and every citizen of the Federal People’s Republic of Yugoslavia is in principle citizen of a people’s republic’.<sup>18</sup> The last federal citizenship law in Yugoslavia, adopted in 1976,<sup>19</sup> reasserted the primacy of the *ius sanguinis* principle in acquiring Yugoslav citizenship and made republic-level citizenship conditional upon federal citizenship. Thus, republican citizenship would be lost with the loss of federal citizenship. Republican laws on citizenship were enacted shortly thereafter. Despite the fact that the republics had substantial competences in relation to the management of registers of citizens and voting registers, and were responsible for issuing IDs and passports, the republic-level citizenship was not considered to be relevant until the process of dissolution of Yugoslavia began.

As far as Kosovo is concerned, its inhabitants were citizens of both Yugoslavia and Serbia. Their status within Serbia was regulated through the Citizenship Law of the People’s Republic of Serbia of 1950<sup>20</sup> and of the Socialist Republic of Serbia in 1965<sup>21</sup> and 1979.<sup>22</sup> After the constitutional changes of 1974, Kosovo became a Socialist Autonomous Province of both Serbia and the Socialist Federal Republic of Yugoslavia (SFRY)<sup>23</sup> with enhanced competences at all levels of governance. Though Kosovo had its own constitution, it did not have a separate law on citizenship. The Law on Citizenship of the Socialist Republic of Serbia from 1979 continued to regulate the status of the Kosovar population.<sup>24</sup> However, the newly formed institutions of Kosovo were the only competent authorities to issue Yugoslav passports for the residents of Kosovo, with a code (KA) distinct from that of the issuing

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powers of both Kosovo and Vojvodina were further reduced as they became *de facto* districts of Serbia. In 1963 Kosovo became for the first time an Autonomous Province of Serbia and in the period between 1963 and 1974 its status, together with that of Vojvodina, was elevated several times and it gained many of the republican prerogatives (including the right to adopt its own constitution).

<sup>14</sup> Citizenship Act of the Democratic Federative Yugoslavia. *Official Gazette of the Democratic Federative Yugoslavia*, 64/1945.

<sup>15</sup> Law on Deprivation of Citizenship for Officers and Non-Commissioned Officers of the former Yugoslav Army Who do not Want to Return to the Homeland, and for the Members of Military Forces Who Have Served for the Enemy and have Defected Abroad. *Official Gazette of the Democratic Federative Yugoslavia*, 64/1945.

<sup>16</sup> Medvedović, D. (1998), ‘Federal and republican citizenship in the Former SFR Yugoslavia at the time of its Dissolution’, *Croatian Critical Law Review* 3 (1-2): p. 26; Ragazzi, F. & I. Štiks, (2009), ‘Croatian Citizenship: From ethnic engineering to inclusiveness’, in R. Baubock, B. Perching & W. Sievers (eds.), *Citizenship Policies in the New Europe, Expanded and Updated Edition*, Amsterdam: Amsterdam University Press, p. 340.

<sup>17</sup> Ragazzi, F. & I. Štiks, (2009), ‘Croatian Citizenship: From ethnic engineering to inclusiveness’, in R. Baubock, B. Perching & W. Sievers (eds.), *Citizenship Policies in the New Europe, Expanded and Updated Edition*, Amsterdam: Amsterdam University Press, p. 341.

<sup>18</sup> Law on confirmation and amendment of the Law on citizenship of the Democratic Federative Yugoslavia of 23 August 1945. *Official Gazette of the People’s Federal Republic of Yugoslavia*, 54/1946.

<sup>19</sup> *Official Gazette of the Socialist Federal Republic of Yugoslavia*, No. 58 (1976).

<sup>20</sup> *Official Gazette of the People’s Republic of Serbia*, No.5 (1950).

<sup>21</sup> *Official Gazette of the Socialist Republic of Serbia*, No. 13 (1965).

<sup>22</sup> *Official Gazette of the Socialist Republic of Serbia*, No.45 (1979).

<sup>23</sup> Though the 1974 Yugoslav constitution affirmed the full equality of all republics and autonomous provinces and irrespective of the fact that the latter had many republic-level competences, republics were defined as states (art. 3), whereas autonomous provinces were defined as democratic self-governing socio-political communities (art. 4). As such, Kosovo could not have a citizenship law of itself and for itself.

<sup>24</sup> Though the 1976 Law on Citizenship of the Socialist Republic of Serbia does not mention its two autonomous regions, Kosovo and Vojvodina, art. 30 of the law stipulates that ‘the present Law shall be applied uniformly on the whole territory of the Republic in accordance with art. 300, para. 1, item 1 of the Constitution of the Socialist Republic of Serbia’.

authority of Serbia,<sup>25</sup> as well as certificates of citizenship, and to keep and manage the register of citizens, electoral register etc.<sup>26</sup> In many aspects, this was a quasi-Kosovar citizenship. The situation would, however, change drastically after 1989 when Kosovo's autonomy was forcibly abolished by Serbia and further complicated after the dissolution of the SFRY.

## 2.4 Citizenship in the third Yugoslavia, 1992-2006

After the dissolution of the SFRY, the Republic of Serbia and the Republic of Montenegro established the Federal Republic of Yugoslavia (FRY) with Kosovo as an integral part of Serbia.<sup>27</sup> Though FRY adopted a new constitution in April 1992, it did not enact a federal law on citizenship until 1996. In the meantime, the citizenship issue was regulated by the 1976 SFRY citizenship law, and the respective Serb (1979) and Montenegrin (1975) republican laws.<sup>28</sup> Because of the overall political situation and the wars in Bosnia and Croatia, the right to citizenship in FRY in the period between 1991 and 1996 was marked 'by insecurity and discrimination'.<sup>29</sup> Despite the lack of legislation to regulate the issue of refugees, thousands of people acquired citizenship, sometimes even at black market prices.<sup>30</sup> Finally, on 16 July 1996 a new Law on Citizenship of the Federal Republic of Yugoslavia<sup>31</sup> was enacted, which entered into force on 1 January 1997.

It has been argued that one of the main aims of this new law was to establish legal continuity<sup>32</sup> between SFRY and FRY citizenship.<sup>33</sup> However, a closer observation of the law reveals that it established legal continuity with selective categories of the SFRY citizens in that it applied primarily to citizens of the Socialist Republic of Serbia and the Socialist Republic of Montenegro. The attempt to establish such legal continuity is also reflected in the 'Transitional provisions' (arts. 46-48) of the 1996 Law. Both Serb and Montenegrin citizens were considered FRY citizens *ex lege* regardless of their place of residence. Further, Yugoslav citizenship could be acquired also by SFRY citizens who had citizenship of another

<sup>25</sup> Interestingly, Yugoslav passports issued in Kosovo were written in Albanian as well as in Serbian and French.

<sup>26</sup> Personal interview with Azem Vllasi, former communist leader of the Autonomous Socialist Province of Kosovo. Pristina, 12 October 2009.

<sup>27</sup> Kosovar Albanians were quick to react after the abolition of autonomy and to start a non-violent separatist movement, boycotting the official authorities and establishing their own institutions. Thus, on 2 July 1990 members of the dispersed Assembly of the Socialist Autonomous Province of Kosovo gathered in front of the Assembly building in Pristina and adopted a declaration elevating the status of Kosovo to an independent Republic and a year later (in October 1991) a referendum on independence was organised. Serbia condemned both actions and considered them as illegal actions and no foreign country, apart from Albania, recognised the independence of Kosovo in the early 1990s.

<sup>28</sup> *Official Gazette of the People's Republic of Montenegro*, No. 26 (1975) / 30 (1975).

<sup>29</sup> Svilanović, G. (1998), 'The new law on Yugoslav Citizenship: Procedural provisions and practice', *Croatian Critical Law Review* 3 (1-2): p. 244.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Official Gazette of the Federal Republic of Yugoslavia*, No.33 (1996).

<sup>32</sup> This was part of a broader political strategy of Slobodan Milošević and his allies to consider FRY as the only successor state of the SFRY. Because of the lack of support from international community this became impossible and FRY had to apply for membership in UN (in November 2000) as one of the successor states of SFRY. However, following the logic of legal continuity, FRY authorities continued issuing SFRY passports until late 1990s.

<sup>33</sup> Imeri, S. (ed.), (2006), *Rule of law in the in the countries of the Former SFR Yugoslavia and Albania: between theory and praxis*. Gostivar: Association for Democratic Initiatives, p. 270; Knežević, G. (1998), 'Acquisition of Citizenship According to the Citizenship Law of the Federal Republic of Yugoslavia (With Special Regard to Transitional Provisions)', *Croatian Critical Law Review* 3 (1-2): p. 235.

republic and who as of 27 April 1992 were residing in the FRY ('zero option' principle applied retrospectively), civil and military servicemen of the Yugoslav People's Army (JNA) and members of their immediate families (art. 47), as well as citizens of the SFRY who, by virtue of their national or religious or political affiliations and endeavours to observe human rights and freedoms, were forced to take refugee status on the territories of the FRY (art. 48, point 1).<sup>34</sup>

As far as the territory of Kosovo and its population are concerned, the period between 1991 and 1998 can be considered a period of *de facto* statelessness for the majority of population. After 1989, Albanians in Kosovo were deprived of their basic political and civil rights and liberties. Autonomous Kosovo institutions were shut down, people were expelled from their workplaces, and schools and universities that taught in the Albanian language were closed. Thus, although they were legally citizens of the FRY, *de facto* they were stateless. The most targeted group at the beginning of 1990s were young people between the ages of 18 and 22 who wanted to leave the country to avoid serving in the army (which meant going to fight in Bosnia and Croatia). Being unable to obtain a passport (which was made conditional upon the completion of military service),<sup>35</sup> many young Albanians emigrated illegally or using documents bought on the black market. Following the abolition of the autonomy of Kosovo in March 1989 and the subsequent degradation of the position of Albanians, a new 'parallel system'<sup>36</sup> was emerging among Kosovar Albanians. Underground 'state institutions', a separate system of education where children were taught only in Albanian, a network of information, as well as a network of health centres were established and functioned independently from the Serbian state.

The situation of the majority of the population of Kosovo in the 1990s can best be described by the terms exclusion and self-exclusion. The former included widespread discrimination against ethnic Albanians and their effective removal from public life by the Serbian state and its police apparatus. The latter term describes the permanent boycott of the Serb and Yugoslav institutions and elections in Kosovo by Albanians. By the end of the 1990s, following the escalation of the conflict in Kosovo, more than 850,000 Kosovar Albanian refugees escaped or were deported into neighbouring countries and hundreds of thousands of others were internally displaced persons.<sup>37</sup> In the meantime, the destruction of identity and property ownership documents of those who were deported became

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<sup>34</sup> This category includes Serb refugees from Croatia and Bosnia. According to the UNHCR information bulletin for Federal Republic of Yugoslavia, during the war in Bosnia and Croatia over 1 million people found refuge in the FRY. Though the 1996 FRY Citizenship Law did not imply ethnic discrimination, the interpretation of the transitional provisions of the law in practice went in favour of ethnic Serbs and Montenegrins. According to data provided by the Ministry of Interior, in less than one year after the entry into force of the FRY Citizenship Law (November 1998), some 83,000 applications (100,000 persons) had been submitted by refugees, of which 25,500 (42,000 persons) had been granted citizenship UNHCR (1997), *Citizenship and Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia*, European Series 3. Geneva: UNHCR, Regional Bureau for Europe; see also Knežević 1998: 235 and UNHCR 2000.

<sup>35</sup> Those same people who left Kosovo in the 1990s had problems later in renouncing Yugoslav citizenship for the purpose of acquiring another citizenship precisely because of the military obligation. This practice was reaffirmed in the 1996 Law on Yugoslav Citizenship, where art. 20 point 2. forbids loss of citizenship by release for 'persons subject to military conscription, if the federal authority in charge of defence affairs determine that there are impediments for release related to military obligation': see also Svilanović (1998: 251).

<sup>36</sup> For more on the parallel system of Kosovar Albanians in 1990s, see Maliqi, Sh. (1998), *Kosova: separate worlds: reflections and analyses, 1989-1998*. Prishtinë: MM; Judah, T. (2000), *Kosovo: war and revenge*. New Haven and London: Yale University Press; Clark, H. (2000), *Civil resistance in Kosovo*. London: Pluto Press; Kostovicova, D. (2005), *Kosovo: The politics of identity and space*. London and New York: Routledge.

<sup>37</sup> UNHCR (1999a), *Country operation: Federal Republic of Yugoslavia at glance*, Global Report. Geneva: UNHCR.

widespread.<sup>38</sup> This deportation *en masse* of people and confiscation of their personal documents was a deliberate attempt by the Serbian state to deprive Kosovar Albanians of key citizenship rights, including the rights to property and residence. It was the sheer scale of the human rights violations being committed in Kosovo which led to the military intervention of the North Atlantic Treaty Organization (NATO) in the FRY in spring 1999.

## 2.5 Kosovo residents under international administration, 1999 - 2008

On 10 June 1999, after 78 days of the NATO campaign in the FRY,<sup>39</sup> the UN Security Council adopted Resolution 1244<sup>40</sup> which obliged the FRY to begin and to complete a verifiable phased withdrawal of all military, police and paramilitary forces from Kosovo. The Secretary-General, with the assistance of relevant international organisations, was to establish an international civil presence in Kosovo in order to provide an interim administration under which the people of Kosovo would enjoy substantial autonomy within the Federal Republic of Yugoslavia (art. 10). As the displaced Albanians returned home, many non-Albanian residents of Kosovo left the country or were driven out into neighbouring countries.<sup>41</sup> The post June 1999 political reality in Kosovo created legal obscurity and problems with regard to various legal issues, including citizenship. Resolution 1244 vested all legislative and executive powers, including administration of the judiciary, in the hands of the Special Representative of the Secretary General (SRSG). The SRSG and the United Nations Interim Administration Mission in Kosovo (UNMIK)<sup>42</sup> initiated the process of creating separate Kosovar institutions in all the three fields of governance: legislative, executive and judicial.

In 2001 the SRSG even promulgated a Constitutional Framework for Provisional Self-Government in Kosovo<sup>43</sup> which defined Kosovo as ‘an entity under interim international administration which, with its people, has unique historical, legal, cultural and linguistic attributes.’ This document, which makes no mention of the FRY, was considered unacceptable by the FRY institutions.<sup>44</sup> Though the FRY had no control over Kosovo, internationally Kosovo was still part of the FRY and its inhabitants were legally Yugoslav citizens. This situation led to the creation of two categories of people: the first category comprised people who were born before 1999 and who had Yugoslav documents; the second category included people who were born after June 1999 and who had no opportunity to be entered into the Yugoslav register of citizens. In other words, they were stateless.

<sup>38</sup> UNHCR (1999b), Protection Framework Guidance: Kosovo Situation - Revision 1.

<sup>39</sup> NATO’s military campaign was initiated following the refusal of the FRY to accept the internationally brokered peace plan, the Rambouillet Accords, as an interim solution for Kosovo. This plan, which foresaw large scale autonomy for Kosovo as part of the FRY, on the other hand, was approved and signed by the political leaders of Kosovo.

<sup>40</sup> UNSC Res 1244 (10 June 1999) UN Doc S/RES/1244.

<sup>41</sup> There is no exact number of the Serb and Roma refugees from Kosovo and very often numbers are used for political propaganda. However, according to the UNHCR, almost 200,000 Serbs and Roma left Kosovo after June 1999. See UNHCR 2000.

<sup>42</sup> For a detailed account of the UN administration in Kosovo, its structure, competences and policies, see Reka, B. (2003), UNMIK: as an international governance in post-war Kosova: NATO’s Intervention, UN Administration and Kosovar Aspiration. Shkup: Logos –A; and Stahn, C. (2001), ‘Constitution without a state? Kosovo under the United Nations Constitutional Framework for Self-Government’, 14 Leiden Journal of International Law: 531-561.

<sup>43</sup> UNMIK/Reg/2001/9.

<sup>44</sup> Stahn, C. (2001), ‘Constitution without a state? Kosovo under the United Nations Constitutional Framework for Self-Government’, 14 Leiden Journal of International Law: pp. 543-544.

Thus, UNMIK, the institution mandated to administer Kosovo until the final status settlement, decided to create a separate civil register (Central Civil Register of Kosovo) for the Kosovo residents. UNMIK adopted Regulation No. 2000/13 on the Central Civil Registry<sup>45</sup> which in a way became a substitute for citizenship regulations. According to art. 1.1 of this regulation, ‘the Central Civil Registry shall contain a register of the habitual residents of Kosovo.’ The term ‘habitual resident’ was used to describe residents of Kosovo. The two main categories of people that were to be considered habitual residents of Kosovo were: (a) persons born in Kosovo or who have at least one parent born in Kosovo; and (b) persons who could prove that they had resided in Kosovo for at least a continuous period of five years. Section 4 of this regulation also established the procedures for application to be entered into the Central Civil Register of Kosovo. Because most of the pre-1999 civil registration books were destroyed or confiscated by the FRY administration and because many people had their personal documents destroyed, procedures for application for habitual residency in Kosovo were quite simple. State identity cards, passports, documents issued by any UN agency or organ, documents issued by educational, health, political and religious institutions, public utilities and other quasi-official bodies, as well as oral and written statements, could be all used to prove residency.<sup>46</sup>

In 2000 UNMIK went a step further and promulgated a Regulation on Travel Documents.<sup>47</sup> Art. 1.1 of this regulation stipulated that all persons registered in the Central Civil Registry having the status of habitual residents may apply to the same institution for a travel document. Despite the fact that this travel document performed the function of a passport, it was not strictly speaking a passport. Art. 1.2 of the UNMIK Regulation on Travel Documents clearly determines that the travel document does not confer nationality (i.e. citizenship) upon its holder, nor does it affect in any way the holder’s nationality. Thus, a person could have a UNMIK Travel Document and any other state passport without a problem. In practical terms, the UNMIK Travel Document was a poor substitute for state passports because only 37 countries officially recognised it, thus creating travel-related obstacles for their holders. In this way, UNMIK put in place a system of quasi-citizenship in Kosovo. In the period between 2000 and 2008 UNMIK issued some 600,000 Travel Documents for Kosovo residents and around 1,600,000 ID cards.<sup>48</sup> The absolute majority of these documents belonged to Albanians as Serbs kept their Yugoslav / Serbian documents. Through its parallel structures in Kosovo or municipal offices in Serbia, Serbian authorities continued to issue passports for Albanians as well even after 1999. In the course of eight years (1999-2007) Serbian authorities claim to have issued 200,000 passports for Kosovo residents.<sup>49</sup>

Even though Albanians in Kosovo did not consider Serbia as their own state and were looking forward to independence, nevertheless, they kept applying for Serbian passports for practical reasons (i.e. mobility). In principle, Kosovar habitual residence and Serbian citizenship<sup>50</sup> were not in contradiction. However, during the international administration in

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<sup>45</sup> UNMIK/REG/2000/13.

<sup>46</sup> Since there was evidence that many people used false documents, UNMIK adopted two additional administrative directions on the implementation of the UNMIK Regulation 2000/13 on Central Civil Registry. UNMIK/DIR/2003/26 and UNMIK/DIR/2002/16.

<sup>47</sup> UNMIK/REG/2000/18

<sup>48</sup> Data provided by the Center for Documents (Ministry of Internal Affairs of Kosovo). Personal interview in the Center for Production of Documents (MIA). Pristina, 12 October 2009.

<sup>49</sup> See AFP, *Kosovo Albanians shun Serbia, but not its passports*. 8 September 2007. [www.balkanpeace.org](http://www.balkanpeace.org).

<sup>50</sup> The Federal Republic of Yugoslavia was reconstituted as the State Union of Serbia (with Kosovo as its part) and Montenegro in 2003. In 2004 Serbia adopted a new citizenship law, which does not provide any specific provision for the residents of Kosovo, neither does it take into consideration the new reality in Kosovo. In 2006

Kosovo, most of the Albanians in Kosovo were *de facto* stateless whereas Kosovo Serbs had Yugoslav and later Serbian citizenship alone.

## 2.6 Kosovar citizenship after independence

After more than fifteen months of negotiations between Serbia's and Kosovo's delegations presided over by the Special Envoy for Kosovo, Martti Ahtisaari, on 14 March 2007 the Final Comprehensive proposal for a Kosovo Status Settlement, as well as the Report of the Special Envoy of the Secretary-General on Kosovo's Future Status were handed to the Secretary General of the United Nations. Ahtisaari proposed internationally-supervised independence for Kosovo and in his proposal he laid down the contours of the future Kosovar state. Kosovo, the US and most of the EU countries supported the plan whereas Serbia and Russia opposed it. According to the Ahtisaari's proposal, Kosovo should be a multi-ethnic society based upon the equality of all citizens and the highest level of internationally recognised human rights and fundamental freedoms, as well as the promotion and protection of the rights and contributions of all its communities and their members. The newly adopted legislation set up the contours of a de-ethnicised citizenship, both at the micro and macro level. As far as citizenship, understood as a link between the individual and the state, is concerned, the boundaries of the new polity were to be established not according to the principle of origin, but territory. Art. 1.6 of the Annex I (Constitutional Provisions) made it clear that the future Kosovar Constitution should provide for the right of all citizens of the former Federal Republic of Yugoslavia habitually residing in Kosovo on 1 January 1998 and their direct descendants to have Kosovo citizenship regardless of their current residence and of any other citizenship they may hold. Following almost a year of unsuccessful discussions at the UN Security Council on the adoption of a resolution that would endorse Ahtisaari's Proposal, on 17 February 2008, Kosovo declared independence.

Regarding the rights and practices of citizenship, the Kosovo legislation provides extensive rights through which the people of Kosovo, irrespective of their ethnic origin, can exercise full membership of the political community. Art. 2 of the Declaration of Independence, defines Kosovo to be 'a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law' and expresses the commitment 'to protect and promote the rights of all communities in Kosovo and create the conditions necessary for their effective participation in political and decision-making processes.' Subsequently, inhabitants belonging to the same national or ethnic, linguistic, or religious minority groups traditionally present on the territory of Kosovo (*communities*) were granted specific rights, including reserved seats in the parliament and at other levels of governance. On the basis of the gender equality principle, the quota for women in the Kosovar parliament is 30 per cent. In addition to this, the new legislation provides for further group-differentiated rights related to territorial self-government; creation of the new Serb-dominated municipalities is one of the main issues in the post-independence political agenda in Kosovo.

Bearing in mind the long period of *de facto* statelessness in Kosovo and taking into consideration the urgent need to regulate the citizenship status of the people in Kosovo, the

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Montenegro, which in 1999 had approved its new citizenship law in open conflict with the FRY 1996 Citizenship Law, left the Union and declared its independence. Thus, after this period Kosovar residents were in principle Serbian citizens only. See Law on Citizenship of the Republic of Serbia 2004. *Official Gazette of the Republic of Serbia*, No. 135/04.

Parliament of Kosovo adopted a new citizenship law<sup>51</sup> on 20 February 2008, just three days after the declaration of independence and even before the adoption of the constitution. The Kosovar Law on Citizenship is one of the laws belonging to the ‘Ahtisaari package’ and as such it was adopted in a fast-track procedure.<sup>52</sup> Though there was no public debate before or after the approval of this law, it is evident that external influence in drafting of all new laws was essential. In the case of the Law on Citizenship of Kosovo, legal advisers of the ICO-EUSR preparatory team<sup>53</sup> were involved extensively. European legal advisers involved in the process looked at various citizenship practices in the region and elsewhere and their main aim was to draft a law that enabled wider inclusion into Kosovar citizenship. The relatively inclusive nature of the present Kosovar citizenship legislation resulted from Ahtisaari’s provisions, as well as from UNMIK legislation, which has been taken in consideration largely by experts drafting the Kosovar law. The 2011, 2013, 2018 and 2020 citizenship-related amendments and changes have introduced numerous important provisions without significantly altering the (inclusive) character of Kosovo’s citizenship regime. A notable exception is the increase in residence requirements (from 5 to 10 years) in the case of naturalisation of foreigners.

### 3. The current citizenship regime

The Kosovar citizenship regime is a reflection of the principles of multi-ethnicity and inclusiveness enshrined in the Ahtisaari Plan, the Declaration of Independence and the Kosovar Constitution. In terms of criteria of inclusion, pursuant to art. 1.6 of Annex I of the Ahtisaari Plan, the Kosovar Law on Citizenship enables all pre-war residents of Kosovo (who were citizens of the Federal Republic of Yugoslavia) and their direct descendants to be considered as citizens of Kosovo (transitional provisions). This provision addresses the problem of the refugees who left Kosovo in 1999 and were not registered as habitual residents during the international administration in Kosovo. In a similar vein, the current law provides that any habitual resident of Kosovo based on UNMIK/Reg/2000/13 is considered *ex lege* a citizen of the Republic of Kosovo. These two provisions more or less define the

<sup>51</sup> Law on Citizenship of Kosova. *Official Gazette of the Republic of Kosovo*, No. 26/2008.

<sup>52</sup> Initially the Parliament of Kosovo created an ad hoc commission that would examine all the draft laws deriving from the ‘Ahtisaari package’ and based on the proposal of this commission, the parliament adopted these laws. Only minor amendments were proposed during the parliamentary session. So, in a single day, on 20 February 2008, the Parliament of Kosovo adopted nine laws deriving from the ‘Ahtisaari package’, including the Law on Citizenship of Kosovo. As is apparent from the written transcript of the plenary session, none of these draft laws, including the one on citizenship, were debated before approval. At the end, 77 MPs voted ‘for’ the package of laws, four were ‘against’ and six MPs abstained. See Parliament of Kosovo, *Transcript of the Plenary Session of 20 February 2008* (<http://assembly-kosova.org/?cid=1.177&date=2008-02-20>). However, as part of the initiative to end Kosovo’s supervision in September 2012, the Kosovo Parliament amended all these laws so that they do not refer anymore to the Ahtisaari Plan. See Law No. 04/L-115 on Amending and Supplementing the Laws Related to the Ending of International Supervision of Independence of Kosovo, *Official Gazette of the Republic of Kosovo No. 25 / 7 September 2012*, p. 4.

<sup>53</sup> The purpose of the ICO-EUSR (International Civilian Office – EU Special Representative) preparatory team was to plan for a possible future international civilian presence in Kosovo after settlement of Kosovo’s final status. The office of ICO was established immediately after the declaration of independence of Kosovo. Its main aim was to ensure full implementation of Kosovo’s status settlement and support Kosovo’s European integration. However, its mission ended in September 2012, when the International Steering Group decided to end the period of Kosovo’s supervised independence. See “Kosovo declared ‘fully independent’”, *BBC*, 10 September 2012. <http://www.bbc.co.uk/news/world-europe-19550809>.

scope and character of citizenship in Kosovo, including the body of citizens, inclusiveness, and openness. The latter provision especially facilitates greater inclusiveness when taking in consideration that the procedures for admission into the Kosovar Central Civil Register under UNMIK were simple and many people (especially Albanians from southern Serbia and Macedonia) profited from this opportunity to regularise their status. Both of these provisions were reaffirmed in the Constitution of the Republic of Kosovo,<sup>54</sup> which entered into force on 15 June 2008.<sup>55</sup>

The law was, however, amended in 2011,<sup>56</sup> roughly at the same time as the adoption of the new law on foreigners.<sup>57</sup> These amendments introduced two substantial changes in the law on citizenship. The first regards the residence criteria for naturalisation, which has been increased from five to ten years, thus making the Kosovo law one of the strictest in the region regarding naturalisation of aliens. This change, together with the approval of the new law on foreigners, which for the first time regulates entrance (including the issue of visas)<sup>58</sup> and stay of foreigners in the territory of Kosovo, in fact reflects the attempt of Kosovo institutions to fulfil the criteria for visa liberalisation with the EU. The other change is related to the status of stateless people. Several paragraphs were added regarding acquisition of citizenship by stateless people, thus widening the scope of the law in the context of reduction of cases of stateless persons.

These changes were further consolidated in a new set of laws that the Kosovar Assembly adopted in 2013, including new laws on citizenship,<sup>59</sup> on foreigners,<sup>60</sup> on asylum,<sup>61</sup> and on the Civil Registration Agency.<sup>62</sup> These new laws incorporate previous amendments of the laws affecting citizenship and at the same time introduce new provisions that reduce/eliminate statelessness (especially among children) and provide facilitated naturalisation for stateless people and refugees. A further progress was made in the period between 2018 and 2020 with the amendment of the Law on Foreigners<sup>63</sup> and adoption of new administrative instructions on criteria and procedure for: Issuing Residence Permits for Foreigners,<sup>64</sup> Loss of Citizenship by Release and Deprivation,<sup>65</sup> Acquisition of Citizenship<sup>66</sup>

<sup>54</sup> See art. 155 of the Constitution of the Republic of Kosovo.

<sup>55</sup> In September 2012, after more than four years since the declaration of independence and after it has been concluded that the Comprehensive Status Proposal had been substantially implemented, the Kosovo parliament adopted amendments to the Kosovo Constitution replacing or amending all the references to the Ahtisaari Plan or the International Civilian Office, thus paving the way for the end of supervised independence of Kosovo. Amendments on the Constitution of the Republic of Kosovo Regarding the Ending of International Supervision of Independence of Kosovo, *Official Gazette of the Republic of Kosovo No. 25 / 7 September 2012, p. 1.*

<sup>56</sup> Law No 04/L-059 on Amending and Supplementing the Law No.03/L-034 on Citizenship of Kosovo, *Official Gazette of the Republic of Kosovo, No. 26, Pristina, 25 November 2011.*

<sup>57</sup> Law No.04/L-069 on Foreigners, *Official Gazette of the Republic of Kosovo, No. 01, Pristina, 12 January 2012.*

<sup>58</sup> On 16 May 2012, the Kosovo Government decided to introduce the regime of visas for foreigners visiting Kosovo. As of 1 January 2013, citizens of a total of 72 countries will need to apply for entry visas at the diplomatic and consular missions of the Republic of Kosovo, whereas citizens of 14 other countries will get their visas at the Kosovar border. Government of Kosovo, *Decision 02/74, 16 May 2012.* [http://www.kryeministri-ks.net/repository/docs/Vendimet\\_e\\_Mbledhjes\\_se\\_74-.pdf](http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_se_74-.pdf)

<sup>59</sup> Law No. 04/L-215 on Citizenship of Kosovo, *Official Gazette Of The Republic of Kosova, No.33, 2 September 2013.*

<sup>60</sup> Law No. 04/L-219 on Foreigners, *Official Gazette Of The Republic of Kosova, No.35, 5 September 2013.*

<sup>61</sup> Law No. 04/L-217 on Asylum, *Official Gazette Of The Republic of Kosova, No.32, 20 August 2013.*

<sup>62</sup> Law No. 04/L-160 on Civil Registration Agency, *Official Gazette Of The Republic of Kosova, No.6, 12 March 2013.*

<sup>63</sup> Law No. 06/L –036 On Amending A]and Supplementing the Law No.04/L-219 On Foreigners, *Official Gazette Of The Republic Of Kosovo / No. 6 / 3 May 2018.*

<sup>64</sup> Administrative Instruction (Mia) Nr. 09/2019 on the Procedure and Criteria for Issuing Residence Permits For Foreigners, 3 September 2019.

and Determining the Status of the Stateless Person and Acquisition of Citizenship by Stateless People and Refugees.<sup>67</sup> These legal acts have contributed to eliminating various discrepancies between the main law on citizenship and other related laws and administrative instructions, as well as facilitating procedures for recognition and registration of residence of foreigners, in particular refugees and stateless people, as well as their naturalisation.

In terms of the procedures, the basic characteristics of the Kosovar citizenship law are a combination of *ius sanguinis* and *ius soli* principles, prevention of statelessness, absence of provisions granting ethnic preferences, and gender equality of parents who decide about the naturalisation of the child as well as gender equality of spouses. Another crucial characteristic of this law is the unconditional recognition and acceptance of dual and multiple citizenship. Yet a more particular characteristic of the Kosovar citizenship law is that it contains some transitional provisions regulating acquisition of citizenship, namely arts. 31 and 32 of the 2008 law (that have been reaffirmed in the 2013 law) which refer to the acquisition of citizenship by FRY citizens who were Kosovo residents before 1 January 1998 and habitual residents of Kosovo (1999-2008). Persons belonging to the first category can become citizens of Kosovo by registration whereas those belonging to the second category become Kosovar citizens *ex lege*. Though this law foresees facilitated naturalisation for people from the diaspora, it does not define or differentiate them on the basis of ethnicity. According to the law, all people (and their descendants within one generation) who have legal residence in foreign countries and who can prove that they were born and/or maintain family ties in Kosovo are considered to be members of the Kosovar diaspora.

### 3.1 Acquisition and loss of citizenship

#### 3.1.1 Acquisition of citizenship

Kosovar citizenship is acquired by birth, adoption, naturalisation, on the basis of international treaties and on the basis of transitional provisions. Based on the principle of descent, a child acquires citizenship automatically in cases when both of his or her parents have Kosovar citizenship (in this case *ius soli* does not apply). However, if on the day of the child's birth only one of the parents is a citizen of Kosovo, the child may acquire Kosovar citizenship under the following conditions: a) the child is born in the territory of Kosovo (here we have a combination of *ius soli* and *ius sanguinis*) principles); b) the child is born abroad and one parent is stateless or his or her citizenship is unknown; and c) the child is born abroad and only one parent has Kosovar citizenship but both of them give their consent before the child reaches the age of 14. The law stipulates that in cases when the child would be stateless, he/she can gain citizenship even without the consent of parents. The 2020 administrative instruction on procedures and criteria for acquisition of citizenship<sup>68</sup> has simplified the procedure and reduced the number of documents required to register a newly born child.

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<sup>65</sup> Administrative Instruction (Mia) No. 06/2019 On The Procedure of Loss of Kosovo Citizenship by Release and Deprivation, 9 July 2019.

<sup>66</sup> Administrative Instruction (Mia) No. 05/2020 On Criteria and Procedures for Acquiring the Citizenship of the Republic of Kosovo, 4 September 2020.

<sup>67</sup> Administrative Instruction (Mia) No.06/2020 For the Procedure and Criteria of Determining the Status of the Stateless Person, The Manner of Acquisition of the Citizenship by the Stateless Person and the Person with Refugee Status, 4 September 2020.

<sup>68</sup> Administrative Instruction (Mia) No. 05/2020 On Criteria and Procedures for Acquiring the Citizenship of the Republic of Kosovo, 4 September 2020.

The *ius soli* principle applies in cases of unknown or stateless parents of the child born or found in Kosovo. However, if one of his/her parents who does not have Kosovar citizenship is found before the child reaches the age of 7, upon the parent's request and provided that he/she would not become stateless, the citizenship of the child may be forfeited. The territorial principle is also applied in cases when a child is born in the territory of Kosovo and his or her parents have foreign citizenship but have permanent residence permit in Kosovo and, most importantly, give their consent. So, here we have a conditional application of the *ius soli* principle in that the consent of parents is crucial in this case. Yet, notwithstanding this, in cases where a child born in Kosovo would otherwise remain stateless, he/she shall none the less acquire citizenship of Kosovo. Acquisition of citizenship by adoption is based on the principle of descent and a child adopted by parents who have Kosovar citizenship, or at least one of them does so, acquires the same rights as a natural child.

Kosovar citizenship law provides for regular, facilitated and exceptional naturalisation. Regular naturalisation is used for all foreign persons who apply through the regular procedure for naturalisation. Facilitated naturalisation is a special procedure applied to the Kosovar diaspora,<sup>69</sup> meaning persons who were born in Kosovo (irrespective of their ethnicity) and who are legal residents of other states as well as their first generation of descendants. The 2013 Law encourages competent authorities to facilitate the naturalisation of stateless people and refugees, in particular in terms of proceedings and fees (art. 14). Finally, exceptional naturalisation is applied in cases of special economic, social, sporting, cultural, scientific or political interest of the Republic of Kosovo and is issued by the decree of the President of Republic.

As far as regular naturalisation is concerned, there are six main criteria that foreign persons intending to become citizens of Kosovo must meet. These are to be an adult, to have lived in Kosovo for five consecutive years after receiving a permanent residence permit<sup>70</sup> (with the possibility of having been abroad for periods not longer than ten months), to accept the constitutional and legal order of the Republic of Kosovo and to be integrated into the society, to have sufficient means of living without resorting to social assistance schemes, to fulfil all the financial obligations owed to the state, and to possess an elementary knowledge of one of the official languages of Kosovo (Albanian or Serbian), its culture and social order. In the case of the naturalisation of spouses, the person married to a Kosovar citizen is

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<sup>69</sup> Apart from this facility, the Kosovar diaspora, which is estimated to number between 700,000 and 900,000 persons, does not enjoy any special political rights in Kosovo. As Kosovar citizens they can vote either by coming to Kosovo or by post. The Kosovar Parliament has special seats reserved for minorities but not for the diaspora. In terms of the institutional organisation, the mechanism responsible for diaspora initially was the Office for Non-Residential Issues and Diaspora within the Government of Kosovo, which as of May 2011 has been turned into a separate Ministry, which in 2020 was merged with the Ministry of Foreign Affairs to form the Ministry of Foreign Affairs and Diaspora. Despite the fact that the Kosovar diaspora is quite big and it played an important role in the past (when it provided essential financial support for the Kosovar Albanian political and military movement in 1990s) and today provides substantial economic support in form of remittances, it did not get a lot of political attention and institutional support in post-independence Kosovo. See Xhorxhina Bami, "Kosovo Failing to Protect Diaspora Rights and Tap Potential," *Balkan Insight*, 1 November 2019. <https://balkaninsight.com/2019/11/01/kosovo-failing-to-protect-diaspora-rights-and-tap-potential/>

<sup>70</sup> The procedure for regular naturalisation has become more stringent with the adoption of 2011 amendments and 2013 law. The current law requires an alien to have resided five consecutive years in Kosovo *after receiving permanent* (my emphasis) residence permission. According to article 84 of the new Law on Foreigners (as amended in 2018), permanent residence permit may be granted to a foreigner who, at the time of submission of the application, has an uninterrupted temporary residence permit of five (5) years in the Republic of Kosovo. This means that an alien should reside for ten consecutive years in Kosovo in order to qualify for regular naturalisation.

required to have resided (possessing a temporary residence) in Kosovo for one year and to show that he or she has been married to a Kosovar citizen for at least three years. Similarly, in the case of the naturalisation of the spouse of the naturalised person, he/she is required to have resided (possessing a temporary residence) in Kosovo for two years and to show that he or she has three years of valid marriage<sup>71</sup> following the naturalisation of the naturalised person. Both natural and adopted minor children acquire Kosovar citizenship once his or her parent has acquired it. For children over fourteen years of age and up to eighteen, their prior consent is warranted. More or less the same facilitated procedure applies also in relation to those persons who have lost Kosovar citizenship and who want to re-acquire it. In those cases, individuals need to declare that they accept the constitutional and legal order of Kosovo, possess sufficient means for living and can prove the fulfilment of all financial obligations toward the state.

The 2011 amendments and the 2013 law have introduced new provisions on acquisition of citizenship for stateless people. According to paragraph 1 of article 15 of the 2013 law, a stateless person or refugee may acquire Kosovo citizenship if he/she resides in the country for five years from the day of recognition of refugee or stateless person status. This means that a stateless person or refugee needs a total of five (as opposed to eight or ten required for foreign citizens) years of residence in order to be naturalised as a Kosovar citizen. This facilitation of naturalisation is also afforded to a child or children of a stateless person or refugee who fulfils the criteria for naturalisation, but in cases when the child is between fourteen and eighteen years of age, his or her consent is needed. The procedure and criteria for acquisition of citizenship by stateless people and refugees has been detailed in a newly approved administrative instruction.<sup>72</sup>

Apart from the aforementioned criteria for naturalisation, the law sets out additional general provisions on the naturalisation of foreign persons. Without prejudice to the specific criteria for naturalisation, no foreign citizen is allowed to acquire Kosovar citizenship if he or she has been sentenced for a criminal offence<sup>73</sup> or if the acquisition of citizenship is contrary to the interests of Kosovo, in particular interests related to the internal and external security of Kosovo. By the same token, the competent body will suspend the naturalisation procedure if the applicant is subject to criminal investigation or criminal court proceedings until the investigation or proceeding is completed. A more drastic measure – revocation of the decision on naturalisation – may be taken if the competent authority establishes that the decision was issued on basis of false statements or concealed facts. In the event of revocation of the decision on naturalisation of the parents, the minor child will be subject to revocation of the decision on his or her naturalisation as well, except if as a result the child would remain stateless. The Kosovar Law on Citizenship does not provide any further explanation on the acquisition of citizenship based on international treaties.

Albeit the law on citizenship and other bylaws have progressively become more detailed, progress has been slower when it comes to determining the procedure and criteria

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<sup>71</sup> In the 2013 law, new provisions have been added which prevent spouses from acquiring citizenship in cases when marriage has been established against the Law on Family. On the one hand this provision prohibits polygamy, but on the other hand discriminates against gays and lesbians as the 2004 Law on Family (amended in 2019) defines marriage as ‘a legally registered community of two persons of different sexes’.

<sup>72</sup> *Administrative Instruction (Mia) No.06/2020 For the Procedure and Criteria of Determining the Status of the Stateless Person, The Manner of Acquisition of the Citizenship by the Stateless Person and the Person with Refugee Status, 4 September 2020.*

<sup>73</sup> This does not include criminal offences punished with a fine or six months of imprisonment (if released on parole by court), sentence for criminal offences that are not considered as such in Kosovo, and sentences for criminal offences that has been legitimately expunged from criminal records.

for temporary and permanent residence of foreigners in Kosovo. In fact, between 2008 and 2020 Kosovo adopted three different laws on foreigners. The current law on foreigners,<sup>74</sup> which was adopted in 2013 and then amended in 2018,<sup>75</sup> represents a step forward in harmonising provisions and regulating foreigners' entrance, stay, employment and residence status. This was followed by the adoption in 2019 of an Administrative Instruction on the Procedure and Criteria for Issuing Residence Permits for Foreigners.<sup>76</sup> This is the first comprehensive act that sets out in detail the procedure and criteria on foreigners' residence permission as well as personal and travel documentation. In addition to determining the criteria and procedure for temporary and permanent residence permits for foreigners, these recent changes also introduce a new category, 'permanent residence in exceptional circumstances', which is a facilitated route to permanent residence for those foreigners who can prove to have lived at least five (5) years in the Republic of Kosovo before 2019 but who did not have temporary residence permits.

As far as statistics are concerned, the Kosovar Office of Citizenship (later on renamed into the Department for Citizenship, Asylum, and Migration) started issuing statistics since its established in April 2009. According to the data of the Ministry of Interior, between 2009 and 2015, of 2760 foreign citizens who applied to become Kosovar, less than half (1022) had their applications approved.<sup>77</sup> In 2020, 338 naturalisation applications were submitted and only 177 were successful.<sup>78</sup> Most of those people were Albanians from South Serbia or Macedonia who had been residing in Kosovo for more than five years. They applied for regular naturalisation. While citizenship acquisition figures have been stable since independence (about 150 per year), it might change (increase) in the future given the increase in applications for residence permits (over 2640 in 2020 alone) and refugee status (1238 in 2020) in the recent years.<sup>79</sup>

### 3.1.2 Modes of loss of citizenship

A citizen of Kosovo cannot be deprived of his or her citizenship of Kosovo except in compliance with the rules set out in the law. According to the law, there are three modes of losing citizenship: by release, by deprivation and based on international treaties. Release from citizenship is a regular case of losing citizenship and is initiated upon the request of the citizen. In addition, the person asking for release should fulfil certain requirements, such as possession of citizenship of another state or a guarantee that he or she will acquire one, fulfilment of all financial obligations towards the state and freedom from any criminal investigation or proceedings. Minors under the age of fourteen are released from citizenship if this is requested by one parent or guardian who has been released from citizenship and provided that there is consent of release by the other parent, provided that the child holds the citizenship of another country or possesses a guarantee issued by the competent body of the

<sup>74</sup> Law No. 04/L-219 On Foreigners, *Official Gazette of The Republic of Kosova* / No. 35 / 5 September 2013.

<sup>75</sup> Law No. 06/L –036 On Amending and Supplementing The Law No.04/L-219 On Foreigners, *Official Gazette Of The Republic Of Kosovo* / No. 6 / 3 May 2018.

<sup>76</sup> *Administrative Instruction (Mia) Nr. 09/2019 on the Procedure and Criteria for Issuing Residence Permits For Foreigners*, 3 September 2019.

<sup>77</sup> "Për 7 vjet, 1022 persona morën shtetësi kosovare" [In 7 years, 1022 people acquired Kosovar citizenship], *AlbInfo*, 2 March 2015. <https://www.albinfo.ch/per-7-vjet-1022-persona-moren-shtetesi-kosovare/>.

<sup>78</sup> "Bie numri i qytetarëve që hoqën dorën nga shtetësia e Kosovës" [The number of citizenship relinquishment falls], *Lajmi*, 26 January 2021. <https://lajmi.net/bie-numri-i-qytetareve-qe-hoqen-doren-nga-shtetesia-e-kosoves/>

<sup>79</sup> "Rreth 3 mijë persona u liruan nga shtetësia e Kosovës brenda këtij viti, mbi 1 mijë të tjerë kërkuan azil në Kosovë" [Some 3000 lost Kosovar citizenship this year and 1000 others applied for refugee status], *Lajmi.Net*, 16 November 2020. <https://lajmi.net/rreth-3-mije-persona-u-liruan-nga-shtetesia-e-kosoves-brenda-ketij-viti-mbi-1-mije-te-tjere-kerkuan-azil-ne-kosove/>

other country guaranteeing the acquisition of the citizenship of that country. Apart from release, competent authorities can issue a guarantee that the applicant will be released from Kosovar citizenship once it is shown that he or she has acquired another citizenship or has such a guarantee. The guarantee is valid for two years from the day it is issued to the person.

Kosovo citizens who are released from citizenship can however apply for permanent residence status through an exceptional procedure now enshrined in article 86(1)4 of the Kosovo Law on Foreigners.<sup>80</sup> The procedure and criteria are further determined in an Administrative Instruction.<sup>81</sup> In article 29, the Administrative Instruction foresees the following requirements: 1) valid travel document; and 2) proof that is not under investigation (issued by the competent state body whose citizen is a foreigner or by the state of the last state residence, translated into one of the official languages of the Republic of Kosovo). This facilitated procedure to enable those citizens who were released from Kosovar citizenship to acquire permanent residence permit is introduced to address the growing number of Kosovar diaspora members applying to be released from Kosovar citizenship (discussed below), but who nevertheless retain close family, economic and cultural ties in Kosovo.

There are two situations when applications for release may be refused. The first case is where the person who asks for release from citizenship is a civil servant, judge, public prosecutor, or a member of the police service or Kosovo Security Forces. The second case is when the release is considered to be against the interests of the state, especially related to its internal and external security or international relations. A more drastic measure is the revocation of the decision on release from citizenship, which is applied when: a) the competent authority determines that the decision on release was taken on the basis of false statements or concealed facts; and b) the promised acquisition of the citizenship by the other country has not been materialised within one year.

Deprivation of citizenship is a measure used only in those cases when a citizen is engaged in activities which pose a threat to the national security of Kosovo. This measure may be applied if the person holds citizenship of another country. Threats to national security are defined as membership of organisations the purpose of which is to destroy the constitutional order of Kosovo, engagement in activities related to that purpose, or membership of foreign intelligence or police services that function illegally on the territory of Kosovo.<sup>82</sup> The decision on deprivation may be issued even without the participation of the person in question. In cases where the person in question participates, the decision on deprivation becomes effective when delivered to him or her. Otherwise, the decision becomes valid on the day it is published in the Official Gazette of the Republic of Kosovo. The 2013 law introduces a new provision whereby the person deprived of citizenship can initiate an administrative dispute before the competent court in accordance with Law on Administrative Conflict.

In terms of statistics, the number of people who have applied for release from citizenship is quite large. In the first few months after the office of citizenship became operational (April to October 2009), some 1600 Kosovar citizens filed applications for release from citizenship and 540 lost their Kosovar citizenship through release.<sup>83</sup> Since then,

<sup>80</sup> Law No. 04/L-219 on Foreigners, *Official Gazette Of The Republic of Kosova*, No.35, 5 September 2013.

<sup>81</sup> *Administrative Instruction (MIA) Nr. 09/2019 on the Procedure and Criteria for Issuing Residence Permits For Foreigners*, 3 September 2019.

<sup>82</sup> In principle, this clause would apply in cases of those Kosovar citizens of Serb ethnicity that are members of Serbian police and intelligence services that operate in Kosovo illegally. So far there has not been a single known case when this clause has been used in practice.

<sup>83</sup> Personal interview in the Office for Citizenship within Ministry of Internal Affairs of the Republic of Kosovo. Pristina, 13 October 2009.

however, there has been a further increase in the number of people who have lost their Kosovar citizenship through release. According to the data provided by the Ministry of Interior in 2020, some 40,000 Kosovar citizens have lost their citizenship since 2009.<sup>84</sup> The absolute majority of those people come from the Kosovar diaspora in Europe, especially from those countries that do not allow dual citizenship.

### 3.1.3 Dual and multiple citizenship

Kosovo legislation is very tolerant of dual and multiple citizenship. The present legislation does not oblige any person to lose his or her citizenship in order to acquire Kosovar citizenship. As already mentioned, this measure was introduced mainly to accommodate the needs of the Serb minority in Kosovo (but also many Albanians living in diaspora in Europe and the US). Though the present number of Kosovar residents who are citizens of two or more countries is not known, it is realistic to assume that the majority of Serbs living in Kosovo (the approximate number of Serbs living in Kosovo is 130,000) will eventually have dual citizenship. Other Serb and Roma refugees from Kosovo who are residing in neighbouring countries and who might return in Kosovo may increase the number of dual citizens even further. In addition, many Albanians from southern Serbia, Albania, Macedonia and Montenegro who have moved to Kosovo to work, study or live in the course of the last decade either have already been registered as habitual residents during the UNMIK period (and now are considered Kosovar citizens) or will apply for Kosovar citizenship through regular naturalisation since many of them satisfy the criteria. At the same time, members of the Kosovar diaspora<sup>85</sup> who hold citizenship of foreign countries that allow dual citizenship are very likely to apply for Kosovar citizenship. Nonetheless, it is difficult to estimate the number of dual citizens residing in Kosovo.

## 3.2 Transitional provisions

Undoubtedly, transitional provisions governing the acquisition of citizenship are crucial in the post-independence phase during the determination of the initial body of Kosovo citizens. These provisions aim to regulate the status of Kosovo residents before January 1998 and habitual residents in the period of international administration in Kosovo (1999-2008). In the case of the former, individuals who on 1 January 1998 were citizens of the FRY and were habitually residing in Kosovo, and the first generation of their descendants, will be registered in the register of citizens upon the application. The criteria that constitutes evidence of the citizenship of FRY and habitual residence in Kosovo is determined in sub-normative acts (i.e. delegated legislation).<sup>86</sup> However, the law makes it clear that the competent body can also use the UNMIK Regulation No. 2000/13 as criteria to determine habitual residence on 1 January 1998. In the case of habitual residents of Kosovo, however, everyone who is registered in the Central Civil Register pursuant to UNMIK Regulation No. 2000/13 will be considered a

<sup>84</sup> Luljeta Krasniqi – Veseli, “Mijëra qytetarë në vit heqin dorë nga nënshtetësia e Kosovës,” [Thousands relinquish Kosovar citizenship] *Radio Free Europe*, 25 February 2020. <https://www.evropaelire.org/a/30453545.html>

<sup>85</sup> According to the officials from the MIA, there is a growing number of Albanians from Turkey, most of whom are first or second generation of Albanian migrants that recently are applying for Kosovar citizenship.

<sup>86</sup> The Ministry of Internal Affairs of Kosovo adopted an administrative instruction ‘About the Criteria that contain evidence about the citizenship of the Former Federal Republic of Yugoslavia and permanent residence in the territory of Kosovo on 1 January 1998’ (No. 05/2014), which was abrogated by *Administrative Instruction (Mia) No. 05/2017* three years later (2017).

citizen of Kosovo and will be registered in the register of citizens. The competent body is allowed to verify the lawfulness of the registration of a person as a habitual resident in Kosovo, and in cases where the competent body determines that the person did not fulfil the legal requirements for registration as habitual resident, he/she will lose Kosovar citizenship and will be deleted from the register of citizens.

### 3.3 Jurisdiction and procedures

In Kosovo, the Ministry of Internal Affairs (MIA) is the main body that has jurisdiction over citizenship issues. In the same vein, the government, through the MIA, has executive competence with regard to specific conditions and rules of procedure for acquisition and loss of citizenship. So far, the MIA has adopted numerous administrative instructions to facilitate implementation of the citizenship law. Although applications should be filed in the Municipal Offices of Civil Status, it is the Department of Citizenship, Asylum and Migration (Division for Citizenship)<sup>87</sup> within the MIA that takes the final decision on acquisition or loss of citizenship. In March 2009, the MIA adopted an administrative instruction on establishment and determination of the procedure rules of the Committee of Citizenship and of the Appeals Committee of Citizenship.<sup>88</sup>

There are two main ways to submit the application: a) to the municipal Civilian Status Office, in the territory of which the applicant resides; and b) if the applicant resides outside Kosovo, to the nearest embassy or consular mission of Kosovo.

According to the present legislation<sup>89</sup>, the procedure for acquisition of citizenship through naturalisation and release from citizenship is relatively simple and short. Once the application has been submitted to the municipal administration, the latter forwards it to the Department of Citizenship, Asylum and Migration. From the day the application arrives to the Department of Citizenship, Asylum and Migration, this body shall take a decision within 180 days. However, the work of the Citizenship Committee been the subject of media attention for alleged irregularities, thus raising questions about the transparency and functionality of these institutional mechanisms that are essential in the process of implementation of the law on citizenship.<sup>90</sup>

In cases where the requesting party is not satisfied with the decision, he or she can appeal the decision to the Appeal Committee of Citizenship within thirty days from the date of publication of the decision. Then, after reviewing all the facts, the Appeal Committee is

<sup>87</sup> Initially it was the Office of Citizenship of Kosovo, which became functional on 29 April 2009, which managed the process of acquiring and loss of citizenship. However, as a result of restructuring of the MIA in 2010, it is the Division on Citizenship, within the Department of Citizenship, Asylum and Migration (MIA), that deals with citizenship-related issues. See Ministry of Internal Affairs, *Administrative Instruction No. 16/2010*.

<sup>88</sup> See Ministry of Internal Affairs, *Administrative Instruction, No. 06/2009*.

<sup>89</sup> Ministry of Internal Affairs, *Administrative Instruction No 4/2014 on Procedures for Acquiring the Citizenship of the Republic of Kosovo*; Ministry of Internal Affairs, *Administrative Instruction No 26/2013 on the Procedure of Loss of Citizenship by Release*.

<sup>90</sup> According to the local media, the Kosovo Police Special Anti-Corruption Department has begun an investigation following reports that the work of the Committee of Citizenship has been characterised by irregularities and violation of the law. As a result, the Ministry of Interior has dismissed the members of the Committee of Citizenship, including the chairman, who at the same time used to be the head of the Department of Citizenship, Asylum and Migration. Moreover, the new members of the Committee have reviewed some of the decisions and even revoked them on the grounds that they were taken in violation of the current law and legal procedures. Jeton Llapashtica, “MPB revokon vendimet e veta” [MIA revokes its decisions], *Zëri*, 6 October 2012. <http://www.zeri.info/artikulli/1/1/58874/mpb-revokon-vendimet-e-veta/>

obliged to make a decision within ninety days. This decision of the Appeal Committee is final within the context of the administrative procedure, but it can be subject to court review in compliance with the laws in force. Fees are relatively low (150 Euro for adults and 50 Euro for minors, both for acquisition of citizenship through naturalisation and release from citizenship).

In order to create an integrated Central Civil Status Register, a Law on Civil Status<sup>91</sup> was adopted in 2011 as well as a number of administrative instructions, issued by the MIA.<sup>92</sup> This register contains details of all the Kosovar citizens, and according to the law, it is kept both by the MIA and the Municipal Offices of Civil Status. This register is unique and is kept both in written form and electronically. Apart from the basic register which contains data related to births, marriages and deaths, the MIA also keeps special evidence of those individuals who acquire citizenship by naturalisation and on the basis of international agreements, as well as evidence of the persons who lose citizenship by release, revocation or on the bases of international agreements. The competent authorities which keep the register of citizens may transmit the data also to other people who according to the law are authorised to have access to it. Data can also be transmitted upon the consent or request of the person in question.

The Ministry of Internal Affairs of Kosovo can also communicate to other state organs information about the citizenship status of registered citizens of Kosovo. This information will be transferred provided that it will be used only by an organ of another state competent for citizenship issues, it is in the favour of the person whose data is being requested, and that the requesting organ guarantees the protection of the citizenship status for foreign citizens as well.

#### 4. Current political debates

Even though Kosovo managed to adopt citizenship-related legislation at the declaration of independence, the process of consolidation of its citizenry remains a challenge even more than a decade after independence declaration. The factors that brought about this situation are manifold. To start with, Kosovo faced the immense problem of lack of credible data. These problems were considerably mitigated as a result of the organisation of a new census in 2011, which was mostly boycotted by Serbs in northern Kosovo as well as other Serbs living in the rest of Kosovo<sup>93</sup>, and Kosovo's acquisition of copies of civil registers held by Serbia. Albeit, incomplete (when it comes to Kosovo Serb population), the census results<sup>94</sup>, provided

<sup>91</sup> Law no. 04/1-003 on Civil Status, *Official Gazette of the Republic of Kosova*, No.6, Pristina, 22 July 2011.

<sup>92</sup> See *Administrative Instruction, No. 16/2009 - MIA on the Registry of Citizenship of Kosovo; Administrative Instruction No. 18/2013 – MIA on Principal Registries of Civil Status and Special Registries; Administrative Instruction No.17/2012- MIA on Civil Status Documents, Administrative Instruction (Mia) No.11/2017 On Central Civil Status Registry.*

<sup>93</sup> Kosovo Serbs were called by Serbia to boycott the census on the grounds that without the prior return of all the refugees there won't be conditions for a proper census. See Gezim Krasniqi, "Whose citizens? Kosovan Serbs between Kosovo, Serbia and Russia", *European Union Democracy Observatory on Citizenship*, 9 December 2011. [http://eudo-citizenship.eu/news/citizenship-news/533-whose-citizens-kosovan-serbs-between-kosovo-serbia-and-russia#.UIE-6MXA\\_h4](http://eudo-citizenship.eu/news/citizenship-news/533-whose-citizens-kosovan-serbs-between-kosovo-serbia-and-russia#.UIE-6MXA_h4)

<sup>94</sup> According to the final results, out of a total number of 1,739,825 people living in Kosovo, Albanians make up 92.9% (1,616,869), Serbs 1.46% (25,532), Turks 1% (18,738) Bosniaks 1.58 (27,533) Roma 0.5% (8,824) Ashkali 0.8% (15,436) Egyptians 0.6% (11,524) Gorans 0.69% (10,265) and so on. Kosovo Agency of Statistics, *Kosovo Population and Housing Census 2011 Final Results*, Pristina, 2012. [http://esk.rks-gov.net/rekos2011/repository/docs/Final%20Results\\_ENG.pdf](http://esk.rks-gov.net/rekos2011/repository/docs/Final%20Results_ENG.pdf)

important data to Kosovo institutions about Kosovo's post-independence resident population profile. Between 2011 and 2013, under the auspices of EU mediators, Kosovo and Serbia signed a number of technical agreements on licence plates, identity cards (which enables Kosovars to travel through Serbia with Kosovo ID cards), university diplomas, Kosovo customs' stamps, border crossings and, importantly, civil registers. The agreement on civil registers enabled the return of certified copies of 12,063 register books from Serbia to Kosovo. This facilitated the consolidation of the Central Civil Status Register of Kosovo.

In Kosovo's case, contested statehood and limited sovereignty continues to affect its citizens. As a result of Serbia's non-recognition of Kosovo, there is a substantial, albeit formal, overlap of the Kosovan and Serbian citizenship regimes. While *de jure* the absolute majority of residents in Kosovo are entitled to Serbian citizenship, in practice this right is limited to the Serb minority and other non-Serb minorities in Kosovo. On the other hand, while all the Serbs in Kosovo (as well as many Serb and non-Serb refugees who haven't returned since the end of the war) are entitled to Kosovan citizenship, a significant number of them refuse to accept it.<sup>95</sup> Kosovo declared independence more than a decade ago, but its government institutions are not the only ones present in the country. At least four different sets of institutions operate in Kosovo - Kosovo's, Serbia's, and to a lesser degree UNMIK's, EULEX's - creating a highly complex net of institutions, legal norms and jurisdictions that often overlap, with Kosovo residents being tied to at least two polities (Kosovo and Serbia) and even more political authorities that determine their legal rights.<sup>96</sup>

#### 4.1 Refugees, undetermined and precarious statuses

Regarding the issue of non-Albanian refugees who left Kosovo after the war, in the absence of reliable data, numbers have been used and misused for political purposes. The fact that the exact number of people living in Kosovo in 1998 (before the war) is unknown complicates any attempt to calculate the number of people who left Kosovo in 1999. Notwithstanding the numbers, there are three categories of refugees from Kosovo: Serb refugees, the Roma, Ashkali and Egyptian (RAE) group, and 'double refugees' (Serb refugees from Croatia and Bosnia who were settled in Kosovo before 1998 and who might have left Kosovo again in 1999). Whereas the Serbian Government claims that the number of the Serbs who left Kosovo is around 250,000<sup>97</sup> and calls for their collective return, the counterpart in Kosovo has dismissed these claims as exaggerated and has established a strategy for gradual return and integration of refugees. The Kosovar Government has established a special ministry – the Ministry for Returns and Communities - in 2005 in order to facilitate the return and reintegration of these communities. The return of Serbs has become a key priority for the new Serb leadership in Kosovo.

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<sup>95</sup> The number of Kosovo Serbs who registered their Kosovar citizenship and acquired Kosovo documents (IDs and passports) has increased as a result of the Kosovo-Serbia dialogue and agreements on travel and electoral participation of Kosovo Serbs. It is estimated that the absolute majority of Kosovo Serbs possess Kosovo ID cards while the number of those with Kosovo passports remains lower. See: REI "Mbi 26 mijë serbë nga veriu janë pajisur me dokumente të Kosovës" [Over 26,000 Serbs from the north acquired Kosovo documents], *Telegrafi*, 18 October 2016. <https://telegrafi.com/mbi-26-mije-serbe-nga-veriu-jane-pajisur-dokumente-te-kosoves/>

<sup>96</sup> Krasniqi, G. (2019), 'Contested States as Liminal Spaces of Citizenship: Comparing Kosovo and the Turkish Republic of Northern Cyprus', *Ethnopolitics*, 18(3), p. 305.

<sup>97</sup> UNHCR estimated that the total number of non-Albanian refugees that left Kosovo in 1999 is 200,000. A report from European Stability Initiative estimates that the number of Serbs who left Kosovo is around 65,000. ESI (2004), *The Lausanne Principle: multiethnicity, territory and the future of Kosovo's Serbs*. Berlin/Pristina.

No exact numbers are available for the RAE refugees either. Most of them live as refugees in Macedonia, Montenegro and Serbia, or in Western countries. The Kosovar government had adopted the Strategy for Integration of Roma, Ashkali and Egyptian Communities in the Republic of Kosovo 2009-2015,<sup>98</sup> in order to improve the position of those already living in Kosovo and to create conditions for the return of the refugees. In 2010 Kosovo adopted the Law on Repatriation<sup>99</sup> and has since then signed agreements for repatriation with more than 15 EU and regional countries, including Germany, France, Switzerland, Austria, Sweden etc. As a result, in 2009 Germany initiated the return of some 14,000 Kosovar refugees, the absolute majority of whom are from the ranks of RAE communities.<sup>100</sup> However, as a result of the existence of loopholes in the readmission procedures and Kosovo's ambiguous international status, Germany and other European states that recognise Kosovo as an independent state are returning Kosovo Roma asylum seekers to Serbia, instead of Kosovo.<sup>101</sup>

The third category of refugees, whose situation is less debated, is the category of the doubly displaced people. This is the category of Serb refugees from Bosnia and Croatia who were initially settled in Kosovo and who were then caught in the cross-fire during the war in Kosovo. The number of these refugees that were settled in Kosovo prior to 1998 is estimated to be around 14,000.<sup>102</sup> Of these, some 200-600 still live in Kosovo.<sup>103</sup> Based on Ahtisaari's package and the transitional provisions of the Kosovar Law on Citizenship, these Serb refugees from Croatia and Bosnia in principle are entitled to be considered Kosovar citizens. However, MIA's Administrative Regulation No. 05/2017 (which abrogated the previous Administrative Regulation 05/2009) specifies that they should have been FRY citizens. Many refugees who came in Kosovo in 1994 or 1995 did not manage to acquire FRY citizenship and it is not clear how many of them have been registered as habitual residents under UNMIK.

Another category includes Albanians from Presevo Valley (southern Serbia) that have migrated to Kosovo since 1999. According to estimates, some 10,000 Albanians from Serbia live in Kosovo today, many of whom do not possess legal residence or Kosovar citizenship.<sup>104</sup> This is a particular category given that they do not qualify as refugees or asylum seekers. While most have already acquired Kosovar citizenship and documents, thousands remain in limbo. Their situation has been aggravated as a result of Serbia's practice of 'deactivating addresses' of people deemed no longer living at their registered

<sup>98</sup> Available at: <http://www.web-kfos.org/home/images/stories//rae-eng.pdf>

<sup>99</sup> Law No.03/L –208 On Readmission, *Official Gazette of the Republic of Kosova / Pristina: Year V / No. 74 / 20 July 2010.*

<sup>100</sup> See 'Gjermania kthen 14 000 kosovarë [Germany returns 14,000 Kosovars]', *Radio Free Europe*, 14 October 2009. [www.evropaelire.org](http://www.evropaelire.org).

<sup>101</sup> According to human right activists in Serbia, such decisions to return Roma to Serbia, and not to their country of origin (Kosovo) violate the rights that protect refugees and internally displaced people. Marija Ristic, "Western Europe Sends Kosovo Roma to Serbia", *Balkan Insight*, 20 July 2012. <http://www.balkaninsight.com/en/article/readmission-loop-over-roma-idps-causes-controversy>

<sup>102</sup> UNHCR (2000), Federal Republic of Yugoslavia information bulletin (Excluding Kosovo).

<sup>103</sup> UNHCR (2000); UNHCR (2009), Statistical Overview: Update as at end of August 2009. Pristina: UNHCR OCM Pristina.

<sup>104</sup> "Mbi 15 mijë shqiptare nga Lugina e Preshevës sot votojnë në Kosovë" [Over 15,000 Albanians from Presevo Valley will vote in Kosovo today], *Presheva Jonë*, 22 October 2017. <https://www.preshevajone.com/mbi-15-mije-shqiptare-nga-lugina-e-presheves-sot-votojne-ne-kosove-ja-ke-do-ta-votojne-ata/>

addresses.<sup>105</sup> This campaign has in particular targeted many ethnic Albanians from Presevo Valley who have moved to Kosovo for work or family reasons thus putting them at the risk of statelessness. The recently introduced ‘permanent residence in exceptional circumstances’ provision, which is a facilitated route to permanent residence for those foreigners who can prove to have lived at least five (5) years in the Republic of Kosovo before 2019 but who did not possess temporary residence permission, among others, is aimed at addressing the situation of thousands of Albanians from Presevo Valley who do not have valid residence status in Kosovo.<sup>106</sup>

## 4.2 Visa liberalisation with the Schengen countries

The most debated issue with regard to citizenship in Kosovo is the one related to visa liberalisation and free movement. In July 2009 the European Commission proposed the introduction of new regulations on visas for Western Balkan countries allowing citizens of Macedonia, Montenegro and Serbia, and a year later those of Bosnia Herzegovina and Albania to travel to all countries of the Schengen area without visas. Kosovo as a country was left outside the visa liberalisation process for the Western Balkan countries. In addition to isolating Kosovo citizens, it also has a direct effect on Serbian citizens residing in Kosovo. As a result of the Commission’s proposal and the EU decision, residents of Kosovo holding a Serbian passport issued by the Coordination Directorate in Belgrade will still need a visa to enter Schengen zone. This includes both Serbs and Albanians from Kosovo who have Serbian passports.<sup>107</sup>

Kosovo moved closer to an eventual visa liberalisation with the EU following, first, the launch of the Structured Dialogue on the Rule of Law with the EU on 30 May 2012 in Brussels, and the handing over to the Kosovo Government of the roadmap for visa liberalisation by the European Commissioner for Home Affairs in June 2012.<sup>108</sup> However, albeit Kosovo fulfilled all the criteria for visa liberalisation and received a positive recommendation by the European Commission in 2018, lack of consensus among member states has prevented Kosovo from enjoying visa-free travel. As a result, Kosovar Albanians remain the only ones in the Western Balkans to wander around and wait for days and weeks in front of the foreign embassies in Pristina or in the neighbouring countries to get a visa. Consequently, this has pushed people to look for other options, such as getting Serbian or Albanian passports (in legal or illegal ways) so that they can travel visa-free to the EU.

<sup>105</sup> Xhorxhina Bami and Milica Stojanovic, “Address Inactive: The Ethnic Albanians Being ‘Deleted’ in Serbia”, *Balkan Insight*, 17 December 2020. <https://balkaninsight.com/2020/12/17/address-inactive-the-ethnic-albanians-being-deleted-in-serbia/>

<sup>106</sup> “Ligji për të huajt mundëson marrjen e shtetësisë së Kosovës brenda pesë vjetësh” [Law on foreigners enables citizenship acquisition within 5 years], *Koha Ditore*, 24 May 2019. <https://www.koha.net/arberi/164796/ligji-per-te-huajt-mundeson-marrjen-e-shtetesise-se-kosoves-brenda-pese-vjetesh/>

<sup>107</sup> From August 2008 until July 2009 some 7,141 Kosovars obtained Serb biometric passports. However, in July 2009, following the European Commission’s proposal, Serbia stopped issuing Serb passports for Kosovars and initiated the establishment of a specific Coordination Directorate in Belgrade that would issue passport for Kosovar residents. Accordingly, any Kosovar who wants to get a Serb passport must travel to Belgrade, which is not easy at all. The Coordination Directorate issued a total of 97,809 passports between 2009 and 2016 to Kosovo residents (primarily Serbs). Milica Andric & Faith Bailey, “Documented yet ‘invalid’: Kosovo Serbs barred from traveling with their Serbian documents,” *Prishtina Insight*, 13.07.2017. <https://prishtinainsight.com/documented-yet-invalid-mag/>

<sup>108</sup> European Commission, Press Release: *Commission delivers visa roadmap to Kosovo government*. Brussels, 14 June 2012. [http://europa.eu/rapid/press-release\\_IP-12-605\\_en.htm](http://europa.eu/rapid/press-release_IP-12-605_en.htm)

Therefore, eventual visa liberalisation for Kosovo citizens would create not only great free movement opportunities for Kosovars, but by adding value to the Kosovo passport, would help a great deal to consolidate the Kosovar citizenship regime as a whole. Currently, the passport of Kosovo offers very little visa-free mobility. In this respect, Kosovan citizenship is rather weak and dysfunctional. The functionality of citizenship is hindered both as a result of the issue of state contestation and internal weaknesses.

## 5. Conclusion

The Kosovar citizenship regime is in its final phase of consolidation. The ‘new born’ state has made undisputed progress in the establishment of its separate citizenship and body of citizens. The legal infrastructure that constitutes the cornerstone of the citizenship regime, which had been adopted at the outset, has gradually been complemented with amendments, new laws and administrative instructions and the country is in a good course of implementing it in practice. By omitting any principle of ethnic preference, the new legislation in Kosovo affirms democratic statehood and liberal principles of citizenship as opposed to the ethnocentric state building. The main factor that contributed to such development is the involvement of international institutions and actors in the process of definition of Kosovo’s final status and its core legislation. By defining Kosovo as ‘a state of free citizens’ and its society as ‘a multi-ethnic society’ the Kosovar Constitution sets the basis for a civic state. The formative character of the state of Kosovo becomes visible through the constitution, state symbols and anthem which represent a par excellence example of de-ethnicisation of citizenship in a country that, above all, should be looked at as an attempt to found a new civic state based on a covenant (constitution). In terms of the initial definition of citizenship, Kosovo model comes close to the ‘new state model’.

Citizenship was considered of paramount importance during the pre-independence negotiation process and even more so at the moment of the declaration of independence. The fact that the new citizenship law was adopted only three days after the declaration of independence and before the new constitution illustrates this fact. Since the aim of the new law was to create an all-inclusive citizenship regime, it thoroughly affirmed the principle of territory in defining initial citizenship. In those cases when the principle of origin is affirmed, it omits reference to ethnicity. Likewise, it provides for gender equality and allows dual and multiple citizenship. The latter measure is taken in compliance with the wide-ranging autonomy extended to the minorities living in Kosovo, in particular the Serb minority, and with attempts to integrate the latter in the political and legal framework of Kosovo. When looked at from the perspective of modern international standards and norms related to citizenship, certainly the Kosovar citizenship regime meets most of the democratic criteria used to define citizenship.

Subsequent legislation changes have introduced new provisions that provide for facilitated naturalisation for stateless persons and refugees as a way of reducing statelessness. On the other hand, as a result of the change of residence criteria (from five to ten years) for regular naturalisation, the law has certainly become more restrictive. Yet, the lack of success in the field of sustainable return of refugees from neighbouring countries and the recent increase in illegal migration need to be addressed urgently by the local institutions. Last but not least, the Kosovo institutions should undertake all the necessary steps to increase transparency and efficacy in dealing with applications for naturalisation or release of citizenship.

Notwithstanding the consolidation of democratic institutions in Kosovo, which resulted in the end of “supervised independence”, as well as Kosovo institutions’ commitment to provide for democratic and inclusive citizenship, the issue is not being resolved without controversy. Kosovo’s attempt to establish statehood and an autonomous citizenship are being seriously challenged both internally and externally. Whereas internally Kosovo has made substantial progress in paving the way for the integration of the Serb community as a result of the Brussels Agreement with Serbia, internationally, Kosovo’s statehood and sovereignty continues to be questioned by a number of states, including Serbia, Russia, Spain, and Cyprus. The challenges related to the partial international subjectivity of Kosovo is depriving the new country of membership in major international organisations, such as the United Nations, the Council of Europe, and the Organisation for Security and Cooperation in Europe. Consequently, Kosovo cannot become a party to many essential international documents, treaties and conventions related to human rights and citizenship. Hence, though Kosovo has unilaterally embraced most of the international human rights and citizenship-related conventions and documents and has tried to comply with those standards while erecting its core statehood legislation, implementation of the former risks remaining unsupervised by the competent specialised international organisations, bodies and agencies.

In sum, while it is unquestionable that Kosovo has set up the basis of a modern citizenship regime, the process of further consolidation of the Kosovar autonomous citizenship regime still depends largely on the overall political and legal developments surrounding Kosovo’s international status. The most pressing issue for the moment remains political and legal integration of the Serb community in northern Kosovo as well as the establishment of good neighbourly relations with Serbia. In this context, the role of the European Union remains crucial in that it is obvious that both Serbia and Kosovo have adopted a clear EU integration agenda. First and foremost, it is essential that the EU has a clear position toward Kosovo as a state and its new citizenship regime in order for the new Kosovar institutions to gain more legitimacy, above all, in the eyes of Kosovo citizens, as well as internationally.

