

# Framing the Concept of Citizenship in a Contested Nation-State: Reflections on Kosovo

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*Since the inception of the Republic of Kosovo in February 2008, the contouring of its statehood has been predominantly affected by four interwoven factors: the partial recognition of its sovereignty, perplexed inter-ethnic relations, profound international interference and parallel jurisdictions with the Republic of Serbia. The efforts put forth to conceptualise the meaning and scope of Kosovo citizenship in such a sensitive socio-political environment have proved particularly challenging. This paper aims to provide an analytical framework for determining essential elements of Kosovo citizenship, with particular emphasis on its practical and ideological implications for the multicultural, yet ethnically divided society. This is done through an assessment of the key nation-constituting legal norms as well as the deep-rooted ethnic tensions sparked by conflicting perceptions of Kosovo's statehood by the majority (Kosovo Albanian) and minority (Kosovo Serbian) population. By formal definition, Kosovo is an indivisible state of all citizens, however, polarised majority-minority interests have impinged the constitutionally guaranteed civic spirit of the entity, thereby threatening not only national, but also wider international security and integrity. With the purpose of determining and delineating labyrinthine intersections of a contested nation-state, citizenship, 'communities' and security, the paper offers a comprehensive theoretical analysis of the respective quadrilateral nexus.*

*Keywords: Kosovo, contested nation-state, citizenship, communities, security*

## 1. Prologue

The Republic of Kosovo was the last entity to arise from the disintegrated Yugoslav federation, thus closing the 27-year-long chapter of a thorny and convoluted process of the dissolution of the predecessor state.<sup>1</sup> Its path to independence has been characterised by three distinctive features which the creation of the Kosovo nation-state have made particularly challenging and strenuous. First, although embedded in the geospatial timeline and chronology of events unmistakably related to the dissolution of the Socialist Federal Republic

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<sup>1</sup> Earlier referendums and declarations of independence, which resulted in subsequent waves of the post-Yugoslav nation-states genesis, included those of Slovenia (1991), Croatia (1991), Macedonia (1991), Bosnia and Herzegovina (1992), Montenegro (2006) and Serbia (2006). See Deklaracija ob neodvisnosti, *Uradni list Republike Slovenije*, no. 1/1991, 25.6.1991; Deklaracija o proglašenju suverene i samostalne Republike Hrvatske, *Narodne novine*, no. 31/1991, 25.6.1991; Сашо Георгиевски, Сашо Додевски, *Декларација на Собранието на Република Македонија по повод референдумското изјаснување, 17. септември 1991 – Документи за Република Македонија 1990-2005* (Скопје: Универзитет “Св. Кирил и Методиј”, Правен факултет “Јустинијан Први”, 2008), 166-168; Deklaracija o državnoj suverenosti i nedjeljivosti Republike Bosne i Hercegovine, *Rezultati republičkog referenduma za utvrđivanje statusa Bosne i Hercegovine koji je održan 29. februara i 1. marta 1992. godine*, *Službeni list Republike Bosne i Hercegovine*, no. 7/1992, 27.3.1992; Deklaracija nezavisne Republike Crne Gore, *Službeni list Republike Crne Gore*, no. 36/2006, 5.6.2006; Odluka o obavezama državnih organa Republike Srbije u ostvarivanju nadležnosti Srbije kao sledbenika državne zajednice Srbija i Crna Gora, *Službeni glasnik Republike Srbije*, no. 48/2006, 5.6.2006.

of Yugoslavia (hereinafter: SFRY), Kosovo's interconnection with the respective preceding state was indirect in its nature for the reason that the fate of Kosovo has always been primarily dependant on the Republic of Serbia as one of the Yugoslav constituent and, later on, successor entities. As a consequence, when the SFRY collapsed, Kosovo followed Serbia's statehood trajectories, having constituted first a territorial unit within the Federal Republic of Yugoslavia (1992 – 2003)<sup>2</sup>, then, of the State Union of Serbia and Montenegro (2003 – 2006)<sup>3</sup> and finally, of the Republic of Serbia (2006 – 2008).<sup>4</sup> Its centuries-long and deep-rooted ties with Serbia have created an immense level of connectives not inherent to the interrelationship between the SFRY and its six former constitutive republics. Hence, Kosovo's decision to secede from Serbia was both greeted with an outright disapproval by the Serbian regime and disputed by a substantial part of the international community, severely affecting the establishment of a fully functional nation-state. The second specificity is related to the character of territorial and political arrangements of the predecessor state(s) in which Kosovo had the status of an autonomous province with no explicit right to secede.<sup>5</sup> Along these lines, the preamble of the Constitution of the Republic of Serbia (2006) specifies that "the Province of Kosovo and Metohija is an integral part of the territory of Serbia" with "a substantial autonomy within the sovereign state of Serbia" and analogous "constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations".<sup>6</sup> Although Kosovo Albanians were for the most part excluded from the referendum on the adoption of the respective Constitution and in the meantime, *de facto* circumstances have significantly altered,<sup>7</sup> the act has remained unchanged to date and might be seen as a symbolic reflection of the official Serbian stance toward Kosovo's independence. Finally, the third aggravating factor in exercising Kosovo's sovereign and fully independent governmental control is limited international recognition.<sup>8</sup> Although the international law doctrine is ambivalent about the character of recognition of states (constitutive vs.

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<sup>2</sup> Ustav Savezne Republike Jugoslavije, *Službeni list Savezne Republike Jugoslavije*, no. 1/1992, 5.1.1992.

<sup>3</sup> Ustavna povelja državne zajednice Srbija i Crna Gora, *Službeni list Srbije i Crne Gore*, no. 1/2003, 4.2.2003.

<sup>4</sup> Ustav Republike Srbije, *Službeni glasnik Republike Srbije*, no. 98/2006, 10.11.2006.

<sup>5</sup> According to Basic Principle I of the last Constitution of the SFRY (1974), the right to self-determination, including the right of secession, was granted to constitutive peoples only (hr. *narodi*; and subordinately, to republics as their sociopolitical units) and not to nationalities/national minorities (hr. *narodnosti*; and their sociopolitical units, if any, such as autonomous provinces). Ustav Socijalističke Federativne Republike Jugoslavije, *Službeni list Socijalističke Federativne Republike Jugoslavije*, no. 9/1974, 21.2.1974. Cf. Milojica Štović, "Samoopredeljenje naroda i raspad Jugoslavije," *Kultura polisa* 8(2011): 46, 50, 52.

<sup>6</sup> Ustav Republike Srbije, loc. cit. (note 4).

<sup>7</sup> *Ustav Republike Srbije – Nedostaci i potreba za reformom* (Beograd: Komitet pravnika za ljudska prava – YUCOM, 2013), 13-14, 16.

<sup>8</sup> As of April 14, 2015, 110 countries have recognised Kosovo, including 23 European Union member states. Those which have refrained from recognising it include, *inter alia*, China, Cyprus, Greece, India, Romania, Russia, Slovakia and Spain. "Countries that have recognized the Republic of Kosovo", Ministry of Foreign Affairs of the Republic of Kosovo, accessed April 14, 2015, <http://www.mfa-ks.net/?page=2,33>; "Who Recognized Kosova as an Independent State", Kosovo Thanks You, accessed April 14, 2015, <http://www.kosovothanksyou.com/>. More on reasons behind the decision of particular states not to recognise Kosovo see Liridon Lika, "La consolidation internationale de l'indépendance du Kosovo: quelle est la viabilité de ce 'nouvel état'?", *Revue de la Faculté de droit de l'Université de Liège* 4, 2012, pp. 494-497.

declaratory approach),<sup>9</sup> the prevailing standpoint treats it as a declaratory act of political significance,<sup>10</sup> with oftentimes far-reaching legal and practical implications.<sup>11</sup>

By determining the scope and limits of sovereignty in today's Kosovo as well as by analysing complex dynamics of interethnic relations as a *primum mobile* of Kosovo's statehood contestation, this paper focuses on a peculiar facet of Kosovo's statehood: citizenship: its meaning, genesis, boundaries and materialisation in everyday life. Since the inception of the Republic of Kosovo in February 2008, the contouring of its statehood has been predominantly affected by four interwoven factors: the partial recognition of its sovereignty, perplexed inter-ethnic relations, profound international interference and parallel jurisdictions with the Republic of Serbia. The efforts put forth to conceptualise the meaning and scope of Kosovo citizenship in such a sensitive socio-political environment have proved particularly challenging. This research aims to provide an analytical framework for determining essential elements of Kosovo citizenship, with particular emphasis on its practical and ideological implications for the multicultural, yet ethnically divided society. This is done through an assessment of the key nation-constituting legal norms as well as the deep-rooted ethnic tensions sparked by conflicting perceptions of Kosovo's statehood by the majority (Kosovo Albanian) and minority (Kosovo Serbian) population. By formal definition, Kosovo is an indivisible state of all citizens, however, polarised majority-minority interests have impinged the constitutionally guaranteed civic spirit of the entity, thereby threatening not only national, but also wider international security and integrity. With the purpose of determining and delineating labyrinthine intersections of a contested nation-state, citizenship, 'communities' and security, the paper offers a comprehensive theoretical analysis of the respective quadrilateral nexus.

Structurally, every factor employed in the contouring of Kosovo's statehood is portrayed in a separate chapter with the aim of providing a thorough factual background about societal specificities of paramount importance for the defining of Kosovo citizenship. The subsequent chapter summarises the essence of Kosovo citizenship as construed by the Kosovo's key normative package on citizenship encompassing the Unilateral Declaration of Independence, the Constitution and the Law on Citizenship.

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<sup>9</sup> Vladimir-Đuro Degan, *Međunarodno pravo*, Zagreb: Školska knjiga, 2011, pp. 261-263; Matthew Craven, "Statehood, self-determination, and recognition," in *International Law, Third Edition*, Malcom D. Evans (Ed.) New York: Oxford University Press Inc., 2010, p. 243; Conway W. Henderson, *Understanding International Law*, Malden/Oxford/Chichester: Wiley-Blackwell, 2010, p. 28.

<sup>10</sup> James Crawford, *Brownlie's Principles of International Law*, Eighth Edition, Oxford: Oxford University Press, 2012, p. 145; Juraj Andrassy et al., *Međunarodno pravo 1*, Zagreb: Školska knjiga, 2010, p. 94; Antonio Cassese, *International Law*, Second ed., New York: Oxford University Press, 2005, pp. 73-74.

<sup>11</sup> As Craven explains, recognition implies respect for the sovereignty and territorial integrity of a recognized state as well as for its laws and legal transactions undertaken within its jurisdiction. Craven, "Statehood, self-determination, and recognition," op. cit. (note 9), 243. For a more elaborate list of advantages of recognition see Sean D. Murphy, *Principles of International Law, Second Edition*, St. Paul: Thomson/West, 2012, p. 34; Robert Jennings and Arthur Watts (Eds.), *Oppenheim's International Law*, New York: Oxford University Press, 2008, pp. 158-160.

## 2. Delimitating the Scope of Kosovo's Sovereignty through the Internal Legal Framework

Legally, the Republic of Kosovo came into being on 17 February 2008, by a unilateral Declaration of Independence proclaimed unanimously at an extraordinary meeting of the Kosovo Assembly.<sup>12</sup> Although of a non-binding nature, the document is of prime importance in the catalogue of nation-constituting acts and as such, a pillar of Kosovo's independence which sets nomotechnically accurately-defined acknowledgments, commitments and principles comprising the essence of statehood, many of which have direct effect on citizenship and minority issues. Being aware of the sensitivity of the Declaration, the legislator opted for genuinely egalitarian, conciliatory and tactful wording. The points of importance for our study are embodied already in the underlying philosophy of the preamble which accentuates the pledge to build a society that honours human dignity and affirms the pride and purpose of its citizens in a spirit of reconciliation and forgiveness; and to protect, promote and honour the diversity of Kosovo's people. Additionally, it is noted that in a decade preceding the Declaration (*i.e.* since placing Kosovo under United Nations interim administration in 1999), Kosovo developed functional, multi-ethnic and democratic institutions which freely express the will of Kosovo's citizens.<sup>13</sup> In point 2 of the Declaration, Kosovo is defined as "a democratic, secular and multi-ethnic republic guided by the principles of non-discrimination and equal protection under the law" which aims 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".<sup>14</sup> Point 3 regulates the responsibility to implement in full obligations deriving from the *Ahtisaari Plan*, "particularly those that protect and promote the rights of communities and their members".<sup>15</sup> As expected, the Declaration has drawn mixed reactions within the international community with a larger share of countries backing the right to self-determination at the expense of the Serbian territorial integrity. The reluctance of states to recognise Kosovo was principally excused by the fear that its independence would serve as a dangerous precedent powerful enough to initiate a domino effect in other contested territories striving for their own independence. To preclude or lessen such concerns, the observation that Kosovo is "a special case arising from Yugoslavia's non-consensual breakup and not a precedent for any other situation" was added to the Declaration of Independence.<sup>16</sup>

The lack of consensus on compatibility of the Declaration with the existing international legal order and the delicacy of political atmosphere surrounding the proclamation of independence, especially Serbia's vehement opposition, prompted the UN General Assembly to request for an Advisory Opinion of the International Court of Justice on whether the Kosovo's unilateral Declaration of Independence is in accordance with international law.<sup>17</sup> On 22 July 2010, the International Court of Justice concluded that "the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework. Consequently the adoption of

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<sup>12</sup> "Kosovo Declaration of Independence", Republic of Kosovo – Assembly, accessed 15 April 2015, <http://www.assembly-kosova.org/?cid=2,128,1635> .

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> "Request for an Advisory Opinion of the International Court of Justice on whether the Unilateral Declaration of Independence of Kosovo is in Accordance with International Law", Resolution A/RES/63/3 (A/63/L.2) adopted by the General Assembly at its 22<sup>nd</sup> plenary meeting on 8 October 2008.

that declaration did not violate any applicable rule of international law.”<sup>18</sup> The value of the Advisory Opinion for the construction of Kosovo’s statehood was of a limited nature as it only addressed the legacy of the Declaration, deliberately avoiding to take into consideration its consequences, *i.e.*, whether or not a new state was actually born as a result of the respective legal act. Such a development in the evolution of Kosovo’s statehood raises several important questions: First, what was the status of Kosovo in relation to Serbia, on one hand, and to the international community, on the other hand, during the period between the declaration of independence and the adoption of the ICJ Advisory Opinion? Second, how did the controversy about the legal subjectivity of Kosovo impact the citizenship status of its residents during the given period? Third, taking into consideration a severely polarised majority-minority interrelationship between Kosovo Albanians and Kosovo Serbs, did Kosovo have sufficient preconditions for putting into practice all the rights, duties and principles enshrined in the Declaration? And fourth, what was the effect of the Declaration on the security situation in Kosovo and the stability of the region at large?

Legal prerequisites for effective functioning of the newly declared state were established soon after the adoption of the Declaration. Nationality law was thereby given the highest priority. Namely, just three days following the proclamation of independence, the Kosovo Assembly promulgated the Law on Citizenship of the Republic of Kosova, thus prescribing “the rules and procedures for the acquisition and loss of the citizenship of the Republic of Kosova” and regulating “other issues related to the citizenship of the Republic of Kosova” (Article 1).<sup>19</sup> By definition of the respective Law, citizenship is perceived exclusively as a legal bond between a state and a person, which establishes mutual rights and obligations (Article 2). Kosovo citizenship can be chiefly acquired in four conventional ways: by birth, by adoption, by naturalisation and on the basis of international treaties (Article 5). In addition, the Law has also introduced two peculiar modes of the acquisition of citizenship: first, on the basis of habitual residence and second, in accordance with the Comprehensive Proposal for the Republic of Kosova Status Settlement. As for the first modality, in line with Article 31(1), “every person who is registered as a habitual resident of the Republic of Kosova pursuant to UNMIK Regulation No. 2000/13 on the Central Civil Registry shall be considered a citizen of the Republic of Kosova and shall be registered as such in the register of citizens”.<sup>20</sup> The second criterion is a post-succession transitory provision, stipulated by Article 32, which in its paragraph 1 prescribes that “all persons who on 1 January 1998 were citizens of the Federal Republic of Yugoslavia and on that day were habitually residing in the Republic of Kosova shall be citizens of the Republic of Kosova and shall be registered as such in the register of citizens irrespective of their current residence or citizenship”.<sup>21</sup> Paragraph 2 of the same Article expands the circle of persons who are eligible to acquire Kosovo citizenship to direct descendants of the persons referred to in paragraph 1. In order to boost the contingency of potential Kosovo citizens, the Law foresees the simplified procedure for the acquisition of citizenship by Kosovars with lawful residence outside Kosovo through facilitated naturalisation. Namely, a member of the Kosovo’s diaspora can obtain citizenship by fulfilling one requirement only (out of six needed for regular naturalisation) – that “he/she declares and with his/her conduct proves that he/she accepts the constitutional

<sup>18</sup> “Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo”, Advisory Opinion, I.C.J. Reports 2010, p. 403.

<sup>19</sup> Law Nr. 03/L-034 on Citizenship of Kosova, *Official Gazette of the Republic of Kosova*, no. 26/2008, 2.6.2008. The Law was amended in 2011 (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 Kosova*, no. 26/2011, 25.11.2011) and in 2013, a new, consolidated version of the Law was passed (Law No 04/L-215 on Citizenship of Kosovo, *Official Gazette of the Republic of Kosova*, no. 33/2013, 2.9.2013).

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

and legal order of the Republic of Kosova and that he/she is integrated into the society of the Republic of Kosova through social, cultural, scientific, economic or professional links” (Article 16.1).<sup>22</sup> The norm concerns persons born in Kosovo and their descendants within one generation likewise, but does not specify their ethnicity; indeed, the entire Law is contoured in a way to create a de-ethnicised citizenship model.<sup>23</sup> Finally, the Law facilitates establishment of linkages between Kosovo and its diaspora as well as between Kosovo and Kosovo Serbs through the institution of dual citizenship. Kosovo’s attitude towards dual or multiple citizenships is very liberal, thus, the acquisition and holding of another citizenship(s) does not cause the loss of the citizenship of Kosovo (Article 3).

*Primus inter pares* in a normative package regulating citizenship and inter-ethnic issues – the Constitution of the Republic of Kosovo entered into force on 15 June 2008.<sup>24</sup> It has introduced three cardinal features of the newly proclaimed state, aiming at long-term peace, security and stability in the country and its neighbouring regions. First, Kosovo is defined as “an independent, sovereign, democratic, unique and indivisible state” (Article 1.1),<sup>25</sup> with special emphasis on its sovereignty and territorial integrity which are construed as “intact, inalienable, indivisible and protected by all means provided in this Constitution and the law” (Article 2.2).<sup>26</sup> The idea behind such a construction referred to preservation of the unity of the state territory, as an opposing view to the attitude much potentiated among Kosovo Serbs who favoured division of the area along ethnic lines (Kosovo Serbian North-Kosovo Albanian South). Second, Kosovo is established as a civic state – “a state of its citizens” (Article 1.2), in which sovereignty “stems from the people, belongs to the people and is exercised in compliance with the Constitution through elected representatives, referendum and other forms in compliance with the provisions of this Constitution” (Article 2.1).<sup>27</sup> The term “people” implies “Albanian and other communities” (Article 3.1) comprising Kosovo’s multi-ethnic society.<sup>28</sup> Tolerance and balance between Kosovo Albanians and Kosovo Serbs (as well as between other “communities”) are to be achieved through exercise of public authorities “based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all communities and their members” (Article 3.2).<sup>29</sup> And third, in order to neutralise and eliminate concerns that in the future, Kosovo could possibly expand territorial claims on nearby areas predominantly inhabited by ethnic Albanians (parts of Macedonia, Montenegro and Serbia) and/or to unify with Albania, the

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<sup>22</sup> *Ibid.*

<sup>23</sup> Gëzim Krasniqi, *Country Report on Citizenship Law: Kosovo*, San Domenico di Fiesole: European University Institute, 2015, pp. 10 & 13.

<sup>24</sup> Constitution of the Republic of Kosovo of 9 April 2008, *Official Gazette of the Republic of Kosovo*, no. 31/2008.

<sup>25</sup> Such a portrayal is built on the preamble’s definition of Kosovo as a “free, democratic and peace-loving country” which is “a homeland to all of its citizens” and “a state of free citizens” aiming to guarantee “the rights of every citizen, civil freedoms and equality of all citizens before the law”. *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> The vision of multi-ethnic Kosovo has been embedded in a number of constitutional provisions designed to promote and reflect the multi-ethnic character of the society. Apart from Art. 3 on equality before the law, the other include Art. 6.1 on state symbols, Art. 59.1(9) on rights of communities and their members, Art. 108.2 on the Kosovo Judicial Council, Art. 109.4 on the State Prosecutor, Art. 110.1 on the Kosovo Prosecutorial Council and Art. 129.2 on the Kosovo Intelligence Agency. *Ibid.*

<sup>29</sup> *Ibid.*

legislator specified that Kosovo will have “no territorial claims against, and seek no union with, any State or part of any State” (Article 1.3).<sup>30</sup>

The Kosovo Constitution explicitly grants the right to citizenship (Articles 14<sup>31</sup> and 155.1<sup>32</sup>) and sets it as a precondition for exercise of a wide range of other constitutionally guaranteed rights and freedoms, *e.g.* the freedom of movement (Article 35), passive and active voting rights (Article 45.1), the right to candidacy for the Assembly (Article 71.1), the right to be elected President of the Republic of Kosovo (Article 85 and 86.3), the right to active participation in the decision-making process of municipal bodies (Article 124.1), the right to be a member of the Kosovo Security Force (Article 126.4) and the right to be elected as Ombudsperson (Article 134.2). Additionally, the notion of citizenship acts as an integral element of the provisions regulating jurisdiction over citizens abroad (Article 15)<sup>33</sup>, the promotion of welfare by fostering sustainable economic development (Article 119.4) as well as the temporary composition of the Constitutional Court (Article 152.4). Aside from conferring the right to acquire citizenship to persons who were legal residents in Kosovo at the time of the adoption of the Constitution (art. 155.1), the act expands the right also to “all citizens of the former Federal Republic of Yugoslavia habitually residing in Kosovo on 1 January 1998 and their direct descendants to Republic of Kosovo citizenship regardless of their current residence and of any other citizenship they may hold” (Article 155.2).<sup>34</sup>

A number of other constitutional provisions compose a legal framework for the promotion of inter-ethnic equality and non-discrimination. For example, both Albanian and Serbian are declared official languages (Article 5.1), alongside Turkish, Bosnian and Roma languages, which “have the status of official languages at the municipal level or will be in official use at all levels as provided by law” (Article 5.2).<sup>35</sup> Furthermore, the Constitution guarantees a large range of rights and freedoms (enumerated in Chapter II – Fundamental Rights and Freedoms) as well as regulates the application of ratified international treaties on human rights, which are legally binding norms with supremacy over domestic law (Article 19). Separate Chapter III stipulates the rights of communities and their members and correlated responsibilities of the State. Self-identification with a certain community is the crucial point of departure and a basis for “the right to freely express, foster and develop (...) identity and community attributes” (Article 57.2 and 3).<sup>36</sup> The notion of identity thereby encompasses religion, language, traditions and culture (Article 59.1.1).

Despite the exceptional efforts of Kosovo Albanians to establish a fully functional sovereign state through creation of a solid legal framework, Kosovo remains deeply polarised and unstable, both externally and internally. The external factor in diminishing the prospects for actualisation of Kosovo’s statehood is the discord stance of the world community towards the recognition of independence. Internally, Kosovo struggles with unprecedented levels of corruption, organised crime, antagonistic inter-party relations,

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

<sup>31</sup> “The acquisition and termination of the right of citizenship of the Republic of Kosovo are provided by law”. *Ibid.*

<sup>32</sup> “All legal residents of the Republic of Kosovo as of the date of the adoption of this Constitution have the right to citizenship of the Republic of Kosovo”. *Ibid.*

<sup>33</sup> According to international law doctrine, every state exercises its jurisdiction not only over its citizens within its own territory but also over those residing or travelling abroad, *i.e.* all the citizens, in or outside the national boundaries, are set under the state's personal authority. See Jennings and Watts, eds., *Oppenheim's International Law*, op. cit. (note 11), 462; Andrassy et al., *Međunarodno pravo 1*, op. cit. (note 10), 353; Degan, *Međunarodno pravo*, op. cit. (note 9), 466.

<sup>34</sup> Constitution of the Republic of Kosovo, loc. cit. (note 24).

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

ruined economy and severely impaired inter-ethnic relations.<sup>37</sup> All these factors impede both the reinforcement of Kosovo's statehood and the formation of the body of its citizens.<sup>38</sup>

### 3. Perplexity of Inter-Ethnic Relations in Kosovo

As of 31 December 2013, the total residential population in Kosovo was 1,820,631 inhabitants.<sup>39</sup> The latest census, conducted in 2011, discloses an ethnically homogenous character of the Kosovo society which is comprised of 91% of Kosovo Albanians, 3,4% of Kosovo Serbs and 5,6% of others.<sup>40</sup> Such a proportion is a feature pertinent to the 21<sup>st</sup> century, as earlier statistics (1948 – 1981) illustrate considerably different ethnic maps with higher shares of Serbs and others in the total population. Namely, in 1948, the ethnic distribution of Kosovo Albanians, Kosovo Serbs and others was 68%, 24,1% and 7,9%, respectively; in 1953, it gradually changed to 64,3%, 24,1% and 11,6%; in 1961, it was 67,1%, 23,5% and 9,4%; in 1971, a more prominent decrease in the number of Kosovo Serbs and increase in number of Kosovo Albanians ensued, leading to the following proportions: 73,7%, 18,4% and 8%; and finally, in 1981, the respective trend progressed, so the numbers were set at 72,4%, 13,2% and 9,4%.<sup>41</sup> The succeeding thirty years have witnessed a drastic transformation of ethnic landscape which remodelled the Kosovo society from a multi- to a mono-ethnic one. Thus far, such a transfiguration has neither neutralised nor eliminated the centuries-long antagonisms between Kosovo Albanians and Kosovo Serbs, but further widened their inter-ethnic tensions. Kosovo Serbs have expanded efforts to preserve their growingly endangered identity while Kosovo Albanians have put a focus on creation of a state free of the tenacious Serbian influence regularly channelled through Kosovo Serbs.

A number of facts framing the discourses on the origins of Kosovo Albanians and Kosovo Serbs as well as on the earliest patterns of their settlement in the Kosovo area remains unclear. In brief, Serbs are Slavs for whom it is assumed that they first arrived to the north-western side of Kosovo in the early 7<sup>th</sup> century. The two prevalent theories interpreting the origins of the Albanians classify them as either Illyrians or Thracians, both of which inhabited the Balkans (Illyrians the western and Thracians the eastern part) during pre-Roman and Roman times. Albanians were first introduced in the historical narrative in the early 11<sup>th</sup> century. As far as other major ethnic specificities are concerned, Kosovo Albanians speak Albanian which is a separate branch of the Indo-European language (*i.e.* a branch on its own), while Kosovo Serbs speak Serbian, a Slavic language. Moreover, Kosovo Albanians are predominantly (Sunni) Muslims while Kosovo Serbs declare themselves Orthodox Christians. Although sharing the same geographic space for centuries, they have strived to preserve very distinct and strong ethnic identities.<sup>42</sup> Such a unique evolution of the Kosovo society can be well depicted by using Hondius' brilliant portrayal of the Yugoslav community of nations

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<sup>37</sup> Ilir Deda, *Kosovo After the Brussels Agreement: From Status Quo to an Internally Ethnically Divided State*, Priština: Konrad Adenauer Stiftung, 2013, p. 6.

<sup>38</sup> Krasniqi, *Country Report on Citizenship Law: Kosovo*, op. cit. (note 23), 1.

<sup>39</sup> *Statistical Yearbook of the Republic of Kosovo 2015*, Prishtina: Kosovo Agency of Statistics, 2015, p. 17.

<sup>40</sup> However, these results should be cautiously taken into consideration because most Kosovo Serbs boycotted the census. Given the fact that they were also excluded from the 2011 census of the Republic of Serbia, many felt betrayed by the only country they considered a homeland, so 21,000 of them signed a petition requesting acquisition of Russian Federation citizenship. As it was expected, their demand was rejected by the Russian authorities because they did not meet naturalisation requirements. Krasniqi, *Country Report on Citizenship Law: Kosovo*, op. cit. (note 23), 21.

<sup>41</sup> *Statistical Yearbook of the Republic of Kosovo 2015*, op. cit. (note 39), 35.

<sup>42</sup> See more Noel Malcom, *Kosovo: A Short History*, London: Pan Books, 2002, pp. 22-40.

which he described in his 1968 study as “an interesting combination of parallels and contrasts” and “an experimental theatre in which different manifestations are performed on different stages in one and the same hall.”<sup>43</sup>

Throughout history, the ethnic specificities of Kosovo residents have been shaped by various regimes ruling the territory. As anticipated, respective changes in the statehood led to reconfiguration of their citizenship statuses as well. For the longest period of time, spanning more than five centuries (1455-1912), Kosovo was under the Ottoman rule, during which it was first subsumed under the so-called *millet* system that regulated the link between the state and different communities (classified in two categories: Muslims and non-Muslims) and later on under the Ottoman Edicts, Nationality Law and Constitution which granted Ottoman citizenship to all inhabitants of the Empire. In the period between the Balkan Wars (1912-1913) and the formation of the Kingdom of Serbs, Croats and Slovenes (1918), Kosovo was partitioned between the Kingdom of Montenegro and the Kingdom of Serbia with a *de facto* stateless population because when the First World War started and Kosovo was occupied by the Austro-Hungarian Empire, Montenegrin and Serbian laws had virtually no effect. After 1918, Kosovars were entitled to various citizenship rights and in 1928, they officially became citizens of the Kingdom of Serbs, Croats and Slovenes following the enactment of its Citizenship Act. In 1929, the Kingdom was renamed into the Kingdom of Yugoslavia. During the Second World War, most of Kosovo was occupied by Italy (and Germany) and merged with previously occupied Albania; hence, Kosovars were granted some citizenship rights of the Kingdom of Albania. When the war ended in 1945, Kosovo was first incorporated into the Federal People’s Republic of Yugoslavia and then, became part of a number of other states and their citizenship schemes: the Socialist Federal Republic of Yugoslavia (1963), the Federal Republic of Yugoslavia (1992), the State Union of Serbia and Montenegro (2003) and the Republic of Serbia (2006).<sup>44</sup>

As Ahtisaari pointed out in his 2007 report on Kosovo’s future status, “a history of enmity and mistrust has long antagonised the relationship between Kosovo Albanians and Serbs”.<sup>45</sup> The animosity culminated in the 1990s during the Milošević regime which abolished Kosovo’s autonomy and started oppressing the Albanian majority through their systematic discrimination and methodical elimination from public life. Oppression led to aggression and the ensuing large-scale and brutal armed conflict resulted in massive displacement and loss of human lives. That was the moment when the international community opted to intervene in order to mitigate and manage the conflict, first through the North Atlantic Treaty Organization (NATO) and subsequently, through the United Nations, as outlined in the following chapter.<sup>46</sup> The international presence on the Kosovo territory did alleviate tensions and stop military activities, but the strict division of the Kosovo population along ethnic lines has persisted to date.

Unyielding delineations of a heterogeneous society along ethnic lines is an ingrained attribute of Kosovo’s actuality, much contrasted with the official vision of the Kosovo nation-state construed by the Constitution, as a conglomerate of equal peoples in which no strict division between the principal nation and ‘the others’

<sup>43</sup> Frederik Willem Hondius, *The Yugoslav Community of Nations*, The Hague/Paris: Mouton, 1968, p. 7.

<sup>44</sup> See more Krasniqi, *Country Report on Citizenship Law: Kosovo*, op. cit. (note 23), pp. 3-7; Gëzim Krasniqi, *Equal citizens, uneven ‘communities: differentiated and hierarchical citizenship in Kosovo*, CITSEE Working Paper Series 2013/27, 2013, p. 6; Gëzim Krasniqi, *The challenge of building an independent citizenship regime in a partially recognised state: the case of Kosovo*, CITSEE Working Paper Series 2010/04, 2010 pp. 4-9; Malcom, *Kosovo*, op. cit. (note 42), pp. 264-356.

<sup>45</sup> *Report of the Special Envoy of the Secretary-General on Kosovo’s future status*, S/2007/168, 26 March 2007.

<sup>46</sup> *Ibid.* See more Paul Latawski & Martin A. Smith, *The Kosovo crisis and the evolution of post-Cold War European security*, Manchester/New York: Manchester University Press, 2003, pp. 11-38; Andru E. Wall (Ed.), *Legal and Ethical Lessons of NATO’s Kosovo Campaign*, Newport: Naval War College, 2002.

is drawn. With the aim of eliminating the negative effects of explicit partition of the population on majority and minority groups, the legislators have introduced the neutral and politically correct term of ‘communities’ for all ethnic collectivities residing in Kosovo. Pursuant to Article 57.1 of the Constitution, they are defined as “inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo”.<sup>47</sup> Preservation of their identity has become the imperative of the multi-ethnic polity, achieved through specific rights set forth in the Constitution and safeguarded by positive obligations of the state. Alongside the unalienable right to self-identification with a particular community, every community member has “the right to freely express, foster and develop her/his identity and community attributes” (Article 57.3), in compliance with internal laws and the rights of other people (Article 57.4).<sup>48</sup> Specific provisions aiming at preservation of the essential elements of communities’ identities encompass a wide array of rights, for instance the right to express, maintain and develop their culture (Article 59.1), to receive public education in one of the official languages of their choice and in their own language (Article 59.2 and 59.3), to establish and manage their own private educational and training establishments (Article 59.4), to use their language and alphabet freely in private and in public (Article 59.5 and 59.6), to use and display community symbols (Article 59.7), to have personal names registered in their original form (Article 59.8), to have guaranteed access to public broadcast media (Article 59.10 and 59.11), to enjoy unhindered contacts among themselves and co-ethnics in other countries likewise (Article 59.12), to establish associations for culture, art, science and education (Article 59.14), to equitable representation in employment in public bodies and publicly owned enterprises at all levels (Article 61), to guaranteed seats in the Assembly (Article 64.2) and consequently, in the (permanent) Committee on Rights and Interests of Communities (Article 78), to positions in Ministries and other executive bodies (Article 96), to be appointed a judge of the Supreme or any other court (Article 103) or a member of the Kosovo Judicial Council (Article 108), of the Office of the Ombudsperson (Article 133) and of the Central Election Commission (Article 139), etc.<sup>49</sup> These rights can be exercised individually or collectively, but in essence, none of them is truly individual because they are granted to a person only as long as he/she is a member of a community.<sup>50</sup>

The state’s measures aimed at preserving, protecting and developing the distinctive identities of Kosovo’s communities include support of cultural initiatives and related financial assistance (Article 58.1), promotion of a spirit of tolerance, dialogue and reconciliation among communities in line with the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages (Article 58.2), protection from discrimination, hostility or violence based on a specific national, ethnic, cultural, linguistic or religious identity (Article 58.3), promotion of full and effective equality among members of communities (Article 58.4), preservation of the cultural and religious heritage of all communities as an integral part of the heritage of Kosovo (Article 58.5), taking effective actions against those undermining the enjoyment of the rights of members of communities or supporting assimilation (Article 58.6), and the establishment of the Consultative Council for Communities, a platform for linking ethnic groups and enabling their dialogue (Article 60).<sup>51</sup> Moreover, the Committee on Rights

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<sup>47</sup> Constitution of the Republic of Kosovo, loc. cit. (note 24).

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> Most widely-used phrases which confirm the collective element in the constitutional provisions stipulating the rights of members of communities include “*inhabitants belonging to (...) group*” (Article 57.1), “*every member of a community*” (Article 57.2), “*members of communities*” (Article 57. 3, 58.4, 58.6, 59), “*communities and their members*” (Article 58.1, 58.7, 61). *Ibid.*

<sup>51</sup> *Ibid.*

and Interests of Communities was established within the Assembly as a permanent body with considerably wide competencies such as overseeing enactment of laws, ensuring that community rights and interests are adequately addressed as well as proposing laws and other measures which concern communities (Art. 78). The laws implementing the rights of communities and their members are declared a legislation of vital interest which may not be submitted to a referendum (Art. 81).<sup>52</sup>

*De iure* societal decentralisation through the introduction of the concept of communities has had a limited effect on the *de facto* balance of power among Kosovo Albanians and Kosovo Serbs. Their deeply polarised perceptions of Kosovo's statehood and identity have to a large extent subverted the enthusiastically defined concept of egalitarianism.

A historic milestone which has initiated a new, progressive phase in the normalisation of relations between Belgrade and Priština, with positive effects on Kosovo Albanian and Kosovo Serbian relations as well as on the framing of Kosovo's statehood, is the Brussels Agreement of 19 April 2013.<sup>53</sup> Its fifteen points crystallise the modus of inclusion of the four northern Serb majority municipalities (Northern Mitrovica, Zvečan, Zubin Potok and Leposavić) into Kosovo's legal order by substantially retaining their independent position. Namely, it has brought to establishment of the Association/Community of Serb majority municipalities in Kosovo with competences not only in the areas of economic development, education, health, urban and rural planning but also regarding other potential issues which might be delegated by the central authorities. The integration of Northern Kosovo's institutions into Kosovo's legal framework is foreseen for police forces and other security structures as well as for judicial authorities.<sup>54</sup> Although Deda argues that the Agreement has transformed Kosovo into a 'bi-national unfinished state' which capacitates "the concept of mono-ethnic based solutions",<sup>55</sup> it is widely understood that the respective twist in the official Kosovo and Serbian political discourse has led to overall enhancement of Kosovo's statehood.<sup>56</sup> Formally, *de iure*, it has unified the country's territory and consolidated its governance while Kosovo Serbs have got considerable authorities aiming to secure a level of autonomy vital for preserving their identity. Yet, even after the conclusion of the Agreement, Kosovo has *de facto* remained gridlocked between three imbalanced realities. The largest share of countries treats it as an independent and sovereign state, but many others perceive it solely as an independent entity within Serbia. For Serbia, it is a part of itself and a separate territory governed by United Nations Security Council Resolution 1244.<sup>57</sup> Given the limited leeway of the

<sup>52</sup> *Ibid.* Although Kosovo's legal framework formally grants equal treatment to all communities and citizens, the accuracy of the *de facto* balance of the Kosovo population is clearly revealed in Krasniqi's categorisation of the Kosovo society distinguishing seven groups of citizens: "(1) Albanians – the core dominant community; (2) Serbs – the core non-dominant community; (3) Serbs from North Kosovo – the core of the 'core non-dominant' community; (4) Turks – the semi-peripheral community; (5) Gorani and Bosniaks – elusive peripheral communities; (6) Montenegrins and Croats – unrecognised communities; and (7) Roma, Egyptians and Ashkali – invisible communities". Krasniqi, *Equal citizens, uneven 'communities'*, op. cit. (note 44), p. 9.

<sup>53</sup> "The Agreement of Dialogue of Normalization", The Republic of Kosovo – The Office of the Prime Minister, accessed August 20, 2015, <http://www.kryeministri-ks.net/?page=2,253>. The dialogue between the Governments of Serbia and Kosovo was facilitated by the European Union and it comprised ten rounds of political talks. Ilir Deda, *Kosovo After the Brussels Agreement*, op. cit. (note 37), pp. 4-5.

<sup>54</sup> "The Agreement of Dialogue of Normalization", *Ibid.*

<sup>55</sup> Deda, *Kosovo After the Brussels Agreement*, op. cit. (note 37), p. 1.

<sup>56</sup> For example, Lika holds that the Agreement should be seen as an important step forward towards formal recognition of Kosovo's independence by Serbia, because already by signing the respective act, Belgrade recognised certain components of the newly construed state of Kosovo. Liridon Lika, "Un pas en avant vers la reconnaissance officielle de l'indépendance du Kosovo par la Serbie?," *Perspectives Internationales*, 8 June 2013.

<sup>57</sup> Deda, *Kosovo After the Brussels Agreement*, op. cit. (note 37), 1.

Agreement, Kosovo's potential to evolve into a fully functional sovereign state will primarily depend on Serbia's recognition of Kosovo's independence. For the time being, it is likely that the Agreement will act as a *status quo* maintainer and/or possibly, a peaceful partition facilitator.<sup>58</sup> The last Brussels Agreements Implementation State of Play, covering the period of October 2014 – March 2015, highlights three levels of progress in the Northern Kosovo municipalities since the signing of the Agreement: good, none and some. The major positive novelty refers to the establishment of Kosovo's unitary justice system in Northern Kosovo and the merger of Serb judges and prosecutors with Kosovo justice institutions following the intergovernmental meeting of February 2015. The respective meeting also gave impetus for drafting an implementation plan on the issue of civil protection, which has been moderately successful by now. The list of the areas in which no progress has been identified is, regrettably, the largest. Deficiencies have been pinpointed in relation to the dismantlement of Serbia's parallel structures in Kosovo, introduction of international dialling code for Kosovo, distribution of power, removal of barricades, confirmation of the Vehicle Insurance Agreement and specifying competences of the Association/Community of Serb majority municipalities.<sup>59</sup>

#### 4. International Interference in Kosovo

From the very beginning, the creation of the independent Kosovo state has been administered by various international bodies responsible for facilitating an inter-ethnic dialogue and eradicating tensions between Kosovo Albanians and Kosovo Serbs, as well as establishing democratic state structures and promoting peace and stability. Their arrival to Kosovo was initiated by a severe armed conflict between Kosovo Albanians and Serbs commenced in 1998. To end the immense atrocities, the United Nations Security Council adopted Resolution 1244 of 10 June 1999 on the establishment of the United Nations Mission in Kosovo (UNMIK), international civil and security presence which started administering Kosovo in complete separation from Serbia (at that time, the Federal Republic of Yugoslavia). In other words, Serbia lost its legislative, executive and judicial governing authorities over Kosovo (with the exception of Northern Kosovo municipalities), which has gradually turned into an irreversible process.<sup>60</sup> Although *de facto* Serbia no longer exercised power over Kosovo, Kosovo was *de lege* a part of the Federal Republic of Yugoslavia since its inhabitants held Yugoslav citizenship. Krasniqi indicates that such an imbalance generated two categories of people: those born before 1999 and having Yugoslav documents and those born after June 1999 and having no prospects of entering into the Yugoslav register of citizens, *i.e.* stateless persons.<sup>61</sup> In order to tackle the issue of statelessness, in 2000, the UNMIK established the Central Civil Registry of habitual residents of Kosovo<sup>62</sup> and the Regulation on Travel Documents for persons registered in the Central

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<sup>58</sup> *Ibid.*, 6.

<sup>59</sup> More on different levels of progress in the implementation of the Brussels Agreements see: *Brussels Agreements Implementation State of Play, 1 October 2014 – 20 March 2015*, Prishtina: Republic of Kosovo, Government, 2015, pp. 6-7. The respective document is a periodical report submitted to the European Union/European External Action Service by the Government of the Republic of Kosovo. Its purpose is to evaluate the progress achieved and challenges met within the implementation of agreements reached in the Brussels dialogue.

<sup>60</sup> *Report of the Special Envoy of the Secretary-General on Kosovo's future status*, loc. cit. (note 45).

<sup>61</sup> Krasniqi, *Country Report on Citizenship Law: Kosovo*, op. cit. (note 23), 8.

<sup>62</sup> *Regulation No. 2000/13 on the Central Civil Registry*, 17 March 2000, UNMIK/REG/2000/13. Pursuant to Section 3 of the Regulation, habitual residents of Kosovo encompassed: (a) persons born in Kosovo or who had at least one parent born in Kosovo; (b) persons who could prove that they had resided in Kosovo for at least a continuous period of five years; (c) such other persons who, in the opinion of the Civil Registrar, were forced to leave Kosovo and for that reason were unable to meet the residency requirement in paragraph (b); or (d) otherwise ineligible dependent children of persons registered pursuant to subparagraphs (a), (b) and/or (c), such children being

Civil Registry.<sup>63</sup> The purpose of the respective travel documents was to substitute passports, *i.e.* to facilitate the ability of persons in Kosovo to travel outside Kosovo, even though they were neither considered passports nor did they confer citizenship to their holders. As Krasniqi argues, such a system led to construction of a special form of ‘quasi-citizenship’, mostly exercised by Kosovo Albanians, while Kosovo Serbs opted for Yugoslav (and later on, Serbian) documents.<sup>64</sup>

One of the principal legal pillars in the construing of Kosovo’s statehood was the 2007 Comprehensive Proposal for the Kosovo Status Settlement (the so-called Ahtisaari’s plan),<sup>65</sup> a report on Kosovo’s future status prepared by the Special Envoy of the Secretary-General (Martti Ahtisaari) which set a legal and political basis for Kosovo’s Declaration of Independence.<sup>66</sup> The report upheld Kosovo’s independence as the only viable option for reconciliation of the diametrically opposed positions of Kosovo Albanians and Kosovo Serbs and called for international supervision of the territory. Among an array of measures defined to create viable, sustainable and stable Kosovo, there are also those aiming at promotion and protection of the rights of communities and their members as well as at protection of cultural and religious heritage in Kosovo (Annexes II and V to the Proposal). *Inter alia*, they promote equal use of Albanian and Serbian as official languages, adequate representation of communities in public life, specific representation mechanisms, enhanced municipal competencies for Kosovo Serb majority municipalities, etc. The Proposal also determines a framework for future involvement of the international community, both its civilian and military corpus, and it involved the International Civilian Representative, the European Security and Defence Policy Mission, a NATO-led military mission continuing the tasks of the Kosovo Force (KFOR) and the Organization for Security and Cooperation in Europe.<sup>67</sup>

Although not on the above list, the European Union has also been actively involved into the shaping of Kosovo’s statehood and citizenship policy, primarily through the European Union Rule of Law Mission in Kosovo (EULEX), the largest EU mission abroad, established in 2008.<sup>68</sup> The purpose of EULEX is to

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under the age of 18 years, or under the age of 23 years but proved to be in full-time attendance at a recognized educational institution. More on the Registry see Krasniqi, *ibid.*, 9; Gezim Krasnići, “Preklapanje nadležnosti, sporna teritorija, nerešen status države: Komplikovan slučaj državljanstva na Kosovu,” in *Državljan i državljanstvo posle Jugoslavije*, Džo Šo & Igor Štikš (Eds.), Beograd, Clio, 2012, p. 124.

<sup>63</sup> *Regulation No. 2000/18 on Travel Documents*, 29 March 2000, UNMIK/REG/2000/18.

<sup>64</sup> There were around 600,000 Travel Documents and 1,600,000 ID cards issued by the UNMIK between 2000 and 2008. The existence of parallel Kosovar and Serbian structures in Kosovo made it possible that even after the UNMIK had undertaken its mission in 1999, the Serbian authorities kept on issuing Serbian passports both to Kosovo Albanians and Kosovo Serbs. The number of such passports issued in the period from 1999 to 2007 is estimated at 200,000.. Krasniqi, *Country Report on Citizenship Law: Kos*, loc. cit. (note 62). More on the *sui generis* status of Kosovo created by United Nation’s Security Council Resolution 1244 and the subsequent UNMIK’s decisions as well as their impact on Kosovo’s citizenship regime see: Duško Dimitrijević, *Regulisanje državljanstva na prostoru bivše SFR Jugoslavije*, *Međunarodni problemi* 60, 2008, pp. 311-317.

<sup>65</sup> *Comprehensive Proposal for the Kosovo Status Settlement*, S/2007/168/Add.1, 26 March 2007.

<sup>66</sup> *Report of the Special Envoy of the Secretary-General on Kosovo’s future status*, loc. cit. (note 45); Krasniqi, *Country Report on Citizenship Law: Kosovo*, op. cit. (note 23), 2, note 4.

<sup>67</sup> *Report of the Special Envoy of the Secretary-General on Kosovo’s future status*, *ibid.*; *Comprehensive Proposal for the Kosovo Status Settlement*, loc. cit. (note 65).

<sup>68</sup> “About EULEX”, European Union – External Action, accessed September 6, 2015, <http://www.eulex-kosovo.eu/?page=2,44>. Aside from EULEX, the other main EU body operating in Kosovo is the European Union Office in Kosovo/European Special Representative in Kosovo, responsible for “realising the European agenda in Kosovo with the aim to promote Kosovo’s approximation to the European Union”. One of its major tasks includes the assistance in the development and protection of human rights and fundamental freedoms in Kosovo. See more

support Kosovo “on its path to a greater European integration in the rule of law area” through expertise in the area of the visa liberalisation process, the Feasibility Study, the Priština-Belgrade dialogue, the rule of law dialogue, the fight against corruption and achievement of sustainability and EU best practices in Kosovo.<sup>69</sup> Its mandate encompasses four operational objectives: (1) “Monitoring, Mentoring and Advising (MMA)” objective; (2) “Executive” objective; (3) “North” objective and (4) “Support to Dialogue Implementation” objective. For instance, within the first objective, EULEX, *inter alia*, gives assistance to the senior management of the Department of Citizenship of the Ministry of Internal Affairs while the third objective aims to restore the rule of law in the Northern Kosovo. The latter is closely intertwined with the fourth objective which includes providing a technical basis for implementation of the legal framework of the EU-facilitated dialogue related to the integration of Kosovo Serbs into the Kosovo security structures and the support of religious and cultural heritage unit within the Kosovo Police.<sup>70</sup> The negotiations of Kosovo with the EU on a Stabilisation and Association Agreement (SAA) were concluded on 6 May 2014<sup>71</sup> and the SAA proposal for Kosovo was approved by the European Commission on 30 April 2015<sup>72</sup>, which should be seen as an important step forward in construing and acclaiming Kosovo’s statehood.

The grounds for the engagement of international organisations in the Kosovo crisis are set by the Constitution. More precisely, partial delegation of sovereignty for specific matters to international organisations on the basis of ratified international treaties is foreseen by Art. 20.1 of the Constitution.<sup>73</sup>

Although international organisations have an active role in Kosovo, Kosovo has been still denied access to their membership. Namely, a limited character of its sovereignty has directly reflected on Kosovo’s prospects for becoming a Member State of international organisations and, consequently, for adhering to their international treaties. Thusly, Kosovo is neither a Member State of leading international organisations which have codified the citizenship-related segments of international law<sup>74</sup> nor is a State Party to their

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“The EU in Kosovo”, European Union – External Action, accessed 6 September 2015, <http://www.eulex-kosovo.eu/?page=2,19> .

<sup>69</sup> EULEX conducts its activities within the framework of UN Security Council Resolution 1244 and it will be operational until 14 June 2016. “What is EULEX?”, European Union – External Action, accessed 6 September 2015, <http://www.eulex-kosovo.eu/?page=2,16> .

<sup>70</sup> “About EULEX: EULEX implements its mandate through four operational objectives”, European Union – External Action, accessed 6 September 2015, <http://www.eulex-kosovo.eu/?page=2,44> .

<sup>71</sup> Krasniqi, *Country Report on Citizenship Law: Kosovo*, loc. cit. (note 23), 27.

<sup>72</sup> “Adoption of the Stabilisation and Association Agreement proposal with Kosovo”, European Commission, accessed 6 September 6 2015, [https://ec.europa.eu/commission/2014-2019/hahn/announcements/adoption-stabilisation-and-association-agreement-proposal-kosovo\\_en](https://ec.europa.eu/commission/2014-2019/hahn/announcements/adoption-stabilisation-and-association-agreement-proposal-kosovo_en) .

<sup>73</sup> Constitution of the Republic of Kosovo, loc. cit. (note 24).

<sup>74</sup> This primarily stands for the United Nations and the Council of Europe which have both retained a neutral stance towards Kosovo’s statehood. Although both international organisations intensively cooperate with Kosovo (in providing for conditions for peaceful coexistence and institution building as well as for the advancement of human rights and regional stability), their overall posture in referring to the territory, institutions or population of Kosovo remains within the limits defined by United Nation's Security Council Resolution 1244 and the principle of neutrality. “Kosovo”, Council of Europe – Office of the Directorate General of Programmes, accessed 28 August 2015, <http://www.coe.int/en/web/programmes/kosovo> ; “UNMIK: Mandate and Structure”, United Nations Interim Administration Mission in Kosovo (UNMIK), accessed 28 August 2015, <http://www.unmikonline.org/Pages/about.aspx>. Nonetheless, Kosovo has become a full member of some regional initiatives such as the Regional Cooperation Council (RCC), the South Eastern Europe Cooperation Process (SEECPP), the Regional School of Public Administration (ReSPA), the Centre for Security Cooperation (RACVIAC), and the International Organization of La Francophonie. *Brussels Agreements Implementation State of Play*, op. cit. (note 59), 20.

corresponding legal acts.<sup>75</sup> Relying solely on the domestic legal order, it undeniably lacks a comprehensive framework for governing citizenship issues.<sup>76</sup>

## 5. Parallel Jurisdictions of the Republic of Serbia and the Republic of Kosovo

As elucidated in earlier chapters, the overlapping Kosovo Albanian and Kosovo Serbian jurisdictions have been one of the most dominant features in Kosovo since its proclamation of independence, stemmed from the Serbian contestation and rejection of Kosovo's statehood. This controversy has greatly reflected on the construing of a uniform citizenship regime because most Kosovo Serbs consider themselves Serbian citizens and hold Serbian passports, while Kosovo Albanians have opted for newly established Kosovo citizenship.<sup>77</sup>

In the latest 2015 report on the implementation of the Brussels Agreement, it is accentuated that Serbia keeps on maintaining parallel structures in Kosovo's four northern municipalities, a practice described as "illegal interference" and "the main obstacle in the process of normalisation of situation in northern part of Kosovo".<sup>78</sup> This included prevention of adoption of legal budgets (in order to restrict the integration of education and health sectors in the Kosovo system); appointment of illegal mayors who receive political and financial support from Serbia and thus hinder the work of democratically elected mayors and other municipal bodies in accordance with Kosovo law; illegitimate appointment of other officials (*e.g.* board members of the National Theatre of Priština and acting directors of health centres); failure to remove barricades dividing Kosovo Albanian and Kosovo Serbian municipality portions; illegal usage of (Serbian) municipal logos and seals as official ones (*e.g.* custom stamps); double taxation, etc.<sup>79</sup>

<sup>75</sup> *E.g.* Convention Relating to the Status of Stateless Persons (1954), Convention on the Nationality of Married Women (1957), Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (1963), European Convention on Nationality (1997) and Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession (2006). See UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28.9.1954, United Nations, Treaty Series, vol. 360, p. 117; *Convention on the Nationality of Married Women*, 29.1.1957, A/RES/1040(XI), pp. 18-19; *Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality*, 6.5.1963, ETS No. 43; *European Convention on Nationality*, 6.11.1997, ETS No. 166; *Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession*, 19.5.2006, CETS No. 200.

<sup>76</sup> However, the normative framework for respecting international law is prescribed by a number of constitutional provisions. By way of illustration, it is envisaged that ratified and officially published international agreements have superiority over the laws of the Republic of Kosovo (Article 19.2) and are directly applied except for cases when they are not self-applicable and the application requires promulgation of a law (Article 19.1). The list of eight directly applicable international documents is incorporated into Article 20 and six of them contain explicit references to citizenship (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child and Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment). To avoid the post-succession legal vacuum, Kosovo has opted for advocating the principle of continuity of international agreements and applicable legislation related to international cooperation which have been in effect since the day the Constitution entered into force and shall remain being treated as such until they are renegotiated or withdrawn, or superseded by new international agreements (Article 145). See Constitution of the Republic of Kosovo, *loc. cit.* (note 24).

<sup>77</sup> Krasniqi, *Country Report on Citizenship Law: Kosovo*, *loc. cit.* (note 38).

<sup>78</sup> *Brussels Agreements Implementation State of Play*, *op. cit.* (note 59), 3, 10.

<sup>79</sup> *Ibid.*, 10-14, 25.

## 6. Kosovo Citizenship: Practical and Ideological Implications

The concept of citizenship is of elusive and versatile nature even if perceived in the context of fully-functional sovereign states. The dimension of a contested statehood reshapes it into a contested polysemy which despite being *de iure* clearly defined by national law, *de facto* remains obstructed by a number of limitations. The legal definition of citizenship usually depicts it as a real and effective legal link between the state and an individual<sup>80</sup> or, as Bauböck illustrates it, “a sorting device for allocating human populations to sovereign states”.<sup>81</sup> Hence, what if an element of a formally *real* and in practice *effective* link is justified, but it is established between an individual and an entity which has not yet been recognised as a sovereign state? The example of Kosovo confirms that such a situation does not lead to creation of a peculiar sub-category of provisional citizenship which needs to be denoted differently from the classic notion thereof as long as the entity is contested. Kosovo reflects the multifacetedness of the concept which is as contested as the corresponding statehood, but still performs the conventional features of classic citizenship vis-à-vis a significant portion of the international community that does not dispute Kosovo's independence. Moreover, although Kosovo citizenship is subject to a variety of restrictions related to mobility and visa regime, citizens of sovereign states are also not exempted either from strict visa procedures or even travel bans.<sup>82</sup>

A rigid legal interpretation of citizenship cannot oftentimes image all the aspects of this flexible notion because it commonly transcends the sole legal identification of an individual with the state<sup>83</sup> and associates with the senses of socio-political identity, nationalism, belonging, loyalty and economic benefits.<sup>84</sup> It is contextually interconnected with the phenomena of identity, statehood, multiculturalism and migrations which make the concept versatile and elusive.<sup>85</sup> Like in other successor states of the former Yugoslavia,

<sup>80</sup> See Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, Seventh edition, London: Routledge, 1997, p. 263; Andrassy et al., *Međunarodno pravo 1*, op. cit. (note 10), 353; Degan, *Međunarodno pravo*, op. cit. (note 9), 466. The most widely cited legal definition of the notion of citizenship, which promotes the criteria of a 'real' and 'effective' link between the state and an individual, is the one embedded in the historical judgment of the International Court of Justice in the *Nottebohm Case* (1955). It accentuates that “*according to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties*”. *Nottebohm Case (Liechtenstein v. Guatemala)*, Second Phase, Judgment of 6.4.1955, I.C.J. Reports 1955, p. 23; See also Crawford, *Brownlie's Principles of Public International Law*, op. cit. (note 10), pp. 513-518.

<sup>81</sup> Rainer Bauböck, *Citizenship and migration – concepts and controversies*, in Rainer Bauböck (Ed.), *Migration and Citizenship: Legal Status, Rights and Political Participation*, Amsterdam: Amsterdam University Press, 2006, p. 16.

<sup>82</sup> On citizenship as a status (in relation to Kosovo) see also Krasnići, *Preklapanje nadležnosti, sporna teritorija, nerešen status države*, op. cit. (note 62), 126-129.

<sup>83</sup> Henderson, *Understanding International Law*, op. cit. (note 9), p. 132.

<sup>84</sup> See more Bauböck, *Citizenship and migration*, op. cit. (note 81), 18-21; Derek Heater, *A Brief History of Citizenship*, New York: New York University Press, 2004, 1, pp. 88-89; Ronald Beiner, *Introduction: Why Citizenship Constitutes a Theoretical Problem in the Last Decade of the Twentieth Century*, in Ronald Beiner (Ed.), *Theorizing Citizenship*, Albany: State University of New York Press, 1995, pp. 1-28.

<sup>85</sup> See Subrata K. Mitra, *Turning Aliens Into Citizens: A “Toolkit” for a Trans-Disciplinary Policy Analysis*, in Subrata K. Mitra (Ed.), *Citizenship as Cultural Flow: Structure, Agency and Power*, Heidelberg/New York/Dordrecht/London, Springer, 2013, p. 65; Haldun Güllalp, *Transcending the Nation-State?*, in Haldun Güllalp (Ed.), *Citizenship and Ethnic Conflict: Challenging the Nation-State*, Abingdon: Routledge, 2006, pp. 133-139; Will Kymlicka & Wayne Norman, *Citizenship in Culturally Diverse Societies: Issues, Contexts, Concepts*, in Will Kymlicka & Wayne Norman (Eds.), *Citizenship in Diverse Societies*, New York: Oxford University Press Inc.,

citizenship in Kosovo is to a great degree regarded as an expression of one's ethnic identity. Hence, following the proclamation of Kosovo's independence, the vast majority of Kosovo Serbs has embraced Serbian citizenship, while Kosovo Albanians have chosen the Kosovo citizenship<sup>86</sup>. Their initial choices induced by strong national feelings were soon softened by pragmatism. Namely, for practical purposes, Kosovo Serbs have also accepted Kosovo documents and *vice versa*, Kosovo Albanians have obtained Serbian ones. Flexible economic motives have evidently upstaged rigid national rationale. This has brought to a significant number of dual citizens, a phenomenon which is widespread in Kosovo nowadays, not only between Kosovo and Serbia but also in relation to third countries accommodating economic and political migrants from Kosovo. The exact number of dual citizens is, however, unknown<sup>87</sup>. An intrinsic peculiarity of Kosovo residents who are holders of Serbian citizenship, regardless of their ethnicity, is that their legal status is not identical with that of Serbian citizenship holders residing in the Republic of Serbia. Namely, although both categories of citizens are considered Serbian citizens, the residents of Kosovo are, unlike the latter, subject to greater travel restrictions and they cannot enter the Schengen area without a visa. Moreover, the front page of their Serbian passport includes caption "Kosovo". The respective passports are issued by the Coordination Directorate within the Ministry of Interior in Belgrade, but if their holders want to apply for a visa, they need to turn to the authorities/embassies in Priština<sup>88</sup>.

Finally, citizenship can be portrayed as *the right to have rights*,<sup>89</sup> *i.e.* "a principle vehicle through which most people access their universal human rights"<sup>90</sup> as well as "one of the fundamental rights and a factor in achieving these rights".<sup>91</sup> Although most readings on citizenship put emphasis primarily on rights, neglecting responsibilities, it is necessary to ascertain that citizenship embodies both the *rights* and *responsibilities* of citizenship holders.<sup>92</sup> As outlined in previous chapters on Kosovo's legal framework

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2000, p. 1; Tharailath Koshy Oommen, *Citizenship, Nationality and Ethnicity*, Cambridge: Polity Press, 1997, pp. 223-243.

<sup>86</sup> However, it remains debatable whether ethnic Albanians genuinely show their loyalty to the Kosovo *State* or the Albanian *nation* in general. See more Alexandra Channer, *Albanians Divided by Borders: Loyal to State or Nation?*, in Tristan James Mabry et al. (Eds.), *Divided Nations and European Integration*, Philadelphia: University of Pennsylvania Press, 2013, pp. 157-189.

<sup>87</sup> Krasniqi, *Country Report on Citizenship Law: Kosovo*, op. cit. (note 23), 1, 18. More on citizenship as an identity (in relation to Kosovo) see in Krasnići, *Preklapanje nadležnosti, sporna teritorija, nerešen status države*, op. cit. (note 62), 131-133.

<sup>88</sup> See Uredba o postupku utvrđivanja ispunjenosti propisanih uslova za izdavanje **pasoša** za lica sa područja Autonomne pokrajine Kosovo i Metohija, *Službeni glasnik Republike Srbije*, no. 76/2009, 16.9.2009. The Law on the Citizenship of the Republic of Serbia goes silent on the respective diversification of Serbian citizens. See Zakon o državljanstvu Republike Srbije, *Službeni glasnik Republike Srbije*, no. 135/2004, 21.12.2004 and no. 90/2007, 24.9.2007.

<sup>89</sup> The origin of the respective perception of citizenship through the angle of *rights* can be found in the 1958 US Supreme Court judgment in the case of *Perez v. Brownell* in which Judge Earl Warren emphasised that "Citizenship is man's basic right, for it is nothing less than the right to have rights". *Perez v. Brownell*, 356 U.S. 44, 31.3.1958.

<sup>90</sup> Lydia Morris, *Citizenship and human rights: ideals and actualities*, *British Journal of Sociology* 63, 2012, p. 43.

<sup>91</sup> Jean-Yves Carlier, *Droits de l'homme et nationalité*, *Annales de Droit de Louvain* 63, 2003, p. 243.

<sup>92</sup> See more Will Kymlicka & Wayne Norman, *Return of the Citizen: A Survey of Recent Work on Citizenship Theory*, in Ronald Beiner (Ed.), *Theorizing Citizenship*, Albany: State University of New York Press, 1995, pp. 291-301; Bauböck, *Citizenship and migration*, op. cit. (note 81), pp. 30-31; Hilde Coffé & Catherine Bolzendahl, *Partisan Cleavages in the Importance of Citizenship Rights and Responsibilities*, *Social Science Quarterly* 92, 2011, pp. 658-659, 662. See contra Dimitry Kochenov, *EU Citizenship without Duties*, *European Law Journal* 20, 2014, pp. 482-498. On citizenship as a right (in relation to Kosovo) see Krasnići, *Preklapanje nadležnosti, sporna teritorija, nerešen status države*, op. cit. (note 62), pp. 129-131.

regulating citizenship, Kosovo's legislation grants an array of human rights to Kosovo citizens, which corresponds to a usual set of citizenship rights secured by domestic laws.<sup>93</sup>

In a nutshell, the summary of the three prevalent approaches to citizenship, those addressing it from the angle of law, self-identification and rights respectively, upholds the stance that Kosovo citizenship falls within the ambit of these conventional conceptions. When juxtaposed with statehood, it can be also easily perceived as, in Krasniqi's words, "a tool of state-building in Kosovo".<sup>94</sup> In evaluating its credibility, it is necessary to note that the Kosovo citizenship legislation was drafted in collaboration with international institutions, so, to the greatest possible extent, it reflects their values and viewpoints. Yet, in spite of its solid legal basis, there are some objective concerns about its practical value, expressed due to Kosovo's generally weak international position.<sup>95</sup>

The contested Kosovo statehood and, hence, citizenship are inevitably intertwined with travel restrictions and visa schemes. Kosovo citizens are the only category of citizens in the Balkans who cannot travel visa-free to Schengen areas and indeed, the list of countries for which they do not need a visa is modest and encompasses Albania, Macedonia, the Maldives, Montenegro, Serbia and Turkey only.<sup>96</sup>

Late 2014 and early 2015 witnessed an unprecedented scale of emigration flows from Kosovo to Western Europe induced by appalling economic and social conditions, before all high unemployment, corruption and crime.<sup>97</sup> The exodus was additionally prompted by technical changes to entry rules on the Serbian border which simplified the border crossing procedure for Kosovo Albanians to travel from Kosovo to Serbia which was on their way to Hungary and then to Western Europe. Namely, as a result of the 2013 Brussels Agreement negotiations, they were granted the right to travel to Serbia with their local identity documents.<sup>98</sup> It is estimated that the number of irregular migrants and asylum seekers of Kosovo origin registered throughout 2014 was as high as 37,000, while in the first months of 2015, additional 42,000 Kosovo citizens fled abroad. Their numbers reached a peak in mid-February 2015 and then, subsided.<sup>99</sup> Apart from pointing at Kosovo's inefficient governmental structures, critics for massive outflows were also

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<sup>93</sup> Citizenship rights are commonly divided into three categories: civil (e.g. the right to privacy, to freedom of speech, etc.), political (e.g. the right to vote, to freedom of association, etc.) and social (e.g. the right to health, to education, etc.). See more Kymlicka and Norman, *ibid.*, 285; Bauböck, *ibid.*, 22-29; Elspeth Guild, *Does European Citizenship Blur the Borders of Solidarity?*, in Elspeth Guild, Cristina J. Gortázar Rotaache and Dora Kostakopoulou (Eds.), *The Reconceptualization of European Union Citizenship*, Leiden/Boston: Brill Nijhoff, 2014, pp. 190-191.

<sup>94</sup> See: Gëzim Krasniqi, *Citizenship as a tool of state-building in Kosovo: status, rights, and identity in the new state*, CITSEE Working Paper Series 2010/10, 2010.

<sup>95</sup> Krasniqi, *Country Report on Citizenship Law: Kosovo*, op. cit. (note 23), 2.

<sup>96</sup> *Visas for Kosovo Citizens*, Republic of Kosovo – Ministry of Foreign Affairs, accessed 10 September 2015, <http://www.mfa-ks.net/?page=2,70>.

<sup>97</sup> Poverty is considered as the main push factor for the sharp increase in Kosovo emigration (35%) preceded by family reunification (46%) defined as the main pull factor. Other factors include political or conflict-related reasons (8%), the lack of opportunities to relevant education (1%) and other reasons (10%). See *Coordinated Response Needed to Address Irregular Migration Flows*, International Organisation for Migration – Kosovo, accessed 10 September 10 2015, <http://kosovo.iom.int/coordinated-response-needed-address-irregular-migration-flows>.

<sup>98</sup> Andrew Byrne, *Thousands Seek to Escape Bleak Kosovo for Life in West*, Financial Times Europe, March 27, 2015, 2; *Coordinated Response Needed to Address Irregular Migration Flows*, *ibid.*

<sup>99</sup> *Coordinated Response Needed to Address Irregular Migration Flows*, *ibid.* For decades prior to the mass exodus of late 2014 – early 2015, Kosovo had experienced continuous emigration flows. The estimated number of the emigrated population of Kosovo and the population of Kosovo origin (with no reference to a specific ethnicity) in the period between 1969 and 2011 is set at 703,978 residents. *Kosovan Migration* (Kosovo Agency of Statistics: Prishtina, 2014), 75.

directed at international institutions on the Kosovo territory (especially EULEX) which in fifteen years of their tutelage have not done enough to annihilate the criminal networks within the government. Those institutions have, however, contributed to the society by increasing the stability of the region and improving the relations between Kosovo and Serbia, yet, these developments seemed insufficient to overpower bleak economic conditions and to avert citizens from migrating.<sup>100</sup>

## 7. Conclusion

Sixteen years ago, Kosovo was put under international tutelage and thus embarked on a path to full independence. Although it acquired a polity's main attributes soon after it had unilaterally proclaimed independence (*i.e.* a population, a defined territory, a government and independence/capacity to enter into relations with other states), all of them were of a highly fragile nature, impaired by utterly opposite Kosovo Albanian and Serbian perceptions of the Kosovo's future status. The population was rigidly polarised along ethnic lines and torn between the ideas of sovereign Kosovo and territorially intact sovereign Serbia. The polity's borders were known, but the newly proclaimed (Kosovo Albanian) Government did not have effective control over the substantial part of the territory inhabited by Kosovo Serbs. Hence, the Government was not considered legitimate both by Kosovo Serbs and Serbia but also by a significant portion of the international community. Consequently, Kosovo was limited in its capacity to enter into relations with other states and confined only to those which recognised its independence. Despite the fact that the Kosovo's international position has strengthened in the meantime, especially following the 2013 negotiations with Serbia, it has remained a contested nation-state struggling to accommodate the wishes and needs of alienated Kosovo Serbs.

Understandably, a contested-nation state has a correspondingly contested citizenship regime. Kosovo has created a well-construed citizenship framework, but the reality of contestation makes Kosovo citizens highly prone to discrimination and isolation. They are subject to rigid travel restrictions or bans which question the practical value of Kosovo citizenship as long as Kosovo is contested. The recent opening of the EU accession negotiations with Kosovo and Serbia has brought Kosovo a step closer to the final chapter in its statehood trajectories to full independence. The European Commission's approval of the Stabilisation and Association Agreement with Kosovo given in April 2015 has considerably improved these prospects, but the decisive factor in the successful transition from a partially to a fully functioning and recognised state will inevitably be Serbia's capacity to accept Kosovo's new realities.

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<sup>100</sup> Byrne, *Thousands Seek to Escape Bleak Kosovo for Life in West*, loc. cit. (note 98).