

THE ISSUE OF  
***SERBIAN CULTURAL HERITAGE IN KOSOVO***  
IN THE CONTEXT OF AN EVENTUAL  
**'GRAND FINALE'** BETWEEN  
**KOSOVO AND SERBIA**

October 2019

Supported by:



Norwegian Embassy



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**BACKGROUND NOTE/STUDY**

**ON**

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## Abbreviations

<b>CH</b>	Cultural Heritage
<b>CSP</b>	Comprehensive Settlement Proposal
<b>EU</b>	European Union
<b>GoK</b>	Government of Kosovo
<b>GoS</b>	Government of Serbia
<b>IMC</b>	Implementation and Monitory Council
<b>KCCH</b>	Kosovo Council for Cultural Heritage
<b>KIPM</b>	Kosovo Institute for the Protection of Monuments
<b>MCYS</b>	Ministry of Culture, Youth, and Sports
<b>MESP</b>	Ministry of Environment and Spatial Planning
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>RIC</b>	Reconstruction Implementation Commission
<b>SCSC</b>	Special Chamber of the Supreme Court
<b>SOC</b>	Serbian Orthodox Church
<b>SOE</b>	Socially Owned Enterprises
<b>SPZ</b>	Special Protective Zones
<b>SRCH</b>	Serbian Cultural Heritage
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization

## Introduction

1. The cultural heritage of a country is the product of all the various peoples who have inhabited the land from prehistory to modern times, and is therefore as a rule varied and diverse, reflecting the ethnic character of its creators. The cultural heritage of Kosovo is no exception to that rule: its contents reflect the long history of the land, dating back to prehistoric times and extending – through antiquity, Illyrian and Roman times, the Middle Ages, including the Byzantine and the Serbian period, followed by the Ottoman Empire – to modern times and our age.
2. This paper deals with the Serbian cultural heritage (henceforth: SRCH) in Kosovo and how this can be addressed in the context of an eventual agreement between Kosovo and Serbia on the normalization of their relations. It can serve as a guide to the nexus of complex and sensitive issues that are evoked by the title and which constitute an essential ingredient of the Kosovo reality today. The topics mentioned here examined from the perspective of the role they play in the relations of Kosovo as a state with an important segment of its citizens (the Serb Kosovars) and with its neighbor (the Republic of Serbia) as well as of the role they are expected to play in an eventual agreement of mutual recognition with the latter. The intention is to present a broad overview of the issues, without shying away from singling out specific cases when required for the sake of clarity.

## Serbian Religious and Cultural Heritage in Kosovo

3. Outstanding among the cultural-heritage monuments in Kosovo are undoubtedly those belonging to the Serbian Orthodox Church (henceforth: SOC); they are so far the only cultural heritage in Kosovo represented on the UNESCO World Heritage List. The four monuments included on that list are the Visoki Decani monastery in Decan, the Peja Patriarchate in Peja, the Gracanica monastery near Prishtina, and the Bogorodica Ljeviska church in Prizren.
4. Beyond its universally recognized aesthetic value, an additional factor that lends the Serbian religious and cultural heritage extraordinary importance is the significance it has for the Serbian nation, a nation that views religion, that is, the Serbian Orthodox Church, as an indispensable ingredient of its identity. The international community, including in particular those Western countries which came to understand that the settlement of the Kosovo issue should be based on the establishment of an independent state, understood at the same time the need to guarantee full protection to the SRCH in the new state, which would be of the Albanian majority. Another factor that informed the attitude of the international community toward the SRCH was the fact that the Serbian monuments and sites in Kosovo (churches and monasteries) became prime targets of the shocking outburst of violence and destruction in March 2004. To sum up, the aesthetic value, the importance for the Serbian identity, and the vulnerability of the SRCH in Kosovo led the international community to bestow on it a status of exceptionality within the new Kosovo state. Perhaps, it would not be an exaggeration to say that among the Western powers, which the strongest supporters of Kosovo protecting the SRCH are, enjoys the same measure of support as defending and strengthening Kosovo's statehood.
5. The fact that the SRCH monuments are not museum relics, but living places of worship, which are inhabited by religious communities celebrating religious services daily and attract significant numbers of visitors from all over the world, has contributed to the extension of the concept of SRCH to encompass the presence of the

SOC in Kosovo in all its facets, its position in the legal framework of the country as well as in society. The position of the SOC in Kosovo today can be seen from two angles: one pertains to its rights and privileges as the owner and manager of the SRCH, and amounts to what could be called a status of exceptionalism; the other aspect covers a set of problems facing the Church as a civic entity, mainly about property issues, and as such belongs in the sphere of the rule of law, which applies to all citizens without exception.

6. The status of the SRCH in Kosovo today is based, of course, on the provisions contained in the Comprehensive Proposal for the Kosovo Status Settlement (henceforth: CSP), also known as the Ahtisaari Plan<sup>1</sup>, especially in its Annex V, provisions which the government of Kosovo solemnly pledged, on its independence day, that it would abide by and implement in full, a pledge inscribed in the most sacred text of the nation, the declaration of independence. Thus, the commitment to respect and protect the SRCH should be rightfully considered as one of the principles of the state of Kosovo.

## **SRCH in the legislative system of Kosovo**

7. Up until the end of the international supervision of Kosovo's independence, in September 2012, the CSP provisions guaranteeing full protection of the SRCH in Kosovo were directly applicable within the Kosovo legal system under the 2008 Constitution, art. 143.3 of which stated that "[t]he Constitution, laws and other legal acts of the Republic of Kosovo shall be interpreted in compliance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. If there are inconsistencies between the provisions of this Constitution, laws or other

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<sup>1</sup> Assembly of the Republic of Kosovo (2007), 'Comprehensive Proposal for the Kosovo Status Settlement' p. 37-42. Available at: <http://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf> [Accessed on: October 14, 2019].

legal acts of the Republic of Kosovo and the provisions of the said Settlement, the latter shall prevail.”<sup>2</sup>

8. Some of the CSP provisions transferred into the Kosovo legal framework before the end of the supervision. Notable among the legislation deriving from the CSP and adopted during that time are three laws referring to the SRCH, to wit, **the law “On Special Protective Zones,”** adopted in 2008, **the law “On the Historic Center of Prizren”** and **the law “On the Village of Hoce e Madhe/Velika Hoca.”**
9. These laws meant to implement the CSP provisions in terms of which certain SRCH monuments and sites (which are comprehensively listed) shall be provided special protection through the establishment of protective zones around them, this to ensure the peaceful existence and protection of the sites concerned, preserve their historical, cultural and natural environment, including the monastic way of life of the clergy, prevent adverse development around them, while ensuring the best possible conditions for harmonious and sustainable development of the communities inhabiting the areas surrounding such sites. The special protective zones (SPZ) constitute the ideal balance between two equally important considerations, the protection of the SRCH within the Kosovo legal system and the territorial integrity of the country (the latter would have been compromised if an extraterritoriality regime had been preferred, a solution that would have certainly caused more problems than it would aim to solve). The term “special protective zone” applies only to the SRCH monuments, whereas “protective zone” is used in the case of other cultural monuments in Kosovo.
10. The law on SPZ sets out the principles governing special protection zones and defines comprehensively the rules applicable within such zones, namely that, without prejudice to the ownership of the property within them, certain new activities are prohibited, and other activities are restricted (being subject to the consent of the

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<sup>2</sup> Assembly of the Republic of Kosovo (2008), ‘Constitution of the Republic of Kosovo - Article 143.3’. Available at: <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf> [Accessed on: October 14, 2019].

SOC).<sup>3</sup> Fully comprehensive lists of the two distinct types of activities included in the text of the law.

**11.** The law on SPZ invoked in a case known as the **Decan/Decani road**, which had gained notoriety over the last few years, especially last year, when it created high tensions between the Decani monastery and the government. The impact of the law on the way the case evolved manifested some of the strengths and some of the weaknesses of the legal system, and the implementation mechanisms, and is therefore worth mentioning. The case concerns the government plans to construct a transit road from Decan to Plava in Montenegro, and the current plans have the road pass through the Decani monastery SPZ. The planned road, about 35km long, would include an existing rural 4,5km-long road passing right in front of the monastery main gate and would upgrade it to transit, inter-state road by widening, asphaltting and extending it through the gorge and over the mountains to Montenegro. The SPZ law (art.5) lists “transit road construction in rural areas” among the prohibited activities within SPZs. In fact, in 2014 the then PM presided in Decan over an official ceremony inaugurating the construction of the road that would bypass the monastery SPZ. Works came slowly to a halt by summer’s end and the issue is still pending.

**12.** The law on the historic center of Prizren (04/L-066) establishes a protective zone that includes Serbian Orthodox, Ottoman, Catholic, vernacular, and other sites of historical and cultural significance<sup>4</sup>. Moreover, the law on Hoce e Madhe (04/L-062) accords the village, a Serbian enclave in the municipality of Rahovec encompassing several remarkable medieval churches, the right to exercise limited authority over activities in the areas of protection and promotion of SRCH and rural planning, in consultation with the municipality.<sup>5</sup>

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<sup>3</sup> Assembly of the Republic of Kosovo (2008), ‘Law Nr. 03/L-039 On Special Protective Zones’. Available at: [http://www.assembly-kosova.org/common/docs/ligjet/2008\\_03-L039\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L039_en.pdf) [Accessed on: October 14, 2019].

<sup>4</sup> Assembly of the Republic of Kosovo (2012), ‘Law No. 04/L-066 On Historic Centre of Prizren’. Available at: <http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20Historic%20Centre%20of%20Prizren.pdf> [Accessed on: October 14, 2019].

<sup>5</sup> Assembly of the Republic of Kosovo (2012), ‘Law No. 04/L-062 On the Village of Hoçë e Madhe/ Velika Hoča’. Available at:

## End-of-Supervised-Independence Legislation

13. Besides the SPZ laws, the remainder of the CSP provisions – or, to be accurate, most of them, with some small omissions – were incorporated into the Kosovo legal framework upon the end of the international supervision of independence. It was then decided that it would be better and more practical to put together all provisions in one piece of legislation rather than having to amend each affected law separately. The purpose of proceeding in this way was to maintain the integrity of the package and ensure that specific provisions could not be removed. Thus the “**Law Amending and Supplementing Laws Related to the Ending of International Supervision of Independence**” (2012/04-L-115), also known as “ESI Law,” was adopted on 31.08.2012 and promulgated on 04.09.2012.<sup>6</sup>

14. In order for the CSP-granted rights and privileges of the SOC and the SRCH to be adequately incorporated and protected, two types of amendments were also adopted:

- (a) An amendment to the constitution sets a higher threshold to amend/repeal/adopt **laws of vital interest**<sup>7</sup>. Article 81 of the constitution requires that laws falling within specifically enumerated categories are considered to be of “vital interest” and subject to a more stringent voting requirement to amend or repeal. Before ESI, the requirement was a double majority (all deputies/deputies representing non-majority communities) of MPs *present and voting*. Now, after the constitution was amended, a double majority of *all deputies* (not just those present and voting) is required to amend a law of vital interest.

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<http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20the%20Village%20of%20Hoce%20e%20madhe.pdf> [Accessed on: October 14, 2019].

<sup>6</sup> Assembly of the Republic of Kosovo (2012), ‘Law No. 04/L-115 On Amending and Supplementing the Laws Related to the Ending of International Supervision of Independence of Kosovo’. Available at: <http://www.kuvendikosoves.org/common/docs/ligjet/Law%2004-L-115.pdf> [Accessed on: October 14, 2019].

<sup>7</sup> Assembly of the Republic of Kosovo (2008), ‘Constitution of the Republic of Kosovo - Article 81’. Available at: <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf> [Accessed on: October 14, 2019].

(b) Law on Special Protective Zones is now considered a law of vital interest. Laws on protection of cultural heritage and laws on religious freedom or laws on agreements with religious communities were already considered to be of “vital interest.” As part of the ESI package, laws on special protective zones, which are generally considered to be spatial-planning laws as opposed to cultural-heritage laws, were also added to the “vital interest”. It was felt it was important that their inclusion was explicit to ensure they could not be amended on a technicality.

## Renewal of Government Pledge Regarding SRCH

15. A few years after the declaration of independence and the solemn pledge of full implementation of the Ahtisaari provisions, the government reiterated the same promise in circumstances which led to what many observers consider as the most significant setback in the history of the country, that is, during the campaign for UNESCO membership. This time the pledge took the form of an official “**Letter of the Institutions of Kosovo**”<sup>8</sup> addressed to the member states of UNESCO, dated 7 October 2015 and signed by the President of the Republic, the Prime Minister, the Speaker of the Assembly, and the Foreign Minister. The fact remains that the SRCH was the pivotal issue of what turned out to be the first confrontation of Kosovo with Serbia in the international arena. That should serve as a warning and a cautionary tale, as Kosovo and Serbia are now getting ready to face each other at the negotiating table to reach a historic “legally binding agreement” to normalize their relations.

16. Among the renewed commitments made in the *Letter*, it is pertinent here to retain the following: the GoK stated, that it “[would] continue to abide by the Annex 5 obligations of the Ahtisaari Plan [...] that provide the Serbian Orthodox Church constitutional protection of its identity, property and special relations with Serbia”;

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<sup>8</sup> Kosovo Institutions (2015), ‘Letter of the Institutions of Kosovo’. Available at: [http://kryeministri-ks.net/repository/docs/Letter to UNESCO National Delegations.pdf](http://kryeministri-ks.net/repository/docs/Letter%20to%20UNESCO%20National%20Delegations.pdf) [Accessed on: October 14, 2019].

also that it “[would] consult with [...] the Serbian Orthodox Church [...] before amending the Law on Cultural Heritage or related regulations”; furthermore that “[t]he Serbian Orthodox Church [would] remain the sole Christian Orthodox organization in the territory of Kosovo, enjoying full legal persona, granted by the new Draft Law on Religion.”<sup>9</sup>

## Pending Legislation Affecting the SRCH

17. Two significant pieces of legislation have been in preparation in the past few years, which are expected to fill gaps and correct omissions of laws deriving from Annex V of the CSP.

18. The first draft law concerns **Freedom of Religion**<sup>10</sup> and amends an existing law dating to 2001 and already amended by the ESI legislation in 2012. The new draft law has benefitted from advice received from the Venice Commission, and its adoption is eagerly anticipated by most religious communities in Kosovo, including the SOC. The most significant benefit introduced by it is the recognition of legal personality to religious communities, giving them the ability to exercise their rights and obligations related to their status of a legal entity, such as the right of property ownership, bank account maintenance, employing officers, etc. It recognizes six religious communities as already established, namely, the Kosovo Islamic Community, the Catholic Church, the Serbian Orthodox Church, the Jewish Religious Community, the Kosovo Protestant Evangelical Church, and the Tarikate Community of Kosovo, and prescribes the modalities for recognition of eventual new ones in the future.

19. The most important new piece of legislation related to the SRCH is, without doubt, a **new law on Cultural Heritage**, legislation which is eagerly anticipated, with high expectations mixed with a certain degree of apprehension, by all stakeholders and

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<sup>9</sup> Ibid.

<sup>10</sup> Government of Republic of Kosovo (2017), ‘Draft Law on Amendment and Supplementation of Law No.02/L-31 on Freedom of Religion in Kosovo’. Available at: <http://www.kuvendikosoves.org/common/docs/ligjet/06-L-001.pdf> [Accessed on: October 14, 2019].

which is seen as a litmus test of the Kosovo government's sincerity and seriousness in dealing with the SOC and the SRCH in Kosovo. The original pledge to fully implement the CSP Annex V provisions made back in 2008 as part of the declaration of independence, and its solemn reiteration in 2015, in the form of the Letter of the Institutions, will be put to the test in the new law. The new law is expected to correct the shortcomings observed in the implementation of the obligations deriving from Annex V of the CSP and also to update and improve the original provisions wherever needed.

20. The new law should ensure that IMC functions properly, in full observance of its mandate, but also endorse, indeed sanction, the de facto broadening of the current mandate turning the IMC into the official body that deals with all matters of the SOC in Kosovo, not only SRCH issues. Also, importantly, it should strengthen and clarify the legal status of the IMC as the body mandated to deal with SRCH; differentiate it from the KCCH; establish the terms of its cooperation with the MCYS in a way that would safeguard its legal integrity.
21. After the issuance of the *Letter of the Institutions* in October, and despite the fateful UNESCO vote in November, it followed through the renewed pledge of the Letter and, in co-operation with diplomatic missions in Prishtina, reviewed the original draft and introduced all the missing CSP elements relevant to the scope of the Strategy. The text that was finally adopted by the government (since it is not a law, it did not need adoption by the Assembly) as ***National Strategy for Cultural Heritage 2017-2027***<sup>11</sup> is, in addition to its other many merits, the only government document currently in force that mentions explicitly the "full discretion" right of the SOC.
22. It is by now becoming clear that a new CH law is not yet in sight, and it is getting increasingly likely that the final phase of the Kosovo-Serbia dialogue will begin before such a law is adopted, in which case it might well happen that the SRCH issues that

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<sup>11</sup> Ministry of Culture, Youth and Sport (2017), 'National Strategy for Cultural Heritage 2017-2027'. Available at: [https://mkrs-ks.org/repository/docs/eng\\_strategy\\_for\\_heritage.pdf](https://mkrs-ks.org/repository/docs/eng_strategy_for_heritage.pdf) [Accessed on: October 14, 2019].

are now expected to be resolved in the law will eventually be addressed in the final agreement between Kosovo and Serbia.

## **Implementation and Monitoring Council (IMC)**

- 23.** Since early 2013, SRCH matters have been dealt with primarily by the Implementation and Monitoring Council (IMC), a body mandated to ensure implementation of Kosovo legislation on the protection of the Serbian RCH, including in particular the law on special protective zones. It was originally prescribed by the Ahtisaari Plan and subsequently by the Law on Special Protective Zones, of 2008, and it was set up in its current format in February 2013. It is composed of five members, the MESP Minister, the MCYS Minister, the SOC in Kosovo, the EU Special Representative in Kosovo, and the head of the OSCE Mission in Kosovo, and is co-chaired by the MESP and the EUSR.
- 24.** As a body that brings together the main SRCH stakeholders, i.e., the GoK, the SOC and the international community, the IMC has naturally developed into a forum dealing with all issues relating to the SOC, not only with those prescribed in its original mandate, and the idea has been gaining ground that its mandate should be expanded turning it *de jure* to what it is already *de facto*, a kind of a “one-stop-shop” dealing with all matters involving the SOC.
- 25.** A question has, at times, arisen as to whether it is an advisory body or has executive powers. Both the current minister of MCYS and his predecessor have repeatedly branded it a merely advisory body, which as such, submits recommendations to the government, the latter being the only authority to make final decisions. The SOC insists that the IMC decisions are not subject to approval by any other government body above it, and has repeatedly stressed that its participation in the IMC is conditional on the latter’s having executive power.
- 26.** Now, the question of whether the IMC is an advisory body or has executive powers can be treated as one of the many ambiguities that remain unavoidable in the current

state of things, one that is best left without exhaustive exploration. Setting aside loaded nomenclatures, the issue boils down to whether the decisions of the IMC are subject to approval by another body or they are enforceable as such. Two points are worth considering: (a) The IMC mandate states (art. 12.6) that “MESP and MCYS shall ensure implementation of the IMC decisions by the appropriate bodies of the Republic of Kosovo”.<sup>12</sup> This implies the fact that IMC’s decisions do not need approval by a body other than itself. Note also the use of the word “decisions” as opposed to words such as “recommendations”, “advice”, “opinions,” and the like. (b) So far, the IMC has adopted several decisions without encountering any difficulty with having them implemented, even in a case involving demolition of structures found to be illegal.

27. It is worth noting in this context that the exceptional character, indeed the uniqueness of the IMC, consists precisely in that it can take final and enforceable decisions in matters involving one of its members, i.e., the SOC.

28. Another issue concerns the place of the IMC within the Kosovo legal framework in the field of cultural heritage, and it takes the form of the question about its relationship with the main institutional body in Kosovo in the field, the **Kosovo Council for Cultural Heritage (KCCH)**, which was established directly by the Kosovo Assembly in 2010 as an advisory body according to Law 02/L-88 of 2006. The SPZ law, which provides for the creation of the IMC, states (article 11.2) that the IMC cooperates with the KCCH “on any other issue related to the protection and preservation of religious and cultural heritage in the Republic of Kosovo”.

29. The Kosovo legislative system differentiates between the non-Serbian cultural heritage and the Serbian cultural heritage becomes obvious also by the different terminology it uses to describe the protective zones around cultural monuments: “protective zone” and “special protective zone.” The current law defines the former

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<sup>12</sup> Ministry of Environment and Spatial Planning (2013), ‘Administrative Instruction No. 03/2013 On the Implementation and Monitoring Council’. Available at: <https://gzk.rks.gov.net/ActDocumentDetail.aspx?ActID=9778> [Accessed on: October 14, 2019].

on CH (02/L-88 of 2006)<sup>13</sup> as “an area of land [...] which is surrounding the perimeter of protected immovable cultural heritage that may be safeguarded from any development or activity which could damage the visual setting or otherwise damage the cultural heritage”. The latter special protective zone”, refers to cases in which the immovable cultural heritage concerned is part of the SRCH, and is introduced to the Kosovo legislative system by the law on SPZ (Law 03/L-039)<sup>14</sup>, whose purpose it is to “ensure protection of Serbian Orthodox Monasteries, Churches, other religious sites, as well as historical and cultural sites of special significance for the Kosovo Serb community, as well as other communities in the Republic of Kosovo, through the establishment of Special Protective Zones” (art. 1).

**30.** Thus, the relation between the law on CH and the KCCH, on one hand, and the law on SPZ and the IMC, on the other, becomes clear: the scope of the former is general in nature, covering all cultural heritage, whereas the scope of the latter is specific, giving it jurisdiction only in the SRCH. The former is *lex generalis*, and the latter is *lex specialis*; therefore, the latter has precedence over the former, under the principle that the special law supersedes the general law (“*lex specialis derogat lege generali*”). (Needless to say, the differentiation between the Serbian and non-Serbian cultural heritage is, of course, of a purely legal nature and in no way implies any comparison between the two, or value judgment. It is axiomatic that every heritage is unique, incomparable, and of equal value, and of course, deserves equal and unqualified respect and protection).

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<sup>13</sup> Assembly of the Republic of Kosovo (2006), ‘Law No. 02/L-88 Cultural Heritage Law’. Available at: [http://www.assembly-kosova.org/common/docs/ligjet/2006\\_02-L88\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2006_02-L88_en.pdf) [Accessed on: October 14, 2019].

<sup>14</sup> Assembly of the Republic of Kosovo (2008), ‘Law Nr. 03/L-039 On Special Protective Zones’. Available at: [http://www.assembly-kosova.org/common/docs/ligjet/2008\\_03-L039\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L039_en.pdf) [Accessed on: October 14, 2019].

## SRCH Issues

**31.** There follows brief scrutiny of the main SRCH issues today. The way of their presentation, in distinct sections with individual titles, has been chosen for practical reasons, to facilitate the reading of the study/report. It is, of course, understood that all issues are strictly inter-related as they constitute facets of the same reality, which is the Religious and Cultural Heritage of the Serbian Orthodox Church in Kosovo.

## The management of the SRCH in Kosovo

**32.** Who has the right to manage the SRCH in Kosovo? The first official answer to this question provided in Annex V of the CSP, which spells out the “rights, privileges and immunities” of the SOC as well as its “duties and responsibilities”. Among other provisions enumerated in the text, it is stated that the Church “shall exercise full discretion in the management of its property, property reconstruction, and access to its premises”. During the period of “supervised independence”, that is, up until September 2012, this provision was fully respected by the GoK, with the endorsement of the International Civilian Office. The government had no difficulty interpreting the two principles – i.e., “rights, privileges and immunities” on the one hand and “duties and responsibilities” on the other – in a pragmatic way that left no room for conflict between the two. Indeed, the first principle states the substance (the what) of the provision, whereas the second refers to the modalities (the how) of its implementation.

## Reconstruction of 34 SRCH Monuments Damaged in March 2004 Riots

33. In the aftermath of the March 2004 riots, the then Kosovo authorities and the international community drew up a plan for the reconstruction of 34 damaged SRCH monuments. A five-member **Reconstruction Implementation Commission (RIC)** was set up under the chairmanship of the Council of Europe, with mixed Serbian and Albanian Kosovar membership, including, in particular, the SOC. The whole process was funded primarily from the budget of the GoK. When the original mandate of the RIC reached its assigned deadline, in 2011, some 70% of the planned reconstruction had been completed, and the amount spent up until then by the GoK far exceeded the total amount initially budgeted for the whole reconstruction project. Since then, resumption of the reconstruction process has not been possible, as the SOC did not agree to a new format proposed by the GoK. However, the Government has repeatedly made clear that it remains fully committed to the completion of the works, from its budget and in full co-operation with the SOC.

34. In the meantime, while the successor format to the RIC was being worked out, the need was felt to ascertain the exact nature and extent of the remaining reconstruction works. So, a field mission was organized by the CoE in April 2012, with the participation of experts from the MCYS and the SOC, the findings of which would form the basis of the work ahead. Both the SOC and the MCYS expressed their agreement with the findings of the mission report. The report, titled "**Technical Assessment Report on the Programme of Reconstruction of Serbian Orthodox Religious Sites Damaged in March 2004 in Kosovo**," also known as the Montanes Report, after the name of the Spanish expert who headed the mission, can form the basis of a renewed start of the works, whenever circumstances allow that to happen.

35. Now, it seems that both sides would be in agreement that the proper organ to carry out the remaining reconstruction is the IMC.

## Rule-of-Law Issues Concerning the Serbian Orthodox Church

**36.** The following cases are issues concerning the SOC as a civic entity, issues that do not have to do with the protection of cultural heritage but have very much to do with the implementation of the rule of law in Kosovo, mainly since they affect the most prominent institution of the largest non-Albanian community in the country, and spiritual inheritor of the cultural-heritage monuments and sites accorded an exceptional status in the legislative system of the country, some of which included in the UNESCO world heritage list.

### The Decan/Decani Land Issue

**37.** Probably the most pressing (and most depressing) issue related to the SOC is the Decani land case, a matter which, by the fact that it concerns the “territorial” integrity and sustainability of the most essential cultural-heritage monument in Kosovo, the Visoki Decani monastery.

**38.** The case concerns two land parcels of a total of 23 hectares of the land. According to the SOC, they are part of the larger area owned by the monastery in the past and confiscated by Communist authorities in 1946. In 1997, as part of a broader restitution effort, the Government of Serbia (GoS) returned those two parcels to the monastery. One of them is adjacent to land that had remained in the ownership of the monastery in Communist times and is part of the arable land used by the monastery for its sustenance. The other is on top of a small hill across the road passing in front of the monastery. The parcels in question had been used during the Communist times by two socially owned enterprises (SOE), which at the time of restitution, in 1997, were defunct.

39. Following the Kosovo war, the situation changed and the two defunct SOEs, were also revitalized on paper to regain legitimacy over the ownership of the land. After the intervention by UNMIK, the case sent to court.
40. After more than ten years of litigation, the Special Chamber of the Supreme Court (SCSC) of Kosovo, which took over the case in 2008, finally decided in favor of the monastery on 27.12.2012. Following appeals by entities which the Court had already determined were not legally parties to the dispute, the Appellate Panel of the SCSC, on 09.07.2015, that the appeals were grounded, and the judgment in favor of the monastery set aside; it furthermore decided that the SCSC had no jurisdiction to adjudicate the claim, and the claim was sent back for retrial with the Basic Court in Peja.
41. The SOC turned to the **Constitutional Court of Kosovo**, under art. 113.7 of the Constitution and the Court decided that the 12.07.2015 decisions of the Appellate Panel constituted “a violation of Applicant's right to a fair and impartial hearing as protected by Article 31, paragraph 2, of the Constitution in conjunction with Article 6, paragraph 1, of the ECHR” and were therefore “null and void”, and the decisions of 27.12.2012 (the ones in favor of the monastery) were “final and binding, and as such [...] *res judicata*” (note that throughout the 15-year litigation the courts issued double decisions, one for each of the two parcels in dispute)<sup>15</sup>. This decision, issued on 20 May 2016, under Ref. No.: AGJ943/16.

## Church of Christ the Savior in Central Prishtina

42. An issue that has been recurring in the public debate, and has been taken up in the IMC, concerns the church of Christ the Savior, an edifice that remains unfinished and stands at a central point of the campus grounds of the University of Prishtina. This issue, too, is not, properly speaking, an RCH issue, as it concerns a modern building that cannot be considered as part of the invaluable treasures associated with the

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<sup>15</sup> Constitutional Court of Kosovo (2016), ‘Judgement in Case No. KI132/15’. Available at: [http://gjk-ks.org/wp-content/uploads/vendimet/KI132\\_15\\_ANG.pdf](http://gjk-ks.org/wp-content/uploads/vendimet/KI132_15_ANG.pdf) [Accessed on: October 14, 2019].

SRCH in Kosovo. The church is not mentioned at all in the CSP, the *locus classicus* of the SRCH in Kosovo.

**43.** The majority of Kosovo citizens (i.e., Albanian Kosovars) widely regard the building, whose construction began in the early '90s and halted during the war of 1998-1999, -as a Milosevic church-, the SOC claims this as a legal case in its favor, since it has produced, (a) some type of documentation to prove that it is the legal owner of the land on which the church is built, and (b) a sort of building permit for the church (both the land ownership and the building permit complying with the laws applicable at the time).

**44.** As both sides recognize the sensitivity of this case, it seems that a tacit consensus had been developed in recent years on the need to avoid dealing with it for the time being. A breach of that consensus occurred in September 2012, when the then outgoing Rector of the University filed a suit against the SOC for illegal construction on land that belonged to the University.

**45.** On the day the case was taken up in a Prishtina court of law, 26.11.2015, the University representatives failed to show up, and the Court accepted the motion of the SOC representatives, who were present and had submitted their documentation on time, that the case is put aside. The University took the case to the Kosovo Appeals Court, which decided again in favor of the SOC on 27.09.2017.<sup>16</sup>

**46.** Charting a way forward requires first and foremost that the two sides recognize each other's sensitivities. It remains one of the issues which needs to be addressed in the near future. The matter remains unresolved.

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<sup>16</sup> Prishtina Insight (2017), 'Kosovo court rejects university complaint over controversial church'. Available at: <https://prishtinainsight.com/kosovo-court-rejects-university-complaint-controversial-church/> [Accessed on: October 14, 2019].

## **St. Nicholas Church within the Holy Archangels Monastery near Prizren**

- 47.** This case can be considered a hybrid, as it is both an SRCH and a rule-of-law matter. Moreover, it has turned out to be more complicated than it should because it was not approached from the beginning with the attention to detail that was needed. Its current stage started as a gesture of reconciliation between the SOC and the MCYS in the context of the IMC: at the 18.04.2016 IMC session, the first one after the traumatic experience of the Kosovo UNESCO candidature and the breakdown of the SOC-GoK relations that ensued, the SOC Bishop submitted to the MCYS Minister an application, accompanied by documentation, for a permit regarding the restoration of a church within the complex of the Holy Archangels monastery; and the Minister accepted it, graciously assuring the Bishop that the permit would be ready within a couple of weeks. The case is still pending.
- 48.** In addition, to the elementary rule-of-law fact that such issues are not issued on the word of a Minister but require decisions by appropriate institutional organs, it turned out that the church in question dates to the 14<sup>th</sup> century and is now almost a total ruin (some 20% of the original structure remains), as it was largely demolished in 1615. Therefore, what the SOC is planning cannot be considered as restoration (as stated in the application), but only as reconstruction and strict international rules applicable in cases of ancient-monument reconstruction shall follow. Also, the monastery complex is not registered in the cadastre as belonging to the SOC, and it is registered as the social property of the (Kosovar) Regional Center for Cultural Heritage – Prizren. The obvious implication is that the monument is not a property of the SOC, with all that this entails.
- 49.** The application was duly examined by the Kosovo Institute for the Protection of Monuments (KIPM), which rejected it in a carefully worded and well-reasoned decision. The GoK, at the highest level, genuinely eager to satisfy the SOC, also prompted to that effect by international diplomats in Prishtina, tried their best to convince the KIPM to reconsider – to no avail. The goodwill manifested by the GoK

toward the SOC, in this case, was admirable, but no less admirable – and certainly reassuring – was also the stance of the KIPM members, who refused to yield to authority and honored their profession by standing by their collective and well-documented decision.

**50.** Faced with an impasse, the OSCE Mission in Kosovo, an IMC member, undertook to engage an international restoration expert to advise the IMC and the parties on a course of action. The matter remains unresolved.

## Conclusions and Recommendations

51. What seems to emerge from the above overview is a mixed picture. The situation of the SRCH in Kosovo is undoubtedly not ideal. The legal system designed for its protection is very good; one might even say excellent.
52. The GoK should acknowledge and respect the **exceptional status** accorded to the SOC and the SRCH in Kosovo by the Ahtisaari Plan and the legislation deriving from it. The specific actions listed in the following recommendations would go a long way in the direction of satisfying the SOC's needs and desiderata immediately or in the medium term:
53. Reinststate the SOC's right to exercise **full discretion** in the management of its property, property reconstruction. The natural place for this should be the new law on Cultural Heritage, and the GoK has pledged to consult the SOC in drafting it.
54. Honor the Kosovo Institutions' pledge that "the SOC will remain the **sole Christian Orthodox organization in the territory of Kosovo**".
55. Formally establish the **IMC** as the official body responsible for dealing with all issues relating to the SOC and the SRCH and recognize its decision-taking prerogative.
56. Complete the **reconstruction** of the SRCH sites damaged in March 2004.
57. In the case of the **Christ-the-Savior church** in central Prishtina, seek an amicable solution in a conciliatory spirit.
58. Seek a compromise in the case of the **St. Nicholas church** near Prizren that would aim at a balance between safeguarding the integrity of the KIPM position and respecting the dignity of the SOC.
59. Consider, in consultation with the SOC, the possibility and advisability of adopting a **comprehensive law on the SOC and the SRCH** that would bring together and codify all relevant legal provisions which are currently dispersed throughout the Kosovo legal system.

## Serbian Religious and Cultural Heritage and the Legally Binding Agreement between Kosovo and Serbia

60. There can be no doubt that the SRCH will be among the main issues to be addressed in the negotiations leading to a legally binding agreement between Kosovo and Serbia, which is expected to be the outcome of the Brussels dialogue. The Serbian president has made it clear that the protection of the SRCH in Kosovo is one of his country's main objectives in the dialogue and the final legally binding agreement with Kosovo. This section outlines how the SRCH could be taken up in the negotiations leading to such an agreement.
61. An essential factor in Serbia's approach to the dialogue and the final negotiations is the position of the Holy Synod of the SOC and the Patriarch himself. All statements emanating from the Church's seat in Belgrade have been critical of a compromise in the dialogue, and firmly against any thought of "losing Kosovo" (note that in the vocabulary used by the Church the expressions "delineation" and "border adjustment" mean separation of Kosovo from Serbia, i.e., recognition of Kosovo's independence from Serbia).
62. What is needed in the Kosovo-Serbia negotiation is precisely what is needed in any negotiation that aims at a win-win outcome: each side decides (a) what it is that it wants to gain from the exercise, and (b) what it thinks the other side considers as its most valuable gain. It is not difficult to see that, as far as Kosovo is concerned, absolutely undoubtedly its *sanctum sanctorum* is its statehood, the recognition of its independence by Serbia, which would open the way for UN membership and universal recognition. Moreover, there can be no doubt either that Serbia's *sanctum sanctorum*, or at least part of it, is the SRCH. Therefore, the GoK should consider, in exchange for the recognition of Kosovo's statehood by Serbia, an eventual set of measures designed to facilitate easier implementation of the CSP provisions on the protection of the SRCH within the state of Kosovo.

- 63.** A practical way of doing so, one that would also have the advantage of being very visible, would be to adopt a legal instrument that would bring together and codify all provisions of the Kosovo legal system concerning the SRCH, provisions that are now dispersed in various laws and regulations. Also, it would restore provisions that lost in the transposition of the Ahtisaari Plan into the Kosovo legal system, such as the SOC's discretion in the management of its property, and, in general, would update them and incorporate the lessons learned from the difficulties encountered in their implementation. That single legal instrument could be a codification of SRCH laws and provisions, which would eventually form part of the final international agreement on normalization of relations between Kosovo and Serbia and mutual recognition.
- 64.** An agreement along the lines indicated above would mean that Kosovo would give what it has already given since it has previously repeatedly and solemnly pledged to respect and fully implement all the Ahtisaari provisions, subsequently turned into Kosovo state legislation, about the SRCH. Therefore, such an agreement would both satisfy the other side and be in full accord with Kosovo laws. Furthermore, it would take the form of an international treaty between two states guaranteed and overseen by the EU and other international actors. The very definition of a win-win deal.

