
Protection of human rights in Kosovo
[Recommendation 1691](#) (2005)

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Reply from the Committee of Ministers
adopted at the 936th meeting of the Ministers' Deputies (7 September 2005)

1. The Committee of Ministers concurs with the view expressed by the Parliamentary Assembly in its [Resolution 1417](#) (2005) that "many of the substantive human rights problems faced by Kosovo [...] could be alleviated by enhancing and supplementing human rights protection mechanisms, within the context of the interim administration and without prejudice to the issue of Kosovo's final status." From this standpoint, the agreement signed with UNMIK on 23 August 2004 for the implementation of the Framework Convention for the Protection of National Minorities (FCNM) and for the extension of the right of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to visit places of detention coming under the authority of the interim civil administration in Kosovo is an important achievement, which the Committee of Ministers welcomes. UNMIK has submitted to the Council of Europe its report on the implementation of the FCNM, on which the Advisory Committee of the Convention will prepare an opinion. The adoption of this opinion, to be preceded by an in situ visit of the Advisory Committee, is expected for November.

2. At the same time, in response to paragraph 2.i of [Recommendation 1691](#) (2005), the Committee of Ministers regrets that, despite the approaches made to the NATO authorities, it has not yet been possible to conclude a similar agreement with NATO, so as to allow the CPT to visit places of detention coming under the authority of KFOR. When this problem was referred to it in February 2005, the Committee of Ministers noted that the delegations whose countries were NATO member states could help by contacting their respective authorities in order to draw their attention to this matter and to the need for a speedy solution. The President and the Executive Secretary of the Committee for the European Committee for the Prevention of Torture went to Brussels on 28 February for an exchange of views on this matter with the Political Affairs Committee of NATO. Regrettably, no progress has been made since, and the Committee of Ministers again calls on the delegations concerned to take action along these lines as soon as possible.

3. As to the recommendations set out in paragraphs 2.ii, iii and iv concerning "work ... towards establishing a human rights court for Kosovo", the Committee of Ministers refers the Parliamentary Assembly to the appended observations by the European Court of Human Rights, with which it fully concurs. Furthermore, the Committee of Ministers would like to inform the Parliamentary Assembly that UNMIK is working on the establishment of a human rights advisory panel as mentioned in para 2.iv.a. Concerning the nomination of experts to this panel, the Committee of Ministers again refers the Parliamentary Assembly to the appended observations by the European Court of Human Rights, with which it fully concurs.

Appendix to the reply

Parliamentary Assembly [Recommendation 1691](#) (2005)
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Comments by the European Court of Human Rights

The Court has taken note of [Recommendation 1691](#) (2005) of the Parliamentary Assembly and of the Committee of Ministers' decision of 9 February 2005 to communicate it to the Court for information and possible comments.

The Court will confine itself to commenting briefly on the proposals to commence work on establishing a human rights court for Kosovo and to empower the President of the European Court of Human Rights to appoint judges to this human rights court as well as to nominate international human rights experts in a number of bodies to be created with a view to reinforcing the protection of human rights in Kosovo.

As the Court understands it, the proposal to set up a human rights court for Kosovo raises the question of the applicability of the European Convention on Human Rights to Kosovo. This question, which can only be resolved having regard to United Nations Security Council Resolution 1244 and other relevant provisions determining the status of Kosovo under international law, is liable to arise in the context of applications against Serbia and Montenegro lodged with the Court in virtue of Articles 33 or 34 of the Convention. Consequently, the Court is in no position to address it in the present observations, as this might prejudice the later examination of an application brought under the Convention (see, *mutatis mutandis*, Article 47 § 2 of the Convention and the Court's decision of 2 June 2004 on its competence to give an advisory opinion). *Mutatis mutandis*, this conclusion also applies to the proposal to undertake a study on the "possible interim extension of the jurisdiction of the European Court of Human Rights to all the inhabitants of Kosovo".

As regards the recommendation to confer on the President of the European Court of Human Rights the power to appoint and/or nominate judges and experts to the bodies which it is proposed to create in Kosovo, the Court would stress that the sense in having its President as nominating/appointing authority in a context such as the one referred to in [Recommendation 1691](#) (2005) lies mainly in the high moral authority and independence of the presidential function. Modalities which, in contrast to those laid down in the Dayton Peace Agreement (Article VI 1 (a) of the Bosnia and Herzegovina Constitution), limit the President's power to the extent that he/she would only nominate candidates to be appointed subsequently by another authority, or that he/she would have to appoint candidates from among those nominated by another authority, would however appear to run counter to the President's necessary independence.