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## **The situation in Kosovo<sup>1</sup> and the role of the Council of Europe**

Report<sup>2</sup>  
Political Affairs Committee  
Rapporteur: Mr Björn von SYDOW, Sweden, Socialist Group

### *Summary*

The poor respect for the rule of law affects the everyday lives of all persons in Kosovo, irrespective of the community they belong to, undermines their trust in the political system and the prospects of economic development.

The Council of Europe should aim at raising standards in the field of democracy, human rights and the rule of law in Kosovo, so that its inhabitants can enjoy an equivalent level of rights as that upheld by the Council of Europe, irrespective of the status of Kosovo.

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<sup>1</sup> Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

<sup>2</sup> Reference to Committee: Doc. 11676, Reference 3482 of 29 September 2008.

**A. Draft resolution<sup>3</sup>**

1. Since the unilateral declaration of independence of 17 February 2008, the Kosovo institutions consider themselves as the sovereign and legitimate authorities of Kosovo and have taken steps to affirm Kosovo's statehood. 69 members of the United Nations have recognised the independence of Kosovo. However, the question of compliance of the unilateral declaration of independence with international law is being examined by the International Court of Justice, following a request for an advisory opinion made by the United Nations General Assembly.

2. The United Nations Civilian Administration in Kosovo (UNMIK), set up by the United Nations Security Council Resolution 1244, continues to be present in Kosovo, even if its staff has been considerably reduced and the scope for exercising executive functions has shrunk. It has been joined by the European Union Rule of Law Mission in Kosovo (EULEX), also acting under the aegis of Resolution 1244, whose main mandate is to monitor, mentor and advise the Kosovo institutions in the areas of the judiciary, customs and police. EULEX also holds an executive mandate in addressing war crimes as well as serious or organised crimes.

3. The Council of Europe applies a policy of status-neutrality towards Kosovo and recognises the continued validity of United Nations Security Council Resolution 1244. 33 of its member states have, however, recognised Kosovo as a sovereign and independent state.

4. The Parliamentary Assembly is convinced that, in the present circumstances, the focus of its attention as regards Kosovo should not be on status but on standards. In particular, it believes that, irrespective of its status, Kosovo should be a safe place for all those who live in it and a place where standards of democracy, the rule of law and human rights of an equivalent level to that upheld by the Council of Europe are fully enforced.

5. In this context, the Assembly welcomes the increased level of security in Kosovo, as recognised by international actors on the ground, and the decrease in the number of inter-ethnic incidents. It stresses, however, the need to closely monitor the security situation in Kosovo's northern municipalities, which remains volatile. It also regrets that, throughout Kosovo, different communities live separately, with a negligible level of interaction, and that inter-ethnic dialogue and reconciliation are still objectives to attain.

6. The Assembly expresses deep concern about the poor respect for the rule of law in Kosovo, which affects the everyday lives of all persons, irrespective of the community they belong to, and their trust in the political system. It also hampers good governance, economic development and, in the long term, the prospects of European integration.

7. Despite a significant legislative effort to reform the administration, the judiciary and other key sectors, much needs to be done to consolidate the democratic functioning of the institutions, improve political stability and ensure a level of governance that would bring Kosovo in line with Council of Europe standards.

8. The participation of all Kosovo communities in the political system remains a major challenge, despite the fact that Kosovo Serbs living south of the Ibar River are more and more prepared to find a *modus vivendi* with the Kosovo authorities, as indicated by their increased turn-out during the November 2009 local elections in Kosovo. In addition, some communities, such as Kosovo Serbs and Roma, Ashkali and Egyptians (RAE) continue to face discrimination and practical difficulties in the exercise of their rights and freedoms.

9. The Assembly notes that the Kosovo Constitution incorporates in domestic law the main international human rights instruments, including the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005), the Framework Convention for the Protection of National Minorities (ETS No.157) and the United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, and that the Kosovo government has adopted a Strategy and Action Plan on Human Rights 2009-2011. The Assembly, however, recalls that the incorporation of these instruments *per se* cannot be a guarantee of effective human rights protection if it is not backed by a firm political commitment to ensure implementation.

10. In the light of these considerations, the Assembly calls on EULEX, UNMIK and the Kosovo institutions to strengthen their actions aimed at enhancing the rule of law in Kosovo, in particular by:

10.1. taking public stances to condemn corruption, including in the political system;

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<sup>3</sup> Draft resolution adopted by the Committee on 1 June 2010.

10.2. introducing without further delay comprehensive legislation on procurement addressing the present legal and practical weaknesses;

10.3. taking concrete steps to improve the state of the judiciary, in particular with a view to enhancing its efficiency, competence, ethics and independence;

11. The Assembly encourages the European Union to:

11.1. continue its policy of diversity on status and unity on engagement, while ensuring a European perspective for Kosovo, in the context of the western Balkans;

11.2. strengthen its EULEX mission by:

11.2.1. improving its public image in Kosovo, through a more developed and inclusive communication policy;

11.2.2. reinforcing its presence and role in the North of Kosovo.

12. The Assembly calls on the authorities in Pristina and Belgrade to:

12.1. adopt a constructive and pragmatic attitude in trying to solve the practical problems affecting Kosovo Serbs and other minority communities in or from Kosovo, in particular as regards the issuance of documents, the recognition of the validity of documents (such as identity cards, passports, driving licences and school diplomas) and the availability of energy supply;

12.2. make further efforts in order to facilitate the recognition of property rights and the restitution of properties to their legitimate owners or, if this is not possible, the provision of equivalent compensation, along the lines set out in Assembly Resolution 1708 (2010) on Solving property issues of refugees and internally displaced persons, and consistent with the case law of the European Court of Human Rights;

12.3. establish an inclusive dialogue with the Kosovo Serb civil society in the North of Kosovo, also outside formal structures;

12.4. continue to co-operate in the framework of the activities of the Working Group on Missing Persons and in the Reconstruction Implementation Commission (RIC) and establish dialogue on other issues of common concern;

12.5. ensure full co-operation with EULEX War Crimes Investigation Unit and the International Criminal Tribunal on the former Yugoslavia;

12.6. take a flexible approach in the context of regional co-operation initiatives in order to facilitate the participation of their representatives, irrespective of status-related considerations;

12.7. be pro-active in promoting dialogue and reconciliation between communities, in policy and public discourse.

13. The Assembly calls on the Kosovo institutions to:

13.1. ensure full co-operation with EULEX in the context of investigations into serious or organised crime and war crime cases;

13.2. fully co-operate with the Kosovo anti-corruption agency, reinforce its independence and the professionalism of its staff, allocate adequate resources to it and ensure follow-up to its recommendations ;

13.3. take fully into account the multi-ethnic character of Kosovo, in particular by:

13.3.1. scrupulously implementing the legislation on the rights of minorities, decentralisation and minority languages;

13.3.2. creating the socio-economic conditions for the full integration of individuals from minority communities in society, including displaced persons and returnees;

13.3.3. creating the conditions for the safe return and reintegration of displaced persons wishing to return;

13.3.4. promoting the participation of individuals from minority communities in the political system and the public sphere;

13.3.5. taking resolute action against discrimination on ethnic grounds, in both the public and private sphere;

13.3.6. condemning publicly inter-ethnic crimes and instructing the police to keep specific statistics on these crimes;

13.4. ensure effective adherence with international human rights instruments incorporated in domestic law, including the European Convention on Human Rights and the Framework Convention on National Minorities;

13.5. consider incorporating in domestic law additional Council of Europe conventions, with a view to adopting Council of Europe standards;

13.6. ensure the independence of the media and promote the role of the media as a catalyst of inter-ethnic dialogue and reconciliation, in particular by:

13.6.1. restoring an independent budget for the public broadcaster RTK;

13.6.2. ensuring the independence of the board of RTK;

13.6.3. promoting the production, distribution and broadcasting of television and radio programmes in minority languages, especially Kosovo-wide;

13.6.4. supporting the efforts of media professionals to produce TV and radio programmes, as well as written articles, portraying the situation of different communities in different parts of Kosovo;

13.7. take steps to address the situation of women and promote gender equality, in particular by:

13.7.1. taking resolute action to fight against trafficking in human beings;

13.7.2. introducing measures and programmes to address the situation of victims of trafficking and facilitate their re-integration in society;

13.7.3. supporting or organising public campaigns against domestic violence;

13.7.4. taking appropriate measures to promote the economic independence of women;

13.7.5. combating discrimination against women in all fields, including in the context of inheritance law and practice and other civil cases, such as divorce, separation and custody of children;

13.8. take urgent steps to relocate permanently the Roma population of the camps of Cesmin Lug and Osterode Cesmin, which are heavily contaminated by lead, and provide medical treatment to those whose health has been affected, as also recommended by the Council of Europe Commissioner for Human Rights.

14. The Assembly calls on the Serbian authorities to:

14.1. eliminate all practical obstacles for those displaced persons who wish to return, in particular as regards access to information, and recognition and transmission of documents, including cadastral information and property certificates;

14.2. set up appropriate programmes to ensure the integration in Serbia of displaced persons from Kosovo who do not wish to or cannot go back.

15. The Assembly calls on Council of Europe member states to:

15.1. refrain from forcibly returning to Kosovo individuals who might still be in need of international protection according to the relevant United Nations High Commissioner for Refugees guidelines;

15.2. take into consideration Kosovo's capacity to sustain returns when deciding whether to return individuals to Kosovo.

16. In order to enhance the Council of Europe's role in Kosovo, the Assembly:

16.1. encourages the Council of Europe Commissioner for Human Rights to continue his activities as regards Kosovo;

16.2. invites the Secretary General of the Council of Europe to convey to the Organisation's secretariat that direct working contacts with the Kosovo authorities, at all levels, are possible when justified by the need to ensure the smooth implementation of Council of Europe activities which respect status neutrality.

17. In order to contribute to the consolidation of the democratic functioning of Kosovo institutions, the Assembly:

17.1. encourages Kosovo political parties to:

17.1.1. introduce rules on their internal democratic functioning;

17.1.2. promote gender equality in their structures, leadership and electoral lists;

17.1.3. encourage multi-ethnic membership, leadership and electoral lists;

17.2. resolves to initiate a dialogue with representatives of the political forces elected to the Kosovo Assembly on issues of common interest, while taking into account the legitimate interests and concerns of Serbia and United Nations Security Council Resolution 1244.

**B. Draft recommendation<sup>4</sup>**

1. Referring to its Resolution.....(2010) on the situation in Kosovo and the role of the Council of Europe, the Parliamentary Assembly is of the view that, although divided on the issue of status, Council of Europe member states should be united in supporting a greater involvement of the Council of Europe in Kosovo, for the benefit of all its inhabitants.
2. Although more than two thirds of Council of Europe member states have recognised Kosovo as an independent state, the Organisation implements a policy of status-neutrality towards Kosovo. In these circumstances, the Assembly believes that the Council of Europe engagement in Kosovo should aim at raising standards in the field of democracy, human rights and the rule of law, so that people in Kosovo can enjoy an equivalent level of rights as that upheld by the Council of Europe, irrespective of the status of Kosovo.
3. To this end, the Council of Europe should broaden the range of its activities in Kosovo and demonstrate pragmatism, flexibility and imagination in finding formulas which would enable the broadest possible range of Council of Europe activities and mechanisms to apply in Kosovo, while respecting its current policy of status-neutrality.
4. In the light of these considerations, the Assembly recommends the Committee of Ministers to:
  - 4.1. clearly formulate the political commitment that the Council of Europe should contribute to raising the standards of democracy, human rights and the rule of law in Kosovo and consider this as a priority area for the work of the Organisation;
  - 4.2. give priority to activities aimed at improving the rule of law, fighting corruption, organised and economic crime and reinforcing the judiciary in Kosovo;
  - 4.3. continue its activities in the field of education, as well as protection and rehabilitation of the cultural heritage in Kosovo, which play a fundamental role in fostering inter-ethnic dialogue and reconciliation;
  - 4.4. support the continuation and further development of activities which bring together individuals from different Kosovo communities;
  - 4.5. take a pro-active approach in negotiating new modalities to ensure the continuation of the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Advisory Committee for the Protection of National Minorities in Kosovo and ensure that the reports issued by these bodies are addressed directly to those authorities which have real and effective authority in the relevant domain, and which can subsequently implement the relevant recommendations;
  - 4.6. initiate a feasibility study on how to extend the implementation of other Council of Europe monitoring mechanisms to Kosovo;
  - 4.7. conduct a study on the relevance and applicability of the case law of the European Court of Human Rights to the issue of restitution of properties or provision of equivalent financial compensation to the case of Kosovo;
  - 4.8. support activities aimed at fostering gender equality, fighting violence against women, including domestic violence, and trafficking in human beings in Kosovo;
  - 4.9. set up activities aimed at strengthening the independence of the media in Kosovo;
  - 4.10. step up activities on the situation of the Roma, Ashkali and Egyptian community in Kosovo;
  - 4.11. reinforce the role, visibility and capacities of the Council of Europe office in Pristina, in particular by enhancing its resources and capacity for political analysis and early warning;

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<sup>4</sup> Draft recommendation adopted by the Committee on 1 June 2010.

4.12. continue to co-operate closely with the complex institutional lay-out present in Kosovo, including international actors and Kosovo institutions, and reinforce its contacts with civil society and non-governmental organisations;

4.13. ensure that the policy of status-neutrality is implemented in such a way as not to prevent direct working contacts between Council of Europe staff and the Kosovo authorities, at all levels, when such contacts are justified by the need to ensure the smooth implementation of Council of Europe activities which respect status neutrality.

**C. Explanatory memorandum by Mr von Sydow, rapporteur**

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**1. Introduction**

1. I have taken on the task of rapporteur on the situation in Kosovo being fully aware of the challenges involved. The issue of the status of Kosovo is deeply divisive and I will steer clear from trying to promote consensus over it. On the contrary, although bound to take into account the unilateral declaration of independence by the Kosovo Assembly and its consequences on the ground, I will adopt a status-neutral approach. I am convinced that there is no scope for an Assembly rapporteur to try to address the status issue at the present moment and in the present circumstances:

- from a legal point of view, the question of the compliance of the declaration of independence with international law is being examined by the International Court of Justice, following a request for an advisory opinion made by the UN General Assembly;<sup>5</sup>
- from a political point of view, at the time of writing, Kosovo has been recognised as an independent and sovereign state by 69 countries, including 33 Council of Europe member states.

2. My ambition is to promote consensus on a different aspect of the Kosovo question: that people in Kosovo should enjoy good governance, democracy, rule of law and the same legal and human rights

<sup>5</sup> On 8 October 2008, the UN General Assembly adopted Resolution A/RES/63/3, in which it requested the ICJ to render an advisory opinion on the accordance with international law of the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo. In December 2009, public hearings were concluded. The Court is now ready to begin its deliberations (ICJ, Press release No. 2009/34, 11 December 2009).



standards as other people in Europe, irrespective of the status of Kosovo, of the ethnic community to which they belong, or whether they live North or South of the Ibar river. To use a vocabulary often associated with Kosovo, I will not be concerned with status but with standards. I will try to:

- analyse the situation on the ground as regards governance, democracy, human rights and the rule of law;
- suggest what should be done for the standards to be fully achieved;
- recommend how the Council of Europe could contribute to achieving them.

3. This report is based, amongst other things, on a number of formal and less formal discussions with actors having first-hand knowledge of the situation in Kosovo, including the Council of Europe Commissioner for Human Rights, Mr Hammarberg, who has devoted great attention to specific human rights issues; an exchange of views organised by the Political Affairs Committee in Strasbourg;<sup>6</sup> and a number of fact-finding visits, in particular to:

- Pristina, Gijlan, Gračanica and Mitrovica (2-5 February 2009);
- Belgrade (8-9 June 2009);
- Brussels (25-26 November 2009);
- various locations in Kosovo (21-26 February 2010).

## 2. A complex institutional lay-out

4. At the moment, Kosovo presents a complex institutional lay-out, including local and international actors. Some of these institutions have been set up as a result of the declared independence of Kosovo; others are status-neutral. Some of them have executive functions; others have mainly a consultative function but they can exercise executive functions by default if other institutions fail to do so. The complexity of this institutional framework requires a great effort of co-ordination and vigilance in order to avoid gaps or overlapping which would affect security, governance and the rule of law.

5. Since declaring independence, the Kosovo institutions consider themselves as the sovereign authorities of Kosovo and have made steps to affirm Kosovo's statehood. Institutions such as the President, Ministers and the Assembly continue to exist as prior to the unilateral declaration of independence but refuse the label of 'Provisional Institutions of Self-Government' (PISG). In the government, new Ministries of European Integration, Foreign Affairs and Defence have been set up.

6. Upon declaring independence, Kosovo expressly invited an international civilian presence, as it was envisaged in the Comprehensive Proposal for the Kosovo Status Settlement (thereafter the Ahtisaari Proposal).<sup>7</sup>

7. In response to this request, the International Steering Group for Kosovo (ISG) – formed by 25 states having recognised the independence of Kosovo and supporting the Ahtisaari Proposal – appointed Pieter Feith, a Dutch diplomat and former official of the Secretariat of the Council of the European Union, as International Civilian Representative (ICR), with the task of monitoring and ensuring implementation of the Ahtisaari Proposal by the Kosovo government.

8. In addition, Pieter Feith holds a simultaneous mandate as the European Union Special Representative (EUSR) in Kosovo,<sup>8</sup> under which he should ensure the overall co-ordination of the European Union presence in Kosovo, the consistency and coherence of the Union action towards the public, provide local political guidance to the Head of the European Union Rule of Law Mission in Kosovo (EULEX) and contribute to the development and consolidation of respect for human rights and fundamental freedoms in Kosovo.

9. The establishment of the figure of the EUSR for Kosovo was inscribed in a trend that developed in parallel with the negotiations over the final status of Kosovo, namely the downsizing of the UN presence in Kosovo and the corresponding increase in the political and operational involvement of the European Union, with a large field mission that should have been deployed after the successful conclusion of the negotiations.

<sup>6</sup> Exchange of views held on 28 September 2009 with the participation of: Mr Oliver Ivanovic, State Secretary in the Ministry of Kosovo and Metohija of the government of Serbia; Mrs Zylfije Hundozi and Mr Bujar Bukoshi, members of the Kosovo Assembly; and Mrs Rada Trajkovic, President of the Executive Board of the Serbian National Council, Gračanica.

<sup>7</sup> The text can be found at: <http://www.unosek.org>

<sup>8</sup> On the basis of Council Joint Action 2008/123/CFSP of 4 February 2008.

10. The declaration of independence, outside a negotiated solution, posed important political challenges to European Union involvement on the ground, as not all EU member states were - and are - prepared to recognise the independence of Kosovo.<sup>9</sup> EU member states, however, overcame possible political difficulties in a pragmatic spirit, ensuring unanimous support for the deployment of a European Union operation despite their different views over status, as epitomised by the formula '*diversity on status but unity on engagement*'.<sup>10</sup>

11. In line with the United Nations Security Council's presidential statement of 26 November 2008,<sup>11</sup> the Government of Serbia and the majority of Kosovo Serbs accepted the deployment of EULEX on condition that it would fully respect Resolution 1244 (1999) and that it would operate under the overall authority of the United Nations and within its status-neutral framework. Having achieved operational capability in April 2008, EULEX therefore could deploy Kosovo-wide starting from December of the same year. EULEX is the largest civilian mission ever launched by the European Union, with a final staff target of 3,200 people. Its core aim is to assist and support the Kosovo authorities in the rule of law area, specifically in the police, judiciary and customs areas. It is a technical mission which monitors, mentors and advises whilst retaining a number of executive powers in some specific areas.

12. In October 2009, the Italian Ambassador to Kosovo, Michael Giffoni, was appointed as European Union Representative for the North of Kosovo, with a view to increasing European Union activities in the area. In March 2010, the European Union also opened an office in North Mitrovica. Ambassador Dimitris Moschopoulos is the Union facilitator for the protection of religious and cultural heritage.

13. The changed circumstances on the ground and the deployment of EULEX in Kosovo have led to the gradual adjustment of the profile and size of the United Nations Interim Administration Mission in Kosovo (UNMIK), which concluded its reconfiguration and reached the authorised strength of 510 staff as of 1 July 2009.<sup>12</sup> Its functions have also changed: rather than an authority with executive powers, UNMIK mainly acts as a facilitator in situations where the underlying disagreement over the status of Kosovo has inhibited practical progress, affecting the everyday life of people in Kosovo. UNMIK maintains a sizeable presence in the North of Kosovo, where it acts as a facilitator also between the Serbian community and EULEX, when necessary. Enjoying the trust of all communities, UNMIK is in a unique position to act as a facilitator of dialogue.

14. The changed situation on the ground has also had consequences on the size and tasks of KFOR, a NATO peace-enforcement operation operated under Chapter VII of the UN Charter, on the basis of United Nations Security Council (UNSC) Resolution 1244. Following the declaration of independence, the Alliance reaffirmed that KFOR should remain in Kosovo unless the UNSC decides otherwise. Its troops, however, have been reduced to approximately 10,000. Amongst its new tasks is assisting in the dismantling of the Kosovo Protection Corps (KPC) and in the establishment of the Kosovo Security Force (KSF), as well as the civilian structure to oversee the KSF. These tasks are implemented in close co-ordination and consultation with the relevant local and international authorities. KFOR plans the further downsizing of its mission in 2010.

15. To complete the overview of the main international organisations present in Kosovo,<sup>13</sup> I would like to mention the OSCE which, without having executive powers, holds a mandate to '*take the lead role in matters relating to institution and democracy-building and human rights and rule of law*', in the framework of UNSC Resolution 1244.<sup>14</sup> To do so, the OSCE Mission applies a proactive monitoring policy that includes monitoring, analysing, reporting and recommending remedial action for observed shortcomings. When necessary, the Mission provides training and advice to the institutions. With a ceiling of 224 international and 633 local staff, the OSCE Mission in Kosovo is currently the largest OSCE field presence. To fulfill its mandate and carry out its activities, it has a network of five regional centres and 33 municipal teams that cover Kosovo's 33 municipalities. The OSCE budget allocated to the Mission in Kosovo for 2010 amounts to 23,546,600 Euros.

16. Also after the unilateral declaration of independence, the Serbian authorities continue to have an impact on the lives of the Serbian community in Kosovo. This impact is particularly strong in the three municipalities of Leposavić, Zvečan and Zubin Potok and also in North Mitrovica - an area where Serbs are

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<sup>9</sup> At the time of writing, Cyprus, Greece, Romania, Slovakia and Spain have not recognised Kosovo as an independent state.

<sup>10</sup> This expression was mentioned to me several times by EU officials in Brussels.

<sup>11</sup> S/PRST/2008/44

<sup>12</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 30 September 2009, S/2009/497.

<sup>13</sup> The role of the Council of Europe will be described later on.

<sup>14</sup> OSCE Permanent Council, Decision no. 35, 1 July 1999.

the majority of the population and which has territorial continuity with Serbia - whereas it is more limited in the Serbian enclaves South of the river Ibar.

17. The voice of Belgrade is heard through the Serbian television and other media in Serbian language; through the Orthodox Church; through politicians, some of whom have been elected in the Serbian local elections organised in the territory of Kosovo,<sup>15</sup> while others hold a parliamentary mandate in Belgrade, gained by participating in the Serbian parliamentary elections;<sup>16</sup> and through the Ministry of Kosovo and Metohija, in the Serbian government, led by Goran Bogdanović with Oliver Ivanović as State Secretary.

18. Throughout Kosovo, Serbian structures receiving funding from Belgrade (so-called parallel structures), provide basic services to the Serbian community in key areas for everyday life such as administration, justice, health and education. Also at the political level, local authorities elected through Kosovo elections operate aside local authorities elected through Serbian elections. Recently, in a new development, the Judicial Council of Serbia has announced its decision to appoint judges and prosecutors to Kosovo municipalities. In the North of Kosovo, where the majority of the population is of Serbian ethnicity, Serbian structures are the main reference for ordinary people.

### 3. Political stability, governance and democracy

19. In the unilateral declaration of independence, the Kosovo Assembly declared Kosovo to be a democratic republic and vowed to realise the full democratic potential of its society. Since then, a Constitution has entered into force, a huge legislative effort has been made, and a number of reforms in the fields of the administration, the judiciary and other key sectors have been undertaken. However, much remains to be done to improve political stability and governance and to bring Kosovo's democracy closer to European standards.

20. The last elections to the Kosovo Assembly were held in 2007, before the declaration of independence. They were organised by UNMIK, with the Council of Europe and the OSCE playing a leading role in the observation process.<sup>17</sup> Following the vote, a coalition government was formed by the two majority parties, the PDK lead by Hashim Thaci (37 seats) and the LDK of President Fatmir Sejdiu (25), with AKR, LDD and AAK and other smaller parties in the opposition.<sup>18</sup>

21. In November 2009, for the first time the Kosovo authorities were entirely in charge of the organisation of local elections. Neither the Council of Europe nor the OSCE observed them or were involved in the organisation. However, the Kosovo authorities invited the European Network of Election Monitoring Organizations (ENEMO), a group of 18 leading civic organisations from Eastern and Central Europe and Central Asia with a consolidated experience in election monitoring, to conduct long and short-term observation. ENEMO found that elections took place in a calm and orderly atmosphere and largely in compliance with European standards, despite some breaches of procedure.<sup>19</sup> Politically, the electoral results gave a big shake to the government coalition, with rumours circulating that the PDK would form a new alliance with AKR and LDD, excluding LDK. This reshuffling has so far been averted but tensions between the coalition parties remain.

22. The most striking feature of recent elections in Kosovo is the low turn-out: approximately 30% in 2007 (elections for the Kosovo Assembly) and 38% in 2009 (local elections).<sup>20</sup> This is a sign of the electorate's disaffection with the political system, which is not only a general problem in Europe but is also due to Kosovo's specific reality, with widespread suspicion of the political class being corrupt and having links with organised crime. An additional explanation for the low turn-out in the 2009 elections was offered to me by

<sup>15</sup> On the strength of these elections, held in May 2008, local assemblies and councils were set up. However, the then SRSG Joachim Rucker spoke against the holding of such elections and the recognition of the structures stemming from them, as the organisation of elections in the territory of Kosovo by Serbia was in contravention with UNSC 1244.

<sup>16</sup> Within the Serbian parliament there is a parliamentary Committee on Kosovo and Metohija, with whom I met during my visit to Belgrade in 2009.

<sup>17</sup> See Council of Europe press release 801 (2007), Elections in line with international standards but alarmingly low turn-out. The observation mission comprised a central team of eight international experts based in Pristina, under the leadership of Giovanni Di Stasi (Italy), former President of the Congress of Local and Regional Authorities of the Council of Europe. A delegation of the Council of Europe's Congress of Local and Regional Authorities and from the European Parliament also took part in the observation.

<sup>18</sup> PDK = Democratic Party of Kosovo; LDK = Democratic League of Kosovo; AKR = New Kosovo Alliance (whose leader is Behgjet Pacolli); LDD = Democratic League of Dardania; AAK = Alliance for the Future of Kosovo (whose leader is Ramush Haradinaj)

<sup>19</sup> For ENEMO's statements see <http://www.enemo.eu/kosovo2009.htm>

<sup>20</sup> It is not possible to quote exact figures, due to the lack of accuracy of voters' lists.

some ordinary people from Kosovo: the current government was put in place to deliver independence, and it did so; however, those same politicians are unable to deliver on the most pressing issues that preoccupy the electorate once the status issue settled: unemployment, the state of the economy, the provision and quality of basic services and the fight against corruption.

23. Irrespective of the performance of the current leadership, Kosovo has a long way to go to consolidate the democratic functioning of its institutions: political debate in the Assembly is very limited; legislation and political decisions tend to be negotiated outside the Assembly and then handed over for endorsement; there is no deep understanding of the oversight role of the Assembly on government or of the dynamics between the majority and the opposition in a democratic system; political parties do not operate according to democratic rules and reflect the interests of some prominent figures in society, families or structures linked to the war period; the media and the judiciary are not free from political interference. Corruption in politics – including at the highest level – and in the administration are a major problem, recognised by all the international actors on the ground.

24. The issue of the participation of communities in the political system is essential for its democratic functioning and political legitimacy. Special measures have been introduced in order to ensure the representation of minority communities in the Kosovo Assembly and special majorities are required for passing legislation affecting them. However, in practice, ensuring the participation of the Kosovo Serb community in the Kosovo political system remains a major challenge.

25. During the votes that have taken place in Kosovo since 1999, Kosovo Serbs' participation in the elections to the Kosovo Assembly has been very low, also in response to calls from Belgrade in favour of abstention. As a result, the seats set aside for Kosovo Serbs' representatives in the Assembly (10) have been occupied by politicians whose representativity is questioned by Belgrade as well as by some Kosovo Serb political figures. For similar reasons, the authorities in Belgrade have disputed the legitimacy of those Kosovo Serbs who have agreed to occupy the position of ministers in the Kosovo government, as is traditionally the case for the ministry for communities and returns.

26. The majority of Kosovo Serbs abstained from voting also in the 2009 local elections,<sup>21</sup> the first ones after the declaration of independence: the turn-out within this community was lower than 1% in the North. However, the increased participation of Kosovo Serbs living in enclaves South of the Ibar compared to previous votes is an important development, which seems to testify to their growing preparedness to find a *modus vivendi* with the Kosovo institutions and the subsequent decrease of Belgrade's influence.

27. Diverging assessments have been given for the overall Kosovo Serbs' participation in the 2009 vote: while Belgrade declared that the poor turn-out deprived the electoral results of any legitimacy,<sup>22</sup> the European Union welcomed the participation of all communities.<sup>23</sup>

28. Although neither enjoying widespread support nor representing a real threat to political stability, extremist groups are active in Kosovo. The best known is Vetevendosje (self-determination), a group which opposes the international presence and is against local government reform, in particular the creation of new municipalities with a Serbian majority. This group has been responsible for incidents of violence in Kosovo.

#### 4. The rule of law

29. At present, the poor record in the respect for the rule of law is the main problem in Kosovo. It affects ordinary individuals in their everyday life, irrespective of the community they belong to. It also has an impact on governance, the functioning of the political system and the administration and people's trust in the institutions and the private sector. It is a hindrance to economic development, as foreign and local investors are reluctant to commit resources in these circumstances.

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<sup>21</sup> The government of Serbia officially declared that conditions for the participation of Kosovo Serbs in the elections did not exist and that the elections were not in line with UNSC Resolution 1244.

<sup>22</sup> Small Serb Turnout, press release of 15 November 2009, at <http://www.kim.gov.rs/Press+releases/700/Small+Serb+turout+.shtml>. Minister Bogdanovic also denounced electoral frauds and irregularities in the conduct of the vote.

<sup>23</sup> EU Presidency statements on the first and second round of elections, respectively issued on 17 November and 15 December 2009.

#### 4.1. Recent developments

30. Since my last visit to Kosovo, important developments have taken place in this area. In May 2010, following months of thorough investigations, the EULEX judicial component pressed charges against the Minister of Transport, Fatmir Limaj, and the Head of Procurement in the same ministry, Nexhat Krasniqi, on grounds of money laundering, organised crime, abuse of office and soliciting bribes. EULEX acting Chief Prosecutor, Johan van Vreeswijk, also revealed that six other government ministers are under investigation for corruption.<sup>24</sup>

31. Hopefully, this development proves to a large part of Kosovo's public opinion that EULEX is able to tackle exemplary cases and that the time of impunity is over: the rapid enrichment of some figures close to or from the Kosovo political leadership is under everybody's eyes and, at the time of my last visit to Kosovo, various interlocutors expressed frustration and criticism at the performance of EULEX, which they considered to be unable or unwilling to tackle such cases.

32. It is, however, a source of concern that, in an interview with the public broadcaster, Prime Minister Hashim Thaci, who belongs to the same party as the Minister for Transport (PDK), questioned the actions of EULEX and hinted at the existence of a 'political war' between Kosovo and international institutions.

33. I regret this misjudgment over the role of EULEX, which is a status-neutral technical mission with the purpose of strengthening the rule of law in Kosovo: it is neither an international tribunal nor a political body. Despite its mandate and nature, however, EULEX operates in a highly political environment, its actions have a political impact, are liable to political manipulation and subject to political assessment. I was pleased, therefore, to hear that, even before these prominent cases, EULEX was actively promoting round tables and other exchanges with the Kosovo civil society, in order to explain its role and mandate.

34. Another important development, which is telling of the difficulty to enforce the rule of law in Kosovo, is the trial of Albin Kurti, the leader of *Vetevendosje*, who was arrested for inciting violent behaviour and obstructing the work of police officers during a demonstration. This trial was postponed for the 11<sup>th</sup> time because Mr Kurti was not taken to court despite an arrest order issued previously by the presiding EULEX judge. In addition the lawyers appointed *ex officio* did not show up, in violation of their official duties.<sup>25</sup>

35. During my last visit to Kosovo, I met ordinary people who considered it a misdirection of purpose that EULEX was after Kurti. What is more worrying, however, is that police and lawyers themselves decide not to comply with their duties, with a view to preventing the course of justice. As stated by EULEX, this behaviour will require action by the police disciplinary bodies and the Bar Association.

#### 4.2. The fight against corruption

36. Corruption is so widespread in Kosovo that it could be defined as endemic; it is so deeply rooted in society that a considerable effort of awareness-raising should be made to encourage ordinary people to report cases of corruption. On the other hand, it is not infrequent that, when cases of corruption are reported, they are based on rumours or are deliberately calumnious.

37. In an attempt to counter corruption, a Kosovo Anti-corruption agency (KAA) has been established, with a threefold mission:

- fighting corruption, by conducting administrative investigations on potential corruption cases *ex officio* or by the request of a party, and forwarding cases to the Public Prosecutor's Office of Kosovo for further examination and/or judicial action when there is sufficient evidence; drafting bills for supplementing the legal framework in the area and drawing up the Action Plan against corruption and ensuring its implementation;
- preventing corruption, by reviewing asset declarations by high-level Kosovo officials; raising cases of conflict of interest and registering gifts accepted by officials;
- training the civil service on the relevant legal framework and organising awareness-raising campaigns.

38. During two years of work (2007 and 2008; the 2009 report is under preparation), the Agency opened 270 files and, finding that there were sufficient grounds for prosecution, transmitted a hundred of them to the Prosecutor's Office.

<sup>24</sup> [www.balkansinsight.com](http://www.balkansinsight.com).

<sup>25</sup> [www.balkansinsight.com](http://www.balkansinsight.com).

39. Despite the adoption of the Anti-corruption strategy, the legislative framework is not complete. In particular, several interlocutors regretted the lack of resolve of the Kosovo authorities in adopting a new procurement law as a matter of urgency.

40. Misconduct in procurement activities is a frequent form of corruption. On several occasions, procurement officers have been tried. The suspicion, however, remains that procurement officers are only the weak link in a chain, and that the real responsibility lies with political figures who never leave a trace.

41. At present, discussions are taking place in the Kosovo Assembly on the drafting of new procurement legislation. The Anti-corruption agency participates in these discussions and supports three main ideas:

- to make it possible to identify who, politically, is responsible for the allocation of a given tender;
- to conduct more attentive examination of the information provided by firms when competing for a tender – which has often proved to be false;
- to introduce a clause on conflict of interest.

42. The Anti-corruption agency regularly participates in meetings with similar structures within the region, in order to exchange information and best practice. It is supported by the European Commission through a number of projects aimed at improving the expertise and the professionalism of its staff.

#### 4.3. *The judiciary*

43. Any attempt to eradicate corruption is bound to fail without an efficient and trustworthy judiciary. Unfortunately, in Kosovo, the judiciary is in poor shape. This is partly due to the fact that the great majority of judges and prosecutors who are currently in office completed their studies in the pre-1999 period and are not up to speed with relevant law. In addition, due to the lack of career progress during the years of the war and of the UNMIK administration, the average age of judges in municipal courts (the first instance of the judiciary) is 55. These elements, together with low salaries, affect the motivation of judges, their flexibility to adapt to new legislation and to distance themselves from certain inefficient procedures or practices.

44. These problems are aggravated by lack of *de iure* independence, due to the appointment and promotion system,<sup>26</sup> and lack of *de facto* independence, due to the inadequacy of measures to protect judges and prosecutors. Corruption is an outstanding concern, with 80% of all corruption cases involving members of the judiciary, according to some interlocutors.

45. Efficiency in dealing with the current huge backlog of cases is negatively affected by technical problems, such as the poor state of the filing and archiving system, and by shortage of staff, due to the fact that only one third of serving judges have passed the ethics vetting procedure. The slow pace at which Kosovo judges tackle their workload has led to many people spending as long as two years in pre-trial detention, after which cases are normally transferred to EULEX judges to be dealt with as a matter of urgency.

#### 4.4. *EULEX judicial component*

46. The deployment of EULEX has not yet had a decisive impact on the general state of affairs of the judiciary. In fact, relations between the EULEX judicial component and the Kosovo judiciary are not always straightforward. In a way, Kosovo judges resent the presence of EULEX judges and do not find it easy to adapt to their working methods; as a result, communication is not easy and is further complicated by the need of interpretation.

47. At the same time, EULEX faces some challenges of its own:

- the mandate of monitoring, mentoring and advising is not easy to implement considering the *ratio* between the EULEX judicial component and Kosovo judiciary: in Prizren, for instance, the proportion between EULEX prosecutors and Kosovo prosecutors is 1 to 17. It is therefore not evident for EULEX to have a complete overview of the cases being dealt with;
- EULEX' monitoring, mentoring and advising role is not so visible in the eyes of the public opinion as its executive functions. Indeed EULEX judges have primary responsibility for dealing with urgent cases or cases

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<sup>26</sup> The composition of the Kosovo Judicial Council – the body responsible for recruiting and proposing candidates for appointment and reappointment to judicial office - gives reason for concern due to the high number of members appointed by the Kosovo Assembly, which raises the risk of political interference in its work.

for which it is reasonable to believe that Kosovo judges would be subjected to excessive outside pressure, such as corruption cases involving high profile figures and war crimes;

- the work of EULEX judges and prosecutors is slowed down by the need for interpretation and translation, not only to read the files and hear cases but also to communicate with Kosovo colleagues;
- to monitor, mentor and advise, EULEX staff must be experienced. However, according to the current recruitment procedure, the staff are given very short notice before being deployed, with the result that many of those with a consolidated experience do not apply or do not accept the job. It was mentioned to me that it would be better if EULEX could set up a roster of judges and prosecutors from which to draw when needed.

48. Since their deployment, EULEX judges and prosecutors have worked hard: they have reviewed and assessed the war crime files received from UNMIK; they have identified a number of organised crime and war crime cases for priority action and they have dealt with several inter-ethnic crime cases and property cases.

49. At the time of my first visit to Kosovo, in 2009, EULEX judges and prosecutors in North Mitrovica were not able to work due to the poor state of the filing system but above all due to the refusal of Kosovo Albanian and Kosovo Serbs to work together at all levels (from judges to cleaning personnel). One year later, I was pleased to see that this situation has changed: EULEX judges and prosecutors in the North Mitrovica district court have completed a number of trials, while an inventory of files has been undertaken, with the active involvement of Kosovo Albanian and Kosovo Serb professionals.

50. Something which has not changed, however, is the lack of clarity as to the system of sources of law: in their daily work EULEX judges have to deal with a complex and unclear legal framework where different sources of law, such as UNMIK regulations, the Kosovo Constitution, legislation passed by the Kosovo Assembly and pre-1999 Serbian legislation co-exist and overlap without a clear indication of which one should prevail.

#### 4.5. Police

51. According to various interlocutors I met in Kosovo, including EULEX itself, the Kosovo Police (KPS) is properly trained, its staff sufficiently skilled and has appropriate budgetary resources and equipment. There is, however, a concern about the quality of its leadership and its capacity for strategic direction, which are critical features to tackle some of the main challenges to the rule of law in Kosovo, such as organised crime and corruption.

52. Despite the low remuneration of its staff, KPS is found to be relatively free from corrupt behaviour. However, its accountability could be further improved, in particular with regard to the ability publicly to explain its performance and address community expectations at local level in the context of a multi-ethnic society. In order to do so, KPS should improve its system for collecting data on the ethnicity of victims of crime and for categorising crimes as 'likely to be ethnically motivated'.

53. As regards the multi-ethnic character of KPS, out of 325 Kosovo Serb police staff who did not report for duty after the unilateral declaration of independence, 318 have returned to work and have been reintegrated, under EULEX supervision. A visibly mixed police force and joint patrolling are essential elements for the police to enjoy the trust of communities, especially in minority areas. More efforts should be done, however, to encourage the recruitment of Kosovo Serbs into the KPS in the North of Kosovo.

## 5. The human rights framework

### 5.1. Law and policy

54. According to the Kosovo Constitution,<sup>27</sup> a number of international instruments are directly applicable in Kosovo including, amongst others, the European Convention on Human Rights, the Framework Convention on the Protection of National Minorities, the International Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Discrimination and the UN Convention against Torture and other Inhuman Treatment and Punishment.

55. In the current situation, where the self-declared statehood of Kosovo is contested and it is an open question whether Kosovo could become a signatory to any of these instruments in the foreseeable future, the incorporation of key international human rights instruments into domestic law is a fundamental

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<sup>27</sup> Article 22.



precondition to ensure that people in Kosovo can enjoy a level of human rights protection which is equivalent to that enjoyed by other Europeans.

56. Although being a precondition, however, this incorporation is not *per se* a guarantee of effective human rights protection because:

- the general knowledge of these instruments amongst the legal profession and the judiciary is limited;
- people are not aware of these instruments and of the rights stemming from them.

57. Furthermore, it should be noted that even if, under the Constitution, the European Convention on Human Rights is applicable in Kosovo, there is no legal basis for the exercise of jurisdiction by the European Court of Human Rights – given that Kosovo is not a member of the Council of Europe and therefore cannot be a signatory to the Convention. This implies that Kosovo courts, at all levels, will be dealing with cases raising issues under the Convention.

58. I believe that the presence of 3 international judges in the Constitutional Court is an important element which will reinforce the independence of the highest judicial authority but also its capacity to ensure consistency with European and international human rights instruments.<sup>28</sup>

59. At policy level, there is an awareness in the Kosovo institutions that further measures must be taken in order to pass from theory to practice: in December 2008, the government issued a Strategy and Action Plan on Human Rights 2009-2011, which sets out the goal to set up a number of instruments to this end, such as: periodic review of the implementation of legislation; regular reporting and monitoring; increased institutional capacity and appropriate resources; better training and strengthened co-operation between government institutions and civil society. The evaluation given to this Action Plan is generally positive.<sup>29</sup>

60. In the light of what has been said above about the state of the judiciary in Kosovo, I see the scope for an enhanced role for the Council of Europe in providing specialised training to judges, prosecutors, members of the legal profession on the European Convention on Human Rights and other Council of Europe instruments. In addition, the Council of Europe could play a role in the organisation of human rights awareness campaigns or other activities directed to civil society or the general public.

### *5.2. The Ombudsperson*

61. The Ombudsperson is an independent institution which addresses alleged human rights violations or abuse of authority by central or local institutions in Kosovo. The institution was established in 2000 with a view to enhancing the range of mechanisms for human rights protection. Initially, it was an international body but in 2005 UNMIK took steps to transform it into a local body.

62. It is regrettable that, only in June 2009, after a number of failed attempts, the Kosovo Assembly managed to elect an Ombudsperson, Sami Kurteshi.

63. During my first visit to Pristina, I had a long and interesting conversation with the then Acting Ombudsperson, Hilmi Jashari, who held the position *ad interim* from 2005 to 2009 and who gave me an insight into the important work accomplished by the Institution. Its success and the credibility which it enjoys amongst all the communities in Kosovo is due both to its multi-ethnic character and to the expertise of its staff, who are posted in different areas of Kosovo.<sup>30</sup>

64. As confirmed by the current post-holder, Mr Kurteshi, however, the general sensitivity for human rights issues amongst politicians and institutions is rather low. The Ombudsperson's reports are never debated in the Kosovo Assembly, despite the fact that, due to the public's lack of trust in the judiciary, the Ombudsperson's office takes up an increasingly sizeable case-load.

### *5.3. Human rights accountability of international institutions*

65. Faced with the immunity of UNMIK and KFOR staff from any legal process in Kosovo, in 2004 the Venice Commission recommended the establishment of an adequate and consistent mechanism for the

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<sup>28</sup> At the moment, the three international judges are Ms Nezhana Botusharova-Doicheva from Bulgaria, Mr Robert Carolan from the United States and Mr Almiro Simões Rodrigues from Portugal.

<sup>29</sup> Report of the Council of Europe Commissioner for Human Rights, Special Mission to Kosovo (23-27 March 2009), CommDH(2009)23 of 2 July 2009, paragraphs 33-34.

<sup>30</sup> As shown by the Ombudsperson's 8th Annual Report 2007-2008, at <http://www.ombudspersonkosovo.org/?id=2,e,74>



examination of alleged human rights breaches for which they might be responsible.<sup>31</sup> Following this advice, in 2006, UNMIK set up the Human Rights Advisory Panel.

66. The Human Rights Advisory Panel examines complaints of alleged human rights violations committed by or attributable to the United Nations Interim Administration Mission in Kosovo (UNMIK) and makes recommendations to the Special Representative of the Secretary-General (SRSG) in Kosovo when appropriate. The Panel is composed of three internationals who sit in Pristina each month to render determinations on complaints against UNMIK. If a complaint is admissible, the Panel will then render an opinion on whether UNMIK is responsible for a violation of one of the various human rights instruments in force in Kosovo. If the Panel determines that a violation has occurred, the opinion may include recommendations to the SRSG. The SRSG must then publicly state how he/she will react to those recommendations.

67. This mechanism has been criticised by the Assembly in the past, because its recommendations are not binding.<sup>32</sup> On the other hand, it should be underlined that this is the only independent mechanism dealing specifically with human rights violations allegedly committed by or attributable to a United Nations field mission. In addition, in a new interesting development, a recent decision rendered by the Panel recommends UNMIK to award financial compensation to the complainants for non-pecuniary damage.<sup>33</sup>

68. Also argued by Commissioner Hammarberg in his report, the changed situation on the ground with the deployment of EULEX makes it appropriate to evaluate whether this new international presence has effective accountability mechanisms in place. For this reason, the Political Affairs Committee endorsed my proposal to ask the Venice Commission to produce a follow-up opinion on mechanisms to review the compatibility of acts of UNMIK and EULEX with human rights standards in Kosovo. I look forward to discussing the Venice Commission's views and proposals, which should be finalised by September this year.

## 6. The situation of non-Albanian communities

69. According to its Statistical Office, 92% of the population in Kosovo is made up of ethnic Albanians, 5,3% Serbs and 2,7% other ethnic groups, including Roma, Ashkali, Egyptians, Turks and Bosniaks.<sup>34</sup>

70. This data, however, is not completely reliable as the last census dates back to 1991.<sup>35</sup> Preparations for a new census, with the involvement also of the Council of Europe, have been under way since 2005 but are complicated by technical and political issues, such as how to include Kosovo's displaced population. At the moment, however, it is planned to be held in 2011.

71. Organisations on the ground report the overall **security situation** in Kosovo to be calm but fragile in the North.<sup>36</sup> In the current climate in which communities live separately and do not trust each other, futile incidents or ordinary crimes which do not have any ethnic motive can flare up and degenerate in inter-ethnic violence.

72. One year after my last visit to Kosovo, I was struck by the change I saw in the Serbian community, with a deepening gap between Kosovo Serbs living in the North and those living South of the Ibar.

73. More and more Kosovo Serbs in the South are prepared to find a *modus vivendi* with the Kosovo authorities, provided that they are afforded the widest possible autonomy and the highest standards of minority rights, including the right to receive education and deal with the administration in their own language. This trend is also testified by the unexpected increased participation of Kosovo Serbs in the South during the November local elections.

74. Serbs living in enclaves in the South told me that they do not have security concerns and can exercise freedom of movement. However, they continue to face serious problems: some of them are common to all communities, such as high unemployment and untrustworthy judiciary; others are specific to them, such as

<sup>31</sup> Venice Commission, Opinion on Human Rights in Kosovo: possible establishment of review mechanisms (2004).

<sup>32</sup> Assembly Resolution 1533 (2007) on Current situation in Kosovo.

<sup>33</sup> Opinion in the joint cases of Milogorić and others (Case Nos. 38/08, 58/08, 61/08, 63/08 and 69/08).

<sup>34</sup> <http://www.ks-gov.net>

<sup>35</sup> At that time, the ethnic composition of Kosovo was: 81,6% Albanian, 9,9% Serb and 8,5% other ethnic groups, *ibidem*. However, it should also be noted that these figures are not completely reliable because part of Kosovo's population boycotted the census.

<sup>36</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 30 September 2009, S/2009/497.

lack of recognition of documents and real or perceived discrimination. In any case, even if there is no inter-ethnic violence, communities continue to live separately and their level of interaction is negligible.

75. The situation in the North, on the other hand, is tense:

- Kosovo Serbs in the North continue to believe that the status of Kosovo is an open question;
- they are nervous about the Strategy for the North, launched by the Kosovo authorities in consultation with the International Civilian Office, which they consider as an attempt by Pristina to affirm its illegal authority over the North, *de facto*;
- in addition, political differences between majority and opposition forces in Belgrade (where the government is a coalition between DS and the Socialists) and the North of Kosovo (where DSS and the radicals are the main parties) have local repercussions:
  - in a number of key municipalities in the North, new mayors from the DS party have been put in place following exceptional procedures, and replaced DSS mayors;
  - the DSS representatives whom I met in North Mitrovica complained that their voice is not sufficiently heard in Belgrade, particularly in the Ministry for Kosovo and Metohija, and fear that the current government might soften its position on Kosovo as a token to progress towards European Union integration.

76. I was also struck by the lack of information which affects the Serbian community, especially in the North. I am convinced that the exposure of the Serbian community to a variety of media, offering different points of view on the situation in Kosovo, could play a positive role in defusing tensions and helping people make better-informed decisions. In this regard, I strongly encourage the project of the Kosovo Association of Journalists to promote the exchange of stories and reports between journalists belonging to different communities.

77. South of the Ibar, a new pragmatic attitude on the part of Belgrade towards Kosovo Serbs living in the enclaves is to be noticed: for instance, in the field of energy supply, unlike during previous years, the Serbian authorities advised Kosovo Serbs who had been disconnected from the Kosovo Energy Corporation to sign contracts with it, despite its name. This has had an immediate improvement on their quality of life.

78. However, a number of difficulties remain: for instance, Kosovo Serbs continue to face problems related to the issuance of Kosovo identity cards by the Kosovo authorities, who do not recognise birth certificates issued by the Serbian 'parallel' authorities in Kosovo after June 1999. A similar problem exists for driving permits. On the other hand, official school diplomas stamped with 'Republic of Kosovo' are not recognised either by the State University in Mitrovica or by universities in Serbia proper.<sup>37</sup>

79. It is to be hoped that the reform of local self-government, which the Kosovo authorities have undertaken following Ahtisaari's proposals, will eventually lead to better living conditions and governance, also in non-Albanian community areas. This reform redesigns the borders of some municipalities and increases their competences and budgetary powers. At the moment, municipal preparatory teams have been established to Gračanica, Klokot, Northern Mitrovica, Partes and Ranilug.

80. Finally, I would also like to recall the particular situation of Roma, Ashkali and Egyptian communities (RAE) who, throughout Kosovo, face marginalisation, discrimination in areas of education, social protection, health care and housing and are sometimes stateless.<sup>38</sup> As the Commissioner for Human Rights, Thomas Hammarberg, has highlighted in his report, the situation of the three camps in Northern Kosovo where RAE IDPs are accommodated is a matter of serious concern: in all of them living conditions are difficult; in addition, the camps of Cesmin Lug, hosting 163 people, and Osterode Cesmin, hosting 376 people, are contaminated by lead.<sup>39</sup> Despite the clear commitment of the Kosovo government and other stakeholders to relocate them, RAE IDPs have lived in the lead-contaminated camps for 10 years. The Kosovo authorities and the international community should remedy this situation as a matter of urgency, with a view to finding a permanent solution and providing medical treatment to people whose health has been affected by lead-poisoning.

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<sup>37</sup> *Ibidem*

<sup>38</sup> In order to tackle this problem, the Kosovo government has adopted a 'Strategy for the Integration of Roma, Ashkali and Egyptian communities in the Republic of Kosovo', 2009-2015.

<sup>39</sup> Report of the Council of Europe Commissioner for Human Rights, Special Mission to Kosovo (23-27 March 2009), CommDH(2009)23 of 2 July 2009, paragraphs 130-150

81. During my last visit to Kosovo, I had the opportunity to visit the village of Mamusa, in the South of Kosovo, where the majority of the population belongs to the Kosovo Turkish community. I was struck by the public works that the local authorities had undertaken in this village, thanks to the funding made available by Pristina in the context of the decentralisation process. The Turkish government had also been able to fund the construction of a school and a mosque, channelling the relevant resources via Pristina. I was told that inter-ethnic relations were good and that the Turkish minority did not face any particular difficulty, except for those faced by everybody in Kosovo, namely unemployment and an inefficient justice system.

82. Any discussion about the situation of communities in Kosovo cannot but mention the importance of establishing trust between people from different communities. It seems to me that some issues are particularly important in this process: the protection of religious and cultural heritage; missing persons; co-operation with justice in order to uncover mass graves and identify war criminals; public condemnation of inter-ethnic crimes and a political commitment not to allow them to remain unpunished; and public statements by high profile politicians to foster dialogue and reconciliation.

## **7. People in displacement**

83. During my visit to Belgrade, in June 2009, I had the opportunity to visit the collective centre 'ORA-Sartid' for displaced persons, in Smederevo. This centre accommodates 539 persons, of whom 474 are internally-displaced persons (IDPs, 144 families) and 63 are refugees (25 families). The great majority of them come from Kosovo; some of them have been displaced twice (from Kosovo and from previous conflicts taking place in the territory of the former Yugoslavia). Accommodation is provided in 34 prefabricated barracks with 230 rooms. Central heating, electricity and water are provided free of charge, as well as one warm meal per day. Residents have access to local schools and health services.

84. In addition to meeting the Director, the local authorities and staff of the United Nations High Commissioner for Refugees (UNHCR), I could speak freely with a number of families who had lived in the centre since 1999. Only 15 out of the entire population of the centre had a regular job. Some of them had been to Kosovo recently with the go-and-see visits organised by UNHCR. None of the people I met wished to return to Kosovo: the main reasons were the feeling of being unsafe, the lack of prospects in terms of jobs and education, the fear of going back and finding a completely changed context – discrimination, a numerically small or inexistent Serbian community and an Albanian administration. I met a Kosovo Albanian woman who had been married to a Kosovo Serb: despite being a widow, she could not imagine her life in the new Kosovo.

85. According to the estimates, approximately 235,000 Serbs, Roma and members of other minority communities fled Kosovo at the end of July 1999, the majority of whom found refuge in Serbia while others reached other countries in the region or outside. In 2004, another 4,200 persons (Serbs, Roma and Ashkali) were displaced.

86. At the end of 2009, internally displaced persons within Kosovo amounted to 19,670 persons, comprising 10,342 Serbs, 7,550 Albanians, 695 Ashkalis, 676 Roma and 301 Egyptians.<sup>40</sup> The vast majority are concentrated in the area of Mitrovica, followed by Pristina, Gračanica and Strpce. According to the government of Serbia, 205,211 inhabitants from Kosovo are currently displaced in Serbia proper and 16,197 are in Montenegro.

87. According to UNHCR,<sup>41</sup> during the period 2000-2009, 19,827 persons returned to Kosovo, which comprised 42,61% Serbs, 26,08% Ashkali and Egyptians, 13,92% Roma and 4,14% Albanians. Over this period, 12,300 people returned from Serbia proper; 2,858 from Montenegro; 797 from "the former Yugoslav Republic of Macedonia"; 243 from Bosnia and Herzegovina; 2,856 from other parts of Kosovo and 773 from countries outside the region. After a decrease of more than 62% in the return trend in 2008, possibly linked to the unilateral declaration of independence, the return trend in 2009 shows an increase of 70% compared to the same period in the previous year.

88. According to UNHCR, as at the end of 2009, 1,366 families (5,000 individuals) have expressed an interest in returning to Kosovo. Within the Kosovo government, the Ministry of communities and return is dealing with the applications even if the reintegration of returnees continues to pose a daunting challenge due to the lack of employment opportunities, the fragile economic situation and difficult access to basic services. Amongst the ministry's priorities are the construction and reconstruction of houses and investment in community development projects with a view to increasing the sustainability of returns.

<sup>40</sup> Statistical data provided by UNHCR.

<sup>41</sup> Statistical data as of end of 2009, provided by UNHCR.

89. As Pristina and Belgrade do not have any official relations, the UNHCR offices in both cities resulted in an increase of 70%, compared to the previous year, in the number of voluntary returns to Kosovo.

90. UNHCR has been very active in promoting visits to enable displaced persons to obtain first-hand information on the situation on the ground: 76 go-and-see visits and 32 go-and-inform visits have been organised with UNHCR participation in 2009, benefiting 957 IDPs/refugees from Kosovo displaced in Kosovo, in Serbia proper, Montenegro and "the former Yugoslav Republic of Macedonia".<sup>42</sup>

91. The fact that the great majority of European Union member states has recognised the independence of Kosovo has raised concerns of a possible increase in the number of forced returns, not only of people from Kosovo who did not have a legal title to reside abroad, but also people who previously enjoyed some form of international protection.

92. The Kosovo government approved a returnee reintegration strategy in 2007. It sets out the activities necessary to reintegrate people forcibly returned to Kosovo. It covers their initial reception at Pristina airport, their transport to their place of origin and reintegration in Kosovo. An action plan was subsequently approved in April 2008. However, this action plan remains largely unimplemented and no budget for these activities has so far been allocated. During my visit to Pristina in 2009, the Minister of Interior drew my attention to the importance of avoiding large-scale forced returns, which would put a strain on Kosovo's already limited economic resources.<sup>43</sup>

93. So far, UNHCR data indicate an interesting but at the same time worrying trend: overall forced returns to Kosovo are not increasing (they were 3,219 in 2007; 2,550 in 2008; and 2,407 in 2009); however, the return of people from minority communities which could still be in need of international protection is on the way up (68 people in 2007; 71 people in 2008 and 136 in 2009).

94. Addressing the issue of displacement and the right of displaced persons to return in safety and dignity and with a genuine prospect of reintegration is central to ensuring the peaceful coexistence of communities in Kosovo. In this context, I would like to mention some important questions, on which I will elaborate further in the continuation of my work.

#### *7.1. People in need of international protection*

95. As UNHCR has consistently pointed out, every claim for international protection should be considered on the basis of its individual merits. As regards Kosovo in particular, the changed situation on the ground due to the unilateral declaration of independence does not eliminate the risk of persecution, serious harm or cumulative discrimination that some groups of people might suffer.

96. According to UNHCR,<sup>44</sup> these groups include:

- Kosovo Serbs and Kosovo Albanians inhabiting areas where they are in the minority;
- Kosovo Roma inhabiting any part of Kosovo;
- Ashkali and Egyptian minorities (who might be confused for Roma and who, similarly to the Roma, often lack identity papers and therefore face difficulties as regards access to social services, health care and education);
- persons in ethnically mixed-marriages and persons of mixed ethnicity;
- persons perceived to have been associated with the Serbian authorities after 1990;
- victims of trafficking;
- victims of domestic violence;
- people whose claims for protection are based on sexual orientation.

#### *7.2. Property rights*

97. People who fled Kosovo in 1999 and 2004 left behind their houses, businesses and land. Since then, many properties have been damaged, destroyed, illegally occupied and constructions have been built illegally.

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<sup>42</sup> Statistical data as of end of 2009

<sup>43</sup> As of the time of writing, a new reintegration strategy has been adopted.

<sup>44</sup> UNHCR, Eligibility guidelines for assessing the international protection needs of individuals from Kosovo, 9 November 2009, HCR/EG/09/01.

98. In the specific case of Kosovo, some elements complicate the restoration of property rights:

- before 1999, property transactions were often informal and not adequately registered;
- most of the records of property rights for the pre-1999 are in Belgrade;
- existing ownership certificates are not always accurate or authentic;
- cadastral bodies in Kosovo and Serbia do not co-operate and they do not recognise each other's ownership documents;
- the relevant legal framework is not always clear and consistent and is based on different sources of law whose hierarchy is not clear.

99. The restoration of property rights is an essential premise for returnees to resume a normal life, as well described in Assembly Resolution 1708 (2010) on Solving property issues of refugees and internally displaced persons. The restoration of rights to and physical possession of property through restitution, or the provision of equivalent property or value through compensation, are essential forms of redress which have their legal basis in a number of Council of Europe instruments, notably Articles 6, 8, 13 and 14 of the European Convention on Human Rights (ETS No. 5), Article 1 of its Protocol No. 1 and Article 2 of its Protocol No. 4, Article 31 of the revised European Social Charter (ETS No. 163) and Article 16 of the Framework Convention for the Protection of National Minorities (ETS No. 157). In addition, as far as IDPs are concerned, the Committee of Ministers itself, in Recommendation Rec(2006)6, has confirmed their right to the enjoyment of their properties and to repossess property left behind, failing which they should be provided with adequate compensation.

100. During my recent visit I was told by the Chairperson of the supervisory board of the Kosovo Property Agency (KPA), the British Ambassador Andy Sparkes, that the KPA should conclude processing all the registered claims (40,718) by the end of 2011. This time-line includes a set-back of around 6 months due to the need to reconsider a number of claims (possibly 87%) in which notification mistakes were made: as a result of lack of co-operation between the KPA and the Kosovo cadastral agency, the signposts placed on plots to indicate property rights following KPA decisions did not correspond to the exact location of the plots as indicated in the cadastral registry.

101. A positive development which will help improve the situation of Kosovo Serbs who are displaced in Serbia proper is the conclusion of a memorandum of understanding between the Kosovo Property Agency (KPA) and the UNHCR Office in Belgrade, under which the latter will channel information and documentary evidence presented by Kosovo Serbs in Belgrade to the KPA in Kosovo in order to finalise decisions on property claims. This memorandum, which has not been finalised yet, will help circumvent the difficulties created by the decision of the Serbian authorities to close down the KPA office in Belgrade, following the entry into force of the Kosovo Constitution and the transfer of KPA under the authority of the International Civilian Representative.

102. As pointed out by the NGO PRAXIS, which provides legal advice and representation to claimants, issuing a decision is not the end of the story.<sup>45</sup>

- the enforcement of eviction orders is not systematic.
- many cases have not been submitted to the KPA because the deadline was not long enough and has expired.

103. In such cases, the only remedy available is before Kosovo courts, with all the difficulties that this implies.

### *7.3. The integration of displaced persons in Serbia proper*

104. The return of internally displaced persons to Kosovo should be a right but not an obligation. Every effort should be made to ensure that dignified long-term solutions are found for those who cannot or do not wish to go back.

105. The Serbian authorities should provide a viable integration alternative for Kosovo IDPs who are in Serbia proper. During my meetings with the Minister for Kosovo and Metohija and the Minister for Social Affairs in Belgrade, I found a positive reaction to my proposal of establishing, without further delay, programmes tackling the high unemployment of IDPs and other measures intended to foster their integration in society. I look forward to receiving more information about the steps that will be taken in this context.

<sup>45</sup> PRAXIS, Protection of rights of internally displaced persons, in anticipation of a durable solution, Belgrade, 2009.

## **8. The media**

106. Political influence on the media is a major problem. First of all, print media cannot ensure its sustainability only through sales (according to estimates made by the Kosovo Association of Journalists, approximately each newspaper sells 3000 copies per day, at a price of 20 cents). This has made newspapers greatly reliant on advertising as a source of funding. However, this affects their editorial independence because nearly all the advertising consists of job ads placed by the government, as the main employer in Kosovo. On average, one third of daily newspapers is used for advertising. This leads to a situation of generalised self-censorship, in which journalists and editors avoid being too critical of the government and the institutions for fear of losing their main source of funding.

107. A more specific problem affects the independence of the public broadcaster, RTK. The RTK used to be financed through licence fees which were collected with electricity bills. This form of financing was stable and ensured the independence of the broadcaster. However, in November 2009, the Constitutional Court found that this procedure was unconstitutional. As a result, financing through the licence fees was discontinued. At present, RTK is funded through the ordinary Kosovo budget, until an alternative source of financing is found. Needless to say, this affects the independence of the public broadcaster.

108. Additional issues that were brought to my attention include:

- the lack of understanding, amongst the political class, of the role of a public broadcaster, and the confusion with the concept of 'state broadcaster';
- the political pressure exercised on the former Board of the RTK, where several prominent figures were forced to resign;
- the lack of knowledge of the media sector amongst the newly-elected board of the RTK.

## **9. The situation of women**

109. In Kosovo, there are a number of active women NGOs. In the Kosovo Assembly, an informal group of women parliamentarians has been set up. They all complained about the patriarchal model of Kosovo's society and the difficulty for women to have their voice heard. Some NGO representatives pointed out that the international presence in Kosovo, in particular UNMIK, has not done much to promote gender equality and has sometimes even set a bad example. I strongly believe that women in Kosovo can give an important contribution to reconciliation between communities and to the strengthening of the democratic character of the institutions.

110. Although from a legal point of view gender equality and non-discrimination on gender grounds are recognised, the implementation of the law is a different matter. The situation of women is particularly bad in rural areas. In general, it is rare for women to have an independent source of income, they hardly ever own the property where they live and they are disadvantaged in the context of inheritance. In these circumstances, even when they are victims of domestic violence, they have a strong incentive not to divorce, also because, as a rule, the custody of children is given to the father.

111. At the moment, there are around one thousand cases of violence against women, including domestic violence, which have been reported to the police, but this is likely to be only the tip of the iceberg.

112. Women who have been victims of trafficking encounter great difficulties in reintegrating in society: involvement in prostitution carries a great social stigma; there are no programmes or social measures aimed at assisting these women.

## **10. The European Union perspective**

113. Since the 2003 summit in Thessaloniki, the European Union has indicated its unequivocal support to a European perspective for the Western Balkans and endorsed the introduction of European Partnerships as a means to materialise it.

114. The priorities of the European Partnership with Serbia including 'Kosovo as defined by United Nations Security Council Resolution 1244' are set out in Council decision 2008/213/EC of 18 February 2008. They are divided in short and medium-term priorities which Kosovo is meant to address with a view to meeting the criteria for further integration.

### 10.1. The European Commission

115. Progress towards these criteria is assessed in periodic progress reports, the most recent of which dates from November 2009 and mentions as main areas of concern the need for the Kosovo government to ensure administrative capacity and to have the political determination to implement and enforce adopted legislation and the necessary reforms.<sup>46</sup> Amongst the key areas to be strengthened are the rule of law, anti-corruption policy and the fight against organised crime. Enhancing dialogue and reconciliation between communities remains a major political challenge.<sup>47</sup>

116. The way forward for Kosovo in the Stabilisation and Association Process is indicated in two recent communications, one setting out the enlargement strategy and priority for 2009-2010<sup>48</sup> and a second one specifically devoted to Kosovo.<sup>49</sup> In the latter, the Commission proposes to start work towards visa liberalisation for people from Kosovo, begin preparations for a comprehensive trade arrangement with Kosovo and explore ways for Kosovo to be involved in initiatives in areas such as employment, enterprise and education. The Commission also proposes that the European Union should upgrade its political dialogue with Kosovo and widen the scope of the European Commission financial assistance to include cross-border co-operation. All these measures should be implemented progressively and be conditional upon progress made by Kosovo.

117. This emphasis on supporting the socio-economic development of Kosovo is a reminder of the driving force represented by the European Union, not only politically but also economically: the European Union is the main trading partner of Kosovo and its main source of foreign direct investments.

### 10.2. The European Parliament

118. The support given by the European Parliament to the Ahtisaari Plan is well known,<sup>50</sup> as is its call for further recognition of Kosovo's independence,<sup>51</sup> which has provoked severe criticism from Serbia and other non-recognising countries.

119. During some meetings with MEPs, I also realised that, despite the European Union's status neutrality, the European Parliament has developed, over the years, a number of inter-parliamentary activities with the Kosovo Assembly.

120. In the period 2002-2008, the European Parliament Delegation for relations with the countries of South East Europe (DSEE) organised regular *informal* meetings with members from the Kosovo Assembly. These meetings took place alternatively in Brussels and Pristina. The delegation from the Kosovo Assembly was composed by the President of the Kosovo Assembly and other Assembly members, usually drawn from its Bureau members. At the request of the DSEE, a Kosovo Serb member of the Kosovo Assembly was always part of the delegation. To distinguish them from 'formal meetings', these gatherings lasted only one day instead of two.

121. After the declaration of independence and on the strength of the European Parliament's support for the Ahtisaari Plan, in March 2008, the DSEE organised the first formal inter-parliamentary meeting with a delegation from the Kosovo Assembly in Brussels,<sup>52</sup> followed by a second meeting in Pristina the following year.<sup>53</sup>

## 11. The Council of Europe and Kosovo

122. As an international organisation, it is not a prerogative of the Council of Europe to recognise or not the sovereignty and independence of an entity. In the present situation, where 33 out of 47 of its member states

<sup>46</sup> Commission staff working document, Kosovo (under UNSC 1244/99) 2009 Progress Report, COM (2009)1340.

<sup>47</sup> Similar views are expressed in the Council conclusions on enlargement/stabilisation and association process, 7 and 8 December 2009.

<sup>48</sup> Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2009-2010, COM(2009)533 of 14 October 2009.

<sup>49</sup> Kosovo (under UNSC 1244/99) – Fulfilling its European Perspective COM(2009) 5343 of 14 October 2009.

<sup>50</sup> EP Resolution of 28 March 2007 on the future status of Kosovo and the role of the European Union (Rapporteur: Joost Lagendijk, Verts/ALE/NL).

<sup>51</sup> EP Resolution of 5 February 2009 on Kosovo and the role of the EU (Rapporteur: Joost Lagendijk, Verts/ALE/NL). This resolution was adopted with 424 votes in favour, 133 against and 24 abstentions.

<sup>52</sup> The minutes of this meeting can be found on the EP website: <http://www.europarl.europa.eu>.

<sup>53</sup> See the Joint Statement by the Chairperson of the DSEE and the President of the Kosovo Assembly, at <http://www.europarl.europa.eu>.

have recognised Kosovo, the Council of Europe applies a policy of status-neutrality, in the same way as all other European organisations, such as the European Union and the OSCE.

123. One of the main concerns that led to tabling the motion which initiated this report was that the split between those Council of Europe member states who recognise Kosovo as a state and those who do not should not hamper the continuation of the Council of Europe's work in Kosovo.

124. I am therefore pleased that, in reply to Assembly Recommendation 1822 (2008) on Developments as regards the future status of Kosovo, the Committee of Ministers decided the continuation of activities concerning the preservation and promotion of the cultural heritage, education and the development of civil society but also an increase of activities to promote human rights, including the rights of minorities, the rule of law and democracy. It also added that the fight against corruption and organised crime should feature amongst future priorities.

125. At the present moment, the Group of Rapporteurs on Democracy of the Ministers' Deputies (GR-DEM) is discussing a number of new or strengthened projects proposed by the Secretariat. Some of them aim at bringing Council of Europe rule of law standards and methodologies more directly to bear in relation to the fight against corruption, economic crime and, potentially, human trafficking and the sexual exploitation of children; others try to do so in relation to the enforcement of the rights guaranteed by the European Convention on Human Rights in the work of legal professionals, combating ill-treatment and impunity by law enforcement agencies; strengthening civil society and the Ombudsperson Institution, and reinforcing the independence of the media and freedom of expression.

126. I cannot but agree with the broadening of the scope of Council of Europe activities in Kosovo and I hope that these proposals will be endorsed by the Committee of Ministers. The Council of Europe activities in the field of education and protection and rehabilitation of the cultural and religious heritage are of key importance in order to contribute to creating a climate of dialogue and understanding between people from different communities. Recently these activities have been expanded, also through a reinforced presence of Council of Europe project staff on the ground. I strongly support this process.

127. However, in parallel, the Council of Europe should contribute to addressing other problems which affect the life of people in Kosovo, namely in the field of the protection of human rights and the respect of the rule of law, in coordination with other actors active in Kosovo.

128. In this respect, I would like to recall that, in 2004, the Council of Europe and UNMIK signed Agreements to ensure the work of the Advisory Committee of the Framework Convention on National Minorities and the Committee for the Prevention of Torture in Kosovo. These agreements need updating in the light of the changed situation on the ground, such as the change in UNMIK's functions, the deployment of EULEX and the increased role of the Kosovo institutions in such fields. In addition, the feasibility of extending the application of other Council of Europe monitoring mechanisms in Kosovo, for the benefit of its inhabitants, might be considered.

129. Finally, I hope that the Council of Europe office in Pristina, which currently counts 4 members of staff belonging to the Directorate General of Democracy and Political Affairs (1 international and 3 locals), with two locally-recruited teams working on projects in the areas of education and protection of the cultural heritage, will be given more resources in order to ensure the Organisation's visibility in Kosovo and the effectiveness of its work. In particular, I think that the staff of the Office should reflect the multi-ethnic composition of Kosovo and that the capacity of the Head of Office to provide political analysis and early warning should be strengthened through appropriate staff reinforcement.

130. In order to highlight the close co-operation between the Council of Europe and the European Union, I would like to mention that, in 2009, 90% of the financial resources for Council of Europe work in Kosovo originated from Joint Programmes funded by the European Commission. I am pleased to say that, in the various discussions I had with Commission representatives, it was made clear to me that a more pro-active and far reaching involvement of the Council of Europe would be welcome.

## **12. Conclusions and recommendations**

131. The Council of Europe should set itself a clear objective as regards Kosovo. In the light of the mandate of our Organisation, it seems to me that the most obvious objective should be contributing to developing a stable, viable, peaceful, democratic and multi-ethnic Kosovo for the benefit of all individuals. This is for me the lowest common denominator on which all member states could agree, irrespective of their position on the status issue.



132. In pursuing this objective, Council of Europe member states should embrace with resolve an approach of *'diversity on status but unity on engagement'*, similar to the one adopted by the European Union. In this context, I very much support the recent discussions taking place within the Ministers' Deputies aimed at broadening the range of Council of Europe activities in Kosovo, in particular by putting more emphasis on our fields of excellency: democracy, human rights and the rule of law. In particular, I would recommend that:

- the Committee of Ministers set up activities aimed at improving the rule of law, fighting corruption and economic crime and reinforcing the judiciary in Kosovo;
- new modalities to ensure the resumption of the work of the Committee for the Prevention of Torture (CPT) and the Advisory Committee of the Framework Convention on National Minorities should be developed, in the light of the new situation on the ground;
- the issue of how to extend the application in Kosovo of other Council of Europe monitoring mechanisms should be given attentive consideration;
- further thought should be given to how to implement Council of Europe activities in the field of freedom of the media, gender equality and anti-trafficking in Kosovo.

133. Working to ensure that people in Kosovo can enjoy standards of democracy, human rights and the rule of law equivalent to those applicable in Council of Europe member states implies working in synergy with the complex institutional lay-out present in Kosovo.

134. The Council of Europe should continue its fruitful coordination and consultation with international partners, in particular the European Union, UNMIK, OSCE, and should be proactive in proposing joint work.

135. At the same time, it cannot be disputed that the Kosovo institutions have *de facto* authority over the territory of Kosovo (and also legal authority according to the majority of Council of Europe member states) and that they cannot be excluded from the circle of Council of Europe interlocutors if the Council of Europe wants to have any impact. In my opinion, the policy of status neutrality should not be considered as an obstacle to having direct working relations with the Kosovo authorities, at all levels, in the same way as other international organisations do. Although precious partners, neither UNMIK nor EULEX should be considered as necessary intermediaries.

136. Finally, in the light of the shortcomings observed in the functioning of democratic institutions in Kosovo, the Parliamentary Assembly, for its part, might wish to initiate a dialogue with representatives of the political forces elected to the Kosovo Assembly on issues of common interest, while taking into account the legitimate interests and concerns of Serbia.