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Kosovo's path to the Council of Europe¹

(This is a summary of a policy report '**Kosovo's Path to the Council of Europe: Identifying Procedures, Obstacles and Solutions for Membership**', which was presented and published by the 'Group for Legal and Political Studies (GLPS)' on 29 September 2013, Kosovo)

Background

On 19 June 2013, the Committee of Ministers (CM) of the Council of Europe adopted a reply to the Parliamentary Assembly's Recommendation N° 2006 (2013) on 'The situation in Kosovo*' and the role of the Council of Europe², inviting the Secretariat to 'enhance action towards the Kosovar people and reiterating its position that a meaningful monitoring process implies the involvement of the authorities in Kosovo'³.

Despite its declaration of independence on 17 February 2008, Kosovo is still operating on the basis of UN Resolution 1244 (June 1999), which guarantees a strong involvement of the UN, the EU and NATO and resulting in the presence of UNMIK, EULEX and KFOR-forces on the Kosovar territory. The co-operation between the Kosovar authorities and the international community is increasing but remains volatile, especially in its relationship with Serbia. As the EU-facilitated dialogue between Kosovo and Serbia ended on 19 April 2013 in a landmark agreement aimed at normalising the relations between Belgrade and Pristina, some thorny issues⁴ remain unsolved and need further negotiations. Kosovo's northern region with a majority of Serbian citizens remains a weak spot in the Serbian-Kosovar relationship; the sudden death of a European Union police officer on 19 September 2013 confirms the fragility of a mixed population in an unstable political situation. As the EU institutionalised normal contacts with the Kosovar authorities, the path towards a normal relationship with the Council of Europe seems not to be so easy; whilst most of the ex-Yugoslavian states have already become members⁵ of the Council of Europe, the independence of Kosovo - as a former part of Serbia - does not automatically mean membership to the CoE. Moreover, only 34 out of the 47 member states of the Council of Europe have recognised the statehood of Kosovo. The Council of Europe's current 'status

¹ All references to Kosovo, whether to the territory, institutions, or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

² Based on the findings of the Rapporteur of the Committee on Political Affairs and Democracy. Doc. 13088, 07 January 2013.

³ CM/AS(2013)Rec2006 final, 21 June 2013.

⁴ The talks between Belgrade and Pristina on giving Kosovo an international land telephone calling code and granting a Serbian mobile operator license for operation in Kosovo have so far failed to produce any agreement, and the two sides have submitted new proposals in writing to the European Commission. There is also a standstill on the matter of electricity supply and transmission in Kosovo, because Pristina is rejecting the idea of a Serbian company also being involved.

⁵ Serbia became the 45th member state of the Council of Europe on 3 April 2003.

neutrality' towards Kosovo seems to be a default policy option, restricting however the Kosovar population from fully benefiting from the Organisation's work.

The accession of Kosovo to the Council of Europe: requirements and obstacles

The GLPS policy report describes the requirements for Kosovo's accession to the Council of Europe: 1/ a European identity; 2/ statehood; 3/ an invitation from the Committee of Ministers; 4/ability and willingness to fulfil the Art.3 requirements for member states, and 5/ the ratification of the CoE statute.

While the Council of Europe does not define 'statehood' as such and relies on its member states to decide the status of a potential member, the authors claim that Kosovo has already achieved statehood as a result of the acceptance of its independence in 2008 by the majority of the Council of Europe's member states (above), and the statement of the International Court of Justice (2010) that Kosovo's declaration of independence 'does not break international law, making the action legal'. Referring to the non-recognition of Cyprus by Turkey and the mutual non-recognition of Armenia and Azerbaijan, although they are CoE member states, the authors criticise the Council of Europe for not addressing specific status questions. Instead, membership to other internal organisations (such as the European Bank of Reconstruction and Development, the Regional Co-operation Council, the Council of Europe Development Bank) could give 'status' without questioning the current status of Kosovo.

The official invitation by the Committee of Ministers to become a member state is the result of a perennial and politically difficult procedure, involving also PACE, in particular the Committee on Political Affairs and Democracy and the Committee on Legal Affairs and Human Rights. The authors do not seem to perceive major problems for Kosovo here, as both committees could deliver already a mathematical majority for the recognition of Kosovo⁶. However, they emphasise that Kosovo should insist that the report from both committees be positive in terms of statehood; if not, it may prevent a fair assessment of Kosovo's ability and willingness to meet the Council of Europe's criteria. At the same time, the authors encourage Kosovo to lobby PACE members who are still uncertain to either recognise Kosovo and vote for a positive opinion on Kosovo's membership or abstain from voting to prevent a blocking coalition. As for the non-recognising members in PACE, thorough lobbying to abstain from voting on Kosovo's membership could lower the threshold thus preventing Kosovo from entering the Council of Europe.

Concerning the ability and the willingness to fulfil the membership requirements stated in Art.3 of the CoE Statute, the authors emphasise the importance of the authoritative reports from the above-mentioned committees, on Kosovo's accession to the Council of Europe. They are convinced that Kosovo already fulfils the requirements, although they accept concerns raised by the PACE members related to democracy, the rule of law and human rights, and the efforts to be made by Kosovo, especially towards Serbia⁷. In terms of 'Democracy', the 2013 report of the 'Committee on Political Affairs and Democracy

⁶ Respectively 54 of 84 votes of the Committee on Political Affairs and Democracy and 51 of 84 members of the Committee on Legal Affairs and Human Rights could be provided by member states recognising Kosovo.

⁷ The authors however point to the conclusions of an investigation from the European Commission related to the accession of Kosovo to the EU, proposing that PACE should include this report.

on Kosovo⁸ (referred to as the 'PACE report' in the GLPS report) has high-lighted concerns about (i) free and fair elections, (ii) the independence of the legislature and regulatory institutions which seems to be negatively influenced by the Kosovo government, (iii) freedom of expression, especially the media in Kosovo, and (iv) the independence of the judiciary. Two remarks must be kept in mind: firstly the report was issued in January 2013 and includes information gathered in December 2012, and secondly the PACE report (2012) does not include the European Commission enquiry results on Kosovo's ability to enter into a Stability and Association Agreement with the EU.

The authors agree with the findings of the PACE report on 'democracy'; regarding the election system and process, the Rapporteur urges Kosovo on the on-going electoral reform process to avoid irregularities such as multiple voting and voting manipulation. The independence of the legislature and regulatory institutions and the Kosovar government's dominance and political control over the legislative system, combined with rather weak controlling institutions (Central Electoral Commission, Ombudsmen and Independent Media Commission) must also be resolved. The Kosovar Authorities have major influence over the media in Kosovo, who are complaining about political interference which threatens freedom of expression. The PACE report proposes the reinforcement of media independence by voting laws. Finally, the judiciary suffers the same political interference, whereas a new court system will be introduced in 2013, which it is hoped will improve independence, impartiality and efficiency of Kosovo's judiciary.

Regarding the 'Rule of Law'-area, according to the PACE report, corruption (including government corruption) and organised crime are wide-spread in Kosovo and difficult to eradicate, despite efforts and (according to the authors) notable improvements, especially in the legal framework and the setting-up of institutions to combat these crimes. However, due to chronic underfunding and a problematic public procurement system which facilitates misuse of public funds, the inefficiency of police forces, the fight against ingrained corruption and organised crime still remains difficult. Therefore, EULEX is concentrating its efforts to combat these crimes by reinforcing the Kosovar police services' capabilities.

In the field of 'Human rights', the authors point out the difference between the PACE report and the findings of the European Commission; whereas the latter regards Kosovo's legislative record on human rights as 'solid', the PACE rapporteurs seem to be less convinced, focusing on a deficiency in the protection of human rights especially vis-à-vis the protection of Roma, Egyptians and Ashkali, the protection of women and girls against sexual exploitation and the eradication of domestic violence. PACE and the European Commission have urged the Kosovar Authorities to put more effort into implementing existing plans for the above-mentioned minority populations⁹, to fund and implement already existing plans for protecting women and children against trafficking, sexual exploitation and domestic violence and to undertake adequate measures for providing possibilities to promote minority languages.

⁸ Parliamentary Assembly of the Council of Europe (PACE), *'The situation in Kosovo* and the role of the Council of Europe'*, 22 January 2013, Resolution 1912, 2013 Parliamentary Assembly 3rd part-session, Strasbourg. Available at: <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19344&lang=en>

⁹ The most comprehensive of these plans for the Roma, Egyptian and Ashkali populations are the "Forty Actions" drawn up by the European Commission. (http://eeas.europa.eu/delegations/kosovo/documents/press_corner/111608-com-ko-rae-meeting-recommendations_en.pdf).

The authors admit that a greater effort must be made to protect human rights which were the result of the 1999 conflict between Serbia and Kosovo, especially on the perceived impunity of individuals involved in this conflict, stating that too few individuals from both sides have been brought to justice. As for the handling of repatriated persons, by Kosovo, the authors point out the disparity between the PACE report and the European Commission findings. Whereas the European Commission has no such complaints, the PACE Rapporteur fears a discrimination against minorities, suspecting the housing program for repatriated persons.

Full accession or ‘intermediate’ membership as a first step?

Alongside full membership, three intermediate forms of accession to the Council of Europe are described in the GLPS-report and linked to the Kosovo case. The ‘observer’ status would give Kosovo the opportunity to take part at the Committee of Ministers sessions, but would give the appearance of Kosovo being an outsider to the Organisation, comparable to the current status of the Holy See.

The second type of alternative membership, the ‘associate membership’ allows Kosovo to sit and vote in the PACE but not in the Committee of Ministers; this would not give Kosovo a status as ‘potential member state’, because an associate member does not require statehood or state recognition.

The ‘special guest’ status as a third possibility could allow Kosovo to send a non-voting delegation to PACE. That could be, according to the authors, the most feasible way for Kosovo to join the Council of Europe, as 20 current member states have chosen this way prior to accession. The threshold for becoming a special guest at the Organisation is rather low, and this status would give Kosovo the ability to prove its willingness to comply with Art.3 standards, once its candidature has been approved by a single committee of PACE and the group of senior PACE members in the Bureau of the Assembly.

What about timing?

The authors are aware of the length of the process necessary to join the Council of Europe, and they stress an immediate start to this process before the candidature of Kosovo can be ‘reconverted’ into an official invitation from the Committee of Ministers. On the other hand, the current political situation, including increasing ultra-nationalism and populism in European countries that are also member states to the Council of Europe, could hinder accession, because these member states would have legislative elections¹⁰. ‘New’ PACE members with above-mentioned political conviction could be against the accession of Kosovo, as being former part of Serbia.

The authors’ recommendations and final observations

Based on the study, the authors of the GLPS report formulate several recommendations in order to facilitate accession as a future member state to the Council of Europe, focusing on the urgency to start negotiations to join the Council of Europe, while the European political landscape could change in the

¹⁰ The authors refer to Denmark, France, the Netherlands, the United Kingdom, which will hold elections between 2015 and 2017.

forthcoming years. They are aware that the path towards full accession is long and that compliance with the Art.3 standards is far from accomplished.

The thaw in the relationship between Serbia and Kosovo, resulting in the Agreement of 19 April 2013 facilitated by the EU, must be seen in the context of the efforts made by Serbia in order to join the European Union. Although some issues between Serbia and Kosovo remain unresolved, this Agreement could smooth the path to a normalised relationship with Serbia and the neighbouring community.

As for a possible accession to the Council of Europe, the CoE should be prepared that the pressure to start the process may increase inside Kosovo. At the same time, the Council of Europe should put more pressure on the Serbian and Kosovar authorities, while both are in the running for EU-membership. The Kosovar authorities especially should be strongly encouraged to comply to the CoE standards in terms of democracy, the rule of law and human rights. At the same time, the CoE's scope of action should be broadened and deepened, especially in the field of democracy, the rule of law and human rights, and should fully involve CoE experience and expertise in relation to the Kosovar people.

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