



## Bureau of the Assembly

AS/Bur (2023) 64

27 November 2023

### **Application for membership set out in the letter of 12 May 2022 addressed to the Secretary General of the Council of Europe, in line with Statutory Resolution (51) 30**

*Report by the eminent lawyers appointed by the Bureau on 25 May 2023*

REPORT ON THE CONFORMITY OF KOSOVO\*\*S LEGAL SYSTEM WITH COUNCIL OF EUROPE STANDARDS

In the context of the application for membership set out in the letter of 12 May 2022 addressed to the Secretary General of the Council of Europe, in line with Statutory Resolution (51) 30

Submitted by Mr Thomas Markert and Ms Sia Spiliopoulou Åkermark

---

\* 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.

## Table of Contents

<b>PART I: INTRODUCTION</b>	<b>3</b>
1. Disclaimer	3
2. Procedure	3
3. Scope and methodology of this report	3
4. Council of Europe's activities in and engagement with Kosovo	4
5. Issues outside the scope of the report: statehood and recognition	4
6. Kosovo's recent history	5
7. International presence and role	6
8. The EU-facilitated dialogue	7
9. The context of the visit	7
<b>PART II: THE CONSTITUTIONAL FRAMEWORK</b>	<b>8</b>
1. General considerations	8
2. Provisions of the Constitution on national minorities	9
<b>PART III: DEMOCRACY</b>	<b>10</b>
1. The Assembly of Kosovo	10
2. Elections	10
3. The Government	11
4. Local Self-Government	11
5. The issue of the Association of Serb majority municipalities	11
<b>PART IV: THE RULE OF LAW</b>	<b>14</b>
1. The Constitutional Court	14
2. The ordinary courts	15
3. The prosecution service	16
4. War crimes	17
5. Fight against corruption and organised crime	17
6. The Police	18
<b>PART V: HUMAN RIGHTS</b>	<b>19</b>
1. Fundamental rights and freedoms in the Constitution	19
2. Right to education	19
3. Freedom of speech and media	20
4. Property rights and the issue of expropriation	21
5. Rights of national minorities	22
6. Language rights	24
7. Freedom of religion	26
8. Hate speech	27
9. Gender equality and violence against women	27
10. Truth, justice and reconciliation	27
<b>PART VI: KEY CONCLUSIONS</b>	<b>28</b>
<b>APPENDIX</b>	

## PART I: INTRODUCTION

### 1. Disclaimer

1. The present report is an expertise submitted to the Bureau of the Parliamentary Assembly at its request. It reflects our legal analysis and is written in our own name.

2. As independent experts we are not bound to any specific obligation, instruction or custom when using the word 'Kosovo'. Given that this report is submitted to the Bureau of the Assembly, however, and will be published as a Bureau document, we have decided to align ourselves to the practice of the Assembly, which is to add an asterisk after the word 'Kosovo' the first time it is mentioned (in the title of the report), with a footnote with the following words: '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'.

### 2. Procedure

3. On 12 May 2022, Kosovo applied for membership in the Council of Europe. In her letter, Ms Donika Gërvalla-Schwarz, Deputy Prime Minister and Minister of Foreign Affairs and Diaspora, defines Kosovo as 'a European country strongly committed to human rights and the rule of law' recalling its profound European identity and its eagerness 'to contribute to the common good of our common continent', expressing Kosovo's deeply felt aspiration and wish to join the family of European nations in the Council of Europe.

4. On 12 May 2022, the Secretary General of the Council of Europe transmitted the application to the Chair of the Committee of Ministers 'for possible follow up by the Committee of Ministers in accordance with the Statute of the Council of Europe'.<sup>1</sup>

5. On 24 April 2023, the Ministers' Deputies,

*'Recalling the decision, expressed at the 8<sup>th</sup> Session of the Committee of Ministers in May 1951, to consult the Parliamentary Assembly before deciding on applications for membership of the Council of Europe in conformity with the provisions of the Statute;  
Recalling the Brussels Agreement of 27 February 2023 and the Ohrid Agreement of 18 March 2023 and its Implementation Annex, reached in the EU-facilitated dialogue led by the High Representative, and the importance of all parties implementing them expeditiously and in good faith;  
Decided to transmit to the Parliamentary Assembly for consultation the letter of 12 May 2022 addressed to the Secretary General of the Council of Europe (document DD(2022)200), without prejudice to the Committee of Ministers' future consideration of this application to accede to the Council of Europe.'*

6. As a result of this transmission, upon proposals by the President, the Bureau of the Assembly appointed us as the eminent lawyers who would 'draw up a report for the attention of the Bureau assessing the conformity of the applicant's legal system with Council of Europe standards'.<sup>2</sup> In line with the Assembly's recent practice relating to membership applications, this report will provide elements to the Assembly's rapporteurs when drafting the Assembly's Opinion to the Committee of Ministers.

### 3. Scope and methodology of this report

7. The scope of this report is in line with the mandate which we have been given by the Bureau of the Assembly, which is to assess the conformity of Kosovo's legal system with Council of Europe standards. The report, therefore, is divided into four main chapters, addressing the Constitutional Framework, Democracy, the Rule of Law, and Human Rights. In addition, the conclusions set out our general assessment of Kosovo's conformity with Council of Europe standards and identify gaps and problems that need to be addressed.

8. A number of online meetings and a visit to Kosovo which we carried out from 24 to 27 September 2023 have been important sources of information in the preparation of the present report.<sup>3</sup> We would like to thank

<sup>1</sup> [DD\(2022\)200](#).

<sup>2</sup> <https://rm.coe.int/synopsis-bureau-meeting-25-may-2023-in-riga/1680ab5dfd>.

<sup>3</sup> See the list of meetings and the programme of the visit in the Appendix.

all those who have devoted us their time during our exchanges and contributed by sending written submissions and documents before and after the visit.

#### 4. Council of Europe's activities in and engagement with Kosovo

9. To assess Kosovo's conformity with Council of Europe standards, we could draw extensive and authoritative input from the reports published or adopted by a wide range of Council of Europe bodies, as Kosovo has been engaging with them according to various modalities for many years.

10. Some agreements which allow Council of Europe monitoring mechanisms to operate in Kosovo were concluded during the period in which the internationals in Kosovo held executive powers. This is the case, for instance, for the reporting under the Framework Convention on National Minorities,<sup>4</sup> which has currently reached its fifth cycle, and the work of the European Committee for the Prevention of Torture (CPT).<sup>5</sup> Other solutions were envisaged later on, to allow for the functioning of other mechanisms, such as those working in the field of trafficking in human beings and violence against women.

11. The Council of Europe has been actively supporting the strengthening of standards in Kosovo also through a wide range of co-operation projects, including in the areas of justice, rule of law, the fight against economic crime, cybercrime, prison conditions, violence against women, education, freedom of the media, and Roma inclusion. Their relevant documents have been taken into consideration.<sup>6</sup> As indicated in all its overviews of co-operation activities in Kosovo since 2015, 'the Council of Europe co-operation with Kosovo is based on the principle that the Council of Europe and its Secretariat operate in conformity with the United Nations Security Council Resolution (UNSCR) 1244 (1999) and also on the status-neutral approach of the Organisation'.

12. It can also be recalled that the Association of Kosovo Municipalities participates in the sessions of the Congress of Local and Regional Authorities as an observer. In addition, Kosovo has been a member of the Council of Europe Development Bank since 2013 and of the Venice Commission since 2014.

13. As regards the Parliamentary Assembly of the Council of Europe, its relations with the Assembly of Kosovo have evolved over time. The beginning of regular relations dates back to 2010, when the Bureau of the Assembly decided that two elected representatives to the Assembly of Kosovo, one representing the majority and one the opposition, could be invited to attend the meetings of Assembly committees '*whenever a question directly concerning Kosovo is on the agenda of that meeting*'.<sup>7</sup> In 2013, the Bureau expanded the scope of their participation, deciding '*to grant the right to two representatives of the political forces elected to the Kosovo Assembly, one representing the majority and one the opposition, to participate in committee meetings regardless of the questions raised on the agenda, with the right to take the floor upon the authorisation of the Chairperson*'.<sup>8</sup> The current status was set out in 2016: the Assembly of Kosovo may appoint 'a delegation' to the Assembly, consisting of three seats – one belonging to the majority, one to the opposition and one to a representative of a non-majority community.<sup>9</sup> The members of the delegation have the right to speak in committees and, since September 2022, also in the plenary Assembly and in the Standing Committee.<sup>10</sup>

#### 5. Issues outside the scope of the report: statehood and recognition

14. The task of this report is to assess the adherence of Kosovo to Council of Europe standards in the fields of democracy, the rule of law and human rights, including in particular minority rights ahead of consideration by the Assembly of a possible invitation to become a member to the Council of Europe in accordance with Articles 3 – 4 of the Statute of the Council of Europe.

---

<sup>4</sup> [Agreement](#) between the Council of Europe and UNMIK, 23 August 2004.

<sup>5</sup> *Kosovo is subject to special monitoring arrangements on the basis of an agreement between the Council of Europe and UNMIK (2004) and an exchange of letters between the Council of Europe and NATO (2006).*

<sup>6</sup> [Overview](#) of co-operation activities in Kosovo.

<sup>7</sup> The Bureau decision was taken as a follow up to Assembly [Resolution 1739 \(2010\)](#) "The situation in Kosovo\* and the role of the Council of Europe".

<sup>8</sup> This decision was taken as a follow up to Assembly [Resolution 1912 \(2013\)](#) "The situation in Kosovo\* and the role of the Council of Europe".

<sup>9</sup> Assembly [Resolution 2094 \(2016\)](#) "The situation in Kosovo\* and the role of the Council of Europe".

<sup>10</sup> [AS/BUR 012](#).

15. We are not tasked to comment on matters of statehood and recognition. Nor is such examination necessary for us to complete our task of assessing compliance with Council of Europe standards. Our examination and visit show that the Kosovo authorities exercise jurisdiction over a territory and population and have considerable international activities, although membership in intergovernmental organisations is limited. The presence in Kosovo of the international community, which has successively handed over most responsibilities to the Kosovar authorities and notwithstanding the guarantee of security by EULEX and KFOR respectively as so called second and third responder, does not alter this fact.<sup>11</sup>

16. The recognition of States is seen in general in the practice of States and by international lawyers alike as a political act, even though some of the considerations forming part of such decisions as well as their consequences have considerable legal aspects and implications. Recognition of States entails the interpretation of a comprehensive and complex set of facts and factors, including the circumstances of the process towards the creation of a State and the potential consequences of such recognition. Even when the existence of a State is understood as a matter of fact, the recognition of such a State by other States may be deemed to be of a political nature entailing practical legal implications. At the moment, 34 out of 46 Council of Europe member States have recognised Kosovo's statehood.

17. The recognition of States is, in general, seen as distinct from the matter of membership in international organisations. International organisations have their own respective rules about the criteria and process of membership and of other forms of relations between various international subjects and international organisations. As regards the Council of Europe, Article 4 of its Statute reads: *'Any European State which is deemed to be able and willing to fulfil the provisions of Article 3 may be invited to become a member of the Council of Europe by the Committee of Ministers. Any State so invited shall become a member on the deposit on its behalf with the Secretary General of an instrument of accession to the present Statute'*. According to Article 3 *'Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I.'*

## 6. Kosovo's recent history

18. Multi-ethnic Kosovo lies in the heart of the Western Balkans. Under the Constitution of the Socialist Federative Republic of Yugoslavia, Kosovo was an autonomous province of the Republic of Serbia. Inter-ethnic relations deteriorated radically during the Milošević regime, due to the abolition of the autonomy of Kosovo and massive human rights violations, leading to protests, violent clashes, the creation of the Kosovo Liberation Army (KLA) and open demands for secession from Belgrade. An armed conflict ensued in 1998, which caused thousands of victims and population displacement and during which war crimes were committed.

19. Following the Rambouillet Agreement,<sup>12</sup> the NATO military intervention against Serbia and the subsequent end to the fighting between the Kosovo Liberation Army and Serbian forces, on 10 June 1999 the United Nations Security Council adopted, in a unanimous vote with the only abstention of China, Resolution 1244 (1999).<sup>13</sup>

20. Since 1999, the international community has put substantial efforts into strengthening standards in Kosovo while achieving a settlement of the status issue. A key milestone in this latter process was, in 2007, the Comprehensive Proposal for the Kosovo Status Settlement (CPS, also known as the Ahtisaari Plan) by the UNSG's Special Envoy Martti Ahtisaari.<sup>14</sup> While 'supported' by the UNSC, the CPS was not endorsed by it because of lack of consensus. Attempts to achieve an agreement were pursued also after the presentation of the Ahtisaari Plan in a format known as the Troika (United States, United Kingdom and Russian Federation).

21. In the absence of a diplomatic breakthrough on the settlement on the status issue, Kosovo unilaterally declared independence on 17 February 2008, stating in the text of the Declaration of Independence the full acceptance of the Ahtisaari Plan. Serbia strongly opposed this move, which it defined as null and void. In its resolution 63/3 of 2008, the UN General Assembly asked the International Court of Justice an Advisory Opinion whether 'the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo' was in accordance with international law.<sup>15</sup> In its Advisory Opinion delivered on 22 July 2010, the

<sup>11</sup> Cf. Council of Europe, Parliamentary Assembly, Eminent lawyers' report on the conformity of the legal order of Bosnia and Herzegovina with Council of Europe standards, AS/Bur/BiH (1999) 1 Rev., 7 January 1999.

<sup>12</sup> [Interim Agreement for Peace and Self-Government in Kosovo \(Rambouillet Accords\)\\* | UN Peacemaker.](#)

<sup>13</sup> [UNSC 1244 \(1999\).](#)

<sup>14</sup> UN Security Council document [S/2007/168/Add.1](#) of 26 March 2007.

<sup>15</sup> <https://www.icj-cij.org/sites/default/files/case-related/141/14799.pdf>.

Court concluded that ‘the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework. Consequently, the adoption of that declaration did not violate any applicable rule of international law’.<sup>16</sup>

22. The international community continued to support the consolidation of democracy, institution-building and human rights protection in Kosovo after the declaration of independence. An International Steering Group for Kosovo, comprising the United States, 23 EU member States which had recognised Kosovo’s independence and Turkey, appointed the International Civilian Representative for Kosovo (ICR), who was the final authority in Kosovo regarding the interpretation of the Ahtisaari Plan and could annul decisions or laws adopted by Kosovo authorities and sanction and remove public officials whose actions were considered to be inconsistent with the Plan. As set out in the Ahtisaari Plan, ‘the ICR and the European Union Special Representative (EUSR), appointed by the Council of the European Union, shall be the same person’. Mr Pieter Feith, a Dutch Ambassador, was appointed to this responsibility.

23. For some commentators, 2008 marks the end of the period of the international administration of Kosovo and the beginning of “supervised independence”. In September 2012, Mr Pieter Feith announced that also this stage had come to a close, and that the Ahtisaari Plan had been substantially implemented.<sup>17</sup>

## **7. International presence and role**

### **7.1. United Nations Interim Administration Mission in Kosovo (UNMIK)**

24. UNSC Resolution 1244 (1999) authorised the UN Secretary-General to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo could enjoy substantial autonomy. During this phase, which lasted from 1999 to 2008, the United Nations Interim Administration Mission in Kosovo exercised authority over the territory and people of Kosovo, including all legislative and executive powers and administration of the judiciary.

25. Following the Declaration of Independence by the Kosovo authorities on 17 February 2008 and the entry into force of the Constitution of Kosovo on 15 June 2008, UNMIK tasks were significantly modified to focus primarily on the promotion of security, stability and respect for human rights in Kosovo, without any powers in the legislative, executive and judiciary fields. The mission’s priorities are focused on promoting inter-community trust building, respect for human rights and rule of law, gender equality and empowerment of women and youth.

26. The mission has a total of 374 personnel, including 356 civilian personnel (112 international staff; 220 national staff; 24 UN Volunteers) and 18 uniformed personnel (8 military observers; 10 United Nations police officers). The latest report to the UN Secretary General was published on 5 October 2023.<sup>18</sup>

### **7.2. NATO’s KOSOVO FORCE (KFOR)**

27. NATO’s Kosovo Force (KFOR) had a similar evolution: established in the framework of UNSC Resolution 1244 (1999), it was initially composed of some 50 000 men and women from NATO member countries, Partner countries and non-NATO countries under unified command and control. By early 2002, KFOR was reduced to around 39 000 troops. The improved security environment enabled NATO to reduce KFOR troop levels to 26 000 by June 2003, then to 17 500 by the end of 2003. After reaching a minimum of 3 500 personnel, KFOR presence was increased to 4 500 in the light of the heightened security situation in 2023.<sup>19</sup> In parallel with the decrease in the number of troops, responsibilities have been downscaled, with KFOR currently being the third security respondent after the Kosovo Police and EULEX. Also KFOR’s mandate to protect cultural and religious sites has been downscaled, with the Decani Monastery remaining the only site under KFOR protection.

---

<sup>16</sup> [Accordance with international law of the unilateral declaration of independence in respect of Kosovo \(ici-cij.org\)](https://www.ici-cij.org/).

<sup>17</sup> [West ends supervised independence of Kosovo \(france24.com\)](https://www.france24.com/).

<sup>18</sup> [REPORT OF THE SECRETARY-GENERAL ON THE UNITED NATIONS INTERIM ADMINISTRATION MISSION IN KOSOVO 05 October 2023, S-2023-735](https://www.un.org/press/en/2023/srsgsmg2305023.htm).

<sup>19</sup> NATO reinforcements arrive in Kosovo, NATO News 06.10.2023.

### 7.3. OSCE

28. The mandate of the OSCE Mission in Kosovo is based on UNSC Resolution 1244 (1999) and OSCE Permanent Council Decision No. 305 of 1999,<sup>20</sup> which give the OSCE a leading role in matters relating to institution building, democratisation, human rights and the rights of communities. Currently, the Mission counts 491 staff working in five regional centres with teams covering all the 38 municipalities across Kosovo.<sup>21</sup>

### 7.4. European Union Rule of Law Mission in Kosovo (EULEX)

29. EULEX operates within the framework of UNSC Resolution 1244 (1999) and is the largest civilian mission which has ever been launched by the European Union. It was set up in 2008, with the mandate to assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices.<sup>22</sup>

30. Over the years, its executive responsibilities have been substantially reduced, until the handover, in December 2018 of police, prosecutorial and judicial case files to the Kosovo authorities. Currently EULEX, in full co-operation with the European Commission Assistance Programmes, fulfils its mandate through monitoring, mentoring and advising. This has resulted in several reports with findings and recommendations for improvements of the rule-of-law system in order to assist the Kosovo justice institutions in achieving better compliance with Kosovo law and human rights standards.<sup>23</sup>

## 8. The EU-facilitated dialogue

31. Direct dialogue between Belgrade and Pristina, facilitated by the European Union, started in 2012, with the aim of gradually normalising relations by negotiating several technical agreements. The foundation of this process is a 2010 Resolution of the UN General Assembly, which acknowledges the Opinion of the International Court of Justice and welcomes the readiness of the European Union to facilitate a process of dialogue between the parties.<sup>24</sup>

32. The EU-facilitated dialogue gained momentum in 2013, with the signature of the First Agreement on the normalisation of relations between Belgrade and Pristina (the so-called Brussels Agreement).<sup>25</sup> This Agreement provided for Kosovo northern municipalities to be integrated into the Kosovo legal system, and for the integration of Kosovo Serbs in the judiciary and the Kosovo police, including in leading positions. The Agreement also required local elections in the north to be held the following year, under Kosovo law and OSCE facilitation. Both sides agreed not to hinder each other's efforts towards EU integration. Central to the text is Belgrade and Pristina's agreement on the establishment of an Association/Community of Serb majority municipalities in Kosovo (see paragraphs 67-84).

33. A number of additional technical agreements were concluded since then allowing, among others, for the free movement of people and goods between Kosovo and Serbia and the creation of an international dial code for Kosovo. After a period of stand-still in the dialogue starting from 2018, 2020 saw a new momentum, with the appointment of Miroslav Lajčák as the EU special representative for the dialogue and for other Western Balkan regional issues.

## 9. The context of the visit

34. Our visit to Kosovo took place at a moment of heightened tensions.

35. The lack of implementation of the 2013 Brussels Agreement in so far as the creation of an Association/Community of Serb majority municipalities in Kosovo is concerned is considered to be a main stumbling block on the way to restoring trust. Against this background, in July 2022, the Kosovo government

<sup>20</sup> [www.osce.org/files/f/documents/e/0/28795.pdf](http://www.osce.org/files/f/documents/e/0/28795.pdf).

<sup>21</sup> [Mission in Kosovo | OSCE](https://www.osce.org/mission-in-kosovo).

<sup>22</sup> [Joint Action 2008/124/CFSP; Legal Basis - EULEX - European Union Rule of Law Mission in Kosovo \(eulex-kosovo.eu\)](https://www.eulex-kosovo.eu/joint-action-2008-124-cfsp-legal-basis-eulex-european-union-rule-of-law-mission-in-kosovo).

<sup>23</sup> See, for instance, the [EU Rule of Law Mission Justice Monitoring Report 2022](https://www.eulex-kosovo.eu/eulex-justice-monitoring-report-2022).

<sup>24</sup> [A/RES/64/298](https://www.un.org/press/en/2010/07/20100706.res64298.doc.htm).

<sup>25</sup> <https://kryeministri.rks-gov.net/wp-content/uploads/2022/07/First-agreement-of-principles-governing-the-normalization-of-relations-April-19-2013-Brussels-en.pdf>.

announced that Serbian car licence plates would not be accepted any longer and that the use of Kosovo car plates would become obligatory. Even if the entry into force of this decision was later postponed, it led to violent protests and roadblocks by Kosovo Serbs in the North. In response, Kosovo deployed special police forces, while Serbia mobilised military by the border.

36. In November 2022, Srpska Lista representatives resigned *en masse* from their functions in Kosovo institutions – in the Kosovo Assembly, as mayors and members of municipal assemblies. At the same time, Kosovo Serbs in the Northern municipalities resigned from the police, the judiciary and the prosecution. Local elections in the North of Kosovo, which should have been held in November 2022, were postponed because of security concerns.

37. On 27 February 2023, the EU-facilitated dialogue yielded a new result: the Agreement on the path to normalisation between Kosovo and Serbia,<sup>26</sup> which is complemented by an implementation annex,<sup>27</sup> negotiated in Ohrid on 18 March 2023. While the European Union announced that the Ohrid annex had been agreed, the President of Serbia Aleksandar Vučić denied publicly having given his consent.

38. Local elections in the North of Kosovo were held in April 2023, with the Kosovo Serbs – which represents 96% in these municipalities – boycotting the vote. As a result, Kosovo Albanian mayors were elected. They were escorted into municipal buildings where they took up their functions. Violent protests ensued, causing casualties amongst protesters and KFOR, who intervened as the third security responder.

39. We arrived in Pristina in the evening of 24 September. That morning, a major security incident had taken place in the North of Kosovo, causing the death of a Kosovo Police officer at the hands of a group of Kosovo Serb heavily armed and organised assailants. Three of the armed attackers were killed. The level of resourcing and organisation of this attack, including the discovery of significant heavy weaponry and ammunition, and the alleged direct connections between some of the assailants and the Belgrade authorities illustrated yet another escalation of tensions and security threat.

## PART II: THE CONSTITUTIONAL FRAMEWORK

### 1. General considerations

40. The Constitution of Kosovo was adopted in 2008 and amended in important respects in 2012 to reflect the ending of the period of international supervision. It is based to a considerable extent on the Comprehensive Proposal for the Kosovo Status Settlement prepared by the Special Envoy of the UN Secretary General, Mr Martti Ahtisaari.<sup>28</sup> This proposal contained general principles and several Annexes. Of particular relevance for the text of the Constitution are the Annex on constitutional principles as well as the Annexes on the rights of communities<sup>29</sup> and their members, decentralisation and the justice system. None of the interlocutors we met during our visit criticised the strong international influence on the Constitution. On the contrary, they seemed proud of the fact that Kosovo has an advanced modern constitution, which could serve as a model for other countries.

41. The Constitution states: “*The Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible state*” (Art. 1.1). It describes Kosovo as a democratic Republic based on the principle of separation of powers (Art. 4). It provides for a parliamentary democracy in line with European standards and practice. The executive power is exercised by the Government. The President of Kosovo is elected by the Assembly and has limited powers. Legislative power lies with the Assembly, which elects the Government and can dismiss it through a motion of no confidence.

42. There are no regions in Kosovo, but the Constitution provides important guarantees for local self-government including by incorporating the European Charter of Local Self-Government (Art. 123).

---

<sup>26</sup> [Belgrade-Pristina Dialogue: EU Proposal - Agreement on the path to normalisation between Kosovo and Serbia | EEAS \(europa.eu\)](https://eeas.europa.eu/diplomacy/2023/02/23-belgrade-pristina-dialogue-eu-proposal-agreement-on-the-path-to-normalisation-between-kosovo-and-serbia/).

<sup>27</sup> [Belgrade-Pristina Dialogue: Implementation Annex to the Agreement on the Path to Normalisation of Relations between Kosovo and Serbia | EEAS \(europa.eu\)](https://eeas.europa.eu/diplomacy/2023/03/18-belgrade-pristina-dialogue-implementation-annex-to-the-agreement-on-the-path-to-normalisation-of-relations-between-kosovo-and-serbia/).

<sup>28</sup> UN Security Council document [S/2007/168/Add.1](https://www.un.org/press/en/2007/s2007168add1.htm) of 26 March 2007.

<sup>29</sup> In Kosovo as well as in some neighbouring countries the term “minorities” is perceived as having negative connotations and the term communities is preferred. In the present text we use the term (national) minorities in headings and when referring to Council of Europe standards and the term communities when referring to the norms and practices in Kosovo.

43. The Constitution provides strong guarantees for the independence of the judiciary. The Judicial Council has wide powers, and the majority of its members are judges elected by their peers (Art. 108). Judges are appointed and dismissed by the President on the proposal of the Judicial Council. There is also an independent Prosecutorial Council with wide powers (Art. 110).

44. The Constitutional Court has very wide jurisdiction (Art. 113), including the possibility for individuals to refer violations by public authorities of their constitutional rights to the Court, following the exhaustion of ordinary legal remedies.

45. The Constitution is generally favourable to international law. It states that “*Kosovo shall have no territorial claims against, and shall seek no union with any State or part of any State*” (Art. 1.3). It provides for the direct applicability of the rights contained in a number of international agreements, including the ECHR and its Protocols and the Framework Convention for the Protection of National Minorities (Art. 22). According to its Art. 53 “*Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.*”

46. There is a comprehensive catalogue of political fundamental rights and freedoms. Economic, social, cultural and environmental rights are not absent but the overall approach of the Constitution in this respect is fairly cautious, focusing on provisions which can be implemented by courts.

## 2. Provisions of the Constitution on national minorities

47. The Constitution defines Kosovo as a multi-ethnic society (Art. 3). Albanian and Serbian are official languages, Turkish, Bosnian and Roma languages may have the status of official languages or languages in official use at the municipal level (Art.5).

48. A distinctive feature of the Kosovo Constitution is that it provides for the mandatory representation of non-majority communities in the important State organs and institutions. This includes:

- ten guaranteed seats in the Assembly for the Serb community and 10 guaranteed seats for other communities (Art. 64);
- Deputy Presidents of the Assembly (Art. 67);
- Government ministers and deputy ministers (Art. 96);
- The Supreme Court and other courts with appeal jurisdiction (Art. 103.3 and 6);
- The Kosovo Judicial Council (Art. 108. 6. 3 and 4);
- The Constitutional Court (Art.114.3);
- A deputy Ombudsperson (Art. 133.2);
- The Central Election Commission (Art. 139.4);
- A Vice-President of the Municipal Assembly and representation in the municipal executive body in municipalities where at least 10% of the residents belong to non-majority communities (Art. 62. 1 and 5).

49. Often these office holders have specific procedural rights in order to be able to defend the interests of their communities:

- ten members of the Assembly may refer a law adopted by the Assembly to the Constitutional Court for the examination of its constitutionality (Art. 113.5);
- A Deputy President of the Assembly may request that a draft law be submitted to the Assembly Committee for the Rights and Interests of Communities (Art. 78.2);
- Members of the Judicial Council elected according to the procedure requiring the consent of Deputies from non-majority communities have an exclusive right to propose candidates for certain judicial positions (Art. 108. 9 and 10);
- The Vice-President for Communities of the Municipal Assembly can refer matters to the Constitutional Court (Art. 62.4).

50. Within the Assembly there is a Committee on Rights and Interests of Communities composed of one third of members representing the Serb community, one third representing other communities and one third representing the majority community (Art. 78). It is consulted on draft legislation and can make recommendations to other committees and the Assembly.

51. The Constitution enumerates in its Art. 81 a number of laws of vital interest, which require for their adoption a double majority of all deputies as well as of the deputies representing the non-majority communities.

These laws include laws on municipalities, the rights of communities and their members, the use of language, cultural heritage, religious freedom, education and the use of symbols.

52. Constitutional amendments require for their adoption a double majority of all deputies and of the deputies representing the non-majority communities (Art. 144.2). The Constitution may not be amended by referendum and laws of vital interest may not be submitted to referendum (Art. 81.2), as seems wise in a country with ethnic tensions.

53. Art. 60 of the Constitution establishes a Consultative Council for Communities under the authority of the President of Kosovo, which may *inter alia* comment and propose policy initiatives.

54. The Constitution does not contain any quota for representation in the civil service, but it requires that the civil service shall reflect the diversity of the people and that all communities are equitably represented in all parts of the public sector, with special emphasis on the police (Arts. 61, 101 and 128.2). The composition of courts has to reflect the ethnic composition of the territory for which the courts are competent (Art. 104.3).

### **PART III: DEMOCRACY**

#### **1. The Assembly of Kosovo**

55. The representatives of the opposition parties confirmed to us that the rules of procedure of the Assembly provide sufficient room for the opposition to make its voice heard and that the rights of the opposition are generally respected. Some important committees are chaired by the opposition, one third of the members of the Assembly can request the establishment of an investigative committee and six members of the Assembly have the right of legislative initiative.<sup>30</sup>

56. We heard criticism from some Kosovo and international interlocutors alike about an inefficient process of law-making with the adoption of important laws such as the Civil Code and the amendments to the law on freedom of religion being unduly delayed. The report of the European Commission on Kosovo points to a frequent lack of quorum as a reason for such delays.<sup>31</sup> Increased polarisation and boycotts of the Assembly by opposition parties and the Kosovo Serb representatives make it increasingly difficult for the Assembly to work effectively. By contrast, the representatives of the Assembly referred to the large number of laws adopted during the current legislature.

57. The representatives of the smaller communities in the Assembly confirmed that the Committee on the Rights and Interests of Communities is systematically consulted on relevant legislation. Since Kosovo governments depend on support from community representatives within the Assembly, their rights were adequately respected. If the representatives of a smaller community do not have the necessary number of members of the Assembly of Kosovo to bring a case before the Constitutional Court, they are able to do so through the Ombudsperson. Control by the Constitutional Court is considered effective, and the Court enjoys general trust.

58. All representatives of the Assembly whom we met regretted the boycott of the Assembly by the representatives of the Serb community and a lack of political pluralism within this community. All Serb representatives belong to a single party, Srpska Lista, which is widely considered as an instrument of the policy of Belgrade rather than a party interested in defending the rights of the Serb community in Kosovo. Despite being invited, the representatives of Srpska Lista did not reply to our invitation to meet.

#### **2. Elections**

59. Elections in Kosovo are generally regarded as free and fair and competitive. The last general elections were decisively won by the previous opposition and the last municipal elections were won in most places by candidates of opposition parties. As set out above, the last municipal elections in northern Kosovo were boycotted by the political party representing the Serbian community. Turnout was therefore extremely low (between 1% and 6%) and the mayors and municipal assemblies in these municipalities lack legitimacy. A political solution for this problem will have to be found.

---

<sup>30</sup> Article 70 of the Rule of Procedure of the Assembly of Kosovo.

<sup>31</sup> European Commission Staff Working Document, Kosovo\* 2022 Report, pp. 8-9.

60. The outstanding recommendations of the election observation missions of the EU seem mostly of a technical character and the latest EU election follow-up report notes that “The electoral reform process that has just commenced in the Kosovo Assembly gives ground for cautious optimism about the prospects for the implementation of EU recommendations ahead of the next parliamentary elections scheduled for 2025.”<sup>32</sup>

### 3. The Government

61. Within the Government there is a Bosniak Deputy Prime Minister for Minority Issues and Human Rights and a Serb Minister of Communities and Returns. There is also a Turkish Minister of Regional Development and an Egyptian Minister of Local Government Administration. The Minister for Communities and Returns seems motivated to improve the position of the non-majority communities but has little political support within the Serb community. His influence and the influence of the Deputy Prime Minister is dependent on support from the Prime Minister. The Deputy Prime Minister prepared a - still to be adopted – draft Strategy for the Protection and Promotion of the Rights of Communities and their members. The budgetary funds for programmes to be carried out under the responsibility of the Minister for Communities and Returns are limited.

62. The real place of policy making on communities clearly is the Prime Minister’s office. The Prime Minister has a special adviser on community issues, who also was the Director of the Office for Community Affairs within the Prime Minister’s office. At the beginning of August 2023, she resigned from the latter position, when funds destined for NGO projects to improve the situation of non-majority communities were almost entirely allocated to NGOs from the majority community. Regrettably, the position of Director of the Office of Community Affairs has not been filled since then.

### 4. Local Self-Government

63. As indicated above, the Constitution incorporates the European Charter of Local Self-Government and protects the rights of municipalities, including by providing them with the possibility to appeal against alleged infringements upon their responsibilities to the Constitutional Court (Art. 113.4).

64. The Association of Kosovo Municipalities expressed general satisfaction with the state of local self-government including with respect to financial decentralisation. About one fourth of the budget is spent by the municipalities. While the legal rules on the use of languages in municipalities are quite generous, with e.g. the Roma language being official in two municipalities, implementation of these rules in practice is difficult due to a lack of translators and interpreters. To improve the situation in this respect will require a major effort by the Kosovo authorities.

65. The Study on Local Self-Government in Kosovo\* of 1 December 2021 prepared by the Congress of Local and Regional Authorities of the Council of Europe, concludes that the European standards on local self-government are generally respected in Kosovo.<sup>33</sup>

66. The current situation in the municipalities in the North, where the current mayors and municipal assemblies do not enjoy sufficient democratic legitimacy due to the boycott of the April 2023 elections by the local Serb population, is obviously unsatisfactory. The Kosovo authorities should make every effort to encourage the Kosovo Serb electorate to participate in the electoral process, even if they are not the only ones to have an influence on such participation.

### 5. The issue of the Association of Serb majority municipalities

67. The issue of the establishment of an association of Serb municipalities has been a main source of tensions between Serbia and Kosovo and between the Kosovo authorities and the Serbian community.

68. The First agreement on principles governing the normalisation of relations concluded between Kosovo and Serbia in 2013 and brokered by the EU provides: “*There will be an Association/Community of Serb majority municipalities in Kosovo*” in accordance with the European Charter of Local Self-Government and Kosovo law and the Association/Community will have *full overview of the areas of economic development, education,*

<sup>32</sup> European Union, Election Follow-up Mission, Kosovo\* 2022, Final Report, pp. 16.

<sup>33</sup> Part III: Conclusions. How to improve local self-government.

*health, urban and rural planning*'.<sup>34</sup> This agreement, which was signed by the Prime Minister of Kosovo (and Serbia), was ratified as an international agreement on 27 June 2013 by the Assembly of Kosovo.

69. The origin to these agreements and provisions is found in the Report of the Special Envoy of the UN Secretary-General, Martti Ahtisaari, on Kosovo's Future Status.<sup>35</sup> The report noted as regards the position and rights of communities the following which holds true as much today as it did in 2007:

*'Kosovo's minority communities — in particular the Kosovo Serbs — continue to face difficult living conditions. The violence perpetrated against them in summer 1999 and in March 2004 has left a profound legacy. While Kosovo's leaders have increased their efforts to reach out to Kosovo Serbs and to improve implementation of standards, protecting the rights of minority communities requires their even greater commitment. At the same time, Kosovo Serbs need to engage actively in Kosovo's institutions. They must reverse their fundamental position of non-cooperation; only with an end to their boycott of Kosovo's institutions will they be able to protect effectively their rights and interests.*

*On the basis of this assessment the Comprehensive Proposal for the Kosovo Status Settlement which was annexed to the report by the Special Envoy included the following wording under the heading of decentralization:*

*The extensive decentralization provisions are intended to promote good governance, transparency, effectiveness and fiscal sustainability in public service. The proposal focuses in particular on the specific needs and concerns of the Kosovo Serb community, which shall have a high degree of control over its own affairs. The decentralization elements include, among other things: enhanced municipal competencies for Kosovo Serb majority municipalities (such as in the areas of secondary health care and higher education); extensive municipal autonomy in financial matters, including the ability to receive transparent funding from Serbia; provisions on inter-municipal partnerships and cross-border cooperation with Serbian institutions; and the establishment of six new or significantly expanded Kosovo Serb majority municipalities.'*

70. A document entitled "Association/Community of Serb majority municipalities in Kosovo – general principles/ main elements" was prepared in 2015 to implement the 2013 agreement. The then President of Kosovo referred this document to the Constitutional Court for an examination of its constitutionality. The Constitutional Court declared in December 2015 this document to be unconstitutional in some respects.<sup>36</sup>

71. The Court found that the proposed legal framework did 'not meet entirely the constitutional standards'. The Court did not rule out, however, the possibility of such an association *a priori* and in general. The Court dealt with the specific proposals put forward in the General Principles and the Court was concerned *inter alia* by the ambiguity of the term 'exercise full overview' (in the English version) and its similar but not identical translations in the Albanian and Serb languages. Furthermore, the Court noted that the Principles regarding the organisational structure of the Association/Community raised concerns regarding respect for the diversity of communities resident within the participating municipalities, and the reflection of this diversity in the staffing and structures of the Association/Community as required by the Constitution. The Court found that the Association/Community cannot be vested with *full and exclusive authority* to promote the interests of the Kosovo Serb community alone in its relations with the central authorities.

72. This judgment was used by Kosovo politicians to declare that the establishment of such an association is unconstitutional *per se* and no new agreement on the possible statute of such an association was reached. At the time of our visit, the current Government seems unwilling to establish such an association.

73. Such an interpretation of the judgment of the Constitutional Court is, however, abusive. While the Court was critical of the specific document submitted to it, it explicitly held "*that the Association/Community of the Serb majority municipalities is to be established as provided in the First Agreement, ratified by the Assembly of the Republic of Kosovo and promulgated by the President of the Republic of Kosovo*".

---

<sup>34</sup> First Agreement on Principles Governing the Normalization of Relations reached under the EU mediation in Brussels on 19 April 2013 and its Implementation Plan. The First Agreement included also other provisions, i.a. on the police force in Kosovo, integration of Serbian security structures and provisions on the functioning of the judiciary. It was followed-up by the so-called General Principles agreed by the two sides on 25 August 2015. It was these General Principles/Main Elements that came to be examined by the Constitutional Court of Kosovo.

<sup>35</sup> UN Security Council documents [S/2007/168](#) and [S/2007/168/Add.1](#) of 26 March 2007.

<sup>36</sup> Judgment of 23 December 2015 in case No. KO 130/15.

74. The standards of the Council of Europe in the field of decentralisation and effective participation of minorities are relevant in the present case and include foremost the European Charter of Local Self-Government (ETS 122/1985) and Article 15 of the FCNM on effective participation of persons belonging to national minorities.

75. Article 10 of the European Charter of Local Self-Government provides for the right of local authorities to associate:

*'1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.  
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.  
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.'*

76. Furthermore, Article 15 of the Framework Convention on National Minorities (FCNM) provides:

*'The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.'*

77. Following the Second Thematic Commentary (2008) of the Advisory Committee of the Framework Convention on National Minorities (ACFC) concerning the right to participation of persons belonging to national minorities (para. 67) 'processes of decentralisation can play an important role in creating the conditions necessary for persons belonging to national minorities to participate effectively in cultural life. In particular, cultural autonomy arrangements, whose aim is *inter alia* to delegate competences to persons belonging to national minorities in the sphere of culture and education, can result in increased participation of minorities in cultural life.'<sup>37</sup>

78. Following the provisions of the FCNM, the exercise of any right enshrined in the Convention should respect the following principles:

*'Article 20*

*In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.*

*Article 21*

*Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.'*

79. In addition, the OSCE Ljubljana Guidelines on Integration of Diverse Societies (2012), identify possible tools for the effective participation of persons belonging to minorities, including:

*'- Non-territorial self-governance arrangements or power-sharing arrangements aiming to enhance particular groups' influence over matters of special concern to them;  
- In certain circumstances, territorial self-governance arrangements, such as territorial devolution of powers, may also facilitate the representation of individual minority groups. Regardless of form, institutions of self-governance must be based on democratic principles and processes to ensure that they can legitimately claim to reflect the views of all the communities settled in the concerned territory and that they fully respect the human rights of all persons, including of minorities, within their jurisdictions. In this context, power-sharing arrangements, where in place, should not be constructed in a manner that excludes any communities from representation.'*

80. The above mentioned standards are complemented by the principles entrenched in the Venice Commission *Report on the Preferential Treatment of National Minorities by their Kin-State* (CDL-INF(2001)019-e) and the OSCE Bolzano/Bozen Recommendations on National Minorities in Interstate relations (2008).

<sup>37</sup> See also paras. 133-137 of the same Thematic Commentary on matters of cultural and territorial autonomy.

81. Within the parameters of the above normative pronouncements following domestic and European legal standards, it should be possible to identify meaningful agreed ways of association for Serb-majority municipalities.

82. Some interlocutors expressed concerns that such an association could become an instrument of the Serbian authorities to intervene in Kosovo and might even be used separatist purposes in view of the current situation in the north of Kosovo and in the Republika Srpska entity of Bosnia and Herzegovina. It is legitimate to require that the statute of the association is in line with Kosovo legislation. There is also no obligation for Kosovo to accept that powers are granted to such an association which normally belong to central authorities. The delegation of additional powers by central authorities is of course possible upon agreement of the parties. The scope of the powers of municipalities is in any case quite wide and, according to Kosovo legislation, some Serb municipalities have, based on the Ahtisaari proposal, enhanced competencies in the area of secondary health care and education, and all Serb majority municipalities have enhanced competencies in the area of culture.<sup>38</sup> There seems to be no legal reason why these municipalities should not be able, on a voluntary basis, to co-ordinate the exercise of their competencies and to pool in appropriate cases the exercise of these competencies, it being understood that there are limitations to such pooling since the Serb majority municipalities in the South have no contiguous territory. This approach is in line with the Ahtisaari plan which provided that "Municipal responsibilities in the area of their own and enhanced competencies may be exercised through municipal partnerships".<sup>39</sup>

83. On 27 February 2023, Kosovo's Prime Minister Albin Kurti and Serbia's President Aleksandar Vučić agreed to the outlines of a new agreement, following EU mediation efforts by High Representative Josep Borrell and Special Representative for the Belgrade-Pristina Dialogue Miroslav Lajčák.<sup>40</sup> The two sides agreed among other things to mutually recognise their respective documents and national symbols, including passports, diplomas, licence plates, and customs stamps; and that Serbia would not object to Kosovo's membership in international organisations while Article 7 refers to 'an appropriate level of self-management for the Serbian community in Kosovo'.

84. The possibility to establish such an association is not a general requirement resulting from Council of Europe standards. In the case of Kosovo, it is, however, an international obligation of Kosovo and seems indispensable to reduce tensions between the majority and the Kosovo Serb community. **It is therefore recommended that the Kosovo authorities abandon their opposition to the establishment of the Association and enter into negotiations in good faith on the possible statute of such an association which would have to be fully in line with the Kosovo legal order.**

## PART IV: THE RULE OF LAW

### 1. The Constitutional Court

85. As indicated above, the Constitution provides the Constitutional Court with strong powers. In practice, the Court is active and is not afraid of taking far-reaching decisions even if these go against the wishes of the political organs of the State. As an example, in 2010 the President of Kosovo had to resign since the Constitutional Court decided that he could not at the same time be President and head of a political party<sup>41</sup>.

86. The Court regularly refers to the case law of the ECtHR and seems to enjoy general trust including within non-majority communities. About 10% of the cases are brought to the Court by persons belonging to non-majority communities. In 2010 the Court decided, at the request of the Deputy Chairperson of the Municipal Assembly for Communities of Prizren, that the emblem of the municipality was unconstitutional since it was associated with the heritage and tradition of the majority community and did not reflect the multi-ethnic nature of the population<sup>42</sup>. This judgment was praised as a landmark decision both by political representatives of the majority and of non-majority communities.

---

<sup>38</sup> Law on Local Self-Government, Arts. 19-22.

<sup>39</sup> Annex III- Decentralization, Article 9.1.1

<sup>40</sup> Belgrade-Pristina Dialogue: EU Proposal - Agreement on the path to normalisation between Kosovo and Serbia, 27.02.2023 (available at [www.eeas.europa.eu](http://www.eeas.europa.eu)).

<sup>41</sup> Judgment of 28 September 2010 in case No. KO 47/10.

<sup>42</sup> Judgment of 18 March 2010 in case No. KO 01/09.

87. While the Court plays an important role as guardian of the Constitution, in one politically sensitive case the authorities have until now not implemented a judgment of the Court dating from 2016.<sup>43</sup> The Court decided that 24 hectares of disputed land belonged to the Visoki Decani Monastery. This judgment was criticised by politicians and, despite repeated appeals by the International Community, not implemented. This is a clear violation of the rule of law.

**The Kosovo authorities should implement without further delay the judgment of the Constitutional Court in the Visoki Decani case.**

## 2. The ordinary courts

### *Independence and functioning of the judicial system*

88. As set out above, the Constitution provides strong guarantees for the independence of the judicial system and establishes a Judicial Council with wide powers. The legislative framework seems also generally in line with European standards. We did not hear any criticism in this respect. Courts also show independence in practice. In August 2023 the competent court adopted an injunction against the decision by a Ministry to revoke the business licence of an important media enterprise, Klan Kosova.

89. By contrast, politicians in responsible positions sometimes criticise court decisions in sensitive cases in inappropriate language and in a manner which may undermine judicial independence. The judgment of the Constitutional Court in the Visoki Decani case was not only not implemented but harshly criticised by holders of high political office. When a Kosovo Serb suspect was released from jail to house arrest,<sup>44</sup> the Prime Minister stated that he was curious to know the name of the prosecutor who made the request and of the judge who approved the decision.

90. The Government, which came to power in 2021, was very critical of the functioning of the judicial system and criticised an alleged lack of integrity and competence and excessive delays in judicial procedures leading to violations of Art. 6 of the ECHR. It therefore proposed a general vetting of all sitting judges and prosecutors and consulted the Venice Commission on how to proceed<sup>45</sup>. The Venice Commission<sup>46</sup> was not convinced that a general vetting, which is always highly risky for judicial independence, was justified and that it was necessary to establish specific bodies for this purpose. It suggested to improve the current system of judicial discipline, strengthening the system of asset declarations and the vetting units within the Judicial and the Prosecutorial Council.

91. Subsequently, the Government abandoned the idea of a general vetting of all sitting judges and prosecutors and envisages now a vetting only of the members of the highest courts and of the Judicial and the Prosecutorial Council. Constitutional amendments providing for the vetting of these judges and prosecutors by an independent Integrity Control Authority, to be composed of eminent judges of the highest integrity elected by the Assembly with a qualified majority, are pending in the Assembly. By contrast, the representatives of the judiciary, whom we met during the visit, seemed confident that any vetting could be carried out within the current structures.

92. There clearly is a need for further reforms to improve the efficiency of the judicial system and avoid excessive delays. The reports of the EU Rule of Law Mission EULEX show that some progress was already achieved, not least thanks to action by the Judicial Council under its current leadership, and that the number of unproductive hearings has decreased.<sup>47</sup> But this progress is not sufficient, and a number of high-profile cases have remained stalled for years. There still are too many unproductive hearings and cases are frequently sent back for retrial to the basic courts by the higher courts. The reform efforts have to continue, and the Council of Europe could provide valuable assistance in this respect.

93. Another issue within the judiciary is that sentencing in cases of domestic violence and violence against women in general is inconsistent and often far too lenient. The Government seems determined to change this (see also paragraphs 156-158)

<sup>43</sup> Judgment of 20 May 2016 in case No. KI 132/15.

<sup>44</sup> Former Kosovo Serb policeman Dejan Pantic was released from jail at the end of December 2022.

<sup>45</sup> Venice Commission reference document CDL-REF(2022)005 of 9 February 2022: Concept paper on the development of the vetting process in the justice system.

<sup>46</sup> CDL-AD(2022)011 of 20 June 2022.

<sup>47</sup> EU Rule of Law Mission (EULEX): Justice Monitoring Report of November 2022.

94. It should also be noted that complaints concerning the right to legal remedies and fair trial submitted to the Ombudsperson Institution in 2022 account for the vast majority of complaints submitted (970 out of 1 595 complaints in total).

**The Kosovo authorities should:**

- **fully respect the independence of the judiciary including by refraining from undue criticism undermining trust in the judiciary;**
- **continue their efforts to reform the judiciary in co-operation with the Council of Europe and fully respecting Council of Europe standards.**

*The judicial system and minorities*

95. As indicated above the Constitution provides for the inclusion of persons belonging to non-majority communities and in particular the Serb community in the judiciary, especially in the highest courts and the courts responsible for areas with a majority Kosovo Serb population. While initially the recruitment of Kosovo Serb judges proved difficult, this changed following the 2015 Brussels Agreement between Serbia and Kosovo. In 2017 a major step was taken when 40 Kosovo Serb judges and 13 Kosovo Serb prosecutors joined the system. They were mostly allocated to courts and offices in the North or courts with appellate jurisdiction.

96. Unfortunately, most of the Kosovo Serb judges (and prosecutors) including all the Serb judges in the North resigned in November 2022. Both the Kosovo Judicial Council and the Kosovo Prosecutorial Council did not formally accept these resignations since both bodies are of the opinion that these resignations were not voluntary but had taken place under pressure from Belgrade. This position of the Councils is welcome and provides an opportunity to maintain the multi-ethnic character of the judiciary. It remains, however, imperative that the Kosovo Serb judges and prosecutors return to their positions as soon as possible.

97. The courts seem to generally fulfil their obligation to provide Kosovo Serb parties with documents and interpretation in Serbian, but this often leads to long delays and the quality is frequently insufficient. The Advisory Committee of the Framework Convention for the Protection of National Minorities, in its Fifth Opinion on Kosovo\*, therefore called “on the authorities to undertake all necessary measures to improve the implementation of the Law on Languages in courts, notably by recruiting and training qualified translators and interpreters and ensuring sufficient budgetary funds to support the implementation of the system of certification of court interpreters and translators”.<sup>48</sup> This issue concerns all public authorities and will have to be addressed in a comprehensive manner.

98. While excessive delays are a general issue within the judicial system, cases concerning the property rights of refugees and IDPs tend to be pending for 7 or 8 years if not more.<sup>49</sup> While such cases can admittedly be quite complex, this situation is not compatible with Art. 6.1 of the ECHR. The Kosovo authorities have to take the necessary steps to ensure that property claims of refugees and IDPs are adjudicated within reasonable time.

99. During the visit, we were informed about a tendency of the courts to have excessive recourse to detention on remand. This concerns in particular Kosovo Serbs, since in their respect courts tend to assume that there is a high risk of them absconding to Serbia. While this risk may indeed exist in some cases, courts have to avoid any discriminatory practices.

**The Kosovo authorities should take the necessary steps to ensure that property claims by refugees and IDPs are adjudicated within reasonable time.**

### **3. The prosecution service**

100. The problems within the prosecution service seem similar to the problems within the judiciary. Prosecutors are often harshly – and excessively – criticised by politicians in high office. The Prosecutorial Council has the reputation of being less reform oriented than the Judicial Council and the Government has been pushing for a reform of the Council. An initial proposal of the Government for the reform of the Prosecutorial Council was negatively assessed by the Venice Commission in December 2021,<sup>50</sup> since the Commission saw a risk that the Council could be subordinated to the political majority. With respect to a revised

---

<sup>48</sup> At para. 123.

<sup>49</sup> EULEX Report, p. 42.

<sup>50</sup> CDL-AD(2021)051 of 13 December 2021.

proposal of the Government the Commission concluded in March 2022<sup>51</sup> that the key issues identified by it had been addressed. Nevertheless, in March 2023 the Constitutional Court held that the law reforming the Council was unconstitutional since it did not comply with the constitutional principle in Kosovo that the prosecution service is fully independent.<sup>52</sup>

101. According to the Constitution (Art. 109.1) the Chief State Prosecutor is appointed by the President upon the proposal of the Prosecutorial Council. The Prosecutorial Council proposed a candidate for this post in April 2022, but the President has not yet taken a decision - positive or negative - on the appointment. While a court case brought by another candidate is pending, this case does not have suspensive effect and such a long delay is not conducive to further the proper functioning of the service.

#### 4. War crimes

102. The Council of Europe Commissioner for Human Rights has pointed out in her report on Kosovo that there are serious shortcomings in the investigation, prosecution and trying of war crimes in Kosovo.<sup>53</sup> In this respect it has to be acknowledged that Kosovo is fully responsible for the prosecution and trying of war crimes only since 2019. Before, first UNMIK and in some cases the International Criminal Tribunal for the former Yugoslavia (ICTY) and since 2008 EULEX, were responsible for trying such cases.

103. Currently all war crimes are tried applying Kosovo law. However, a number of particularly sensitive cases involving leading politicians are tried by Kosovo Specialist Chambers and a Specialist Prosecutor's office located in The Hague and staffed by internationals. These institutions are in particular responsible for alleged crimes committed between 1 January 1998 and 31 December 2000 related to the allegations in the Dick Marty report of the PACE.<sup>54</sup> The establishment of these institutions was made possible by constitutional amendments adopted by the Kosovo Assembly in August 2015. The first indicted persons, including a former President of Kosovo, were arrested and transferred to The Hague in the second half of 2020.

104. The constitutional amendments were adopted under pressure from the International Community, and the Specialist Chambers and Specialist Prosecutor's Office are clearly not popular in Kosovo. Nevertheless, a specialist unit was established within the Ministry of Justice to ensure co-operation with these institutions and Kosovo prosecutors transfer files to them upon request. It is important that the Kosovo authorities fully co-operate with the Specialist Chamber and the Specialist Prosecutor's Office.

105. Within Kosovo, a special prosecution unit is responsible for prosecuting war crimes which have not been taken up by the Specialist Prosecutor's Office. The Unit has indicted mainly Serb war criminal suspects but also Kosovo Albanians. Its activities are hampered by a lack of co-operation with the authorities of Serbia. An amendment to the Criminal Procedure Code of July 2022 introduces the possibility of trials *in absentia* mainly with a view to such cases.

106. The protection of witnesses was already identified as a major problem for war crimes trials in Kosovo by the Parliamentary Assembly of the Council of Europe in its Resolution 1784 (2011) "The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans".<sup>55</sup> Subsequently, a law on witness protection was adopted in September 2011, but witness protection is very difficult in a country as small as Kosovo. The most sensitive cases are now handled in The Hague and the Kosovo prosecutors we met during the visit did not express any particular concerns in this respect. Nevertheless, it seems significant, as pointed out by the Commissioner for Human Rights in her memorandum,<sup>56</sup> that the first ever judgment of the Specialist Chambers concerned a case of witness intimidation.

#### 5. Fight against corruption and organised crime

107. The fight against corruption and organised crime is a priority of the current Government and some progress has been achieved in this respect. The legislative framework has been improved and new laws on the Agency for Prevention of Corruption, on asset declarations, on whistle-blowers, on criminal procedure as

<sup>51</sup> CDL-AD(2022)006 of 23 March 2022.

<sup>52</sup> Judgment of 24 March 2023 in Cases No. KO 100/22 and KO No. 101/22.

<sup>53</sup> Document CommDH(2022)26 of 19 October 2022: Memorandum following the Commissioner's Mission to Kosovo\* from 30 May to 3 June 2022.

<sup>54</sup> Doc. 12462.

<sup>55</sup> [Resolution 1784 \(2011\)](#). See also the explanatory memorandum by Mr Gardetto (Monaco, EPP/CD), [in Doc. 12440](#).

<sup>56</sup> Para. 38

well as new legislation on the financing of political parties was adopted. The Law on the State Bureau for Verification and Confiscation of Unjustified Assets, which was largely positively assessed by the Venice Commission,<sup>57</sup> is currently pending before the Constitutional Court. The authorities co-operate with the Council of Europe in this area. Public officials are obliged to regularly submit asset declarations and this obligation is generally respected.

108. The position of Kosovo in the Corruption Perception Index of Transparency International has improved from the 104<sup>th</sup> place to the 84<sup>th</sup> place but remains unsatisfactory. The number of relevant court cases remains relatively low, and high-profile corruption cases are often sent back for retrial to the basic court by the Court of Appeals.<sup>58</sup> Investigations of organised crime remain vulnerable to corruption and unlawful interference.<sup>59</sup> There is a clear need to further strengthen the different institutions and bodies combating corruption, including through additional resources.

**The Kosovo authorities should continue their efforts to combat corruption and organised crime and ensure the proper implementation of the new legislation in this area.**

## 6. The Police

109. The Constitution of Kosovo provides that the police has to reflect the ethnic diversity of Kosovo and that “Ethnic composition of the police within a municipality shall reflect the ethnic composition of the population within the respective municipality to the highest extent possible” (Art. 128.4). Art. 41 of the Law on Police provides that station commanders in Serb majority municipalities have to be selected with the participation of the municipal assembly. Following the 2013 First Brussels agreement between Serbia and Kosovo in the EU-brokered dialogue the integration of Serb police officers into the Kosovo police had been fairly successful and, until the resignations by about 400 Kosovo Serb police officers at the end of 2022, the composition of the police in general reflected the composition of the population fairly well. This was of crucial importance in order to facilitate communication between the local population and the police and for the police to gain the trust of the local population. It is therefore highly desirable that a sufficient number of Kosovo Serb police officers return to, or are recruited to, the service. Several interlocutors told us that the resignations in many cases were not voluntary, but due to pressure on the police officers, and that such pressure made new recruitments of Serb police officers difficult if not impossible.

110. If integration of non-majority communities, and in particular Serb officers, was successful in the general police, the same cannot be said for the special police units. These units tend to be composed of Albanian, and also only Albanian-speaking, police officers, they are heavily armed and wear protective gear. Their presence is therefore perceived as intimidating by the local population especially in the North.

111. Following the resignation of the Serbian police officers, there has been an increased tendency to deploy special police units in the North. While the Ministry of the Interior maintains that such units are sent on the basis of a precise threat assessment, all international observers agree that their presence has become excessive and leads to tensions with the population in the North. This does not mean that such a presence can never be justified. In the case of attacks by armed groups, as was the case on 24 September 2023, such units obviously have to be used. The Kosovo authorities agreed, at a meeting with EU Special Representative Lajčák in Bratislava in July, that the presence of special police forces in the North should be reduced and their presence based on a joint threat assessment with KFOR and EULEX. This agreement has, however, not been sufficient to defuse tensions.

112. The latest report of UNMIK to the Security Council of April 2023 refers to “several incidents of verbal and physical abuse by members of the Kosovo Police special operations unit” in northern Kosovo.<sup>60</sup> In case of violent and unlawful demonstrations or roadblocks, the Kosovo authorities favour the quick and robust use of such special forces in order to re-establish public order, even if there is a high risk that use of force by the police will lead to massive violence and bloodshed. Only thanks to the strong stand of KFOR it was possible to avoid a major escalation of violence in recent cases.

**The Kosovo authorities should refrain from using special police forces to carry out ordinary police tasks and ensure that special police forces are deployed only when necessary, in co-ordination with EULEX and KFOR.**

<sup>57</sup> CDL-AD(2022)052 of 19 December 2022.

<sup>58</sup> EULEX Report pp. 23-24.

<sup>59</sup> Commission Staff Working document p. 46.

<sup>60</sup> UNSC Document S/2023/247 of 5 April 2023, paragraph 24. See also para. 40.

## PART V: HUMAN RIGHTS

### 1. Fundamental rights and freedoms in the Constitution

113. Fundamental rights and freedoms are entrenched in Chapter II of the Constitution of Kosovo. The Constitution has incorporated a number of international human rights treaties which are given priority over 'provisions of laws and other acts of public institutions' (see above on the Constitutional Framework). The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the Council of Europe Framework Convention for the Protection of National Minorities as well as several global human rights treaties have been made directly applicable in this way.

114. Several other domestic laws complement this basic framework in various fields. As shall be discussed further below there is legislation and amendments to legislation still needed or pending in some areas of public life, including the needed amendments to the law on freedom of religion and a new Civil Code.

115. Article 32 of the Constitution provides furthermore for the right to legal remedies announcing that 'every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.'

116. One of the key institutions to ensure the monitoring and safeguard for human rights is the Ombudsperson Institution (OI). According to the OI Annual Report 2022, 23% of all complaints submitted and investigated relate to the right to legal remedies and affect mainly the activities of courts and ministries and municipalities.<sup>61</sup> According to the same report at the end of the year 23% of recommendations by the OI had been implemented, 4% had been partly implemented, 3% had not been implemented while 70% were still pending in terms of implementation. Looking back to the cases and recommendations adopted in 2021, the OI reports a 46% implementation of the OI recommendations by the end of 2022. In other words, more than a year after adopted more than half of the OI recommendations remain pending and unimplemented.

117. In general, and overall, the legislative framework in Kosovo needed for the respect and protection of human rights is in place. Many policies have been adopted over past years in a number of human rights fields, including education, communities and returns. While there are some pending gaps, the main problem is that of implementation of laws, policies and recommendations by bodies monitoring human rights, such as the Ombudsperson Institution and the Language Commissioner.

118. While we shall return below to the issue of rights of persons belonging to minorities, we note that the OI reports having received several complaints relating to discrimination at work during the year 2022. Among them are complaints by persons from non-majority communities concerning discrimination at work and in the labour market. Such instances were also reported during our visit.<sup>62</sup> While the reasons behind such discrimination may vary, depending i.a. on the segregated educational field, the non-recognition of diplomas or limited interest in enhancing active bilingualism in the labour market and in society in general, the discrimination and exclusion of persons belonging to the smaller communities in the labour market leaves them in a highly disadvantaged position.

119. The implementation of the Law on the Protection from Discrimination (Law No. 05/L -021 of 2015) faces several difficulties, as identified by the Ombudsperson. Among them are the lack of full powers for the Ombudsperson in the private sector, the absence of legal assistance to victims of discrimination as well as gaps regarding sublegal acts for the implementation of the Law on Protection from Discrimination as well as the Law on Gender Equality.

### 2. Right to education

120. Article 47 of the Constitution guarantees the Right to Education:

<sup>61</sup> Ombudsperson Institution, Annual Report 2022, Pristhinë 2023 <https://www.theioi.org/ioi-news/current-news/the-ombudsperson-institution-of-kosovo-publishes-its-2022-annual-report>.

<sup>62</sup> Such reports concern in particular persons belonging to the Roma, Egyptian and Ashkali communities. See also 'Kosovo's Beleaguered Minorities: Three Degrees And Another On The Way, But Still No Job', RadioFreeEurope, September 18, 2022 <https://www.rferl.org/a/kosovo-roma-ashkali-balkan-egyptian-employment-public-sector/32039477.html>.

1. *Every person enjoys the right to free basic education. Mandatory education is regulated by law and funded by public funds.*
2. *Public institutions shall ensure equal opportunities to education for everyone in accordance with their specific abilities and needs.*

121. The right to education is also guaranteed in Article 2, Protocol I to the European Convention of Human and Fundamental rights which provides:

*'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.'*

122. While we shall return below to the specific concerns about the rights of persons belonging to national minorities in the field of education, we shall at this point note that the educational sphere is thoroughly segregated between schools that follow the Albanian-curriculum and language and those that follow the Serb-curriculum and language. The authorities are not able to exercise effective control over the curriculum and quality of education in schools following the Serb-curriculum. The field of education is not dealt with in the EU-facilitated dialogue between Serbia and Kosovo, except for the recognition of diplomas, an area which has not shown any considerable progress.

123. A new Education Strategy 2022-2026 was adopted in autumn 2022 with the support of the German government and several other international actors. The functioning of Learning Centres since 2018 has helped reduce dropout rates in education, however their funding is not sustainable, as is the case in many areas of diversity directed efforts which rely largely on international short-term and project-driven funding.<sup>63</sup> As regards persons belonging to non-majority communities, it was found during the visit and it is also noted in the Strategy that 'Despite progress in increasing their inclusion at all levels of pre-university education, compared to the national average, this participation remains low. This difference is most noticeable in preschool education, where 7.6% of children in these communities receive services, compared to the general population percentage which is 15%, as well as in the upper secondary level where only 31% of Roma, Ashkali and Egyptians pupils are included, compared to 86.8% amongst the total population'. Below we shall look closer into the implications of the segregated educational system for persons belonging to non-majority communities. Here, however, we can draw attention to the difficulty in ensuring adequate representation in and equal access of minorities to public offices as long as access to education is inadequate and unequal.

124. The realisation of the right to education is also deficient for children with disabilities. It is estimated that 38 000 children with disabilities in Kosovo do not attend school. According to the above-mentioned Education Strategy 2022-2026 the '*inclusion of students with disabilities remains a major challenge at the national level*'. Students with disabilities are considered to be very underrepresented within the education system, with approximately 2.1% of such students included in school, whereas they are estimated to be about 15% of the population, according to the same strategy.

125. Experts and commentators have over time criticised what is perceived as a lack of strategic orientation in the field of education and poor educational results, with too much focus on higher education, fewer interventions in pre-university education and limited per capita investment in education in a country which has a large young population.<sup>64</sup> It remains to be seen whether the implementation of the new Education Strategy shall be able to address these shortcomings in the realisation of the right to education. As often in Kosovo, it is a matter of implementation.

**The authorities should ensure the effective access to good quality primary and secondary education for *all* children, including children with disabilities and children belonging to other disadvantaged groups such as Roma, Ashkali and Egyptians.**

### **3. Freedom of speech and media**

126. There are several television stations in Kosovo, including one public TV channel, very many licenced radio stations as well as numerous online newspapers and media portals. While there is overall freedom of speech and an active media environment, there are also worrying incidents and trends. As noted by the Council

<sup>63</sup> See also Education Strategy 2022-2026 (Ministry of Education, Science, Technology and Innovation), p. 35. Further UNDP (2015) 'Corruption-Risk Assessment in the Kosovo Education Sector. Findings and Recommendations'.

<sup>64</sup> 'Analysis of Kosovo's Education System', Friedrich Ebert Stiftung 2022, which includes several pertinent recommendations.

of Europe Commissioner for Human Rights following the Commissioner's mission to Kosovo in 2022, while there has been some progress in recent years, 'the effective implementation of media legislation is yet to be fully effected'. This is shown among others by the fact that the Kosovo media freedom index by Reporters without Borders had gone down between 2021 and 2023.<sup>65</sup>

127. Among the problems reported by the Commissioner are shortcomings in the implementation of the 2010 Law on Access to Public Documents. For journalists working in the Serbian language, there is an additional problem in being able to access documents in Serbian, in spite of Article 5 in the Constitution which recognises Albanian and Serbian as official languages, and according to information received from civil society and journalists (see below on matters of language rights). The OI has issued one recommendation on a case concerning access to documents following a complaint against the Ministry of Foreign Affairs and Diaspora by a media company, Press Insajder, in 2022. The Ombudsperson found that the failure to undertake action by the Ministry despite the decisions issued by the Agency for Information and Privacy indicates a dismissive approach on the side of the Ministry.

128. In July 2023 the Association of Journalists and members of the civil society, some of which we were able to meet during our visit, had protested in Pristina against what they believed was an effort towards 'the Government's control over media', following the decision by the Ministry of Industry, Entrepreneurship and Trade (MINT) to suspend the business licence of the media enterprise Klan Kosova on purely formal grounds linked to the company's registration documents. Thereafter, the Commercial Court has approved in early August Klan Kosova's request to postpone the execution of the decisions suspending its business licence until the case has been tried finally at court. The case is still pending.<sup>66</sup>

129. While defamation was decriminalised in 2012, there is still use of strategic lawsuits against public participation (so called SLAPPs) by politicians, businessmen and businesses, whereby defamation lawsuits are brought against journalists and environmental activists, with the aim of intimidating them.<sup>67</sup> There are also reports of government officials as well as suspected criminals that verbally threaten journalists for perceived negative reporting. According to some editors, government agencies and businesses withdraw advertising from media outlets that published material critical of them. The limited financial resources available to journalists and media outlets accentuate the challenges for their independence and effective freedom.<sup>68</sup>

130. During the violent clashes in the north of Kosovo in the early summer of 2023 the Association of Journalists documented and reported more than 30 attacks on journalists who were often left unprotected.<sup>69</sup> Long-awaited amendments of the law on the public broadcaster and on the independent media commission are still stalled.<sup>70</sup>

**The authorities should ensure and respect the independence of media and secure the safety of journalists.**

#### **4. Property rights and the issue of expropriation**

131. Since August 2022 the Kosovo Government adopted several decisions and preliminary decisions on the expropriation of 118 parcels of land in northern Kosovo. Representatives of the International Community, including the OSCE, EU, EULEX and the US expressed deep concerns about these decisions since the procedure followed did not comply with Kosovo's own laws and regulations. Among other issues, the decisions did not identify, as required by Article 44 of the Constitution, the public purpose or public interest making these expropriations necessary. It seems, however, to be generally assumed that the intention is to build police stations on parts of this land. This manner of proceeding is not compatible with the rule of law and likely to further undermine trust between the Serb community and Kosovo government institutions. The authorities should also make greater efforts to communicate the reasons for the expropriations to the general public.

<sup>65</sup> Council of Europe Commissioner for Human Rights, "Memorandum following the Commissioner's Mission to Kosovo", CommDH(2022)26, 18 October 2022. See also Reporters without Borders (2023), <https://rsf.org/en/country-kosovo>.

<sup>66</sup> 'Kosovo: Media freedom groups welcome Klan Kosova court injunction decision', 03.08.2023

<https://www.rcmediafreedom.eu/News/Kosovo-Media-freedom-groups-welcome-Klan-Kosova-court-injunction-decision>.

<sup>67</sup> Council of Europe Commissioner for Human Rights, "Memorandum following the Commissioner's Mission to Kosovo", CommDH(2022)26, 18 October 2022.

<sup>68</sup> United States Department of State, Country Report on Human Rights Practices for 2022, pp. 14-15.

<sup>69</sup> Balkan Insight, 'Kosovo Journalists left unprotected in violent protests in North', 02.06.2023. See also Ombudsperson Institution, Annual Report 2022, Pristinë 2023, p. 43.

<sup>70</sup> European Commission, Kosovo 2022 Report, SWD(222) 334 final, pp. 32-35. Article 19, Kosovo: Political pressure on journalists undermines media freedom progress, 17.11.2022.

**The Kosovo Government should refrain from any expropriations which are not fully in line with the Kosovo Constitution and legal standards and communicate the reasons for necessary expropriations to the general public.**

## 5. Rights of national minorities

132. As mentioned above, the Constitution of Kosovo recognises and protects the rights of communities. According to Article 3(1), Kosovo is 'a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions'. The Framework Convention on the Protection of the Rights of Persons belonging to National Minorities (FCNM) is incorporated and made directly applicable. Article 5 of the Constitution recognises Albanian and Serbian as official languages, while Turkish, Bosnian and Roma are recognised as official languages at the municipal level 'or will be in official use at all levels as provided by law'.

133. In addition to Chapter II in the Constitution pertaining to Fundamental Rights and Freedoms, Chapter III enshrines the Rights of Communities and their Members. It guarantees among other '*appropriate conditions* enabling communities and their members to preserve, protect and develop their identities' (Art. 58(1), emphasis added). Furthermore, 'a spirit of tolerance, dialogue and support [of] reconciliation among communities' is provided for (Art. 58(2)) together with respect not only of the FCNM but also of the European Charter for Regional and Minority Languages. In Art. 58(4) it is provided that *adequate measures* shall be adopted 'as may be necessary to promote full and effective equality in all areas of economic, social, political and cultural life among members of communities' as well as their effective participation in public life and decision making.

134. The constitutional framework is complemented i.a. by Law No. 03/L-047 (2008) on the Protection and Promotion of the Rights of Communities and their Members as well as Law No 02/L-37 (2006) on the Use of Languages. Until now there has not been any overall, comprehensive and long-term strategy in matters pertaining to communities. Such a strategy has recently been developed by the Ministry for Communities and Return and stands now in front of the Government for adoption and budgetary allocation.<sup>71</sup> According to the Strategy, the term 'communities' refers to 'national, ethnic, cultural, linguistic or religious groups, traditionally present in Kosovo, that are not the majority. These groups are Serbian, Turkish, Bosniak, Roma, Ashkali, Egyptian, Gorani, Montenegrin, Croatian and other communities'.

135. There are many officials and public bodies responsible for matters of communities in Kosovo. In addition to the Ministry for Communities and Return, there are several functions within the office of the Prime Minister, namely the Office of Community Affairs, the Office of the Language Commissioner and the Office for Good Governance as well as an expert on minorities in the Office of the Prime Minister. There are also municipal offices and officers of communities and return. Furthermore, the Consultative Council for Communities, in which communities are represented, acts under the authority of the President. Minority issues are thus dispersed between the office of the Prime Minister, several other ministries, government officials and public institutions and work is not adequately co-ordinated, nor communicated coherently to those concerned. It is only now, ahead of the preparation of the above-mentioned Strategy, that an inter-institutional working group has been established. According to some interlocutors we met, the co-ordination and streamlining should be done more efficiently through the Prime Minister's office.

136. To a large extent the Strategy focuses first of all on return and solutions for 'displaced persons and non-majority voluntary returnees. Strategic goal 1 targets the 'return, reintegration and possibilities of a permanent solution for displaced persons and non-majority voluntary returnees. Strategic goal 2 targets 'stabilisation of the community and improvement of their well-being by providing equal opportunities for employment, social security services, as well as education'. Strategic goal 3 emphasises the need to improve the 'proportional representation of minority communities in public administration' while Strategic goal 4 focuses on language use, prioritising 'bilingual harmonisation for the drafting of legislation documents. It is to be welcomed that the Strategy also includes an analysis of the current situation of communities, an analysis which, once more, starts off by a discussion of the situation of displaced persons and returnees, followed by analyses in the fields of education, employment and social security, housing, property issues, use of language, health care, culture and gender-based violence, domestic violence and early marriage.

137. The measures proposed to be taken under each strategic goal remain, however, general and are not operationalised in relation to the specific goals proposed, nor is there any differentiation made in relation to

---

<sup>71</sup> Ministry for Communities and Return, Strategy for the Protection and Promotion of the Rights of Communities and their Members 2023-2027, February 2023. The Strategy was submitted to the government for adoption on 10.08.2023.

the measures needed in relation to each distinct community, across the country, across municipalities and across the total timeframe of the Strategy. The total cost of the Strategy for the years 2023-2025 (so, not for the entire Strategy period) is estimated to nearly 28 million euros, and the Minister for Communities and Return has requested a budget of 12,2 million euros for 2024, a considerable increase from the level of 4,3 million euros currently available for this ministry. At the time of the visit, the budgetary allocation to implement the *Strategy for the Protection and Promotion of the Rights of Communities and their Members* is still open alongside the pending approval of the Strategy itself by government. According to information received, in many cases projects and programmes to enhance diversity, dialogue among and the rights of communities are otherwise initiated and funded by international actors while local ownership, continuity and internalisation remain limited.

138. As mentioned above (paragraphs 120-125) the educational sphere in Kosovo remains segregated between schools that follow the Albanian-curriculum and language and those that follow the Serb-curriculum and language. Persons belonging to smaller communities, in particular Roma, Ashkali and Egyptians, are particularly vulnerable under these circumstances and persons belonging to these groups have to choose between attending Albanian or Serbian curriculum schools, while knowing that the recognition of diplomas is problematic.<sup>72</sup> Dropouts among pupils from these communities remains high. While there are scholarship programmes in upper secondary education as well as quotas for such persons in higher education, such programmes are not accessible for children who attend Serbian-curriculum schools while quotas are reportedly filled by non-minority students who declare that they belong to the community targeted. As there has not been a census since 2011 (and then the northern regions were excluded) targeted efforts can only be calibrated with difficulty, making the co-operation and co-ordination among all actors responsible for minority education and the minorities concerned, including at the municipal and university levels, of paramount importance.<sup>73</sup>

139. Serbian-curriculum schools are not only attended by Serb pupils, but also by pupils belonging to other communities, including Gorani, Croat, Bosniak, Montenegrin, Roma, Ashkali and Egyptian. The system prescribed in Article 12 of the Law on Education in the Municipalities (Law No. 03/L-068) is not functioning at the moment due to the bilateral tensions between Kosovo and Serbia. This results i.a. in low quality of and inadequate access to textbooks in Serbian-curriculum schools and pupils have had in some cases to start their school year without access to textbooks. According to information we received during the visit the authorities in some cases block the import of textbooks from Serbia again resulting in pupils having to start their school year without textbooks. These are problems that need to be addressed urgently, as they otherwise amount to an effective denial of the right to education.

140. Kosovo institutions have not worked to develop their own Serbian-language curricula. The Serb-curriculum schools depend on materials and textbooks from Serbia – the importation of which is often blocked or encounters great difficulties - and also on payment of teachers by Serbia. Kosovar institutions have not yet worked for a diversity-oriented and multilingual educational system where there are spaces where pupils from different communities meet and interact and where pupils have access to both official languages. This applies also for subjects and activities such as sports where such integration would seem particularly appropriate. The same basic segregated situation applies both to the municipalities in the north and in the south. As identified also by the ACFC, the authorities do not undertake any systematic initiatives promoting interaction and intercultural learning among pupils following the two separate curricula in school.<sup>74</sup> As provided in the Explanatory Report for Article 12 of the FCNM '[t]he opportunities for being taught the minority language or for receiving instruction in this language are without prejudice to the learning of the official language or the teaching in this language. Indeed, knowledge of the official language is a factor of social cohesion and integration'.<sup>75</sup>

141. Since the Constitution identifies two official languages, it is an advantage if as many pupils as possible have access to both languages. This is not the case today. While the tensions between Pristina and Belgrade is a partial explanation for this situation, all children in Kosovo have a right to education following the constitution and international standards in the field of education. As noted also by the ACFC, from the perspective of minority rights as fundamental human rights, the reference to reciprocity is not simply irrelevant but highly inappropriate, especially at times when linguistic gaps and distrust are on the increase in society.<sup>76</sup>

<sup>72</sup> Advisory Committee on the FCNM (ACFC), Fifth Opinion on Kosovo, adopted in February 2023 and made public in May 2023, paras. 141-146.

<sup>73</sup> Cf. Comments by ACFC concerning Learning Centres in para. 146.

<sup>74</sup> *Ibid.*, para. 132.

<sup>75</sup> See also Thematic Commentary No. 1 of the ACFC on Education (2006). Para. 7 of the Commentary explains: 'Focus in the Commentary is put on the role of the Framework Convention in the task of balancing, on the one hand, the maintenance and development of the culture and the essential elements of the identity of persons belonging to national minorities and, on the other hand, their free integration and participation in the societies where they live'.

<sup>76</sup> Advisory Committee on the FCNM (ACFC), Fifth Opinion on Kosovo, adopted in February 2023 and made public May 2023, para. 188.

142. There were several cases reported during the visit concerning the frequent use of checkpoints by the authorities in the northern municipalities as well as the excessive use of Special Police Forces also in situations concerning administrative and tax matters where such use is neither proportional nor legitimate.<sup>77</sup> Roadblocks are also used by Serbs across northern Kosovo and there is an increasing distrust and tension especially since the violent clashes of 2023 resulting in impediments to the right to movement of inhabitants in the municipalities concerned. The violence was tackled thanks to the intervention of KFOR, indicating that security at least in parts of Kosovo cannot be guaranteed for the moment without the assistance offered by the third security provider, namely KFOR.

143. Since the elected representatives of the Serb party (*Srpska lista*) do not participate effectively in the work of the Assembly of Kosovo, the passage of all legislation requiring enhanced majority, i.a. laws implementing the rights of communities, laws on the use of language and the protection of cultural heritage is blocked affecting the development of rights and position of communities (see Art. 81 of the Constitution concerning legislation of vital interest). In practical terms, this means that legislative work in these matters has stagnated, including amendments to the law on freedom of religion.

**The authorities should ensure effective access to good quality primary and secondary education for all children, including children with disabilities and children belonging to other disadvantaged groups such as Roma, Ashkali and Egyptians.**

**The authorities should ensure that all children have access to textbooks for their education.**

**The government needs to address urgently the absence of a comprehensive and co-ordinated approach on minority matters and rights. Such an approach needs to be developed and implemented in co-operation with those concerned and in ways which reflect the specific needs of different minorities.**

**The principle of reciprocity cannot be raised in matters pertaining to fundamental human rights, in particular the right to education which is a precondition for the enjoyment of many other rights.**

## **6. Language rights**

144. As mentioned above, Article 5 of the Constitution recognises Albanian and Serbian as official languages. Language rights form an important part of Article 59 in Chapter III of the Constitution on Rights of Communities and their Members, which does not simply recognise the linguistic rights of communities and their members, but acknowledges multilingualism as such, in addition to the special position of the Serbian language:

### *Article 59. Rights of Communities and their Members*

*Members of communities shall have the right, individually or in community, to:*

- 1. express, maintain and develop their culture and preserve the essential elements of their identity, namely their religion, language, traditions and culture;*
- 2. receive public education in one of the official languages of the Republic of Kosovo of their choice at all levels;*
- 3. receive pre-school, primary and secondary public education, in their own language to the extent prescribed by law, with the thresholds for establishing specific classes or schools for this purpose being lower than normally stipulated for educational institutions;*
- 4. establish and manage their own private educational and training establishments for which public financial assistance may be granted, in accordance with the law and international standards;*
- 5. use their language and alphabet freely in private and in public;*
- 6. Use their language and alphabet in their relations with the municipal authorities or local offices of central authorities in areas where they represent a sufficient share of the population in accordance with the law. The costs incurred by the use of an interpreter or a translator shall be borne by the competent authorities;*
- 7. use and display community symbols, in accordance with the law and international standards;*
- 8. have personal names registered in their original form and in the script of their language as well as revert to original names that have been changed by force;*

---

<sup>77</sup> See also Ombudsperson Institution, Annual Report 2022, p. 34 and United States Department of State, Country Report on Human Rights Practices for 2022, pp. 16-17.

9. *have local names, street names and other topographical indications which reflect and are sensitive to the multi-ethnic and multi-linguistic character of the area at issue;*
10. *have guaranteed access to, and special representation in, public broadcast media as well as programming in their language, in accordance with the law and international standards;*
11. *to create and use their own media, including to provide information in their language through, among others, daily newspapers and wire services and the use of a reserved number of frequencies for electronic media in accordance with the law and international standards. The Republic of Kosovo shall take all measures necessary to secure an international frequency plan to allow the Kosovo Serb Community access to a licensed Kosovo-wide independent Serbian language television channel;*
12. *enjoy unhindered contacts among themselves within the Republic of Kosovo and establish and maintain free and peaceful contacts with persons in any State, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage, in accordance with the law and international standards;*
13. *enjoy unhindered contacts with, and participate without discrimination in the activities of local, regional and international non-governmental organizations;*
14. *establish associations for culture, art, science and education as well as scholarly and other associations for the expression, fostering and development of their identity.*

145. The 2006 Law on the Use of Languages (Law No. 02/L-37) is found among the legislative acts of vital interest (Article 81 of the Constitution) which can be amended or abrogated with double majority, both among all Assembly deputies as well as majority among the deputies who hold seats guaranteed for the representatives of Communities.

146. According to Article 2 in the Law on the Use of Languages and beyond the status of the two official languages of Kosovo, in municipalities inhabited by a community whose mother tongue is not an official language, and which constitutes at least 5% of the total population of the municipality, the language of the community shall have the status of an official language in that municipality and shall be 'in equal use with the official languages'. In the municipality of Prizren, the Turkish language has the status of an official language.<sup>78</sup> In the municipalities where a community represents more than 3% of the population then such languages are defined as languages 'in official use' in accordance with the framework defined in Article 8 of the same law. Different minority languages have thus the status of official language or language in official use across municipalities in Kosovo. Municipalities are to adopt detailed regulations on the issue.

147. This comprehensive legislative framework lags considerably in implementation as acknowledged by the government, the Language Commissioner, the ACFC and many other institutions.<sup>79</sup> The linguistic landscape is divided between Albanian and Serbian in education, media and public life and there are very few efforts to ensure common spaces and occasions where the two languages and their users interact and co-exist. While the older population is still bilingual, younger generations are raised and educated increasingly monolingually, thus widening the distance and distrust between communities, making sometimes English necessary as a language of communication and accentuating the great need for interpreters and translators.

148. As described by many of our interlocutors, there is no adequate study line for translators and interpreters in the educational system. The salaries of interpreters and translators are very low, making the recruitment of professionals extremely difficult. This results in poor translations of public documents including in tax and property matters as well as in linguistic gaps in the new digital governance platform.

149. The Coordination Group for the Accession to the Council of Europe among ministries and government institutions indicates that the Government 'rendered a decision to establish a Language Control and Harmonization Unit within the Office of the Prime Minister'. An administrative instruction (No 01/2022) which 'outlines the procedures for the implementation of the Law on the Use of Official Languages in Municipalities' has been circulated to all municipalities.<sup>80</sup>

<sup>78</sup> Turkish is also an official language in other municipalities, however, without this legally enshrined status. The level of implementation of language rights varies considerably from municipality to municipality. Ibrahim Ömer, OO-ED "Language Rights: Official Use of the Turkish Language in Kosovo", 04.08.2023.

<sup>79</sup> Ministry for Foreign Affairs and Diaspora, *Inputs from Kosovo's Institutions on the Implementation of the Council of Europe Standards*, Submitted by the Coordination Group for the Accession of the Republic of Kosovo to the Council of Europe, para. 15. Advisory Committee on the FCNM (ACFC), *Fifth Opinion on Kosovo*, adopted in February 2023 and made public May 2023, para. 109. Ombudsperson Institution, Annual Report 2022, pp. 89-91.

<sup>80</sup> Ministry for Foreign Affairs and Diaspora, *Inputs from Kosovo's Institutions on the Implementation of the Council of Europe Standards*, Submitted by the Coordination Group for the Accession of the Republic of Kosovo to the Council of Europe, para. 15.

150. We find that such new structures risk undermining further the work done at the office of the Language Commissioner. Already back in 2012 the monitoring of the implementation of the Law on the Use of Official Languages was found to be unsatisfactory. The Language Commission then in place following the provisions of the language law lacked resources and was inefficient. It was therefore dissolved and replaced by the Language Commissioner.<sup>81</sup> However, the legal status of the Language Commissioner is not firmly anchored in law thus endangering the independence and continuity of the institution. In recent years the visibility of his work has been reduced drastically and in an unfortunate way as part of the website of the Office of the Prime Minister. The reports and the regulations pertaining to the work of the Language Commissioner are not available any longer and the resources available for the work of the Language Commissioner have been reduced considerably. The Strategic Plan submitted by the Language Commissioner in 2016 was never adopted by government. The proposed integration of languages in education was not implemented. As was also established by the Advisory Committee on the FCNM, *'the Serbian language is not taught in Kosovo curriculum schools, and [to the knowledge of the Advisory Committee] Albanian is not taught in Serbian-curriculum schools'*.<sup>82</sup> Only in some Bosniak and Turkish schools can pupils follow Albanian-language classes.

151. The integration and streamlining of language rights following Article 5 of the Constitution has not yet been achieved and legislation that should incorporate language rights does not do so, such as legislation pertaining to bilingual topographic signs and the law on notaries. The Law on the Use of Languages lacks a commentary that could help both users as well as public institutions. Opinions rendered by the Language Commissioner are not observed by institutions, especially when such recommendations concern structural matters.<sup>83</sup> There is a considerable lack of resources in the field of language policy and rights, resulting also in loss of much of the staff in the office of the Language Commissioner. Linguistic rights, especially for the smaller languages which reach the 3% threshold are not integrated in statutes and budgets of many municipalities. The combination of such characteristics renders the position of the Language Commission dependent upon political will. While the co-operation between the Ombudsperson Institution and the Language Commissioner is an excellent initiative, it is regrettable that language rights as a precondition for the enjoyment of other rights, as a core element of the Constitution and dating back to the Comprehensive Proposal for the Kosovo Status Settlement have not yet been given adequate and independent institutional focus and resources.

**The Kosovo government should address the persisting problems in the implementation and monitoring of language legislation, including at the municipal level.**

**The legal entrenchment, independence, adequate resources and continuity of the functioning of the Language Commissioner should be made a priority.**

**The consequences of a divided educational sector and increasingly separate linguistic communities should be addressed as a matter of priority through policies and measures for multilingual education, and inter-communal dialogue enhancing trust and reconciliation.**

## 7. Freedom of religion

152. The Law No. 02/L-31 on Freedom of Religion in Kosovo guarantees the freedom of belief, conscience, and religion to all religious communities in Kosovo, including with regard to equal rights, legal protection, and property rights. However, it does not provide religious communities with the right to register and acquire legal personality. As highlighted by the Ombudsperson Institution and the Venice Commission, such a gap entails that religious communities lacking legal personality will likely encounter obstacles in relation to acquiring or renting property, financial affairs, contracts, and protecting their rights in legal fora.<sup>84</sup> A revised Draft Law on Freedom of Religion has been pending since 2017 and the Ombudsperson Institution describes this as 'a failure' of the authorities to protect this right.<sup>85</sup>

153. Furthermore, the May 2016 judgment by the Constitutional Court on the land dispute case involving the Visoki Decani monastery in Deçan/ Deçane municipality which confirmed the monastery's legal ownership of

<sup>81</sup> OSCE Mission in Kosovo, Municipal language compliance in Kosovo, June 2014, pp. 6-10.

<sup>82</sup> Advisory Committee on the FCNM (ACFC), *Fifth Opinion on Kosovo*, adopted in February 2023 and made public May 2023, para. 132.

<sup>83</sup> Advisory Committee on the FCNM (ACFC), *Fifth Opinion on Kosovo*, adopted in February 2023 and made public May 2023, para. 110.

<sup>84</sup> See also European Commission for Democracy through Law, Opinion on the Draft Law on Freedom of Religion in Kosovo\* CDL-AD(2014)012.

<sup>85</sup> Civil Society Report on Human Rights in Kosovo 2021, paras. 106-111. Ombudsperson Institution, Annual Report 2022, p. 28. The US Department of State Report on International Religious Freedom 2022 Kosovo, points to the failure of the government to resubmit the amendments to the Assembly after the 2021 elections.

the land remains unimplemented. According to several accounts given during our visit, there is a persisting lack of communication between the government and the Serbian Orthodox Church.

154. In July 2022, the OSCE Mission in Kosovo published a report that examined incidents of theft, vandalism, disturbances, and desecration at religious and cultural heritage sites between 2014 and 2020.<sup>86</sup> Of a total of 247 incidents over the seven-year period, 193 occurred in places of worship, while 45 targeted cemeteries. The report notes an increase over time while most incidents are thefts motivated by economic reasons. According to the same report, there were 86 acts of vandalism, most of them (48 incidents) affecting sites of the Serbian Orthodox Church as well as the Islamic community (25 incidents). Among the recommendations of the OSCE mission is enhanced political commitment to ensure the implementation and monitoring of the Law on Special Protective Zones, including against illegal constructions and demolitions.

**All incidents of vandalism, thefts and disturbances of religious and cultural heritage should be prevented and otherwise be thoroughly investigated, documented and tackled in accordance with relevant legislation.**

## 8. Hate speech

155. Hate speech and negative stereotyping on the basis of ethnicity, gender, sexual orientation, and religion is particularly frequent on the internet and social media. It occurs, however, also in acts by journalists, politicians and public officials too.<sup>87</sup> Such acts include also inflammatory speech and incitement to violence. Homophobia and resistance to LGBTIQ+ rights are given as main reasons for the stagnation in the process towards the adoption of a new civil code.

## 9. Gender equality and violence against women

156. Unemployment is considerably higher among women. According to the Ombudsperson Institution's assessment, stereotypes of gender roles, the responsibility to take care of other family members, a lack of social services and daycare services for children are some of the main reasons behind the gender inequality at work. Unequal practices also occur regarding the right to property and inheritance. Custom and prejudice against women and girls results in them renouncing inheritance in favour of male family members. The Ombudsperson Institution concludes that the current legislative framework for inheritance is insufficient to deal with traditional practices as problems are also underreported.<sup>88</sup>

157. While a new law on violence against women and domestic violence has been passed by the Assembly it has not yet been published in the Official Gazette. The reported cases of domestic violence (2022) amount to 2 757 which is an increase of 12% from 2021. It is disturbing that the Ombudsperson concludes that the dynamics of cases of violence, recidivism, and especially the number of cases that end in fatality has increased.<sup>89</sup>

158. Civil society remains critical about the lenient and inconsistent sentencing practices in such crimes. Courts continue providing low sentences in cases of gender-based violence, while some judges encourage family reconciliation and blamed victims for crimes perpetrated against them.<sup>90</sup> A database has been created to streamline implementation and gather data from various authorities, but its accuracy and coverage seems to be still under debate with diverging opinions between NGOs and the government and in need of further development.

## 10. Truth, justice and reconciliation

159. Violence has occurred repeatedly in recent history, including in 1998-1999 and 2004. Missing and displaced persons, distrust in public institutions, separate and contradicting accounts of history, separate educational structures and decreasing bi- and multilingualism in the official languages are among the outcomes of this violence. A transitional justice strategy and a truth and reconciliation commission envisaged and planned for since at least since 2017 are still not in place. Until now little emphasis has been put on efforts and

<sup>86</sup> OSCE Mission in Kosovo, The Protection of Cultural Heritage in Kosovo, 2022.

<sup>87</sup> Reporting Diversity Network 2.0, Monitoring Report on Hate Speech in Kosovo 2022.

<sup>88</sup> Ombudsperson Institution, Annual Report 2022, pp. 106-111.

<sup>89</sup> Ibid. p. 109.

<sup>90</sup> Civil Society Report on Human Rights in Kosovo 2021, para. 171.

commitment towards reconciliation.<sup>91</sup> Official pronouncements and practices (in education, in memorialisation, political speech, media etc.) continue to divide while there are no comprehensive and inclusive reconciliation efforts enhancing mutual dialogue and common spaces. Ethnocentric and one-sided narratives in many fields remain obstacles to mutual understanding and reinforce voices of victimhood.

160. As underlined also by the UN Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, such guarantees should include consistent, inclusive efforts in the field of education, culture, media and the rights of minorities.<sup>92</sup> The Special Rapporteur has recently recommended that Kosovo strengthen policies in the fields of education, culture and the media in order to prevent the intrusion of ethnocentric divisive sentiments, provide society with plural, comprehensive and accurate accounts of past violations, foster a pluralistic enabling environment where members of society can engage on these topics respectfully, and, finally, educate about the history and culture of minorities.

**The government should urgently adopt strategies and measures in many aspects of public life for inter-community dialogue and for reconciliation-oriented spaces and activities, in order to pave the way for inclusive, tolerant and peaceful societal development thus enabling all people of Kosovo.**

## **PART VI: KEY CONCLUSIONS**

161. The legal framework in Kosovo was strongly influenced by the International Community and this influence certainly contributed to the fact that the legal rules are generally in line with international standards, or, as is the case for the Constitution, go beyond these standards. This does not mean, however, that there are no problems with respect to the implementation of the standards in practice.

162. Partly these are problems similar to those encountered in other countries in the region, partly these are problems due to the specific situation in Kosovo and the tensions between the majority and the Kosovo Serb community (and to the tensions with Serbia). These tensions are not only relevant for the situation with respect to human and minority rights, but also impact the functioning of the democratic institutions and the judicial system.

163. Increased co-operation with the Council of Europe could contribute to the improvement of the situation. Local interlocutors among the authorities as well as civil society believe firmly that the extension of the jurisdiction of the European Court of Human Rights to Kosovo would contribute considerably to the improvement of respect for human rights.

164. As regards Council of Europe standards of **democracy**, Kosovo can be regarded as a functioning parliamentary democracy, and it provides a level of local self-government generally in accordance with Council of Europe standards. To further improve the situation:

165. The authorities should abandon their opposition to the establishment of an association of Serb majority municipalities and enter into negotiations in good faith on the establishment of such an association.

166. With respect to the **rule of law**, the legal framework in Kosovo generally corresponds to Council of Europe standards and provides in particular strong guarantees for the independence of the judiciary. In practice, while the Constitutional Court plays an important role furthering the rule of law, there are still problems with the functioning of the ordinary courts and the current tensions make the situation of the courts in the north quite difficult. While the political organs recently have shown more determination to fight corruption and organised crime, they do not always fully respect the independence of the judiciary and there is a worrying tendency to excessively use special police forces in northern Kosovo.

167. To improve the situation, the authorities should in particular:

- implement without further delay the judgment of the Constitutional Court in the Visoki Decani case;
- fully respect the independence of the judiciary including by refraining from undue criticism undermining trust in the judiciary;

---

<sup>91</sup> Advisory Committee on the FCNM (ACFC), *Fifth Opinion on Kosovo*, 2023, para. 79.

<sup>92</sup> UN Document A/HRC/54/24/Add.2 (10 July 2023).

- continue their efforts to reform the judiciary, in co-operation with the Council of Europe and fully respecting Council of Europe standards;
- take the necessary steps to ensure that property claims by refugees and IDPs are adjudicated within reasonable time;
- continue their efforts to combat corruption and organised crime and ensure the proper implementation of the new legislation in this area;
- refrain from using special police forces in northern Kosovo to carry out ordinary police tasks and ensure that such forces are deployed only where necessary and in close co-ordination with KFOR and EULEX.

168. Regarding the respect for **human rights**, including the rights of minorities, the authorities should in particular:

- ensure the effective access to good quality primary and secondary education and textbooks for *all* children, including children with disabilities and children belonging to other disadvantaged groups such as Roma, Ashkali and Egyptians;
- address urgently the absence of a comprehensive and co-ordinated approach on minority matters and rights. Such an approach needs to be developed and implemented in co-operation with those concerned and in ways which reflect the specific needs of different communities;
- address the persisting problems in the implementation and monitoring of language legislation, including at the municipal level and ensure as a matter of priority the legal entrenchment, independence, adequate resources and continuity of functioning of the Language Commissioner;
- adopt concrete strategies for inter-community dialogue and for reconciliation-oriented spaces and activities, in particular in education, in order to pave the way for inclusive societal development and trust.

**APPENDIX I – List of online meetings**

11 July 2023	Mr Miroslav Lajčák, EU special representative for the dialogue and for other Western Balkan regional issues
18 September 2023	Mr Giovanni Pietro Barbano, Head of Mission of the European Union Rule of Law in Kosovo (EULEX) and EULEX staff
18 September 2023	Ms Emma Lantschner and Mr Mikko Puumalainen, Members of the Advisory Committee of the Framework Convention on National Minorities

**APPENDIX II – Programme of the visit to Kosovo****Monday, 25 September 2023**

- 8.00 – 9.00 Working breakfast with diplomatic representatives of the Quint:  
 Ambassador Jorn Rohde, Germany  
 DHoM Ugo Ferrero, Italy  
 Mr Ralan Hill, U.S. Political Economic Councillor  
 DHM Paul O'Connor, UK
- 9.15 – 10.00 Ms Emilija Redžepi, Deputy Prime Minister for Minority Issues and Human Rights
- 10.00 – 10.45 Mr Besnik Bislimi, Deputy Prime Minister for European Integration
- 11.00 – 11.45 Mr Bardhyl Dobra, Deputy Minister of Internal Affairs and Public Administration
- 13.00 – 13.50 OSCE Ambassador Michael Davenport
- 14.15 – 15.00 Ms Albulena Haxhiu, Minister of Justice
- 15.30 – 16.15 Mr Naim Qelaj, Ombudsperson
- 16.30 – 17.15 Members of the Assembly of Kosovo (Committees):  
 Mr Driton Selmanaj – Vice-chair, Committee on Legislation  
 Mr Dimal Basha – Member, Committee on Legislation  
 Ms Arjeta Fejza – 1<sup>st</sup> vice-chair, Committee on Human Rights  
 Mr Hydajet Hyseni Kaloshi – 1<sup>st</sup> vice chair, Committee on Rights and Interests of Communities  
 Mr Bahrim Šabani – 2<sup>nd</sup> vice-chair, Committee on Rights and Interests of Communities  
 Mr Visar Krasniqi - Coordinator of the Committee on Legislation
- 18.00 – 19:00 Civil society and NGOs:  
 Ms Flutura Kusari, Media Lawyer Activist  
 Ms Mexhide Demolli - Nimani, Lëvizja FOL  
 Mr Ehat Miftaraj, Kosova Law Institute  
 Mr Marigona Shabiu, YIHR -Youth Initiative for Human Rights  
 Mr Xhemajl Rexha, AJK – Association of Journalists of Kosovo  
 Ms Riola Morina – QIKA  
 Ms Donika Çeta, GLPS – Group for Legal and Political Studies  
 Mr Vullnet Bugaqku, Researcher at Kosova Democratic Institute  
 Ms Besarta Breznica, Kosova Women's Network  
 Mr Blert Morina, CEL

**Tuesday, 26 September 2023**

- 8.30 – 9.15 Mr Nenad Rašić, Ministrer of Communities and Returns
- 9.30 – 10.15 Ms Caroline Ziadeh UNMIK SRSG
- 11.00 – 12.00 Members of the Assembly of Kosovo (political parties):  
 Mr Arben Gashi, LDK  
 Mr Enis Kervan, Chair of Multiethnic Group, KDTP, Turkish community  
 Mr Fridon Lala, Vice-chair of Multiethnic Group, IRDK, Egyptian community  
 Ms Armend Muja, LVV  
 Ms Agime Gashaj LVV  
 Mr Besnik Tahiri, AAK
- 13.00 – 13:50 Ambassador Tomáš Szunyog, European Union

- 14.00 – 15:00 Civil Society organisations (minority issues):  
Mr Dušan Radaković, representative of ACDC  
Mr Genc Broqi, representative of Roma Versitas Kosovo  
Mr Miodrag Marinković, representative of CASA NGO  
Mr Ibrahim Ömer, Turkish representative
- 16.00 – 16:45 Mr Slaviša Mladenović, Language Commissioner
- 17.00 – 17.45 Ms Gresa Caka-Nimani, President of the Constitutional Court  
Mr Bajram Ljatifi, Deputy President  
Mr Nexhmi Rexhepi, Judge  
Mr Veton Dula, Permanent Secretary
- 19.30 Dinner with the delegation of the Assembly of Kosovo to PACE:  
Ms Saranda Bogujevci  
Mr Besnik Tahiri  
Mr Arben Loshi, deputy to the General Secretary of the Assembly  
Ms Agime Gashaj, Advisor to the deputy chair Bogujevci  
Mr Faton Hamiti, Secretary of the delegation  
Ms Arjeta Statovci, Secretary of the delegation

**Wednesday, 27 September 2023**

- 8.00 – 8.45 Com KFOR Major General Angelo Michele Ristuccia
- 9.45- 10.45 Civil Society Organisations in Gračanica/Graçanicë:  
Representatives of Romano Kham, Roma Iniciativa HAK, Center for Peace and Tolerance (CPT), and Civic Energy Center (CEC, former FDMC)
- 11.30 – 12.30 Representatives of Judicial and Prosecutorial Institutions  
Mr Besim Kelmendi Acting Chief State Prosecutor  
Mr Albert Zogaj, Chairperson of Kosovo Judicial Council,  
Mr Jetish Maloku, Chairperson of Kosovo Prosecutorial Council  
Mr Fejzullah Rexhepi President of the Supreme Court
- 13.30 – 14.15 Consultative Council for Communities (CCC)  
Mr Agim Ferati, Chair of the CCC  
Mr Bajram Ilazi, Vice-chair of the CCC  
Ms Donika Kadaj - Bujupi, Member of the CCC from the President's cabinet  
Ms Nafiye Gaş, Secretariat of the CCC
- 14.30 – 15.15 Specialists Prosecution services and Anti-Corruption  
Mr Blerim Isufaj Head of Special Prosecution Office  
Ms Drita Hajdari Prosecutor  
Mr Yll Buleshkaj, Head of the Agency for Prevention of Corruption
- 15.30 – 16.15 Association of Kosovo Municipalities  
Mr Sazan Ibrahim, Executive Director of the AKM
- 16.30 – 17.15 Ms Donika Gërvalla-Schwarz, Deputy Prime Minister and Minister of Foreign Affairs and  
Diaspora
- 17.30 – 18.15 Dr. Peter Hurrelbrink, Friedrich Ebert Stiftung, Country Director  
Mr Egzon Osmanaj, Programme Coordinator

**APPENDIX III - List of opinions adopted by the Venice Commission at the request of the Kosovo authorities since Kosovo joined the Venice Commission**

**CDL-AD(2022)052**

[Kosovo - Follow-up opinion to the opinion on the draft law N°08/L-121 on the State Bureau for verification and compensation of unjustified assets, adopted by the Venice Commission at its 133rd Plenary Session \(Venice, 16-17 December 2022\)](#)

**CDL-AD(2022)011**

[Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution, adopted by the Venice Commission at its 131st Plenary Session \(Venice, 17-18 June 2022\)](#)

**CDL-AD(2022)014**

[Kosovo - Opinion on the Draft Law N°08/L-121 on The State Bureau for verification and confiscation of unjustified assets, adopted by the Venice Commission at its 131st Plenary Session \(Venice, 17-18 June 2022\)](#)

**CDL-AD(2022)006**

[Kosovo - Opinion on the revised draft amendments to the Law on the Prosecutorial Council, adopted by the Venice Commission at its 130th Plenary Session \(Venice and online, 18-19 March 2022\)](#)

**CDL-AD(2021)051**

[Kosovo - Opinion on the draft amendments to the Law on the prosecutorial Council of Kosovo, adopted by the Venice Commission at its 129th Plenary Session \(Venice and online, 10-11 October 2021\)](#)

**CDL-AD(2020)034**

English

[Kosovo - Opinion on the Draft Law on the Government, endorsed by the Venice Commission on 11 December 2020, adopted at its 125th online Plenary Session \(11-12 December 2020\)](#)

**CDL-AD(2020)030**

English

[Kosovo - Opinion on the Draft Law on Public Gatherings - Adopted by the Venice Commission at its 124th online Plenary Session \(8-9 October 2020\)](#)

**CDL-AD(2020)008**

English

[Kosovo - Opinion on certain provisions of the draft Criminal Procedure Code, namely trial in absentia \(art. 306\) and suspension of officials from office \(art. 177\), adopted by the Venice Commission on 19 June by a written procedure replacing the 123rd Session](#)

**CDL-AD(2019)025**

English

[Kosovo - Opinion on the draft law on legal acts, adopted by the Venice Commission at its 120th Plenary Session, Venice, 11-12 October 2019](#)

**CDL-AD(2018)016**

English

[Kosovo - Opinion on the “draft law on amending and supplementing the Law no. 03/l-174 on the Financing of Political Entities \(Amended and Supplemented by the Law no. 04/l-058 and the Law no. 04/l-122\) and the Law no. 003/l-073 on General Elections \(Amended and Supplemented by the Law no. 03/l-256\)”, adopted by the Council for Democratic Elections at its 62nd meeting \(Venice, 21 June 2018\) and by the Venice Commission at its 115th Plenary session \(Venice, 22-23 June 2018\)](#)