

**ADVISORY COMMITTEE ON THE  
FRAMEWORK CONVENTION FOR THE  
PROTECTION OF NATIONAL MINORITIES**

COUNCIL OF EUROPE



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**Fourth Opinion on Kosovo\* - adopted on 8 March 2017**

**Summary**

Moderate progress has been accomplished to improve the full and effective participation in society of persons belonging to national minorities through representation in elected central and local bodies, support to returnees, increased ethnic diversity in the judiciary and use of minority languages in central and local institutions. However, there is a growing divide between communities, exacerbated by pervasive monolingualism in each community, and intercommunity dialogue and understanding remain absent, including within the same municipality. The legal framework on equality was improved in 2015 and the independence and functioning of the Office of the Ombudsperson Institution has been strengthened. Nonetheless, the legal framework for the protection of persons belonging to national minorities needs to be better implemented. The proliferation of strategies and action plans targeting persons belonging to national minorities without proper monitoring, co-ordination, division of responsibilities and without a clear chain of accountability undermines their effectiveness. Often they appear to have been adopted with a view to complying with international requirements and rely extensively on means provided by international donors, which undermines ownership of the implementation process by ministries and municipalities. Finally, implementation of national human rights bodies' recommendations is still weak and they lack adequate political support to carry out their mandate. The promotion of the learning of more than one official language and of minority languages in schools is not encouraged by the authorities.

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

There is an overall perception that security has improved for minority communities. Hate crime legislation is in place and hate-motivated incidents against persons belonging to national minorities are condemned by the authorities. Nonetheless, few cases are reported and recorded by the authorities and even fewer appropriately sanctioned in line with the applicable legal framework. An active role of municipalities as promoters of societal integration is still to materialise, in particular as regards the K/Serb communities in the North. The continuing existence of parallel structures administered by Kosovo\* and Serbia (municipalities, schools), and the absence of cultural initiatives promoting interaction between members of the different communities, in particular young people, represent serious obstacles for interaction and intercultural dialogue.

Despite some progress achieved locally, persons belonging to the Roma, Ashkali and Egyptian communities continue to face a particularly difficult situation in all aspects of life and are the most vulnerable to poverty, social exclusion, unemployment, unsuitable living/housing conditions and discrimination. Some progress has been accomplished to improve the return process of displaced persons following the conflict, although the persisting lack of a comprehensive domestic legal framework, of data collection, of co-ordination at central and local level and unresolved property issues continue to hamper the process.

#### **Recommendations for immediate action**

- **Prioritise comprehensive and concrete efforts to promote interethnic dialogue and tolerance at central and local level in order to bridge divides between communities and promote reconciliation; build intercommunity relationships through initiatives targeting in particular young people, integrating the education system and applying consistently the language legislation;**
- **Take steps to ensure that the existing legal framework pertaining to national minorities is correctly implemented by strengthening mechanisms for the co-ordination, ownership and monitoring of strategies and action plans at central level, and by improving the distribution of responsibilities in the central government, its accountability and its capacity of communication at local level;**
- **Adopt all necessary measures to ensure full, equal and adequate implementation of the Law on the Use of Languages; address central and local level capacity gaps in language knowledge, quality of official translation and provision of services in minority languages, including in the judicial system; create a favourable environment conducive to the learning of the official and minority languages;**
- **Address disparities in access to justice between the K/Albanian majority and minorities, increasing the presence of non-Albanian judges, lawyers and support staff, and take steps to ensure that property restitution cases, in particular illegal reoccupation, are investigated swiftly, prosecuted appropriately and dealt with by courts in a timely fashion and sanctioned adequately enough to be an effective remedy and a deterrent.**

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## I. Key findings

### Monitoring process

1. This fourth cycle opinion on the implementation of the Framework Convention for the Protection of National Minorities (FCNM) by Kosovo\* was adopted in accordance with the “Agreement between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe on technical arrangements related to the Framework Convention for the Protection of National Minorities”, signed on 23 August 2004 (hereinafter the Agreement). The findings are based on information contained in the progress report prepared by the Organization for Security and Co-operation in Europe (OSCE) and submitted by UNMIK on 8 March 2016 in accordance with the Agreement<sup>1</sup> and other written sources, and on information obtained by the Advisory Committee from official and non-governmental contacts during its visit from 14 to 18 November 2016 to Prishtinë/Priština as well as the municipalities of Obiliq/Obilić, Mitrovicë/Mitrovica, Istog/Istok and Klinë/Klina (Pejë/Peć region), Gračanica/Gračanicë, Gjilan/Gnjilane and Novo Brdo/Novobërdë, and the villages of Plemetin/Plemetina and Zallq/Zac.

2. The Advisory Committee appreciates the close co-operation with UNMIK and the Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE Mission) in the preparation, organisation and follow-up of the visit, and expresses gratitude for the support and assistance received during the visit. It is further pleased to note the constructive approach taken by the authorities who participated in high-level meetings at central and local level, providing ample opportunity for exchanges. It regrets, however, not to have had the possibility to meet with all authorities with responsibilities relevant to the FCNM, such as the Ministries of Culture, Youth and Sport and Justice.

3. The Advisory Committee notes that the progress report, prepared by the OSCE Mission, is based on close consultations with representatives of all communities, as well as relevant governmental and non-governmental entities throughout Kosovo\*. The report constitutes a comprehensive source of detailed information and analysis. It further acknowledges the availability of several reports and assessments by other international and national organisations in Kosovo\*.

### General overview of the current situation

4. The legal and institutional framework pertaining to the protection of persons belonging to national minorities remains in force.<sup>2</sup> Positive steps have been taken to enhance their full and effective participation in society, such as reinforced representation in elected central and local bodies, financial and in kind support to returnees, improved access of Roma, Ashkali and Egyptian communities to education, increased ethnic diversity in the judiciary and better access to the labour market through recognition of diplomas. Nonetheless, the legislation is far

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<sup>1</sup> OSCE Mission, Community Rights Assessment Report, Fourth Edition (2015), available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805aa38b>.

<sup>2</sup> In this opinion the terms “persons belonging to national minorities” and “persons belonging to communities” are used interchangeably.

from being implemented satisfactorily. The proliferation of strategies followed by action plans without adequate monitoring and without clear accountability undermines their effectiveness. Moreover, policy documents targeting persons belonging to national minorities often appear to have been adopted with a view to complying with international requirements and do not always reflect a clear understanding of what inclusion of persons belonging to minorities actually means in a democratic society. Similarly, capacity building seems not to have ensued from the articulated institutional framework. The multiplication of bodies dealing with communities' affairs has made for an unclear division of responsibility, including the overlapping of mandates, while at the same time the staff of these bodies do not appear to be sufficiently trained to fulfil their tasks. Finally, there is a lack of co-ordination and interinstitutional dialogue among the different bodies in charge of communities' affairs at central level and between central and local levels. As to the financial resources made available to improve access to rights promoted by the Framework Convention, there is an extensive reliance on means provided by international donors, which undermines ownership of the implementation process by ministries and municipalities.

5. There is an overall perception that security has improved for communities, and interethnic incidents have slightly decreased. Nonetheless, with some positive exceptions, there is a growing divide between communities, including within the same municipality, and intercommunity dialogue and understanding remain absent. The continuing existence of parallel structures administered by Kosovo\* and Serbia (municipalities, schools) and pervasive monolingualism in each community, represent serious obstacles for interaction and intercultural dialogue. Young people in particular are not encouraged to learn the other official language, let alone minority languages. As a result, young people belonging to different communities seldom interact. Polarisation of media and politisation of issues such as cultural heritage further destabilise the situation. Finally, in the difficult economic context of Kosovo\*, where unemployment remains the main source of concern for the whole population (32.9% in 2015), this divide intensifies perceived and actual discrimination between the majority and the minority communities, in particular with respect to access to the labour market. Overall, this situation contributes to continued segregation along ethnic lines. A multi-ethnic and inclusive society, where diversity is respected, should be promoted.

6. Mechanisms for representation and consultation of communities, for interinstitutional dialogue and central-local level co-operation are in place, but a clear distribution of tasks at central level and an active role of municipalities as promoters of societal integration is yet to materialise, in particular as regards the K/Serb<sup>3</sup> communities in the North. Despite some progress achieved locally, Roma, Ashkali and Egyptian communities continue to face a particularly difficult situation in all aspects of life and are the most vulnerable to poverty, social exclusion, unemployment, unsuitable living/housing conditions and discrimination.

### **Assessment of measures taken to implement the recommendations for immediate action**

7. The first steps in the integration of the four K/Serb majority northern municipalities into Kosovo's\* institutional structures, and the accompanying increased participation of K/Serbs in these institutions, represented important indicators of progress in interethnic relations.

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<sup>3</sup> The opinion uses the prefix "K/" before each community, with the exception of Roma, Ashkali, Egyptians and Gorani, to differentiate them from the nationals of neighbouring countries.

However, integration is not yet effective in practice. In the other municipalities, progress consisted principally of the participation of community representatives in the local institutions mandated to ensure the protection of national minorities. Nonetheless, these bodies appear unable to prioritise local action in the interest of minority communities and to fulfil their task as enablers of interethnic dialogue. With some exceptions at the highest political level, appreciation of the importance of interethnic trust and understanding among the authorities remains insufficient. As a result, comprehensive and concrete efforts to promote interethnic dialogue and tolerance on the ground are sporadic and when put in place, they remain largely driven by civil society and international donors. The absence of cultural platforms promoting interaction between members of the different communities, in particular young people, forestalls the building of cross-community relations.

8. Hate-motivated incidents against persons belonging to national minorities are either concentrated in areas where K/Serb returnees are more numerous (Klinë/Klina, Pejë/Peć) or due to specific trigger events. These incidents have in general been swiftly condemned by the authorities both at central and local levels. Both the legal framework proscribing hate crimes and ethnically motivated incidents as well as the mechanisms for recording them are in place. However, few cases are recorded by the authorities and even fewer appropriately sanctioned in line with the applicable legal framework. This is due to a number of factors: shortcomings in the recording system, under-reporting, mistrust in law enforcement by persons belonging to national minorities, and an insufficient application of the available legal provisions. Efforts have been undertaken to train the police and introduce a co-ordinated case management system linking all law enforcement institutions and enabling the tracking of cases from investigation to prosecution and conviction. Overall awareness of, and trust in, legal remedies against hate crime remains limited.

9. Some progress has been accomplished in the implementation of the 2006 Law on the Use of Languages as regards the use of minority languages in identity documents, the civil registry, in central and local elected bodies, and in the translation of documents. The functioning of the Office of the Language Commissioner (OCL) has also improved. However, the language divide persists and the legislation is still insufficiently implemented at central and local level; the authorities remain uninformed of their responsibilities and there is little awareness of language rights by the public at large. Furthermore, due to the poor quality of translation of legislative texts, there are serious problems of legal certainty and equality before the law. The Language Commissioner seems to lack adequate political support to implement his mandate, and the promotion of the learning of official and minority languages in school is not encouraged by the authorities.

10. Some positive developments have taken place as regards better performance and a higher completion rate of secondary education for Roma, Ashkali and Egyptian communities, although civil society, with the support of international donors, consistently appears as the main factor behind these results, for instance in the establishment and running of learning centres which provide out-of-school support to Roma, Ashkali and Egyptian children. Nevertheless, these communities still face considerable challenges in access to quality education and are disproportionately affected by low enrolment and/or high dropouts.

**Assessment of measures taken to implement the further recommendations**

11. The equality legal framework was strengthened in 2015 with the adoption of new laws on the Ombudsperson, on Gender Equality and on Protection from Discrimination. The new anti-discrimination legislation is meant to sustain enforcement mechanisms before the Ombudsperson and the courts. Initial monitoring of the law has not identified substantive progress in terms of an increase in cases lodged and processed by courts and some already question its applicability in practice. The functioning of the Ombudsperson Institution has improved and its independence strengthened. However, it has been given additional tasks by the new legislation without providing it with supplementary human and financial resources.

12. Some policy steps have been taken to improve the return process of displaced persons following the conflict, namely the revised Strategy for Communities and Returns 2014-2018 and the establishment of the Inter-Ministerial Working Group on Returns in 2015. However, to date, there is no assessment of the strategy, and the working group has never been convened. At local level, Municipal Offices for Communities and Returns (MOCRs) have been established and certain municipalities were able to allocate land for projects involving returnees, to fund housing projects and emergency packages. However, the persisting lack of a comprehensive legal domestic framework, of data collection, of co-ordination between central and local levels and unresolved property issues continue to hamper returns which are slowing down. Forced returns are even more problematic since, once the initial support by international donors wears off, there are no alternative long-term integration measures and resources to sustain the process put in place by the authorities.

13. Reconstruction of damaged Serbian Orthodox religious sites and the implementation of local legislation for the protection of cultural heritage have continued. Although incidents still occur, security and access to cultural heritage have improved thanks in particular to the Kosovo Police Religious and Cultural Heritage Unit (RCHU). However, legal standards are challenged by continuing illegal constructions and attempts by the government to amend Law No. 02/L-88 on Cultural Heritage and adopt a Strategy for Cultural Heritage have, so far, been unsuccessful. Similarly, no progress has been made to set up a system for the allocation of cultural support for national minorities. Media public broadcasting for communities and in minority languages has increased, but both public and private outlets generally work in parallel focusing on issues relevant to each community separately. Moreover, private outlets are widely dependent on international donors for support and training.

## II. Article-by-article findings

### Article 3 of the Framework Convention

#### Personal scope of application and census

14. The scope of application of the Framework Convention for the Protection of National Minorities in Kosovo\* has not changed since the third monitoring cycle and continues to cover all communities present in Kosovo\* according to Article 1.4 of the Law on the Protection and Promotion of the Rights of Communities, that is “Serb, Turkish, Bosnian, Roma, Ashkali, Egyptian, Gorani, Montenegrin, Croatian communities and other communities”.<sup>4</sup> The law also provides that the same rights shall be protected for members of the community in the majority in the Republic of Kosovo\*, that is K/Albanians, where they are not in the majority in a given municipality.<sup>5</sup> However, no progress has been registered with regard to amending the constitution to cover also K/Croat and K/Montenegrin communities, notwithstanding their repeated requests to this end.<sup>6</sup>

15. Once again, the Advisory Committee notes that statistical data on the composition of the population are not fully representative due to the fact that the 2011 census did not take place in the predominantly K/Serb-inhabited northern municipalities and was partly boycotted in the South.<sup>7</sup> The boycott in the North was explained by some representatives of the central authorities and of the K/Serb-majority municipalities with reference to the lack of political, legal, social and security conditions. Plans to organise an extraordinary census in the North in 2016 failed because a lack of support at central and local level prevented the adoption of the necessary legislation. The authorities are thus inclined to wait for the next scheduled census in 2021. However, the Advisory Committee observes that the lack of comprehensive and reliable data leads to a situation which prevents the adequate application of the legislation in force as regards the proportional representation of persons belonging to national minorities in elected municipal bodies and in the civil service, the use of minority languages as official languages at local level, as well as for budgetary allocations made by the local authorities. The Advisory Committee understands from its interlocutors that alternative sources could be employed to gather data, such as identity documents, electoral rolls, welfare benefits and health insurance. It was reported by one local interlocutor, for example, that the number of votes/voters in the 2014 election was higher than the total population figure officially accounted for in the

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<sup>4</sup> According to the principle of free self-identification, this opinion refers to the Bosniak community.

<sup>5</sup> Law No. 04/L-020 on amending and supplementing Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, 21 December 2011, which defines communities as “national, ethnic, cultural, linguistic or religious groups traditionally present in the Republic of Kosovo that are not in the majority”, available at

[www.assembly-kosova.org/common/docs/ligjet/Law%20on%20amend%20the%20law%20on%20protection%20the%20rights%20of%20the%20communities.pdf](http://www.assembly-kosova.org/common/docs/ligjet/Law%20on%20amend%20the%20law%20on%20protection%20the%20rights%20of%20the%20communities.pdf).

<sup>6</sup> See also ACFC Opinion on Kosovo\* (2013), para. 23.

<sup>7</sup> The 2011 census counted 1 739 825 residents in Kosovo\*, disaggregated by ethnicity as follows: 92.2% Albanians, 1.5% Serbs, 1.6% Bosniaks, 1.1% Turks, 0.9% Ashkali, 0.7% Egyptians, 0.6% Gorani, 0.5% Roma, and 0.6% ‘others’ or not specified (Kosovo Agency of Statistics, 2012). However, the results of the 2011 census were seen as controversial as they excluded the four Serb-majority northern municipalities of Leposavić/Leposaviq, Zubin Potok, Zvečan/Zveçan and Mitrovicë/Mitrovica North.



statistical data. The Advisory Committee reiterates its view that numerical thresholds should not be applied too rigidly and that flexibility and caution should be required in particular when using statistical data for the application of minority rights.<sup>8</sup>

### *Recommendation*

16. The Advisory Committee calls on the authorities to pursue their inclusive approach to the personal scope of application of the Framework Convention and to maintain a constructive dialogue with representatives of all communities, including the K/Croat and K/Montenegrin national minorities. It also encourages them to intensify efforts for the preparation of the next census to take place throughout the country and to ensure that all population data, including the use of alternative sources to those used in the 2011 census, are appropriately taken into account for the implementation of the rights of persons belonging to national minorities, including for budgetary allocations.

## **Article 4 of the Framework Convention**

### **Legal and institutional framework for the protection from discrimination of persons belonging to national minorities and the promotion of equal treatment**

#### **Legislation and institutions**

17. The legal framework relevant to the protection from discrimination and the promotion of equal access to rights of persons belonging to national minorities rests on two pillars: legislation specifically addressing the rights of persons belonging to the communities and anti-discrimination legislation.<sup>9</sup> While the former has not been substantially altered (see also Articles 5 and 10), the equality legal framework was strengthened in 2015 with the adoption of three new laws on the Ombudsperson, on Gender Equality and on Protection from Discrimination.<sup>10</sup> The new legislation strengthens remedies before the Ombudsperson and the courts. While initial monitoring of the impact of the amendments has not identified substantive progress, in particular as regards an increase in cases lodged and processed by courts,<sup>11</sup> the Advisory Committee is concerned by the views expressed by certain interlocutors as regards the application of the law in practice. The Ombudsperson in particular raised concerns on the judicial procedures introduced by the legislation to register discrimination complaints since criminal legislation had not been amended accordingly. Furthermore, the Ombudsperson has been assigned conflicting tasks involving both the handling of

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<sup>8</sup> See ACFC Thematic Commentary No. 3 (2012), para. 57.

<sup>9</sup> Legislation specifically addressing the rights of persons belonging to national minorities continue to include the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo (No. 04/L-020); the 2006 Law on the Use of Languages (No. 02/L-37); the 2006 Law on Cultural Heritage (No. 02/L-88) and legislation on education, *inter alia* 2008 Law on Education in the Municipalities of the Republic of Kosovo (No. 03/L-068).

<sup>10</sup> Respectively, Laws No. 05/L-019, No. 05/L-020 and No. 05/L-021, adopted in May 2015, available at [www.kuvendikosoves.org/?cid=2,193&date=2015-06](http://www.kuvendikosoves.org/?cid=2,193&date=2015-06). Article 1.1 of Law No. 05/L-021 reads: "The purpose of this law is to establish a general framework for prevention and combating discrimination based on nationality, or in relation to any community, social origin, race, ethnicity, colour, birth, origin [...] in order to implement the principle of equal treatment".

<sup>11</sup> OSCE, Community Rights Assessment Report, Fourth Edition (2015).

discrimination complaints, and offering assistance to the victims in preparing them.<sup>12</sup> Finally, limited awareness-raising initiatives have been carried out so far within institutions, the judiciary and the public at large.

18. Despite the comprehensive legal framework, the Advisory Committee noted with regret from several of its interlocutors (local authorities, consultative bodies, civil society and the international institutions, as well as some ministries) that its implementation is far from satisfactory. Shortcomings range from the partial functioning of local mechanisms, established to ensure the participation of communities in decision making and non-compliance with quotas for minority communities' involvement in the civil service and in higher education, to poor translation of legislation into the other official language and a lack of provision of services in minority languages. Several factors are generally recognised as preventing the appropriate application of the legislation, including, among others, the multiplication of policy documents such as strategies and action plans and their limited implementation and monitoring, as well as the absence of a clear chain of accountability with respect to this process.<sup>13</sup> The extensive reliance on means provided by international donors undermines ownership of the implementation process by both ministries and municipalities. Finally, according to some of the Advisory Committee's interlocutors, budget reallocation at the time of implementation also represents an additional obstacle.

19. The Advisory Committee observes that a multilayered institutional structure dedicated to the protection of the rights of persons belonging to minority communities is in place. Key actors remain the Prime Minister's Office and in particular the Office of Good Governance (OGG) whose mandate and co-ordination role, including as regards human rights in general, has broadened over time.<sup>14</sup> Protection of the rights of persons belonging to communities continues also to be under the responsibility of the Office of Community Affairs (OCA) and the Office of the Language Commissioner (OCL) (see also Articles 5 and 10), as well as of the Ministry of Communities and Returns and the Ministry of Local Government Administration, which are both headed by ministers belonging to K/Serb community. The Advisory Committee was informed by interlocutors from several of these institutions that at central level, side-effects of the multiplication of bodies dealing with communities' issues have created an

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<sup>12</sup> See Articles 12.2 and 9.2.2 of Law No. 05/L-021 respectively; Ombudsperson Institution, Annual Report 2015, No. 15, p. 40, available at

[www.ombudspersonkosovo.org/repository/docs/English\\_Annual\\_Report\\_2015\\_351292.pdf](http://www.ombudspersonkosovo.org/repository/docs/English_Annual_Report_2015_351292.pdf).

<sup>13</sup> In its Annual Report 2015, the Ombudsperson Institution highlighted that with respect to the Human Rights Strategy, the drafting and the reporting are the task of the same institution in the government. Hence, to increase accountability, it recommended that the Prime Minister reports yearly to the Commission on Human Rights, Gender Equality, Missing Persons and Petitions of the assembly on the implementation of strategies and action plans in the field of human rights, p. 25, available at [www.ombudspersonkosovo.org/repository/docs/English\\_Annual\\_Report\\_2015\\_351292.pdf](http://www.ombudspersonkosovo.org/repository/docs/English_Annual_Report_2015_351292.pdf).

<sup>14</sup> OGG has assumed the role of national co-ordinator for human rights, anti-corruption, rights of the child and disabled, as well as secretariat for the Inter-Ministerial Co-ordination Group for Human Rights (ICGHR) and the councils on the Strategy for integration of Roma, Ashkalis and Egyptians, and the civil society project. See Council of Europe, Reform Proposals to Energise Non-Judicial Human Rights Institutions in Kosovo\*, 2013, pp. 19-20, available at [www.coe.int/t/dgi/hr-natimplement/Source/documentation/Reform\\_proposals\\_eng.pdf](http://www.coe.int/t/dgi/hr-natimplement/Source/documentation/Reform_proposals_eng.pdf).

unclear division of responsibility, the overlapping of mandates and a lack of co-ordination.<sup>15</sup> Moreover, staff working in these institutions have not always received appropriate training.

20. The establishment in 2016 of the Inter-Ministerial Co-ordination Group for Human Rights (ICGHR), with OGG as Secretariat, was meant to address these drawbacks.<sup>16</sup> In particular, the ICGHR should have ensured the accountability of the various government institutions involved in the human rights policy. The Advisory Committee regrets that the ICGHR is not functioning yet. The Advisory Committee furthermore understands that the OGG mandate is generally perceived as too ambitious for the resources attributed to it so far, it has been unable either to monitor effectively the implementation or co-ordination of policies.<sup>17</sup> The OCA, on the other hand, seems to consider its impact on policy making on the protection of national minorities limited, although it is strongly encouraged by civil society to be more proactive and reaffirm its role of impulse and co-ordination.<sup>18</sup> Finally, the Advisory Committee learned that some of the ministries dealing with the protection of national minorities occasionally appear marginalised.

21. The Advisory Committee was pleased to observe during its visit that there was some evidence of proactive engagement in municipalities with local officials endeavouring to improve the conditions of persons belonging to national minorities. Nonetheless, a disconnection between local and central levels became apparent as municipal civil servants appear not to receive clear guidance or co-ordination from the central level. Several municipalities' representatives complained that they were being excluded from important decisions, such as those concerning the placement of returnees on their territory (see also Article 16). This situation casts doubts on the satisfactory implementation of the Law on Local Self Government with respect to the role and competencies of local authorities.<sup>19</sup>

### **Office of the Ombudsperson**

22. The Advisory Committee welcomes the progress accomplished as regards the functioning of the Ombudsperson Institution (OiK) with respect to the suitability of its premises, the increase in staff at central and regional level and a dedicated budgetary line.<sup>20</sup> It also appreciates that the independence of the institution, including financial was confirmed by the Constitutional Court<sup>21</sup> and strengthened by the 2015 Law on the Ombudsperson. The Law on Protection from Discrimination conferred to the OiK the role of an equality body,

<sup>15</sup> Amongst others, see Ombudsperson's recommendations dated 16 December 2015 and Equal Rights for All Coalition (ERAC), "Human Rights Strategy for Kosovo 2016-2022: A way forward", available at [http://equalrightsforallcoalition.com/wp-content/uploads/2016/11/HR\\_Strategy\\_ENG.pdf](http://equalrightsforallcoalition.com/wp-content/uploads/2016/11/HR_Strategy_ENG.pdf).

<sup>16</sup> Decision No. 06/87 of 13 May 2016. As the competent high-level political body, this co-ordination mechanism is entrusted with overseeing and monitoring the implementation of relevant human rights legislation and strategies, ensuring the allocation of the necessary resources, and reporting via the Prime Minister to the relevant institutions including the Kosovo Assembly.

<sup>17</sup> Several reports confirm this, most recently, EC, "Kosovo\* 2016 Report ", available at [http://europa.eu/rapid/press-release\\_MEMO-16-3633\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-3633_en.htm), and the Equal Rights for All Coalition (ERAC), "Human Rights Strategy for Kosovo 2016-2022".

<sup>18</sup> Youth Initiative for Human Rights, "Taking Stock: Human Rights in Kosovo in 2015", p. 44.

<sup>19</sup> Law No. 03/L-040 of 2008, available at [www.kuvendikosoves.org/common/docs/ligjet/2008\\_03-L040\\_en.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/2008_03-L040_en.pdf).

<sup>20</sup> OiK regional offices are established in Prizren, Pejë/Peć, Gjakovë/Đakovica, Gjilan/Gnjilane, Ferizaj/Uroševac, Štrpce/Shtërpçë, Mitrovicë/Mitrovica South and Mitrovicë/Mitrovica North.

<sup>21</sup> Case No. K073/16, 8 December 2016, Ref. No.: AGJ1015/16, available at [www.gjk-ks.org/repository/docs/gjk\\_ko\\_73\\_16\\_ang.pdf](http://www.gjk-ks.org/repository/docs/gjk_ko_73_16_ang.pdf).

Ombudsperson, as well as the National Preventive Mechanism under the Convention Against Torture. As no additional budget is foreseen despite the increased workload of the office, doubts of whether existing human and financial resources are commensurate to the new tasks, appear legitimate. The Advisory Committee notes that the OiK budget was already cut twice in 2015 is now lower than in 2014.<sup>22</sup>

23. In 2015 and 2016, the number of complaints received by OiK was 1 995 and 1 631 respectively, of which the majority were inadmissible (64% in 2015). Around 4.5% of cases concerned communities' issues. This suggests a continuing lack of knowledge of the OiK mandate among targeted audiences due, *inter alia* to difficulties in communication in smaller minority languages and the need for more outreach by regional offices.<sup>23</sup> The recommendations adopted, instead, increased from 57 in 2015 to 173 in 2016 testifying to the growing engagement of the OiK.<sup>24</sup> Regarding responses from Kosovo's\* institutions to the OiK, 25% of the recommendations were complied with by government authorities, judicial institutions and municipalities in 2015. For 2016, this was 18% (with 62% of the cases still pending).<sup>25</sup> The Ombudsperson indicated to the Advisory Committee that a series of measures would be put in place aimed at improving the government's responsiveness. They include addressing recommendations in parliamentary debates, publicising them through the media, having the Prime Minister's Office reporting annually on their implementation to the Assembly, and making EU financial support conditional on compliance.

#### *Recommendations*

24. The Advisory Committee urges the authorities to take steps to ensure that the existing legal framework is correctly implemented including by strengthening co-ordination, ownership and monitoring of strategies and action plans at central level and by improving government accountability and budgetary management. Central authorities should also improve co-ordination and communication at local level.

25. The authorities should also enable the satisfactory functioning of the Ombudsperson Institution by ensuring the provision of the necessary human and financial resources to carry out its mandate, including as regards awareness-raising initiatives, and the effective follow-up to its recommendations.

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<sup>22</sup> The overall cut foreseen partly by the Budget Law and partly by a government decision amounted to about 160 000 euros for a total final budget of about 932 000 euros (circa 18%); see OiK Annual Report 2015, p. 114.

<sup>23</sup> The OSCE reports that OiK-implemented 'Open Days' provide a monthly opportunity to meet with the Ombudsperson or his deputies in different municipalities. Despite OiK reports that these are well publicised, monitoring undertaken by the OSCE indicates that these activities are not very successful in terms of reaching out to sufficient numbers of people. Apart from 'Open Days', most outreach initiatives are limited to OiK participation in activities organised by civil society or international organisations (for example, the OiK participated in UNICEF- or civil society-supported activities); see OSCE Mission, Community Rights Assessment Report, Fourth Edition (2015).

<sup>24</sup> See also Report on The Impact of the "Human Rights Law Package" on the structure, mandate and functioning of the OiK, by J. Sorensen, available at [www.ombudspersonkosovo.org/en/news/Presentation-on-assessing-the-impact-of-Human-Rights-Law-Package-on-Ombudsperson-Institution-1488](http://www.ombudspersonkosovo.org/en/news/Presentation-on-assessing-the-impact-of-Human-Rights-Law-Package-on-Ombudsperson-Institution-1488).

<sup>25</sup> Preliminary data released by the OiK on the occasion of the press conference of 22 December 2016.

## Measures for the promotion of full and effective equality for persons belonging to national minorities

26. The Advisory Committee acknowledges that numerous strategies and action plans relevant to national minorities are either in the process of being drafted (strategies for the promotion of language and property rights) or have already been adopted by the government (strategies for the inclusion of Roma, Ashkali and Egyptian communities in Kosovo\* society and for the reintegration of returnees) (see also further below and Article 16). An overarching Strategy and Action Plan on Human Rights, which would also apply to national minorities, has been under preparation for a considerable time already.<sup>26</sup> While acknowledging the importance of policy documents, the Advisory Committee understands from several of its interlocutors that consultation and involvement of stakeholders is not always thorough, although there has been some progress.<sup>27</sup> Moreover, these strategies are often prepared with the extensive support of a non-governmental organisation and international donors' support rather than within the government structure.<sup>28</sup> This is due to the fact that, in several cases, the drafting and the monitoring of these instruments is entrusted to the same institution in the government, namely the OGG. The Advisory Committee shares the view of the OIK that this remains problematic,<sup>29</sup> mainly because the OGG is short-staffed and its limited competences hamper its ability to become an effective policy developer.<sup>30</sup> Finally, it was the opinion of many of the Advisory Committee's interlocutors that several of these policy instruments, including those targeting minority communities, appear to have been adopted in order to comply with international requirements rather than for a clear understanding of what inclusion of minorities represents in a democratic society.<sup>31</sup>

27. Despite some progress achieved locally with the help of the local action plans,<sup>32</sup> Roma, Ashkali and Egyptian communities continue to be the most vulnerable to poverty, social exclusion, unemployment, unsuitable living/housing conditions and discrimination (see also

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<sup>26</sup> The aim of such a single strategic document would be to set a comprehensive policy framework with overarching objectives that brings together all specific strategies and a remedy to the current fragmentation of human rights policies. For an overview of the process, see the ERAC Report; note 17.

<sup>27</sup> For instance, the preparation of the new "Strategy for Inclusion of Roma and Ashkali communities in the Kosovo Society 2017-2021". The process was more inclusive and steered by the Task Team set up by the government and included Kosovo\* institutions, non-governmental organisations working with the Roma, Ashkali, and Egyptian communities, and international organisations in the capacity of observers. Efforts were made to ensure a broad inclusion of these communities in the consultation process.

<sup>28</sup> The Kosovo Education Centre (KEC) supported the drafting of the Strategy for Inclusion of Roma and Ashkali communities in the Kosovo Society 2017-2021 and the ERAC Report, see note 15, both funded by the EU.

<sup>29</sup> The OIK recommended that the Prime Minister reports yearly to the Commission on Human Rights, Gender Equality, Missing Persons and Petitions on the implementation of strategies and action plans in the field of human rights; see p. 25 of the 2015 Report.

<sup>30</sup> Technical Assistance for Civil Society Organisations (TACSO) Kosovo\* Office, "Assistance to Implementing Kosovo Government Strategy Cooperation with Civil Society 2013-2017, Mission Report, p.5-8, available at [http://tacso.org/doc/Mission%20Report-Pristina-Eng\\_council.pdf](http://tacso.org/doc/Mission%20Report-Pristina-Eng_council.pdf).

<sup>31</sup> The FCNM calls for efforts to foster a climate of mutual respect, understanding and co-operation where persons belonging to national minorities are recognised as integral elements of society, who effectively enjoy equal access to rights and resources, while being provided with opportunities for social interaction and inclusion across difference, see ACFC Thematic Commentary No. 4 (2016), para 43, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a4811>.

<sup>32</sup> By mid-2015, ten municipalities had adopted a local plan.

Article 15).<sup>33</sup> The Advisory Committee was informed by several interlocutors that the limited representation at local level also prevents these national minorities from becoming an integral part of society. The new Strategy and Action Plan for Inclusion of Roma and Ashkali communities in the Kosovo Society 2017-2021 addresses access to education, employment, health care, housing and basic services. It builds upon the recognition that the implementation of the previous 2009-2015 Strategy and Action Plan failed due to the inadequate co-ordination between the ministries and between authorities at central and local level, the lack of human resources to monitor progress of implementation, insufficient funding, and inadequate consultation with external experts. The Advisory Committee notes that the new strategy provides for an articulated monitoring structure, accountability to the ICGHR, liaison with municipal authorities and inclusion of the communities' representatives. It also observes, nonetheless, that the OGG is still the main body in charge of overseeing and co-ordinating implementation. Finally, the Advisory Committee regrets to learn that the Egyptian community is no longer covered by the final version of the strategy and there is no alternative protection plan.

### *Recommendations*

28. The Advisory Committee calls on the authorities to build up capacity within the existing institutional framework for coherent, co-ordinated and progressively independent policy making on the implementation of the rights allocated to national minorities, and to ensure a sound distribution of responsibilities and adequate funding amongst the different government actors involved.

29. The authorities should implement the Strategy and Action Plan for Inclusion of Roma and Ashkali communities in the Kosovo Society 2017-2021 to address challenges in education and employment preventing the integration of these communities, and to substantially improve institutional co-ordination, communication and accountability structures. Alternative ways for persons belonging to the Egyptian community to benefit from similar measures to those provided for in the strategy should also be identified without delay.

## **Access to justice and property restitution**

### **Access to justice**

30. A package of legal reforms and several strategic policy documents have been adopted by the authorities with the aim of improving the functioning and the efficiency of the judiciary.<sup>34</sup> The 2015 legislation, including the Law on Courts, the Law on the Kosovo Judicial

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<sup>33</sup> See OiK Annual Report 2015; UNICEF/Kosovo Statistics Agency, Roma, Ashkali, and Egyptian Communities in Kosovo (UNSCR 1244), Multiple Indicator Cluster Survey 2013-2014; "The World Bank in Kosovo, Country Program Snapshot" (April 2016), available at <http://pubdocs.worldbank.org/en/419461462386476530/World-Bank-Kosovo-Program-Snapshot-April-2016.pdf>.

<sup>34</sup> The overall assessment in the European Commission's 2016 Progress Report on Kosovo\* reads: "Kosovo\* is at an **early stage** in developing a well-functioning judicial system. **Good progress** has been achieved over the past year by adopting amendments to the constitution and most secondary legislation necessary to implement the 2015 justice package laws. Kosovo\* has also appointed most members of key institutions and continued to increase its clearance rate of cases, thus partly meeting two of the 2015 recommendations. However, administration of justice is slow and inefficient, and there is insufficient accountability of judicial officials. The judiciary is still vulnerable to undue political influence and rule of law institutions suffer from lack of funding and human resources", p.13 available at



Council (KJC), the Law on the Kosovo Prosecutorial Council (KPC) and the Law on State Prosecution,<sup>35</sup> addressed and strengthened, *inter alia* training requirements, procedures for the appointment of judges and prosecutors, and responsibilities of both the judicial and prosecutorial councils. While stipulating that the composition of the judiciary shall reflect the ethnic composition of Kosovo\*, these laws do not make specific reference to judges and prosecutors from non-Albanian communities. Nonetheless, policy documents, such as the 2014-2019 Kosovo Judicial Strategic Plan, the KJC's Annual Plan 2015 and the KJC's Strategic Plan 2016-2018, include a number of important measures to improve access to justice for non-Albanian communities, as well as their employment as judges, prosecutors and administrative staff in the Kosovo\* judicial system.<sup>36</sup>

31. The Advisory Committee observes that some progress has been achieved with the support of international donors and in part within the framework of the EU-facilitated dialogue as regards the inclusion of smaller communities' representatives in the KJC and KPC, as well as with the integration of K/Serb judges, prosecutors and administrative staff from the North into the Kosovo\* judiciary (see also Article 15).<sup>37</sup> It also welcomes the growing interest among lawyers in the North to become members of the Bar and the fact that the European Union Rule of Law Mission in Kosovo (EULEX) is providing them with training to this purpose.<sup>38</sup> However, it is concerned about the discontinuation of training programmes relating to the protection of the rights of persons belonging to non-K/Albanian communities. These programmes should be restarted.

32. The Advisory Committee also notes persisting obstacles in achieving equal access to justice between K/Albanian and non-K/Albanian communities due, amongst others, to lack of representation by a lawyer,<sup>39</sup> partial implementation of the language legislation as regards judicial proceedings<sup>40</sup> and availability of free legal aid which, in particular in the Serbian

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[https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_kosovo.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_kosovo.pdf).

<sup>35</sup> Respectively, Law No. 05/L-032 on Amending and Supplementing Law (No. 03/L-199) on Courts, 30 June 2015, Law No. 05/L-033 on Amending and Supplementing Law No. 03/L-223 on the Kosovo Judicial Council, 30 June 2015, Law No. 05/L-035 on Amending and Supplementing Law No. 03/L-224 on Kosovo Prosecutorial Council, 30 June 2015; Law No. 05/L-034 on Amending and Supplementing Law No. 03/L-225 on State Prosecutor, 30 June 2015.

<sup>36</sup> Goal 3.1 of the Judicial Strategic plan, available at [www.gjyqesori-rks.org/en/kjc/report/list/3](http://www.gjyqesori-rks.org/en/kjc/report/list/3), and Objective 15 of KJC 2015 Annual Plan, available at [http://www.psh-ks.net/repository/docs/KPC\\_Annual\\_Action\\_Plan\\_2015.pdf](http://www.psh-ks.net/repository/docs/KPC_Annual_Action_Plan_2015.pdf). Activities 2.2.4 and 3.4.1 of the KJC Strategic Plan are available at [www.kpk-rks.org/assets/cms/uploads/files/Statistika%20dhe%20Raporte/Plani%20i%20Implementimit/Strategic%20Plan%202016-2018.pdf](http://www.kpk-rks.org/assets/cms/uploads/files/Statistika%20dhe%20Raporte/Plani%20i%20Implementimit/Strategic%20Plan%202016-2018.pdf).

<sup>37</sup> In the North, there will be 12 K/Serb judges and nine K/Albanian judges. See also EC, Report on Kosovo\*, note 17, and EULEX, Compact Progress Report August 2015-June 2016, p. 37, available at <http://www.eulex-kosovo.eu/eul/repository/docs/English-Report-2016.pdf>.

<sup>38</sup> In 2012 there were 32 lawyers belonging to smaller communities (25 K/Serbs, four K/Bosniaks and three K/Turkish) and, in 2016, 24 K/Serbs, four K/Turks, five K/Bosniaks, two Gorani; Kosovo Chamber of Advocates, 2012 Annual Report, available at [www.oak-ks.org/repository/docs/Raporti\\_i\\_punës\\_i\\_OAK\\_versioni\\_final-English\\_305156\\_66405.pdf](http://www.oak-ks.org/repository/docs/Raporti_i_punës_i_OAK_versioni_final-English_305156_66405.pdf), and Kosovo Bar Association (forthcoming annual report).

<sup>39</sup> The absence of a lawyer was registered as being more frequent for non-Albanian parties (42%) than for the majority (32%).

<sup>40</sup> Serbian language was not used in 105 proceedings involving only one K/Serb defendant, and in 61% cases involving non-Albanians where translation was required, translation was either not provided or was of poor quality; see OSCE Mission, Justice Monitor: Access to Justice, available at [www.osce.org/kosovo/125242](http://www.osce.org/kosovo/125242).

language, depends entirely on donor support and has become irregular. Finally, there is a widespread perception among persons belonging to communities that their cases are not dealt with efficiently enough. Although the Advisory Committee is aware that the efficiency of justice represents a more general problem, when coupled with the factors enumerated above, it also contributes to fuelling a sense of mistrust in the justice system by persons belonging to minority communities. This is particularly visible with respect to property cases, more specifically illegal re-occupation cases, which are not investigated swiftly, prosecuted appropriately or dealt by courts in a timely manner and, moreover, are not sanctioned strongly enough to provide another proper remedy or a deterrent.<sup>41</sup>

### Property Restitution

33. As regards private immovable property restitution, by the end of 2014, the Kosovo Property Agency (KPA), through the Kosovo Property Claims Commission, adjudicated all the 42 749 claims lodged by 2007. Some of these claims were appealed (159 cases in 2015) and have been either decided upon or are still pending before the Supreme Court (126 and 95, respectively).<sup>42</sup> The KPA is now concentrating on the implementation of the decisions, including in the North where evictions started in 2014.<sup>43</sup> In 2016, the KPA was transformed into the Kosovo Property Comparison and Verification Agency.<sup>44</sup> In the new format, the Agency will also compare and resolve discrepancies between original cadastral documents taken from Kosovo\* by Serbian authorities before June 1999 and current cadastral documents compiled by the authorities.

34. Despite these steps forward, the Advisory Committee is seriously concerned about the effectiveness of the enforcement of KPA adjudications. On the one hand, it notes that, as a consequence of the many complaints received on non-enforcement of solved cases, the Ombudsperson addressed recommendations to the KPA to increase efforts to execute its final decisions and to the Kosovo Police (KP) and the government to support the process, including by establishing a fund to compensate the loss of rent by the owners.<sup>45</sup> On the other hand, the Advisory Committee observes that many unresolved property compensation claims, non-respected eviction orders, and non-execution of orders to demolish illegal constructions are pending before the courts, while evicted persons re-occupy properties.<sup>46</sup>

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<sup>41</sup> OSCE Mission, "Review of Illegal Re-Occupation Cases in Kosovo" (January 2015), available at [www.osce.org/kosovo/141131](http://www.osce.org/kosovo/141131). The cases that the OSCE examined as part of this report concerned all those administered by the Kosovo Property Agency (KPA), which dealt with properties south of the Ibër/Ibar River only. As such, the cases involved a K/Serb victim and a K/Albanian occupier.

<sup>42</sup> KPA, Annual Report 2015, available at [www.kpaonline.org/PDFs/AR2015.pdf](http://www.kpaonline.org/PDFs/AR2015.pdf).

<sup>43</sup> The total number of pending evictions until December 2015 throughout Kosovo\* was 835, of which 242 in Mitrovicë/Mitrovica North.

<sup>44</sup> Law No. 05/L-010 on the Kosovo Property Comparison and Verification Agency (KPCVA) entered into force on 25 November 2016. The establishment of the KPCVA is the outcome of the Agreement for the Return, Comparison and Verification of Cadastral Records, reached in Brussels in 2011, between Kosovo\* and Serbia.

<sup>45</sup> Cases A No. 48/2012 Xhevdet Kalludra; A No.176/2012 Mexhit Balija; A No.125/2013 Abdylqerim Mripa; A No. 36/2015 Hajrullah Bahtiri; A No.49/2015 Muhamed Sherifi against the KPA, OjK Annual Report (2015), p. 75.

<sup>46</sup> Between 2008 and 2013, the KPA referred 326 cases of re-occupation of properties under its administration (around 13 000) to the prosecution, but the number of illegal re-occupations throughout Kosovo\* for all properties is likely to be significantly higher; see OSCE Mission, Report on illegal re-occupation, 2015, p. 3.



35. The Advisory Committee understands that property restitution cases remain numerous in the courts' backlog.<sup>47</sup> The judicial process generally takes two to three years, with respect, in particular, to cases brought by KPA to courts following the failure of the eviction the agency ordered, and the illegal re-occupation of the property. These cases are not legally complex per se (the cases generally involve one defendant, moderate evidence, and a low level of legal complexity), but OSCE monitoring<sup>48</sup> noted that courts not always order evictions; they issue short, suspended sentences that fail to act as a deterrent against re-occupation; and do not order compensation for the property owners. The Advisory Committee highlights that property restitution and illegal re-occupation of properties in particular have a clear interethnic component since on the whole, persons belonging to a minority community, or to the majority in a minority situation, are affected. As a result, the effective adjudication of these cases, including by constructively putting emphasis on their interethnic nature and seeking stiff penalties, would contribute not only to establishing legal certainty, but it would also have a positive impact on the return process which is often disrupted due to property restitution claims (see also Article 16).

### *Recommendations*

36. The Advisory Committee calls on the authorities to address disparities in access to justice between K/Albanian and non-Albanian communities through, *inter alia* increasing the number of judges, lawyers and court staff of non-K/Albanian ethnicity, in particular in the North, implementing the legislation on the use of languages in judicial proceedings, and providing adequate legal aid for persons belonging to national minorities.

37. The authorities should also take steps to ensure that property restitution cases, in particular illegal re-occupation, should be investigated swiftly, prosecuted appropriately and dealt with by courts in a timely fashion and sanctioned adequately enough to provide an effective remedy and a deterrent.

## **Article 5 of the Framework Convention**

### **Support for the preservation and development of national minority identities and cultures**

38. Recognising the importance of cultural heritage for the preservation of the identity of national minorities, the Advisory Committee appreciates that some progress has been made as regards the reconstruction of damaged K/Serbian Orthodox religious sites.<sup>49</sup> The implementation of local legislation on cultural heritage has also improved. The Law on the Historic Centre of Prizren and the Law on the Village of Velika Hoča/Hoçë e Madhe have been implemented as regards limited or prohibited activities within the two areas and the establishment and functioning of the two respective councils have been administratively regulated. Both councils meet regularly to discuss and review activities in the special protective zone (SPZ). However, the Advisory Committee's interlocutors have indicated that existing legal standards are challenged by continuing illegal constructions in SPZs to which the authorities

<sup>47</sup> According to the KJC Annual Reports, the total number of pending cases at the end of the year decreased from 466 255 (2013) to 325 418 (2015) (available at [www.gjyqesori-rks.org/en/kjc/report/list/1](http://www.gjyqesori-rks.org/en/kjc/report/list/1)). However, with respect to property claims, the efficiency rate of the Special Chamber of the Supreme Court was only 10.35%.

<sup>48</sup> See OSCE Mission Report on illegal re-occupation, 2015, p. 3.

<sup>49</sup> There are emergency projects involving conservation works for 36 out of 50 prioritised buildings and the establishment of a cultural heritage database (200 out of 1 441 monuments are listed).

are not in a position to provide an adequate and timely response.<sup>50</sup> Moreover, no other local regulations appear to have been adopted for cultural heritage placed in remote and isolated locations.

39. There have been attempts by the government to amend Law No. 02/L-88 on Cultural Heritage and to clarify, *inter alia* the position of the Serbian Orthodox Church and to adopt a strategy for cultural heritage. The Advisory Committee understands that both drafts were controversial in particular because they were considered to either affect the autonomy of Serbian Orthodox Church decision making on the restoration and renovation of its buildings, or to curtail protection of its heritage. In addition, as religious communities had not been adequately consulted, the government agreed to redraft both texts in co-ordination with the international community. Religious representatives indicated that, despite some resistance in public opinion, overall relations between the K/Albanian majority and the Serbian Orthodox Church have improved lately both in the context of the Implementation and Monitoring Council and at municipal level.<sup>51</sup> Nonetheless, after a promising start, the Advisory Committee regrets that this council appears less active than in the past.<sup>52</sup> Furthermore, as shown by the recurring events in connection with the unfinished Serbian Orthodox Church of St. Christ the Saviour in Prishtinë/Priština, the 'politicisation' of the cultural heritage debate instrumentalises the issue as an additional, divisive rather than cohesive, element and delays progress.<sup>53</sup> The Advisory Committee observes that the increasing politicisation of cultural heritage point in the direction of a limited awareness by the authorities of the importance of engaging with minority communities to advance interethnic understanding.

40. Several interlocutors of the Advisory Committee considered the security situation as regards access to cultural heritage to have improved overall, thanks in particular to the Kosovo Police Religious and Cultural Heritage Unit (RCHU), established in 2013 to protect 24 Serbian Orthodox Church cultural heritage sites. This police unit, which is multi-ethnic in its composition, performed well and established good relations with the various religious communities. Regular police patrols have also contributed to improving the situation in other religious sites and hostile incidents appear rather to reflect individual circumstances than the general situation. Nonetheless, in 2015, instances of religious-based violence, interference with religious pilgrimages, thefts and vandalism of religious sites, continued. According to KP's data, the number of incidents increased in 2015 (99) as compared with 2014 (88) (respectively, 38 to 42 attacks targeting Serbian Orthodox, 52 to 40 targeting Muslims, six to five targeting Catholics, and three to one targeting 'others'). The Advisory Committee considers nonetheless that statistics may not entirely reflect reality because religion and ethnicity are often closely

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<sup>50</sup> For instance, in 2015, the Visoki Dečani Monastery SPZ, where a fish farm and restaurant were constructed, and the Peć Patriarchate SPZ, where wooden huts for cafes and an improvised wooden bridge were constructed.

<sup>51</sup> The IMC is a special body which first became operational in June 2010 to monitor and facilitate the implementation of the 2008 Law No. 03/L-039 on Special Protective Zones.

<sup>52</sup> Although the IMC is supposed to meet every two months, lately it only met in June 2015 and then in March 2016. Kosovo's\* failed application for UNESCO membership in 2015 has affected the cultural heritage policy making.

<sup>53</sup> The church is periodically at the centre of manifestations against the Serbian Orthodox Church (SOC) and the object of attacks by the K/Albanian majority, most recently on the occasion of the Orthodox Christmas celebration in January 2017 when a bus transporting displaced K/Serbs from Gjakovë/Đakovica and going to St. Christ the Saviour was reportedly stoned and a window was broken upon arrival. About the politicisation, see also the press release of the UN Special Rapporteur in the field of cultural rights who visited Serbia and Kosovo\* in October 2016, available at <http://media.unmikonline.org/?p=68313>.

linked and it is hard to categorise many incidents as being solely based on religious affiliation (see also Article 6). It also observes that a good balance has to be reached between the need to ensure security to religious communities and allow access to sites for those who wish to visit them since over-securitisation engenders other risks of exclusion and alienation.

41. The Advisory Committee regrets the continued lack of an institutionalised system for the allocation of cultural support for national minorities. Grants for cultural activities provided by line ministries appear limited and representatives of communities expressed a lack of awareness of the yearly call for proposals to receive funding. There was also a perception that the K/Serb community received more attention than other minority communities. The OCA, for its part, informed the Advisory Committee that it provided financial support through calls for proposals of community projects, such as national days, cultural and media projects. Central and local support to promote the culture and traditions of the Roma, Ashkali and Egyptian communities was largely limited to celebrations of Roma Day but, when in place, such support extended beyond artistic performances (music, dance, exhibitions, photography, etc.) to events discussing the communities' social issues, including in the Romani language.<sup>54</sup>

42. The Advisory Committee considers that the preservation and development of the identity and culture of national minorities is also impacted by the fact that the knowledge and use of the two official languages, as well as locally of the other smaller communities' languages remains problematic in all spheres of life in Kosovo\*. While the legislation in force is up to the task (see Article 10 for details), implementation lags behind thereby hindering the presence of minority languages in public spaces and the development of activities promoting the knowledge and awareness of minority cultures. The Advisory Committee observed with concern the shift towards monolingualism in both official languages and the lack of cultural platforms promoting interaction between members of the different communities. It appears in particular that young people are not exposed to the language and cultures of the other communities, including in endeavours such as the Kosovo Strategy for Youth of the Ministry for Youth, Culture and Sport.<sup>55</sup>

### *Recommendations*

43. The Advisory Committee calls on the authorities to consult closely with representatives of all communities when finalising the law and the strategy on cultural heritage, as well as to strengthen the response to illegal constructions and activities in special protected zones by addressing gaps in the legal and policy framework.

44. The authorities should also establish a transparent fund allocation mechanism for the preservation of minority cultures and identities and provide equitable opportunities for non-Albanian communities to promote their culture and heritage as an integral part of Kosovo\* society.

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<sup>54</sup> Pejë/Peć and Prizren municipalities supported roundtables discussing the achievements and challenges of the Kosovo Roma community; Prizren supported a theatre play in the Romani language; Roma NGOs organised round-table discussions in Gjakovë/Đakovica and Deçan/Dečani .

<sup>55</sup> Available at [www.mkrs-ks.org/repository/docs/KOSOVO\\_STRATEGY\\_FOR\\_YOUTH.pdf](http://www.mkrs-ks.org/repository/docs/KOSOVO_STRATEGY_FOR_YOUTH.pdf).

## Article 6 of the Framework Convention

### Tolerance and intercultural dialogue

45. Interethnic relations have slightly improved in some domains compared with the previous monitoring cycle as a result of achievements at central level within the EU-facilitated dialogue (see Articles 17 and 18). However, in its exchanges with K/Serb representatives, the Advisory Committee learned that the EU-facilitated dialogue was perceived as a distant process and its impact was uncertain as regards daily interethnic relations between the majority and the K/Serb community, which remain persistently divided.<sup>56</sup> The Advisory Committee gained also the impression during its visit that, with some exceptions at the highest political level,<sup>57</sup> appreciation of the importance of interethnic trust and understanding among the authorities is still insufficient. Comprehensive and concrete efforts to promote interethnic dialogue and tolerance on the ground are not prioritised yet at institutional level and when put in place they remain largely driven by civil society and international donors. On the contrary, sectarianism is growing as a result of the continuing existence of parallel systems and institutions, including in the administration and in education (see Article 12), and pervasive monolingualism. These factors all represent major obstacles for interaction and intercultural dialogue between persons belonging to the majority and the K/Serb community, in particular for young people.

46. At municipal level, there have been few systematic efforts to bring communities closer. Institutional attempts mainly consisted of the participation of community representatives in local bodies mandated to ensure the protection of minorities, such as community committees (CCs), deputy mayors for communities (DCMs) and deputy chairpersons of the municipal assembly for communities (DCMACs). While DCMs and DCMACs did not appear to fulfil their task of promoting interethnic dialogue,<sup>58</sup> some albeit sporadic initiatives emanated mainly from local actors, including civil society in co-operation with international donors. The Municipality's representatives in Novo Brdo/Novobërdë referred to a number of small-scale activities, mainly targeting youth and sport events as opportunities for children belonging to different communities to meet, organised with the Gjilan/Gnjilane, Kamenicë/Kamenica, and Ranilug/Ranillug municipalities.<sup>59</sup> Representatives of local bodies and civil society were of the opinion that the promotion of interethnic relations remains nonetheless sporadic, including when aimed at easing tensions surrounding the return of internally displaced persons (IDPs) (see Article 16).

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<sup>56</sup> A survey on ethnic distance in Kosovo\* (the survey is based upon the Bogardus social distance scale, which is a technique for measuring social distance usually applied to the study of ethnic relations, social classes, and social values generally. The scale attempts to measure respondents' degree of warmth, intimacy, indifference, or hostility to particular social relationships. In this case, the focus was on the Albanian-Serbian relations) showed a very high level of ethnic distance between K/Albanians and K/Serbs, which diminishes with a higher level of education and more frequent contacts between the communities, but it is not significantly impacted by factors such as age; see "Ethnic distance in Kosovo", published in "Perspectives of a multi-ethnic society in Kosovo", p.261, Youth Initiative for Human Rights, Kosovo (May 2015) available at [www.yihr.rs/en/perspectives-of-a-multiethnic-society-in-kosovo/](http://www.yihr.rs/en/perspectives-of-a-multiethnic-society-in-kosovo/).

<sup>57</sup> In 2016, President Hashim Thaçi carried out interethnic reconciliation efforts to shed light on the crimes committed during the 1998-1999 Kosovo\* conflict and the post-conflict period against K/Serbs and their properties. He engaged with relatives of K/Serb missing persons to discuss ways to clarify their fate and they agreed that the missing persons' issue could be one of the topics in the Brussels dialogue between Prishtinë/Priština and Belgrade. He also laid wreaths in memorial locations where K/Serbs had been executed.

<sup>58</sup> OSCE records relatively few examples, Community Rights Assessment Report, Fourth Edition (2015) p. 6.

<sup>59</sup> *ibid*, additional examples, p. 7.

47. With some positive exceptions where constructive co-habitation between K/Serbs and K/Albanians is nurtured by both sides,<sup>60</sup> the Advisory Committee detected a general sense of separation among communities even when they live in the same municipality (separate administrations, schools and even shops). This state of affairs does not contribute to frequent interethnic contacts, including in situations where the majority live in a minority situation, as is the case of K/Albanians in Mitrovicë/Mitrovica North and Gračanica/Graçanicë. Symbolic initiatives, such as for instance the construction of a wall in Mitrovicë/Mitrovica North in the context of the works for the reopening of the bridge, even intensified the perceived divide between communities.<sup>61</sup> The divide also has an impact on other smaller communities, whose issues tend to be sidelined or absorbed within those of the predominant community, thus creating further fragmentation in society rather than promoting an inclusive and integrated society where diversity is respected as an integral part of the society in Kosovo\*.

48. Although overt hostile narratives and hate speech may not be visible in printed media, relations among communities continue to be affected by ethnically polarised media coverage. According to OSCE monitoring,<sup>62</sup> reporting of incidents and events is often biased by single community sources and by making reference to the ethnicity of the perpetrator even when the facts do not point towards an ethnic or political motivation. Reportedly, the K/Serb media, in connection with Serbia's media outlets, tend to focus on the interethnic elements of an incident thereby heightening tensions and leading to hostile narratives between communities,<sup>63</sup> while K/Albanian media outlets are more cautious for fear of escalation and politicisation. On the other hand, coverage by the public broadcasting service, Radio Television of Kosovo (RTK), continues to be criticised as being partisan and under the influence of the political majority.<sup>64</sup>

49. The Advisory Committee observes that the media is divided along ethnic lines and seldom reaches out to the other communities' audiences. These problems, coupled with the existing language barriers and the fact that media outlets do not often employ staff from different communities, represent serious obstacles impeding intercommunity dialogue and understanding. While division of the media may explain why there is little incidence of hate speech in the press, journalists and independent bodies expressed the opinion that hate speech is increasing in online portals and social media. In the absence of a legal framework for online media and news portals and of mechanisms for moderating the comment sections, media outlets are opting to close these sections altogether. The Association of Journalists and other independent bodies, such as the Press Council of Kosovo (PCK), considered the decision by the media outlets to close the sections as appropriate because of the lack of capacity to monitor, edit or ban comments on the online platforms (see also Article 9).

50. Hostile ethnic rhetoric and intolerance continues to be expressed publicly by some officials when potential ethnically motivated incidents occur. While K/Albanian media outlets appear to use a more reconciliatory language, Serbian media and also K/Serb media outlets

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<sup>60</sup> Information received from interlocutors during the visit in Novo Brdo/Novobërdë.

<sup>61</sup> See [www.balkaninsight.com/en/article/kosovo-serbs-build-a-wall-in-northern-divided-city-12-08-2016](http://www.balkaninsight.com/en/article/kosovo-serbs-build-a-wall-in-northern-divided-city-12-08-2016).

<sup>62</sup> OSCE Mission, Community Rights Assessment Report, Fourth Edition (2015), for additional examples, p. 34.

<sup>63</sup> See examples at <https://inserbia.info/today/2015/04/kosovo-young-serb-stabbed-police-patrol-did-not-react-at-all/>; [www.telegraf.rs/english/1563118-new-attack-on-klina-serbs-third-in-two-weeks](http://www.telegraf.rs/english/1563118-new-attack-on-klina-serbs-third-in-two-weeks).

<sup>64</sup> See Freedom of the Press, 2016, available at <https://freedomhouse.org/report/freedom-press/2016/kosovo>.

appear to politicise the reporting.<sup>65</sup> However, adequate reactions are more frequent when potential ethnically motivated incidents occur (see paragraph 55). The Advisory Committee reiterates that hostile ethnic and intolerant discourse, especially coming from public figures, must be immediately and strongly condemned by senior government officials to ensure that a clear message is sent to the public that such attitudes are not acceptable.

### *Recommendations*

51. The Advisory Committee urges the authorities to make comprehensive and concrete efforts to prioritise and promote interethnic dialogue and tolerance at central and local level in order to bridge divides between communities and to promote reconciliation. Steps should include the adoption of measures aimed at building intercommunity relationships through initiatives targeting in particular young people, integrating the education system and applying the language legislation consistently.

52. Where intercommunity tensions are identified or affect vulnerable communities, such as returnees, the authorities should undertake increased and proactive outreach and communication with communities and build the capacity of key stakeholders to support intercommunity dialogue including through engagement of key officials (such as deputy mayors for communities or deputy chair of municipal assemblies for communities).

53. The Advisory Committee also calls on the authorities to continue condemning all expressions of ethnically hostile public discourse and to engage with media outlets to promote a more nuanced understanding and reporting of facts to avoid fuelling intolerant behaviour and further polarisation.

### **Protection from hate crime and hostility**

54. Article 147 of the Criminal Code proscribes hate crimes and ethnically motivated incidents consisting in public incitement and spread of hatred or intolerance between those of different nationality, race, religion, or ethnicity. However, this article does not address the potentially ethnic motivation behind the crime, which is instead covered by Article 74(2.12) of the code as an aggravating circumstance. The combined application of these two provisions allows judges to address ethnically motivated crimes, but the Advisory Committee's interlocutors were unanimous that Article 74(2.12) is not applied in practice.<sup>66</sup>

55. The overall perception is that security has improved for communities, including for the majority living as a minority in the North. According to OSCE monitoring,<sup>67</sup> there has been a slight decrease of incidents affecting communities (479 in 2014-15 instead of 556 in 2013-14), still addressing in majority K/Serbs (310) and returnees (22% of the 479 cases). Incidents vary from theft, verbal assault, severe damage and illegal occupation of property, including cultural heritage (see Article 5) to incidents inciting hatred and actual physical assault or intimidation.

<sup>65</sup> In May 2015, a Serbian media outlet reported that the president of the Parteš/Partesh Municipality said that the incident [the stabbing of a K/Serb man by allegedly K/Albanians] was aimed at frightening K/Serbs in this part of Kosovo\* (available at [www.telegraf.rs/english/1553254-serb-gets-stabbed-in-pasjane-near-gnjilane](http://www.telegraf.rs/english/1553254-serb-gets-stabbed-in-pasjane-near-gnjilane)). See also ECMI/ERAC Report, Potentially ethnically motivated incidents: challenges in defining and reporting, 2016, p. 22, available at [www.ecmikosovo.org/uploads/Pemi\\_ENG.pdf](http://www.ecmikosovo.org/uploads/Pemi_ENG.pdf).

<sup>66</sup> Opinion confirmed by several reports; see, *inter alia* ECMI/ERAC Report, note 65 and EULEX Compact Report, note 37.

<sup>67</sup> OSCE Mission, Community Rights Assessment Report, Fourth Edition (2015), p. 9.



Certain hate-motivated incidents against ethnic minorities were concentrated in specific areas where returnees are more numerous (Klinë/Klina, Pejë/Peć) or were due to specific trigger events.<sup>68</sup> Generally, they have been swiftly condemned by the authorities both at central (in particular the Ministry for Communities and Returns) and municipal level (mayors).<sup>69</sup>

56. The Advisory Committee notes however that, although mechanisms for recording interethnic incidents are in place, official numbers provided by the KP during the visit are much lower (16 reported cases in 2015 and five reported cases until November 2016).<sup>70</sup> The Advisory Committee observes that the lack of incidents recorded may be explained by several factors, including shortcomings in the recording system, under-reporting, division of the communities and mistrust in the police and judicial system by persons belonging to national minorities. Data collection and the exact identification of the motive behind potentially ethnically motivated incidents are lacking because the current crime recording methods register data disaggregated by community affiliations, but do not record bias motivation. Moreover, KP data only reflects the cases where the prosecutor has authorised an investigation.<sup>71</sup> The Advisory Committee also understands that the KP exercises a considerable degree of caution when recording and investigating incidents to avoid inflammatory interethnic repercussions.<sup>72</sup> The Ombudsperson expressed the opinion that the numbers available are not representative of the situation. Although solely ethnically motivated incidents may be less frequent, there are patterns in incidents which point to ethnic motivation, such as the location and the group targeted, which are not sufficiently taken into account. Finally, under-reporting is also a cultural trait, reinforced by the perception that there is no follow-up by law enforcement officers.

57. The Advisory Committee notes that the shortcomings in the registration process of potential ethnically motivated incidents result in a low number of prosecutions and adjudications.<sup>73</sup> However, this is not the only issue. The Advisory Committee also understands from its interlocutors that the low numbers often reflect an insufficient application of the available legal framework by prosecutors (aggravated murder, Article 179(1.10) or damage to property (Article 333.4), or the courts (Article 74(2.12) on aggravating circumstances as bias motivation). This state of affairs reinforces the perception that the judiciary is unable to redress adequately the situation. The Advisory Committee observes that incidents such as attacks on persons, private property or religious heritage, when ethnically motivated or affecting minority communities increase the feeling of insecurity and deter further returns. The degree of precision as regards the way in which data on interethnic incidents are collected is thus of utmost importance to ensure that potential ethnically motivated crimes are taken seriously by the authorities, and that they are investigated, prosecuted and sanctioned as

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<sup>68</sup> For instance, the 2016 European Cup qualifier between Serbia and Albania in Belgrade.

<sup>69</sup> Namely, Klinë/Klina, Pejë/Peć, Mitrovicë/Mitrovica South, Gjakovë/Đakovica, and Rahovec/Orahovac. Mayors of other K/Serb majority municipalities such as Gračanica/Graçanicë, Ranilug/Ranillug, Mitrovicë/Mitrovica North, Novo Brdo/Novobërdë, and Parteš/Partesh also issued public condemnations on incidents affecting K/Serbs as alleged victims.

<sup>70</sup> OSCE Mission reports KP data for 2014 (19 cases) and 2013 (20).

<sup>71</sup> ECMI/ERAC Report, note 65, p. 15.

<sup>72</sup> Ibid.

<sup>73</sup> According to ECMI/ERAC Report, note 65, in 2015, the State Prosecutor recorded 11 interethnic cases, while courts adjudicated nine cases under Article 147 in 2014 and six cases in 2015, in both cases new and backlog cases. However, the exact number of cases adjudicated on the basis of ethnic bias remains unknown due to the lack of statistics on cases where Article 147 has been used in conjunction with other provisions, including aggravated sentencing.

appropriate. The Advisory Committee appreciates the ongoing efforts to introduce in 2017 a co-ordinated case management system linking all law enforcement institutions and allowing the tracking of cases from investigation to prosecution and conviction.<sup>74</sup> It also considers it necessary that awareness-raising and training measures for the judiciary are put in place.

58. Among law enforcement bodies, the public has most contacts with the KP, which is also perceived as the most inclusive and trustful institution (56%) (see also Article 15).<sup>75</sup> The Advisory Committee notes that further efforts and training to improve co-operation between the police and communities in prevention, awareness and interethnic dialogue have been put in place through the implementation of the first Community Policing Strategy and Action Plan 2012-2016. According to the OSCE monitoring report,<sup>76</sup> Municipal Community Safety Councils (MCSCs) have been established in 34 of the 38 municipalities and their performance has been improved by meeting more often and focusing on security concerns of communities, in particular returnees.<sup>77</sup> Overall participation by persons belonging to all communities, as well as by the police and other institutions in these bodies has slightly improved.<sup>78</sup> Some 51 Local Councils for Public Safety (LCPSs) were also operative in 2015 and played an important role by convening extraordinary meetings when ethnically motivated incidents occurred and by promptly condemning them.

#### *Recommendations*

59. The Advisory Committee urges the authorities to intensify their efforts to improve the performance of law enforcement bodies in processing, investigating, prosecuting and adjudicating potential ethnically motivated hate crimes. In order to achieve this, data collection, including the recording of bias motivation, should be improved and streamlined. The judiciary should be adequately trained so that all cases are appropriately examined and those responsible sanctioned in line with the applicable legal framework. Justice must be delivered in an equitable way in order to reassure persons belonging to minority communities are reassured as regards their security in Kosovo\* and their protection by the law.

60. At local level, the authorities should increase efforts to improve the performance of local safety institutions (Municipal Community Safety Councils and Local Councils for Public Safety) and to ensure the inclusion of persons belonging to the different minority communities. They should also prioritise policing efforts in areas where non-Albanian or returnee communities are especially vulnerable or have experienced persistent security problems.

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<sup>74</sup> EU European Commission, Report from the Commission to the European Parliament and the Council, Second report on progress by Kosovo\* in fulfilling the requirements of the visa liberalisation roadmap, (COM(2014)488 final (24 July 2014), pp. 5 and 7.

<sup>75</sup> Prosecutors and the courts stand respectively at 26% and 22%, see "Kosovar Centre for Security Studies, Kosovo Security Barometer, Fifth Edition (December 2015)", available at [www.qkss.org/repository/docs/Kosovo\\_Security\\_Barometer\\_-\\_Fifth\\_Edition\\_523670.pdf](http://www.qkss.org/repository/docs/Kosovo_Security_Barometer_-_Fifth_Edition_523670.pdf).

<sup>76</sup> OSCE Mission, Community Rights Assessment Report, Fourth Edition (2015), p. 10.

<sup>77</sup> Throughout 2014 and until the end of June 2015, 15 MCSCs discussed topics relevant for communities in a numerical minority in their municipality, and three condemned the relevant incidents. In 2015, 180 meetings were held (an increase of 11.8%); see Kosovo Police Annual Report 2015.

<sup>78</sup> One third of MCSCs (11), however, failed to include representatives of communities with a significant presence in the municipality, and five MCSCs had not included relevant religious representatives by the end of June 2015.



## Article 8 of the Framework Convention

### Freedom of religion

61. Freedom of religion is guaranteed by the constitution in line with international standards. However, the legal status of religious communities remains unsolved because amendments to the 2006 Law on Freedom of Religion have not yet been adopted. Current legislation lacks a mechanism through which religious communities could gain official legal status, a designation that would give them easier access to buy and rent property, establish bank accounts and carry out other administrative activities.<sup>79</sup> Interlocutors of the Advisory Committee indicated that the version of the draft law pending in the assembly will provide automatic registration of the 'traditional' religious communities of Kosovo\* (Muslim, Catholic, Protestant, Jewish, Serbian Orthodox). If adopted, the mechanism paves the way for registration of communities which currently are unable to register under the present criteria.<sup>80</sup>

62. Representatives of religious and minority communities were of the opinion that expression of freedom of religion has become somewhat easier. For instance, in 2015, the Serbian Orthodox Church (SOC) Saint Vitus (*Vidovdan*) festivities took place without major obstacles albeit with a high level of security present. The Advisory Committee notes, however, that although stable in number, incidents of vandalism, intimidation and threats to pilgrims still occur in particular in small villages on the occasion of participation in religious events (see also Article 5). Incidents target not only SOC pilgrims and properties, but also those of Muslim, Catholic and Jewish confessions.<sup>81</sup> Similarly, contentious use of property and land is only solved judicially, as in the case of the Christ the Savior Church in Prishtinë/Priština. In addition, problems may still occur with the enforcement of the decisions, as in the case of the Deçan/Dečani Monastery. The Advisory Committee is concerned that a lingering feeling of insecurity continues among certain communities to manifest their religious belief. It therefore appreciates in this context the government support of interfaith dialogue when such incidents occur.<sup>82</sup> Since religion and ethnicity are often closely linked, efforts to promote tolerance, interethnic and interfaith dialogue should also be directed towards respecting freedom of religion.

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<sup>79</sup> See OïK Annual Report 2015 for examples of the difficulties encountered by the different denominations with respect to use of property, constructions and land for cemeteries, p. 63-64. See also European Commission for Democracy through Law (Venice Commission), Opinion on the draft Law on amendment and supplementation of Law No. 02/L-31 on Freedom of Religion of Kosovo\*, adopted on 25 March 2014, paras. 35 ff.

<sup>80</sup> OïK Annual Report 2015, p. 63.

<sup>81</sup> In August 2015, the police had already registered 34 incidents of property usurpation, theft, and damage involving SOC facilities, primarily vandalism or theft of metal objects later sold for scrap. Vandals spray-painted the SOC church in Lipjan/Lipljan and the SOC Seminary of St. Cyril and Methodius in Prizren with KLA graffiti and destroyed SOC tombstones in a village near Obiliq/Obilić. An unknown vandal damaged the plaque of the Jewish Community of Kosovo headquarters in Prizren. The Union of Kosovo Tarikats (UKT) reported the 15th century tomb of Sufi female Saint Gjylfatyn in Pejë/Peć was torched. Unknown perpetrators destroyed the wall surrounding the construction site of a new Catholic cemetery and church in the village of Llapushnik/Lapusnik in the Glllogvc/Glogovac municipality; see US State Department Religious Freedom report on Kosovo (2015) p. 9, available at [www.state.gov/documents/organization/256417.pdf](http://www.state.gov/documents/organization/256417.pdf).

<sup>82</sup> On the day after the violent protests, the President and the Prime Minister visited the Deçan/Dečani Monastery and called for tolerance and peaceful coexistence after the attacks on Serbian Orthodox religious pilgrims on 6 February 2015.

### Recommendations

63. The Advisory Committee calls on the authorities to ensure that the Law on Freedom of Religion is amended without delay, in consultation with representatives of the religious communities, in order to allow them to be registered.

64. It also calls on the authorities to ensure that their comprehensive and concrete efforts to prioritise and promote dialogue and tolerance, in order to bridge divides between communities and promote reconciliation, take into consideration the dimension of freedom of religion.

## Article 9 of the Framework Convention

### Access of minority communities to broadcast and print media

65. The Advisory Committee welcomes the expansion of media broadcasting for the communities and in minorities' languages. In 2013, public broadcasting (RTK) launched a second channel, RTK2, which broadcasts 85% of programmes in Serbian and 15% in other non-Albanian languages. Furthermore, in 2014-2015, RTK1 addressed the requests of the Ashkali and Egyptian communities to broadcast in the Albanian language monthly programmes specifically dedicated to them. In addition, RTK1 continued to broadcast a weekly 45-minute Romani language programme, as well as a 15-minute daily news bulletin. However, there is still no TV programming for the K/Bosniak community. Private radio broadcasting also offers programming for K/Serbs in the North<sup>83</sup> and for all the smaller communities in certain municipalities throughout Kosovo\*.<sup>84</sup> As regards printed media, the main outlets are in the Albanian language, which is generally the case also with online news portals. Printed media is also dedicated to smaller communities, but is limited in volume.<sup>85</sup> In general, private outlets are widely dependent on international donors for financial support and training.<sup>86</sup> While recognising the difficulty of sustaining a diversified media sector when the numbers of potential audiences are minor, the Advisory Committee considers it important that support of smaller community media is not only the financial responsibility of international donors, but also of the authorities.

66. In spite of progress, the Advisory Committee also observed some shortcomings. Media in general appear to work in parallel and serve each community separately, focusing on issues relevant only to that community. There is neither translation of the programming, nor subtitling of mainstream programmes and/or bilingual/multilingual printed media. Moreover,

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<sup>83</sup> News portal in the Serbian Language (*KoSSev*), *Radio Kontakt Plus*, *Radio Kosovska Mitrovica*, *TV Most* and *TV Mir*.

<sup>84</sup> According to data on licences from the Independent Media Commission (IMC), in 2016, there were 82 radio stations, 20 TV stations, 32 cable operators and 56 programming Services Providers. While the majority broadcast in Albanian as the main language, there were also 27 media outlets broadcasting in Serbian, four in Turkish, three in Bosnian, two in Gorani and two in Romani. However, many of the outlets also broadcast in a second language covering all communities' languages, available at [www.kpm-ks.org/?fage=315&gjuha=3](http://www.kpm-ks.org/?fage=315&gjuha=3). *Romano Avazo* Radio broadcasts in Romani in Prizren (since 2007) and *Prosperiteti* in Gjakovë/Đakovica.

<sup>85</sup> For example, *Yekhipe* (Union) magazine is published by the NGO Sakuntala, with the last edition in May 2015 funded by the Embassy of the Netherlands in Kosovo\*.

<sup>86</sup> For example, the OSCE Mission six-month-long apprenticeship programme, implemented in co-operation with Serbian-language media outlets in North Kosovo in 2016.

RTK2's signal is not sufficient to allow national coverage<sup>87</sup> and a considerable portion of media in Serbian is broadcasted directly from Serbia. In addition, ethnic bias and stereotypes in reporting, such as a single focus on certain issues present within the Roma community, including low education performance or housing conditions, strengthens a negative image of this community while the reality is often more nuanced. Media should help to dispel negative stereotypes, for example, by making existing role models better known. Finally, when training for the promotion of interethnic dialogue in the media sector is available, it continues to be organised mainly with the support of the international community.<sup>88</sup>

67. It is the view of the Advisory Committee that the shortcomings mentioned above provide few opportunities for interaction and curtail the role that media could play in promoting intercultural dialogue between persons belonging to the majority and the minority. While it is considered that the public broadcasting RTK is subject to political interference and reflects, mainly the position of the government,<sup>89</sup> incidents of harassment of journalists belonging to minority communities continue to be reported.<sup>90</sup> In addition, despite the efforts of the PCK and the Association of Journalists to increase professionalism amongst journalists, the Advisory Committee understands from its interlocutors that these are insufficient.<sup>91</sup> Action is needed to promote awareness of and sensitivity towards the specific needs and concerns of persons belonging to different groups in society.<sup>92</sup>

68. Persons belonging to smaller communities are represented among the staff of public media structures, as well as in the independent media regulator and self-regulatory structures (Independent Media Commission (IMC) and the PCK and, from 2016, also in the Association of Journalists. Both the IMC<sup>93</sup> and the PCK<sup>94</sup> are in charge, *inter alia* of ensuring the media's

<sup>87</sup> Freedom House, Freedom of the Press 2016 report, available at <https://freedomhouse.org/report/freedom-press/2016/kosovo>.

<sup>88</sup> The OSCE Mission, for example, supported *Radio Kontakt Plus* and *KoSsev* news portals to broadcast/publish stories on the verification of diplomas and youth unemployment. The radio story prepared and broadcasted by the *Radio Kontakt Plus* described the process of verification of diplomas issued by the Serbian-Government funded University of Pristina, which is currently based in Mitrovicë/Mitrovica North.

<sup>89</sup> Several reports point to a lack of both balanced reporting and adherence to professional journalism standards including for public broadcasters, as well as serious shortcomings in Kosovo\* media, including amongst others to political interference and the absence of long-term financial sustainability of the media; see Institute for Development Policy (INDEP), Report 2015/4, The State of the media in Kosovo 2015, available at [www.gendrore.com/indepi/wp-content/uploads/publications\\_en/The%20State%20of%20the%20Media%20in%20Kosovo%202015.%5bShkamb%20Qavdarbasha%2C04.2015%2CDemocratic%20Governance%5d.pdf](http://www.gendrore.com/indepi/wp-content/uploads/publications_en/The%20State%20of%20the%20Media%20in%20Kosovo%202015.%5bShkamb%20Qavdarbasha%2C04.2015%2CDemocratic%20Governance%5d.pdf).

<sup>90</sup> In 2015, two RTK2 journalists and a journalist from Serbia's public broadcaster were attacked during a demonstration in Prishtinë/Priština. The office of the Serbian-language news portal *KoSsev*, based in Mitrovicë/Mitrovica North, was sprayed with bullets in June, and in November, assailants set fire to a vehicle belonging to one of its journalists. No one was hurt in either case; see Freedom of the Press Report 2016.

<sup>91</sup> The Association of Journalists informed the Advisory Committee that training was organised for Roma, Ashkali and Egyptian communities to raise knowledge and professionalism of potential journalists among their members. Moreover, a meeting is organised every three months with journalists of these communities to assist their work. The need for training to generally improve content standards in the media is openly acknowledged; see B. Taylor, Kosovo – Setting standards, Public awareness and effectiveness of the Independent Media Commission and the Press Council, Thomson Foundation, January 2015, p. 14, available at <http://presscouncil-ks.org/wp-content/uploads/2015/05/Setting-Media-Standards.pdf>.

<sup>92</sup> See ACFC Thematic Commentary No. 4(2016), paragraph 70.

<sup>93</sup> The IMC, which is an independent institution of the state of Kosovo\* funded entirely by the state budget, has a legal responsibility to licence TV and radio stations, to regulate the broadcast spectrum, to ensure fair and open

adherence to ethical standards with respect to content through complaints' procedures. While the IMC has the power to fine broadcasters who breach the code of ethics, the PCK may only oblige the journalists and news organisations to publish its adjudications in a medium they deem appropriate. The Advisory Committee was informed by representatives of the two bodies that a limited number of cases concern community issues.<sup>95</sup> Among the reasons advanced to explain this situation are the facts that online media and news portals are not regulated and the Code of Ethics does not yet apply to them; there is a lack of awareness of their role as defenders of ethical standards in journalism, and financial pressures affect their effectiveness, reputation and future development.<sup>96</sup> As hate speech and unethical language is present online, including in social media (see Article 6), the Advisory Committee appreciates the efforts undertaken by the PCK to expand its mandate and promote adherence to the Code of Ethics. It also understands from several of its interlocutors that a more general legal framework is required for online media covering standards of reporting, content, as well as transparency of the sector.

### *Recommendations*

69. The Advisory Committee calls on the authorities to continue ensuring adequate financial support for the development of media dedicated to minority communities through targeted programming, allocation of sufficient air time, as well as bilingual and multilingual media outlets, to contribute to fostering community identity and promoting intercultural dialogue with the majority.

70. Media regulatory and self-regulatory bodies should extend the monitoring and sanctioning of the professional conduct of media outlets online and increase awareness of their role as defenders of ethical standards in journalism among the public at large. Training of journalists should address the problem of biased and non-objective reporting.

## **Article 10 of the Framework Convention**

### **Use of minority languages in the public sphere**

71. Although progress has taken place in certain areas, representatives of the communities, independent bodies and international donors unanimously concluded that the far-reaching Law on the Use of Languages is still insufficiently implemented at central and local level. Institutions remain uninformed of their responsibilities and there is little awareness of language rights by the public at large.<sup>97</sup> Several interlocutors indicated that the language divide, which is a major factor that promotes sectarianism, persists and that monolingualism is

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access to the broadcasting market place and to uphold a code of ethics for the content of TV and radio programmes.

<sup>94</sup> The PCK is a non-governmental organisation (funded by donations from international organisations) that operates a system of self-regulation for print and online media (newspapers, some news portals, news agencies and one blogger) who choose to become members (as of March 2017, there are 23 members).

<sup>95</sup> Among the 500 cases dealt with by the PCK in the ten years of its existence, only a few concerned national minorities.

<sup>96</sup> See INDEP 2015 Report, note 89, and Thomson Foundation Report 2015, note 91. Political interference has been held to have a serious impact on IMC functionality.

<sup>97</sup> See, *inter alia* Office of the Language Commissioner, "Monitoring and Evaluation of Language Rights in Kosovo", March 2015, available at [www.komisioneri-ks.org/repository/docs/Englisht\\_Finale\\_160315.pdf](http://www.komisioneri-ks.org/repository/docs/Englisht_Finale_160315.pdf); OiK Annual Report 2015, and OSCE, Community Rights Assessment Report, Fourth Edition (2015).

becoming pervasive. Besides operational deficiencies (see further below), the Advisory Committee also notes an overall lack of political commitment to further implement the legislation, for instance, by delaying the adoption of the Languages Strategy prepared by the OCL and, in general, to offer the commissioner adequate political support to implement his mandate.<sup>98</sup>

72. According to OCL<sup>99</sup> and the OSCE, some progress with the implementation of the language legislation has been accomplished, for instance, with respect to issuing identity cards in the Turkish language upon request and introducing software allowing municipalities to issue civil registry forms in the Bosnian and Turkish languages, as well as in the Cyrillic alphabet. According to the OCL, at central level, in the Assembly of Kosovo, interpretation is available in both official languages and in Turkish, and documents are available in both official languages. At local level, 28 municipalities provide interpretation and translation for official languages in municipal assemblies and one municipality (Gračanica/Gračanicë) uses the Romani language. The functioning of the OCL has improved through the launch of a website, awareness campaigns of individual language rights through TV, radio and other information activities, and language focal points have been appointed in 32 municipalities. Finally, the number of complaints rose from 12 in 2013 to 54 in 2014 with a high closure rate.

73. However, the Advisory Committee also notes that, overall, several obstacles remain to the use of minority languages other than Albanian in relations with the public administration persist. It is reported that, at central level, interpreters and translators in the administration are present on an irregular basis and services are outsourced. There are also serious problems of legal certainty and equality before the law due to the poor quality of translation of legal texts and discrepancies between different official language versions. The lack of properly trained translators and other personnel proficient in Serbian, as well as of appropriate translation procedures, contribute to an exacerbation of this problem. Similarly, at local level, translations of regulations and draft legislation into minority languages are often poor (with a third of the municipalities not even providing translations).<sup>100</sup> There is also a lack of provision of services in minority languages (official documents, land registry, tax, vehicle registration) and documents which continue to be issued only in Albanian, e.g. police fines and instructions to municipalities, thereby contributing to legal uncertainty.<sup>101</sup> Finally, there are difficulties in recruiting language-proficient staff and language training, when in place, is mainly supported by international donors.

74. More generally, the Advisory Committee observes that it transpires, in particular from the OCL report that non-compliance with legislation is not only due to shortages of financial, technical and human resources. It also has deeper causes, such as the limited awareness of legal obligations among authorities and their lack of commitment to mainstream language in

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<sup>98</sup> OiK Annual Report 2015, p. 56.

<sup>99</sup> OCL report, note 97.

<sup>100</sup> While five municipalities have no translators, the other 33 municipalities employ only one or two translators, with the exception of Prizren which employs four.

<sup>101</sup> As an example, the Turkish language is official in Prizren, yet problems were reported in the office for building permits where communication with the public is conducted through a translator. In Gjilan/Gnjilane, Mitrovicë/Mitrovica South and Vushtrri/Vučitrn, where Turkish is in official use, the majority of civil servants working in the MOCR, the office for building permits, the civil registry office, the social welfare offices, the legal aid office and the employment centre do not speak Turkish.

all policies, the lack of opportunity to learn both official languages simultaneously during primary and secondary school and to study them at university level (see also Article 12 and 14), and the absence of higher education courses in translation and training for civil servants. The Advisory Committee recalls the cross-cutting relevance of language learning and proficiency to achieve an inclusive society and avoid the risk of different communities functioning in parallel.

### *Recommendations*

75. The Advisory Committee once again urges the authorities to take all necessary measures to ensure the full, equal and adequate implementation of the Law on the Use of Languages. The central and local authorities, in their respective fields of competence, should address the capacity gaps in language knowledge and provision of services in minority languages, including in the judicial system. The central authorities should provide adequate financial and human resources, as well as guidance and monitoring to municipalities, to improve their performance in this respect.

76. The authorities should take strategic and comprehensive steps to improve capacities for language compliance and quality in official translations, in particular by recruiting language-proficient civil servants, and to create a favourable environment conducive to the learning of official and other minority languages, including in the education system.

## **Article 11 of the Framework Convention**

### **Public signs, topographical indications and official documents**

77. Notable progress has been made in the display of signs of names of municipalities, villages, streets and municipal roads in official languages, the majority of which comply with domestic obligations.<sup>102</sup> Seven municipalities (in addition to the four northern municipalities) remain however non-compliant<sup>103</sup> and incorrect spelling and/or damage of signs remains a widespread problem. According to OSCE monitoring,<sup>104</sup> the situation varies in municipalities with regard to the use of minority languages inside and outside public buildings. In the majority of municipalities, legal provisions on language were fully respected. Nonetheless, the Advisory Committee is concerned by the continuing cases of non-compliance with the legal framework and the damages caused to property. It considers that displaying topographical bilingual signs in minority languages is of particular symbolic value inasmuch as it portrays a society where members of minorities are welcome and respected as part of society as a whole.

78. The Advisory Committee notes that measures are still in place to facilitate the registration of persons belonging to the Roma, Ashkali and Egyptian communities, such as free registration days. In the context of the EU-facilitated dialogue, efforts have been made to establish a comprehensive and sustainable civil registry in Kosovo\* managed by a dedicated agency. However, municipalities still work on the basis of certified copies, and the northern

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<sup>102</sup> This is largely the result of the unified address system and digitalisation project implemented by the Kosovo Cadastral Agency as part of the EU project "Support to the Civil Registration Agency and unified address system".

<sup>103</sup> Gjilan/Gnjilane, Hani i Elezit/Elez Han, Malishevë/Mališevo, Mamuša/Mamushë/Mamuša, Parteš/Partesh, Rahovec/Orahovac and Ranilug/Ranillug.

<sup>104</sup> OSCE Mission, Community Rights Assessment Report, Fourth Edition, p. 15. However, nine municipalities were only partially compliant, and four municipalities (in addition to the four municipalities in northern Kosovo) displayed signs only in the local majority language.

municipalities are still not using Kosovo\* documentation.<sup>105</sup> Representatives of the communities indicated that this situation creates uncertainty because it leads to the double registration of birth, marriage and other certificates. The Advisory Committee observes that the lack of an adequate civil registry and other forms of registration, coupled with the non-automatic recognition of documents released by parallel administrative structures, impact strongly on persons belonging to different communities as legitimate users.

### *Recommendations*

79. The Advisory Committee reiterates that the authorities should take the necessary measures to comply with their obligation to display bi- and multilingual public signs in all relevant official languages. Damages to signs should be officially condemned, adequately sanctioned and should be repaired without delay.

80. The authorities should implement a comprehensive civil registry throughout Kosovo\* to ensure that registration is streamlined and valid in all municipalities.

## **Article 12 of the Framework Convention**

### **Equal access to education**

81. The Advisory Committee notes with deep concern that no progress has been made as regards the establishment of an integrated education system and that two parallel education structures operated by the authorities, in Prishtinë/Priština and Belgrade, and following different curricula, continue to exist.<sup>106</sup> With the exception of K/Bosniaks and K/Turkish, in general, smaller communities (Roma, Ashkali and Egyptian, K/Croats, K/Montenegrins and Gorani) have no access to community-specific educational subjects to enable them to preserve their cultural identity.

82. The Advisory Committee was informed by the authorities that efforts were directed to increase the participation of smaller communities at all education levels with a specific focus on preschool, as well as measures targeted specifically to higher education (see further below). Inclusion of children from minority communities was among the goals of the Kosovo Education Strategic Plan 2011-2016, which was evaluated by the Ministry of Education, Science and Technology (MEST) in 2015. Although the lack of disaggregated data on ethnicity prevents drawing concrete conclusions for different education levels, the Evaluation Report underlines that overall enrolment increased, with the most challenging groups being children from smaller communities and those living in remote rural areas.<sup>107</sup> The Advisory Committee understands from its interlocutors that even physical access to education continues to be a problem for persons belonging to some smaller communities, including for Gorani pupils living in remote areas.

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<sup>105</sup> See EULEX Report, note 37, p. 35.

<sup>106</sup> This established parallelism was legalised in 2008 when the Kosovo\* institutions integrated the Ahtisaari plan into legislation and drafted the Law on Education in the Municipalities of the Republic of Kosovo. Serbia continues to administer Serbian schools throughout the territory, paying salaries to teachers. The Kosovo\* government also pays for part of the salaries, school maintenance and other running expenses.

<sup>107</sup> MEST, Evaluation Report of Kosovo Education Strategic Plan 2011-2016, p. 34, available at <http://masht.rks.gov.net/uploads/2016/02/raport-vleresimi-psak-2011-2016-eng-web.pdf>.



83. A reform of the curriculum, incorporating multi-ethnic and inclusive teaching methods, is ongoing. The new curriculum has been translated in the Turkish and Bosnian languages. The Evaluation Report of the Strategic Plan indicates that, at the end of 2015, the curriculum was implemented in 92 schools (8% of the overall number) in 30 different municipalities. Some 30% of teachers had been trained and teaching materials had been developed.<sup>108</sup> The MEST however, acknowledges that the implementation falls short of the original objectives, due, *inter alia* to the lack of adequate human and financial resources. While acknowledging the positive steps taken, such as the translation of the curriculum in languages of some smaller communities, the Advisory Committee remains deeply concerned by the fact that no concrete steps have been taken to develop the curriculum in the Serbian language and modules of community languages for the majority community, e.g. the Serbian language as a non-first language, Turkish as a non-first language, etc. The non-harmonisation of Kosovo\* and Serbian curricula, which is used in Serbian-administered schools, and the lack of compulsory learning of the other official language and minority languages in general, creates the situation whereby younger generations are unable to learn the other official language and to interact with each other. It follows that current education policies are implemented in a manner that promotes ethnic and social division rather than fostering a multi-ethnic and inclusive society (see also Article 14).

84. Higher education opportunities in the languages of smaller communities remain limited and students belonging to these groups are often obliged to pursue their studies elsewhere. Affirmative measures (quota system, scholarships, benefits in kind) to facilitate access to higher education by persons belonging to non-Albanian communities, such as K/Turks, K/Bosniaks, Roma, Ashkali and Egyptians, have been in place for some time. As a result, participation is estimated to reach around 10% of the age group 20-24 (compared with 47% of K/Albanians).<sup>109</sup> A quota system in place to ease access to higher education of persons belonging to minority communities was reportedly misused<sup>110</sup> and later replaced by measures based on self-identification of applicants.<sup>111</sup>

85. Concerns about the recognition of qualifications are persisting for students wishing to move from one education system to the other and for entering the job market. The Advisory Committee welcomes the initiative launched in 2015 by the Prime Minister's Office for Community Affairs together with civil society and international donors to set up a mechanism for the recognition of diplomas released between 2001 and 2015 by the University of North Mitrovica, to allow for applying for jobs, obtaining licenses and sitting professional exams in

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<sup>108</sup> *ibid* p. 45.

<sup>109</sup> *ibid* p. 80. K/Serb students are not counted as regards their attendance to the University of North Mitrovica, which is not part of the Kosovo\* higher education system.

<sup>110</sup> Only 30 of the 382 reserved places were filled by persons belonging to national minorities, see ECMI, "Minority Communities in the Kosovo Higher Education system: Is the Reserved Quota System being Abused?" (2015) available at [www.ecmikosovo.org/en/Political-update-and-analysis/Is-the-minority-quota-system-in-higher-education-being-abused-](http://www.ecmikosovo.org/en/Political-update-and-analysis/Is-the-minority-quota-system-in-higher-education-being-abused-).

<sup>111</sup> Self-certifications about language and ethnicity have replaced a letter attesting ethnicity provided by political parties to compete for the 12% quota reserved in higher education, as well as for scholarships and benefits in kind such as places in dormitories and access to canteens; see MEST Administrative Instruction No. 09-2016.



public institutions.<sup>112</sup> It also notes that some progress has been noted within the EU-facilitated dialogue as regards the recognition of qualifications issued in the Republic of Serbia.<sup>113</sup>

86. Access to education for Roma, Ashkali and Egyptian communities is unequal. Minority representatives and NGOs indicated that some positive developments have taken place as regards better performance, higher completion rate of secondary education, and improved youth literacy. The Advisory Committee observes, however, that civil society, supported by international donors, appears to be the main force behind these results, for instance in the establishment and running of learning centres which provide out-of-school support to children.<sup>114</sup> Nevertheless, these communities still face severe challenges in access to quality education and are disproportionately affected by low enrolment and/or a high dropout rate, where girls are more affected due to, *inter alia* early marriages. In addition, as a consequence, they later face reduced prospects on the labour market (see Article 15).<sup>115</sup> The Advisory Committee is also deeply concerned by reports that there are still examples of segregation and of separated education within mainstream education (“in class” separation) of Roma, Ashkali and Egyptian children.<sup>116</sup>

87. The authorities have taken some policy steps to improve the situation such as the renewal of the Strategy for Inclusion of Roma and Ashkali Communities in the Kosovo society 2017-2021 (see also Article 4) and the creation of mandatory “teams for prevention and response towards abandonment and non-registration in compulsory education (PTRANS)”<sup>117</sup> at municipal level. MEST is also providing scholarships to facilitate access to education of the three communities (500 for secondary education and 33 for higher education in 2015). Nonetheless, the Advisory Committee notes that, while it is too early to assess the impact of the strategy, PTRANS operates so far only in 20% of the municipalities. Moreover, the education mediators, who proved to be successful in connecting the communities with the education systems, and the 40 community-based learning centres, continue to be run by civil society and their institutionalisation is not foreseen.

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<sup>112</sup> MEST, “Regulation (GRK) - No. 21/2015 on procedures and criteria for the issuance of certificates to citizens of the Republic of Kosovo who have received degrees from the University of Mitrovica/Mitrovicë [...]”.

<sup>113</sup> MEST, Administrative Instruction No. 9/2015, Principles and procedures for the recognition of diplomas of higher education and professional schools and university grade issued in the Republic of Serbia from 10 August 2015.

<sup>114</sup> See projects implemented by the NGO Balkan Flowers.

<sup>115</sup> Enrolment levels of Roma, Ashkali and Egyptian children from primary to secondary education are several percentage points lower than the national average and decrease substantially with the school level (e.g. primary 68.1% v. 91.6%, lower secondary or secondary 65% v. 95.9%, secondary school or more 30.3% v. 82%); see UNICEF/Kosovo Statistics Agency Cluster Survey, note 33. The government Strategy for Inclusion of Roma and Ashkali Communities in the Kosovo society 2017-2021 provides absolute disaggregated data of enrolments and dropouts.

<sup>116</sup> Information received by interlocutors during the visit to Obiliq/Obilić municipality where a group of only Roma children continue to attend a Serbian-administered school in disrepair and with no current water. Segregation is acknowledged in the Evaluation Report of the Education Strategy, note 107, p. 34.

<sup>117</sup> MEST, Administrative Instruction No. 19/2012 on Establishment and Enforcement of Teams for Prevention and Response Toward Abandonment and Non-enrolment in Compulsory Education, available at <http://masht.rks.gov.net/uploads/2015/05/ua-19-2012-new.pdf>.

### *Recommendations*

88. The Advisory Committee urges the authorities to prioritise the development of an integrated Kosovo\* curriculum in the Serbian language with materials for teaching and learning, as well as to solve access to education issues affecting persons belonging to national minorities, including diploma recognition, in consultation with minority representatives.

89. The Advisory Committee urges the authorities to strengthen action at central and local level on non-enrolment, school dropouts and access to quality education for Roma, Ashkali and Egyptian children, and to support a gender equality perspective towards school attendance of girls. The authorities should ensure the adequate implementation of the Strategy for Inclusion of Roma and Ashkali Communities in the Kosovo society 2017-2021, additional measures for the Egyptian community, and take responsibility for learning centres and mediators. Any form of ethnic segregation in schools should be immediately discontinued.

#### **Textbooks, teacher training and intercultural education**

90. The Advisory Committee was informed that textbooks and teaching materials are being developed to reflect the content of the new curriculum, while the publication of adequate textbooks for minority communities, such as the K/Turkish and the K/Bosniak communities, remains a challenge, especially in upper secondary education. When available, they tend to be either poorly translated from the Albanian language or replaced by textbooks imported from neighbouring countries. A Romani language textbook was published in 2014 and a second is under preparation.

91. The existence of the two parallel school systems, following different curricula, has a particular impact on teaching materials. The authorities referred to discrepancies, conflicting historical representation and the presence of messages of hatred in textbooks used in Serbian-administered schools, notwithstanding some steps which have been taken to overcome this, in compliance with the Comprehensive Proposal for the Kosovo Status Settlement.<sup>118</sup> Bans or confiscation on the importation of textbooks and exam materials between Serbia and Kosovo\* have ensued, which prevent the guarantee of equal access to education for persons belonging to national minorities. The Advisory Committee is seriously concerned that the lack of textbooks and other teaching materials free from ethnic bias for minority communities, continues to hamper the development of a multi-ethnic society and considers that, in particular, commitment and action is required by both Prishtinë/Priština and Belgrade institutions to reach a positive outcome. The Advisory Committee underlines the importance of introducing critical thinking in history teaching, based on the appreciation of multiple perspectives and the promotion of intercultural understanding through the education system.

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<sup>118</sup> The Independent Commission for Reviewing of Serbian Language Teaching Materials, established in 2010 to check if curricula and textbooks meet the criteria stipulated in the legislation, issued a report documenting all pages in textbooks that were not in compliance with the Constitution of the Republic of Kosovo\*, see p. 17 in particular about history, available at [www.erisee.org/sites/default/files/-%20Comprehensive%20Report%20of%20Independent%20Commission%20for%20the%20review%20of%20serbian%20language%20teaching%20materials.pdf](http://www.erisee.org/sites/default/files/-%20Comprehensive%20Report%20of%20Independent%20Commission%20for%20the%20review%20of%20serbian%20language%20teaching%20materials.pdf).

92. With some exceptions,<sup>119</sup> it appears that training related to inclusive education, interethnic dialogue and diversity management in the classroom, is not readily available to teachers. This results in a lack of qualified teachers. Intercultural education is often understood as the participation of smaller communities in the K/Albanian system of education rather than the development of community-specific educational modules concerning minority culture, traditions and history.

#### *Recommendations*

93. The Advisory Committee calls on the authorities to take steps, in consultation with minority representatives, towards the development, of adequate quality teaching and learning materials in minority languages free from stereotypes or other harmful representations. Modules supporting the preservation of identity, language and culture of these communities should also be developed, as well as critical thinking in history teaching, based on the appreciation of multiple perspectives and the promotion of intercultural understanding.

94. It further calls on the authorities to ensure that a sufficient number of teachers and school staff is effectively trained to accommodate diversity in the classroom and promote intercultural respect and understanding throughout the education system.

### **Article 14 of the Framework Convention**

#### **Teaching and learning in and of minority languages**

95. The current parallel education systems (see Article 12) provide different first language education opportunities for members of numerically smaller communities who tend to choose either system depending mainly on their location and, to a lesser extent, on their language and/or religion. Kosovo\* institutions offer teaching in the Albanian, Turkish and Bosnian languages, and the Serbian-administered system offers education in Serbian. In some cases, minority language education is offered even if the number of pupils is less than the official requirement.<sup>120</sup> Educational needs of smaller communities are not sufficiently addressed. Finally, Roma have benefited from a pilot project, funded by the MEST and international donors, offering Romani-language classes which encompassed elements of Roma culture and history. However, representatives of these communities and the OSCE indicated that the classes were discontinued due to the lack of funds and in some cases they never started.<sup>121</sup> For instance, in Ferizaj/Uroševac, classes started in 2016 with some 25-30 pupils attending, but attendance has decreased and the teacher only continues them on a voluntary basis.

96. The Advisory Committee regrets that education in the other official language continues to be unavailable for pupils following, either the Kosovo\* or the Serbian curricula, while some teaching of Albanian as a second language is provided to students following education in Bosnian and Turkish languages. This teaching is, however, often inadequate in terms of the number of hours, qualified teachers and learning materials. The Advisory Committee is deeply

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<sup>119</sup> For instance, the Ministry of Education indicated that 66 teachers have been trained for inclusive education and for repatriated children in the Roma, Ashkali and Egyptian communities.

<sup>120</sup> OSCE Mission, Community Rights Assessment Report, Fourth Edition (2015), p.18. This is the case for Bosnian and Turkish.

<sup>121</sup> Classes stopped in Gjakovë/Đakovica and never started in Fushë Kosovë/Kosovo Polje, Obiliq/Obilić and Pejë/Peć.

concerned that, to date, no concerted efforts seem to have been made to support the introduction of the teaching of the two official languages to non-native speakers. It noted that the situation is deadlocked, due to the lack of commitment by both parties to take the first step. It recalls that the continuing existence of two separate educational systems providing education in Albanian and Serbian, inevitably perpetuates divisions between communities and carries, as a consequence, a move towards monolingualism. In order to build a multi-ethnic and inclusive society, efforts should be concentrated on developing the learning of official and minority languages at all educational levels, including the possibility to study them at public universities. This will not only contribute to promoting a generation of teachers who have been trained within Kosovo\* in the two official languages, but also of translators and interpreters (see under Article 10).

#### *Recommendation*

97. The Advisory Committee reiterates its call on the authorities to intensify efforts to ensure adequate first language education opportunities for members of the numerically smaller communities. They should also put in place opportunities for all persons to learn the two official languages of Kosovo\* and provide adequate teacher training programmes for official and minority languages throughout Kosovo\*.

### **Article 15 of the Framework Convention**

#### **Representation in elected bodies and the civil service**

98. Overall, the representation of minority communities in the Assembly of Kosovo and its committees, in independent institutions and leadership-level appointments are in compliance with the law. Persons belonging to non-Albanian communities fill the 20 reserved seats in the assembly,<sup>122</sup> as well as the positions of deputy presidents of the assembly,<sup>123</sup> deputy prime minister, ministers and deputy ministers.<sup>124</sup> However, the Advisory Committee notes that the constitution has not yet been amended to provide the K/Croat and K/Montenegrin communities with reserved seats in the assembly despite the amendment of the legislation on communities in this regard (see also Article 3). The composition of the Consultative Council for Communities (CCC) is representative of all non-Albanian communities, as K/Croat and K/Montenegrins have been given two seats each in the council, as provided by Law No. 04/L-020. However, it does not respect the gender equality quota (only five out of 25 members are women which is less than the 40% required by statute).

99. The Advisory Committee also appreciates that the implementation of the legal framework for local government mechanisms ensuring the participation of persons belonging to minorities, and that further guidance is provided by the Ministry for Local Government and Administration.<sup>125</sup> Community committees and Municipal Offices for Communities and Returns

<sup>122</sup> However, non-Albanian communities did not win any seat beyond the stipulated quota.

<sup>123</sup> One deputy assembly president is reserved for the K/Serb community, and the other for another non-Albanian community. In the current legislature, the two posts are filled by a K/Serb and a K/Bosniak.

<sup>124</sup> One of the three deputy prime ministers is K/Serb; four ministers out of 19 (one more than the legal requirement) are from non-Albanian communities (K/Serb, K/Bosniak and K/Turkish); and three deputy ministers (less than the six requested) are non-Albanian (Roma, Ashkali and K/Bosniak).

<sup>125</sup> Secondary legislation and policy guidance documents to support the functioning of the four mechanisms include Administrative Instruction No. 03/2014 on the procedure of establishment, composition and competences

(MOCRs) have been established throughout almost the whole territory;<sup>126</sup> deputy mayors for communities and deputy chairpersons of municipal assemblies for communities, have been appointed in almost all municipalities.<sup>127</sup> The Advisory Committee is concerned, however, that the presence of minorities in these bodies does not always translate in their broader impact on the political process. Moreover, although there has been an increase in the appointment of Roma, Ashkali and Egyptian representatives following the 2013 elections, smaller communities continue to be under-represented in elected municipal bodies and there is very poor representation of women.<sup>128</sup>

100. Representatives of national minorities expressed concern over the Law on Civil Service, which is considered unsatisfactorily implemented, in particular at local level for the smaller communities.<sup>129</sup> A government report concluded that persons belonging to communities represented 7.7% of central and local level staff, with the number of K/Bosniaks, K/Serbs and K/Turkish being proportionate to census data.<sup>130</sup> On the contrary, Roma, Ashkali, Egyptian and Gorani communities were under-represented with a current rate of civil service employment of approximately 1%. The Advisory Committee understands from its interlocutors that these discrepancies reflect the disparity of qualifications, as well as a perceived, general lack of political will to comply with legal requirements. In the context of the EU-facilitated dialogue for the normalisation of relations between Belgrade and Prishtinë/Priština, some progress has taken place with respect to the “K/Serb security structures” whose personnel has been partially integrated into Kosovo’s\* administrative structures both in the North and the South.<sup>131</sup> Finally, in 2016, the OCA put in place an internship programme with the support of international donors facilitating the placement of 100 non-Albanian interns from the University in Mitrovicë/Mitrovica North in different central and local level institutions for a six-month period.<sup>132</sup>

101. Among law enforcement agencies, the KP stands out as a multi-ethnic and gender-diverse force, with 16.9% of the overall number of officers belonging to minority communities

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of standing committees in municipality; Administrative Instruction No. 01/2014 on The Procedure of Appointment of Deputy Mayors in Municipalities; ‘Terms of Reference for Deputy Mayor for Communities’ in 2015.

<sup>126</sup> CCs have been established in every municipality in Kosovo\*, including the four northern municipalities. MOCRs are established in all municipalities throughout Kosovo\* excluding the northern municipalities, even though some MOCRs remain short-staffed.

<sup>127</sup> No DCMAC has been appointed in Gračanica/Graçanicë as no member of communities in a numerical minority at the municipal level was elected to the municipal assembly.

<sup>128</sup> For an overview, see OSCE Mission, “An Assessment of Local-level Mechanisms for the Protection and Promotion of Communities’ Rights and Interests in Kosovo”, June 2014, available at [www.osce.org/kosovo/120343](http://www.osce.org/kosovo/120343).

<sup>129</sup> According to the law, 10% of the workforce must be represented by members of communities at the central- and local-level and representation must be proportionate to the demographic composition of each municipality.

<sup>130</sup> Office for Community Affairs (OCA) report, available at [www.zck-ks.net/repository/docs/Assessment\\_on\\_Employment.pdf](http://www.zck-ks.net/repository/docs/Assessment_on_Employment.pdf). On the reliability of census data, see Article 3 of this opinion.

<sup>131</sup> Some 483 staff members from the Serbian Civilian Protection, for example, have been integrated in various institutions and ministries, mainly in North Kosovo and all signs of Civil Protection presence in the North dismantled, see EULEX Compact Report, note 37, p. 37.

<sup>132</sup> Any future public service employment, however, will be dependent on successful diploma recognition or certification.

and 17% women.<sup>133</sup> The police is also a trusted institution.<sup>134</sup> The establishment of four police stations in the North, the extensive involvement of police in communities' protection through the special units for religious sites (see Article 5) and the participation of the KP in local level security bodies, such as the MCSCs and the LCPSs, have helped promote trust. Although the judiciary is still far from thoroughly reflecting Kosovo's\* ethnic diversity, positive steps have been taken, as two representatives of non-majority communities (one K/Serb and one K/Bosniak) were elected to the Kosovo Prosecutorial Council. The recruiting process for judges and prosecutors in northern Kosovo is almost completed.<sup>135</sup>

### *Recommendations*

102. The Advisory Committee calls on the authorities to guarantee the appropriate representation of the K/Croat and K/Montenegrin communities in the Assembly of Kosovo. The authorities should also ensure adequate and effective political and other forms of support to the local mechanisms representing communities in order for them to be fully representative.

103. Further steps should be taken to intensify the recruitment of persons belonging to minority communities in public administration, including in the judiciary and in northern Kosovo, with a view to reflecting adequately Kosovo's\* ethnic diversity.

### **Effective participation in the decision-making process**

104. The Advisory Committee notes that K/Serb representatives considered their presence in the government structure insufficient for effective participation in decision making. The absence of direct communication with the majority was often mentioned as one of the reasons preventing more fruitful interactions. The CCC is the main body in charge of representing communities' interests at central level and ensuring their participation in decision making, *inter alia* by reviewing and commenting on legislative initiatives of relevance for communities. Views, however, diverged among its members concerning its role. Some members indicated that CCC recommendations are only requested in the last stage of the legislative process and, moreover, seldom taken into account by the government. The Advisory Committee also notes from other sources that there is no systematic consultation of the CCC on policy making concerning minorities, and when it occurs, it is often prompted by the international community.<sup>136</sup> Moreover, the CCC does not report to international human rights mechanisms, as provided by law and by the constitution,<sup>137</sup> and so far has neither engaged in consultations nor outreach activities to support the understanding of community issues.<sup>138</sup>

105. The Advisory Committee is aware from meetings during its visit to Kosovo\* that views and situations vary substantially as regards the functioning of, and participation in local

<sup>133</sup> As of June 2016, non-majority communities were represented as follows: 12.09% K/Serb, 2.27% K/Bosniak, 0.72% K/Turkish, 0.45% Roma and 0.65% other; see EULEX Compact Report, note 37.

<sup>134</sup> In 2015, the Police Inspectorate of Kosovo received 1 237 complaints and information of potential misconduct, 5.4% fewer than in 2014, resulting in 220 officers under investigation (2.45% of the total PK workforce), see EULEX Compact Report, note 37.

<sup>135</sup> The KJC has published 48 vacancies for K/Serb judges, from which 38 have already been selected and recommended to the president for appointment.

<sup>136</sup> OSCE Mission, Fourth Communities Rights Report, 2015, p. 21.

<sup>137</sup> See Article 12 of Law No. 04/L-020 on amending and supplementing Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, 21 December 2011.

<sup>138</sup> One of the reasons indicated by members is the shortage of funding.

mechanisms representing communities in decision making (CCs, MOCRs, DMC and DCMAC). However, representatives of communities shared the perception that, in certain municipalities, these mechanisms often overlook the interests of smaller communities and fall short of their duty to ensure the participation of communities in the decision-making process. Additional concerns include lack of clear reporting and oversight between these mechanisms and central level, poor co-operation among the different mechanisms, and non-prioritisation of the role played by these mechanisms in overall municipal policy. One of the consequences is that persons belonging to national minorities continue to rely on informal and personal connections rather than institutionalised channels to transmit their grievances, putting smaller and under-represented communities at a disadvantage. The Advisory Committee understands that compliance with the law as regard local representation is perceived by minority representatives as a perfunctory exercise rather than a real commitment to foster intercommunity relations and to promote inclusiveness. Overall, there is a sense of disconnection between central and local level with respect to the needs of the communities, as well as the perception that decentralisation of minority issues does not encompass effective participation and lead to satisfactory outcomes.

### *Recommendations*

106. The Advisory Committee urges the authorities to intensify efforts to consult in a meaningful manner the Consultative Council for Communities (CCC) on all issues of relevance to minority communities in order to enhance its impact in the decision-making process. It also calls on the council to engage in consultation and outreach activities in order to promote the interests and understanding of communities, including numerically smaller ones.

107. The authorities should also ensure that municipal community-specific protection mechanisms perform their duties effectively providing them with the necessary resources and guidance. In addition, they should guarantee that their work is prioritised by other municipal actors with a view to promoting intercommunity relations and developing inclusiveness for community representatives.

### **Effective participation in socio-economic life**

108. The Advisory Committee acknowledges that throughout Kosovo\*, employment remains the priority for both minority communities and the majority.<sup>139</sup> In 2015, the official unemployment rate was 32.9 %, with youth unemployment rising to 57.7%.<sup>140</sup> Non-majority communities are particularly affected, and their representatives regularly mentioned employment in local government or public entities, as the only secure option. The mechanism for the recognition of degrees from the University of Mitrovicë/Mitrovica and the OCA internships (see Article 12) improved employment opportunities of certain non-Albanian communities, but more is needed. K/Serbs, for instance, are still affected by land usurpation following their departure at the time of the conflict and which still today restricts their

<sup>139</sup> More than three quarters of Kosovo's \* inhabitants (76%) think that the largest problems facing Kosovo\* today are related to the socio-economic conditions. Indeed, respondents selected unemployment (48%), followed by poverty (21%) and corruption (7%) as the three biggest issues which impact their social well-being. See UNDP in Kosovo\*, Public Pulse XII, November 2016, available at [www.ks.undp.org/content/kosovo/en/home/library/democratic\\_governance/public-pulse-12/](http://www.ks.undp.org/content/kosovo/en/home/library/democratic_governance/public-pulse-12/).

<sup>140</sup> Eurostat, Enlargement countries - labour market statistics, available at [http://ec.europa.eu/eurostat/statistics-explained/index.php/Enlargement\\_countries\\_-\\_labour\\_market\\_statistics#Main\\_statistical\\_findings](http://ec.europa.eu/eurostat/statistics-explained/index.php/Enlargement_countries_-_labour_market_statistics#Main_statistical_findings).

economic opportunities. The economic perspective of the Roma, Ashkali and Egyptian communities remains particularly bad as they experience an even lower level of employment (7%) when compared with K/Serbs (21%) and K/Albanians (40%). The Advisory Committee notes that active labour market measures for minority communities put in place by the Ministry of Labour and Social Welfare, were also addressed to Roma, Ashkali and Egyptians, but their participation was limited.<sup>141</sup> Some efforts were put in place at municipal level, but they mainly consisted of seasonal or menial jobs with no long-term perspective.<sup>142</sup>

109. The Advisory Committee welcomes the fact that all lead-contaminated camps have been closed and healthcare provided initially. However, it also notes that access to social welfare continues to be a general concern for the Roma, Ashkali and Egyptian communities. An introduction of stricter criteria for families to benefit from social assistance, which includes a narrow definition of ‘families who live in a single household’, has been unfavourable to these communities, who often live in multi-generational families, and has led to the removal of many community members from the beneficiary lists.<sup>143</sup>

110. As for access to health care, K/Serbs, as well as some members of smaller communities and sometimes even members of the majority, continue to have access to care provided by the parallel Serbian-administered system. This may, however, imply travelling long distances to receive care in Serbian-run health facilities, leading to additional costs and an increased risk in case of medical emergency. Moreover, the Advisory Committee was also informed that the absence of public transportation is an issue for persons belonging to certain minorities living in isolated areas, such as in Novo Brdo/Novobërdë, when seeking access to health services.

#### *Recommendation*

111. The Advisory Committee recommends that the authorities devise measures targeting employment opportunities for persons belonging to national minorities within employment programmes and activities to promote their economic integration, paying particular attention to the needs of the Roma, Ashkali and Egyptian communities. It also calls on the authorities to ensure that adequate access to health care and social assistance is in place for members of minority communities.

### **Article 16 of the Framework Convention**

#### **Sustainability of return**

112. The rate of return from within and outside the region of persons displaced by the conflict is slowing down and the decline in the number of voluntary returnees continues. In 2015, there were 802 voluntary returns (429 K/Serbs and 306 Roma, Ashkali and Egyptian) and, in 2016, 582 voluntary returns (299 K/Serbs and 225 Roma, Ashkali and Egyptians). Overall, since 2000, the number of voluntary returns by members of minority communities stands at

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<sup>141</sup> In 2014, 247 persons belonging to the Roma, Ashkali and Egyptian communities reportedly benefitted from these schemes, out of 2 262 persons registered as jobseekers, of whom 49.5% are women.

<sup>142</sup> Data for the municipalities of Obiliq/Obilić and Fushë Kosovë/Kosovo Polje in UNDP, Community Vulnerability Assessment Report, 2013.

<sup>143</sup> Law No. 04/L-096 amending and supplementing Law No. 2003/15 on Social Assistance Scheme in Kosovo, 13 June 2012. Estimates from communities and local authority sources are that in Prishtinë/Priština, approximately 400 families were affected.



27 286 individuals. In September 2016, the number of IDPs was 16 557, with the highest concentration in Mitrovicë/Mitrovica.<sup>144</sup> The Advisory Committee is aware that returns to the original villages are prevented by the weakness of the mechanisms for the protection of individual rights, limited employment opportunities, continuing difficulties with restitution of property and security incidents.<sup>145</sup>

113. Although there has been improvement in the general security situation and freedom of movement (there are no longer road blocks and there is free movement within Kosovo\*), 22% of the 479 recorded security incidents affected returnees, in particular K/Serbs.<sup>146</sup> The Advisory Committee was informed by returnees themselves that security incidents, in particular thefts of property and burglaries, are still common in the region of Pejë/Peć, Istog/Istok and Klinë/Klina. While being open to acknowledge that ethnic bias was not necessarily at the origin of these incidents, communities' representatives underlined that the absence of effective investigation and law enforcement by the police and the judiciary contributed to a perception of impunity for the perpetrators and to a feeling of insecurity within the minority communities. Return is also made difficult by persisting tensions between receiving communities and returnees, with the former expressing strong dissent in a number of locations through opposition to visits and petitioning.

114. The Advisory Committee notes that some steps have been taken at central level since its previous opinion to improve the return process; namely the Ministry for Communities and Returns (MCR) revised the Strategy for Communities and Returns 2014-2018, the launching of an assessment of the situation of IDPs and the establishment of the Inter-Ministerial Working Group on Returns in 2015. However, there is no assessment to date on whether the strategy contributed to any progress and the working group has never been convened. Due to the persisting lack of a comprehensive legal domestic framework for the protection of rights of IDPs and of a systematisation of data collection to suitably assess their needs and characteristics, the return process still occurs on the basis of existing guidelines. As a result, procedural co-ordination at central and local level is still problematic and training for local bodies, harmonisation of a return assistance package and data collection are still lacking. The Advisory Committee also understands from some of its interlocutors at central level that allocated budgets may sometimes be diverted, thus preventing the completion of ongoing processes.

115. At local level, the performance of municipalities on returns varies substantially. There has been progress with respect to the establishment of Municipal Offices for Communities and Returns (MOCRs), which are now present in all municipalities except the four in the North. However, if 90% of MOCRs have established contacts with all communities, only half actually undertake needs assessments, and fewer monitor policies relevant to communities.<sup>147</sup> Moreover, municipal working groups on return, mandated to support the work of the MOCR, were established only in 24 out of the 38 municipalities and only 16 are functioning. The

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<sup>144</sup> All data are from UNHCR, Kosovo Office Statistical Overview 2016. The UNHCR estimates that nearly 107 000 persons still have displacement-related needs and are waiting for solutions. Among them 88 000 are in Serbia, 16 713 in Kosovo\*, 1 477 in Montenegro and 674 in "the former Yugoslav Republic of Macedonia".

<sup>145</sup> A UNHCR survey demonstrated that less than 60% of those who returned in the last five years were still living in the place of return.

<sup>146</sup> OSCE Mission, Community Rights Assessment Report, Fourth Edition (2015), p. 21.

<sup>147</sup> *ibid.*

Advisory Committee notes that some municipalities were able to allocate land for return-related projects, to fund housing projects and emergency packages. It also observes, however, that unresolved property issues (such as unresolved compensation claims (approximately 22 000), problems with evictions and re-evictions, illegal (re)-occupation, payment of property taxes, and land allocation continue to prevent IDPs from enjoying their property rights. Often, the final result is that returnees tend to cluster in ethnically homogenous locations in existing or newly planned settlements (for instance Gjilan/Gnjilane and Gračanica/Gračanicë or the Sunny Valley project), thereby exacerbating the separation between communities.

116. Finally, the Advisory Committee is aware that forced returns can be even more problematic since, once the initial support by international donors ends, there are no alternative long-term measures or resources to sustain the process put in place by the authorities. Interlocutors of the Advisory Committee representing the majority and minority communities in Plemetin/Plemetina (Obiliq/Obilić municipality) presented the situation of their village as an example of unco-ordinated forced return policy, in particular of persons belonging to the Roma minority. The intake of families not originally from the area, helped by the support of the international community which provided funds for constructing housing and a financial assistance package, appears to have further strained scarce local resources. As additional funding for infrastructure, education and employment opportunities, or increased police patrolling, was not forthcoming, local resources were largely insufficient. However, the absence of a long-term plan of reintegration after the initial resettlement and the perceived sense of being at the receiving end of higher political interest contributes to creating division rather than promoting integration among the different communities affected.

117. The Advisory Committee finally regrets the fact that there has been no real progress on reconciliation, notwithstanding some central level institutional initiatives (Working Group on Dealing with Past and Reconciliation). Besides local, positive examples (e.g. in the North, the Zubin Potok municipality's assembly is sometimes chaired by a member of the K/Albanian community), further efforts are necessary in order to move beyond mere cohabitation which may, in practice, reinforce the ethnically based divides and prevent the emergence of an inclusive society. The Advisory Committee also observes that impunity for serious human rights violations committed during the conflict continues to impact negatively on interethnic relations. The creation of Specialist Chambers and a Specialist Prosecutor's Office, with jurisdiction over war crimes, represents thus an opportunity to contribute to this goal.<sup>148</sup>

### *Recommendations*

118. The Advisory Committee reiterates its call on the authorities to develop a comprehensive legal framework for returnees, to standardise processes and mechanisms, including the setting up of a central database, as well as to improve co-ordination between institutions at central and local level to assist in sustainable and safe returns.

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<sup>148</sup> In 2015, the assembly adopted Article 162 of the Constitution and the Law on Specialist Chambers and Specialist Prosecutor's Office, following the Exchange of Letters between the President of Kosovo\* and the High Representative of the European Union for Foreign Affairs and Security Policy in 2014. In 2016, the "Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands" was concluded, available at [www.scp-ks.org/en/specialist-chambers/background](http://www.scp-ks.org/en/specialist-chambers/background).

119. Particular attention should be devoted to expanding the work of Municipal OCRs and their support bodies in outreach, needs assessment, and the identification and implementation of projects benefiting communities and returnees in order to ensure their access to property, housing, social services and employment. More efforts must be made to resolve conflict-related property cases and to build confidence and trust between returning and receiving communities.

## **Article 17 and 18 of the Framework Convention**

### **Regional co-operation**

120. The EU-facilitated dialogue between Belgrade and Prishtinë/Priština progressed with the conclusion, in 2013 of the First agreement of principles governing the normalisation of relations (the so-called Brussels Agreement) and further agreements in 2015 and 2016. The rationale of the Brussels Agreement, including the establishment of the Association/Community of K/Serb majority municipalities, was to facilitate the integration of North Kosovo into the Kosovo\* legal system and phase out progressively the existence of two parallel administrative systems. The Advisory Committee welcomes the concrete results achieved in the fields of justice, civil protection, vehicle insurance and customs duty. In 2015 and 2016, agreements were reached in the areas of energy, telecommunications, free movement (licence plates), use of the bridge over the River Ibar in Mitrovicë/Mitrovica and the Association/Community of K/Serb majority municipalities.

121. The Advisory Committee stresses the importance of these achievements to promote intercommunity relations and develop an integrated and inclusive society where diversity is recognised and respected as an integral part of society. It regrets that, up to now, there has been no progress in the establishment of the Association/Community of K/Serb majority municipalities. It was also informed about the difficulties in the implementation of the various agreements, including those caused by discrepancies in the translation of the different linguistic versions of legal texts. It also observes that the ongoing Brussels negotiations have put the relations between the communities in Kosovo\* in a new light. Many of its interlocutors referred to the negotiations as the determining factor for how the future relationship between the K/Albanians and the K/Serbs will develop, although with opposite expectations (positive for K/Albanians and more negative for K/Serbs). The Advisory Committee also perceived a sense of disconnection between the high-level political process and the local level, the latter being excluded from involvement in fundamental decisions which have an impact on daily life. The Advisory Committee wishes to underline the utmost importance of an inclusive dialogue in order to guarantee an interethnic and peaceful future for the people in Kosovo\* and for the overall stability of the region.

### *Recommendation*

122. The Advisory Committee encourages the authorities to pursue their efforts with respect to regional co-operation and an EU-facilitated dialogue which is inclusive and aims to promote the effective implementation of the rights contained in the Framework Convention.

### III. Conclusions

123. The Advisory Committee considers that the present concluding remarks and recommendations could serve as the basis for the resolution to be adopted by the Committee of Ministers with respect to the implementation of the Framework Convention by Kosovo\*.

124. The authorities are invited to take account of the detailed observations and recommendations contained in Sections I and II of the Advisory Committee's Fourth Opinion.<sup>149</sup> In particular, they should take the following measures to improve further the implementation of the Framework Convention:

#### **Recommendations for immediate action<sup>150</sup>**

- **Prioritise comprehensive and concrete efforts to promote interethnic dialogue and tolerance at central and local level in order to bridge divides between communities and promote reconciliation; build intercommunity relationships through initiatives targeting in particular young people, integrating the education system and applying consistently the language legislation;**
- **Take steps to ensure that the existing legal framework pertaining to national minorities is correctly implemented by strengthening mechanisms for the co-ordination, ownership and monitoring of strategies and action plans at central level, and by improving the distribution of responsibilities in the central government, its accountability and its capacity of communication at local level;**
- **Adopt all necessary measures to ensure full, equal and adequate implementation of the Law on the Use of Languages; address central and local level capacity gaps in language knowledge, quality of official translation and provision of services in minority languages, including in the judicial system; create a favourable environment conducive to the learning of the official and minority languages;**
- **Address disparities in access to justice between the K/Albanian majority and minorities, increasing the presence of non-Albanian judges, lawyers and support staff, and take steps to ensure that property restitution cases, in particular illegal reoccupation, are investigated swiftly, prosecuted appropriately and dealt with by courts in a timely fashion and sanctioned adequately enough to be an effective remedy and a deterrent.**

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<sup>149</sup> A link to the opinion is to be inserted in the draft resolution before submission to the GR-H.

<sup>150</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

Further recommendations<sup>151</sup>

- Enable the Ombudsperson Institution to function properly by providing it with adequate human and financial resources to carry out its mandate, including awareness raising, and by ensuring an effective follow-up to its recommendations;
- Implement the Strategy and Action Plan for Inclusion of Roma and Ashkali communities in the Kosovo Society 2017-2021 to improve access to education, including from a gender equality perspective, through the institutionalisation of learning centres and mediators and find without delay alternative ways for persons belonging to the Egyptian community to benefit from similar measures to those provided for in the strategy; immediately discontinue any form of segregation in schools; promote access of persons belonging to these communities to employment and social services;
- Continue condemning all expressions of ethnically hostile public discourse; improve the performances of law enforcement institutions in processing, investigating, prosecuting and adjudicating potential ethnically motivated hate crimes through application of the existing legal framework, training, and the collection of reliable data;
- Strengthen the protection of cultural heritage in consultation with all communities and the response to illegal constructions and activities by addressing gaps in the legal and policy framework; establish a transparent fund allocation mechanism for the preservation of minority cultures and identities;
- Ensure adequate financial support for the development of media dedicated to all minority communities; engage with media outlets and regulatory bodies to promote a more nuanced understanding and reporting of facts to avoid fuelling intercommunity tensions and further polarisation, including online, and enhance the training of journalists;
- Prioritise the development of an integrated curriculum in the Serbian language, of adequate first education opportunities for members of numerically smaller communities, as well as of learning opportunities of official and other minority languages; develop quality teaching and learning materials in all minority languages free from stereotypes or other harmful representations, as well as modules supporting the preservation of the identity, language and culture of the communities in consultation with their representatives; enhance teacher training programmes to accommodate diversity in the classroom and promote intercultural dialogue, respect and understanding;
- Develop a comprehensive legal framework for returnees, standardise processes and mechanisms, including the setting up of a central database, prioritise the resolution of property restitution cases, as well as improve co-ordination between institutions at central and local level and support the latter to assist in sustainable and safe returns;

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<sup>151</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

- Consult effectively the Consultative Council for Communities (CCC) on all issues of relevance to minority communities and ensure that municipal community specific protection mechanisms fulfil effectively their role as enabler for all minorities to participate in decision making; enhance the recruitment of persons belonging to minority communities in the public administration;
- Prioritise targeted employment programmes and activities to promote the economic integration of men and women from non-Albanian communities, paying particular attention to the needs of the Roma, Ashkali and Egyptian communities.