

## Memorandum following the Commissioner's mission to Kosovo\* from 30 May to 3 June 2022

### Introduction

1. The Council of Europe Commissioner for Human Rights, Dunja Mijatović, carried out a mission to Kosovo from 30 May to 3 June. The mission focused on pending issues pertaining to transitional justice and social cohesion, freedom of the media, and issues related to women's rights and gender equality.
2. During the mission, the Commissioner had discussions with the President, Vjosa Osmani-Sadriu; the Prime Minister, Albin Kurti; the First Deputy Prime Minister for European Integration, Development and Dialogue, Besnik Bislimi; the Third Deputy Prime Minister for Minority Issues and Human Rights, Emilija Redžepi; the Minister of Justice, Albulena Haxhiu; the Minister of Internal Affairs, Xhelal Sveçla; and the Minister of Education, Science, Technology and Innovation, Arbërie Nagavci. She also met with the Special Representative of the Secretary-General and Head of the United Nations Mission in Kosovo (UNMIK), Caroline Ziakeh; the Head of the OSCE Mission, Ambassador Michael Davenport; the EU Special Representative, Ambassador Tomáš Szunyog; the Head of the European Union Rule of Law Mission in Kosovo (EULEX), Ambassador Lars-Gunnar Wigemark; and the Chief of Mission of the United Nations High Commissioner for Refugees (UNHCR), Erol Arduç. Furthermore, she held meetings with the Ombudsperson, Naim Qelaj.
3. Meetings were also held with civil society organisations active in the field of transitional justice and women's rights, as well as representatives of the media sector both in Pristina and in North Mitrovica/Mitrovicë. In addition, the Commissioner also visited and met with a member of the clergy of the Visoki Dečani Monastery, a UNESCO world heritage site, and met with a returnee from a Serb non-majority community in Gjakovë/Đakovica. The Commissioner extends her thanks to all her interlocutors for their willingness to share with her their knowledge and views.
4. The Constitution of Kosovo provides for direct application of the European Convention on Human Rights and other international treaties, including the Framework Convention for the Protection of National Minorities (FCNM), and their priority over domestic law. In September 2020 the Kosovo Assembly enacted an amendment to the Constitution that gives direct effect to Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), thus extending the list of human rights treaties directly applicable in Kosovo.
5. Kosovo is a member of the European Commission for Democracy through Law (the Venice Commission) and of the Council of Europe Development Bank. The Assembly of Kosovo sends a delegation to the Council of Europe Parliamentary Assembly (PACE) with speaking rights and the Association of Kosovo Municipalities enjoys Observer status at the Chamber of Local Authorities of the Congress of Local and Regional Authorities. The Committee on the

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\* 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 (1999) and without prejudice to the status of Kosovo.

Prevention of Torture (CPT) and the Advisory Committee on the FCNM carry out their monitoring work in Kosovo on the basis of agreements signed with UNMIK in 2004. Evaluations of the alignment of Kosovo's legislation and practice with Council of Europe conventions and other standards, using the methodology of the relevant Council of Europe monitoring bodies, have been carried out within the framework of cooperation activities including, most recently, in respect of the Convention against Trafficking in Human Beings, and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

6. The programmes currently implemented by the Council of Europe Office in Pristina, focus on the efficiency of the justice system; the application of the European Convention of Human Rights (ECHR) by the Constitutional Court; economic crimes; the empowerment of Roma; freedom of expression and of the media; inclusive education; anti-trafficking; anti-discrimination; prison conditions and the fight against violence against women and domestic violence.
7. The Commissioner's mission and this memorandum are part of the Office's regular continuous human rights monitoring work. They follow up on her predecessor's work<sup>2</sup> and aim to make a further contribution to the on-going efforts of the authorities, including in co-operation with the Council of Europe, aimed at enhancing the promotion and protection of human rights in Kosovo.
8. Section I of the Memorandum deals with pending issues of transitional justice and social cohesion, including the fight against impunity for war-related crimes, access to reparations with a focus on victims of war-related crimes of sexual violence, establishing the truth about missing persons, the human rights of forcibly displaced persons and other relevant issues concerning social cohesion. Section II addresses freedom of the media and discusses protection of journalists from violence and other obstacles to journalists' work, ethical journalism and self-regulation and issues related to public service media. Section III focuses on issues related to women's rights and gender equality, including access to employment, political participation of women, enjoyment of the right to property and combating violence against women and domestic violence.

## Summary

9. This memorandum draws on the mission to Kosovo carried out by Commissioner Dunja Mijatović from 30 May to 3 June 2022, focusing on pending issues relating to transitional justice and social cohesion, freedom of the media, and issues related to women's rights and gender equality. Over the course of this mission, the Commissioner met with the authorities, representatives of civil society organizations and the media sector and international organisations. The Commissioner also visited and met with a member of the clergy of the Visoki Dečani Monastery and visited a returnee from a Serb non-majority community in Gjakovë/Đakovica.
10. Many transitional justice issues stemming from the armed conflict in Kosovo from 1998-1999 persist to this day, including impunity for war-related crimes, missing persons, displacement, human rights violations, and ethnic divisions. While fully cognizant of serious shortcomings<sup>3</sup> in past investigations of war-related crimes in Kosovo and the impact of this on the situation today, the Commissioner is concerned about the present shortcomings in the investigation, prosecution and trying of such crimes, now under the responsibility of the justice system in Kosovo. These shortcomings need to be effectively addressed by the authorities. Cooperation with the Kosovo Specialist Chambers and Specialist Prosecutor's Office should also be enhanced. Furthermore, it is important to ensure that all civilian war victims, without exception, have access to reparations, and that safe conditions are in place for victims of war-related

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<sup>2</sup> The Commissioner's predecessor's [memorandum](#) following his mission to Kosovo from 5 to 9 February 2017.

<sup>3</sup> Ibid. paragraph 17.

crimes of sexual violence to come forward, including preserving their privacy and avoiding their re-traumatisation.

11. The Commissioner is concerned that important discussions about missing persons as a result of the conflict in Kosovo have been marred by disagreements and lack of cooperation between Belgrade and Pristina. She encourages the parties to resolve the disputes and cooperate on the resolution of the remaining cases of missing persons, putting the families of the missing persons at the centre of all their considerations.
12. Many obstacles to sustainable returns noted by the Commissioner's predecessor still remain in place and need to be tackled, especially with regard to addressing crimes that undermine potential returnees' sense of safety and obstacles to the enjoyment of property rights, although improvements to the applicable legal framework are noted. The continuing lack of implementation of the judgment of the Constitutional Court of Kosovo concerning the Visoki Dečani Monastery poses important questions regarding respect for the rule of law, and this judgement needs to be promptly implemented.
13. The Commissioner regrets the persistence of divisions along ethnic lines in the field of public education and stresses the importance of developing a single education system, respectful of all communities' cultural and linguistic differences. The reported lack of implementation of the 2006 Law on the Use of Languages presents a further concern. While welcoming the development of a new Balkan language department at the University of Pristina as a measure to address shortcomings in this field, more decisive, short-term action is needed with a view to ensuring the protection and promotion of language rights of non-majority communities.
14. The Commissioner is pleased to note the diverse and vibrant media landscape in Kosovo, supported by a comprehensive legal framework. However, there is a persisting lack of full implementation of the existing legislation, in particular with regard to access to information, although there have been improvements in this regard since the Commissioner's predecessor's mission in 2017. It is especially important to ensure that journalists can conduct their vital work free from strategic lawsuits against public participation (SLAPP). Threats and physical attacks against journalists and the impunity for such acts are of particular concern. The Commissioner recalled that journalists must be protected against violence and that impunity for crimes against journalists must end, including in respect of the 13 cases of murders and disappearance of Kosovo Albanian and Serb journalists from 1998 to 2005.
15. Due to a lack of financial sustainability, further exacerbated by the COVID-19 pandemic, journalists and media are vulnerable to influence by political and business interests. Noting the challenges this poses for self-regulation and ethical journalism, the Commissioner stresses the importance of providing the Press Council with sustainable funding, while all journalists need to adhere to ethical codes of conduct. While the election of the new Governing Board of the public broadcaster Radio-Television of Kosovo (RTK) is a positive development, the Commissioner emphasises the need for the authorities to provide RTK with sustainable funding in line with relevant standards in this field, with a view to ensuring their editorial independence against political interference.
16. The Commissioner notes a significant gap between the domestic legislation governing gender equality and women's rights and the situation on the ground, due in particular to the persistence of deeply rooted patriarchal norms in society. She is concerned at the low participation of women in the labour market, political life and decision-making and their position with respect to education, health and the division of responsibilities, which have worsened with the COVID-19 pandemic. The Commissioner therefore welcomes a recent initiative by the government to provide 1,000 scholarships specifically for women wishing to study in the STEM (science, technology, engineering, and math) sector. Regretting the longstanding gender inequality regarding women's access to property rights and inheritance, the Commissioner notes with interest steps taken by the authorities in this field that have brought about some positive

changes and the announced amendments to the Civil Code to address remaining shortcomings.

17. Violence against women and domestic violence regrettably are a serious human rights issue in Kosovo. While she welcomes the amendment to the Constitution in September 2020 giving direct effect to the Istanbul Convention, the Commissioner stresses the need for harmonisation of domestic law with the Istanbul Convention and its effective implementation, as well as for continuous training of members of the judiciary and law enforcement officers in this field. The promotion of gender equality, including by removing any barriers preventing women's empowerment, remains a crucial tool at the authorities' disposal in the prevention of violence against women and domestic violence.

## **I. Pending issues pertaining to transitional justice and social cohesion**

### **1.1 General overview**

18. The Commissioner is concerned that more than 20 years after the end of the armed conflict in Kosovo, which resulted in great loss of life, large displacement and serious human rights violations, divisions along ethnic lines persist. Civil society representatives, both in Pristina and North Mitrovica/Mitrovicë, stressed to the Commissioner that reconciliation is stalled mainly because there is no genuine understanding between Serb and Albanian communities of each other's experience and suffering caused by the conflict, and the narratives about the past focus only on each community's own victims. They stressed the importance for Kosovo to have a transitional justice strategy and regretted that transitional justice initiatives developed thus far had failed. The Commissioner's predecessor stressed that the reasons for the failure of one of these initiatives was the lack of political support and of necessary co-ordination between relevant ministries and limited participation of members of minority communities and of families of missing persons.<sup>4</sup>
19. In 2021 the authorities launched the preparation of a National Strategy for Transitional Justice (the Strategy) and a working group was established by the Ministry of Justice of Kosovo tasked with its development. The Commissioner notes with interest that on the occasion of the launch of this initiative, the Prime Minister acknowledged deficiencies in earlier initiatives and committed to rectifying those and adopting a more inclusive approach, while stressing the critical need for civil society organizations, state institutions, researchers, and citizens to join forces to support this renewed process. The Commissioner underlines that in order to succeed, this process requires genuine collective ownership and therefore needs to be inclusive with a strong awareness raising component among affected communities and the general public. In her discussion with the Commissioner, the Minister of Justice mentioned that the transitional justice strategy was being finalised and would soon be open for public consultations.
20. The Commissioner stresses the pivotal role played by civil society organisations in Kosovo in this field and their contribution to the preparation of the Strategy. As noted in an NGO document "Guidance for the design of the transitional justice strategy", based on the four pillars of transitional justice the strategy must meet the legitimate expectations of victims and society with regard to justice, truth, reparation and guarantees of non-recurrence.<sup>5</sup>
21. During the mission, the Commissioner was informed by representatives of the authorities about a bill establishing a War Crimes Institute within the Prime Minister's office. The Institute is tasked with collecting and documenting information about "the crimes committed during the war in Kosovo" and about "actions that led to the war". Civil society interlocutors in Pristina and North Mitrovica/Mitrovicë, criticised the temporal scope of the bill because it applied only to the

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<sup>4</sup> See the Commissioner's predecessor's 2017 [memorandum](#), paragraph 9.

<sup>5</sup> Humanitarian Law Center, Guide for the design of the transitional justice strategy, "[Towards a national strategy of transitional justice for Kosovo](#)".

war-related crimes committed until 20 June 1999, and therefore excluded the victims who lost their lives after that date, many of whom were members of the Serb, Roma and other non-majority communities. The Commissioner notes that, since her mission, the temporal scope of the draft law has been amended and it now provides that the Institute “can document” crimes which occurred until 31 December 2000. On 8 October 2022 the Kosovo Assembly adopted the law.

## **1.2 The need to end impunity for war-related crimes and provide effective redress to all war victims**

### **1.2.1 International criminal justice**

22. The Commissioner acknowledges the important contribution made by the International Criminal Tribunal for the former Yugoslavia (ICTY), in the fight against impunity for serious violations of international human rights and humanitarian law committed in the 1990s in Kosovo and the region, and in providing justice to the victims of these crimes.
23. The ICTY tried [13 people](#) (in five cases) for alleged war crimes in Kosovo. In two cases against senior Serbian and Yugoslav officials six persons were convicted for crimes against humanity and war crimes, and one was acquitted (see [Šainović at al](#) and [Djordjević](#)). In another case, former President of Serbia Slobodan Milošević was charged, among others, with crimes against humanity and war crimes in Kosovo, on account of his individual and command responsibility (see [Milošević](#)). In two cases concerning alleged war crimes committed by commanders or members of the Kosovo Liberation Army, the ICTY convicted two persons while four persons were acquitted (see [Haradinaj et al.](#) and [Limaj et al.](#)).

### **1.2.2 Domestic proceedings**

24. The Commissioner wishes to emphasise the importance of effectively prosecuting and sanctioning serious human rights violations committed by all parties during the conflict for the rule of law and reconciliation in Kosovo. Addressing impunity for war-related crimes and providing redress to all war victims is essential for the society to move forward. The lack of justice inflicts additional suffering on victims. The importance of effective regional co-operation cannot be overemphasised.
25. [The Kosovo Memory Book](#) 1998-2000 contains information about 13 421 persons who were killed or who went missing during and in the aftermath of the conflict in Kosovo, from January 1998 until December 2000. 10 533 of them are Albanians, 2 238 are Serbs, and the rest come from other communities including Roma, Ashkali and Egyptians, Bosniaks and Montenegrins.
26. The Humanitarian Law Center (HLC), an NGO active in Serbia and Kosovo with extensive expertise in the area of transitional justice, has been documenting and reporting for decades about serious human rights violations committed in Kosovo and elsewhere in the region. For example, the HLC has systematically reported about the crimes allegedly committed by the 37th Brigade of the Yugoslav Army in Kosovo in 1999.<sup>6</sup> According to the HLC, 1400 civilians were killed in the Drenica region, and nobody has been held accountable for these crimes. In February 2017, the HLC published a report noting that Serbian civilian, military and police structures were involved in the planning and execution of the operation of clandestine removals of the bodies of more than 900 Kosovo Albanians killed during the conflict in Kosovo in 1999, and their subsequent burial in mass graves in Serbia. According to this report, from 2001 until 2007 four mass graves containing bodies of Kosovo Albanians were discovered in Serbia, the largest of which was found in Batajnica holding the remains of 744 persons.<sup>7</sup> While this memorandum focuses on the investigation, prosecution and trying of war-related crimes by

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<sup>6</sup> HLC, “[General Dikovic and 37th Brigade in Kosovo](#)”, February 2017, and “[OWCP showed no genuine will to investigate crimes committed by the 37th Motorized Brigade of the Yugoslav Army](#)”, February 2015.

<sup>7</sup> HLC, [Unpunished Concealment of more than 900 bodies in mass graves in Serbia](#), February 2017.

Kosovo institutions, the Commissioner is concerned about the long-standing impunity for these and certain other war-related crimes committed in Kosovo by Serbian forces, and its impact on achieving justice for the victims from all communities in Kosovo. Her predecessors had systematically raised these issues in their work on Serbia.<sup>8</sup>

27. Since 2019, the Kosovo judiciary is fully responsible for the prosecution and trying of war-related crimes, except those crimes falling under the jurisdiction of the Kosovo Specialist Chambers.<sup>9</sup> Previously, in 2008, EULEX had taken over the responsibility for the investigation, prosecution and trial of war-related crimes from UNMIK, which had exercised executive powers in Kosovo since 1999. During 2018 and 2019 EULEX handed over all wartime crime files to the Kosovo judiciary, and it has continued to exercise a monitoring role in this context. According to EULEX, about 1000 wartime crimes cases have been transferred to the Kosovo judiciary.
28. The Commissioner is fully cognizant of the serious shortcomings in the investigation of war-related crimes in Kosovo in the past,<sup>10</sup> and the possible negative impact of this situation on current efforts in Kosovo today, given the time elapsed. However, the Commissioner is concerned that structural problems in the justice system and lack of public trust in institutions also pose serious challenges to the effective prosecution of war crimes. In its 2022 report on Kosovo, the European Commission noted that Kosovo was still at an early stage in developing a well-functioning judicial system and that the overall administration of justice continued to be slow, inefficient and vulnerable to undue influence. Concerns were also expressed about the willingness to hold former Kosovo Liberation Army members accountable in war crimes cases. The report also noted that the implementation of the strategy on war crimes adopted by the Kosovo Prosecutorial Council in 2019 continued to be hampered by an uncondusive political context, lack of resources and lack of effective international and regional cooperation.<sup>11</sup> The Commissioner furthermore regrets the lack of accountability for the many allegations of war-related crimes of sexual violence committed during the conflict, although, in a positive development, she notes that a first conviction in such a case was secured last year.
29. During the mission, the Commissioner noted the government's commitment to further invest in and strengthen the war crimes prosecution infrastructure and the announcement by the Minister of Justice of an immediate plan to increase the number of prosecutors, assistant prosecutors and interpreters dealing with war-related crime cases. Progress has also been made in the use of an electronic war crimes database by the Kosovo Police, notably with help from EULEX, which should facilitate the investigation of war-related crimes and missing persons cases.
30. The Commissioner notes the support provided to the authorities by the European Commission for the Efficiency of Justice as part of the framework of the joint Council of Europe - European Union programme [Strengthening the Quality and Efficiency of Justice in Kosovo](#) aimed at improving the functioning of the justice system in Kosovo by strengthening its efficiency and quality in accordance with European standards.
31. In July 2022, in an effort to hold accountable the perpetrators of war crimes who do not reside in Kosovo, the Kosovo Assembly passed an amendment to the Criminal Procedure Code, introducing the possibility of trial in absentia for *all* criminal offenses. The Venice Commission had been consulted on the compatibility of the draft amendment with the European Convention on Human Rights. In its opinion from June 2020 it noted that the draft provisions were largely in line with the European Convention on Human Rights as interpreted by the Strasbourg Court and other international standards.<sup>12</sup> While the authorities stressed the importance of this

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<sup>8</sup> See, *inter alia*, the Commissioner's predecessor's [observations](#) following his visit to Serbia from 19 to 22 February 2018, published on 22 February 2018.

<sup>9</sup> See the section of this Memorandum on the *Kosovo Specialist Chambers*.

<sup>10</sup> The Commissioner's predecessor's memorandum on Kosovo, paragraph 17.

<sup>11</sup> European Commission, Kosovo report 2022, pp. 5 and 23

<sup>12</sup> Venice Commission, [Opinion No. 985](#) on certain provisions of the draft Criminal Procedure Code, namely trial in absentia (art. 306) and suspension of officials from office (art. 177), paragraph 63, June 2020.

amendment as a tool to fight impunity, some transitional justice experts expressed their concern to the Commissioner that this legal avenue in itself may not be impactful in terms of achieving justice for the victims, and is insufficient, since war crime suspects who live in Serbia will continue to be inaccessible, given the currently limited mutual legal cooperation between Serbia and Kosovo.<sup>13</sup>

32. The Commissioner underlines that the fight against impunity for war-related crimes requires resolute action in addressing the structural problems in the justice system and further strengthening of the capacities of the judiciary. Sustained support and assistance of the Council of Europe through its programmes implemented in Kosovo aimed at strengthening the efficiency and quality of justice, remain highly important. Equally important is the task of continuing to build capacity among members of the judiciary to investigate, prosecute and try war-related crimes. Mutual legal cooperation and assistance between Serbia and Kosovo in this context needs to be improved, with a view to ensuring that no perpetrator of war-related crimes evades justice.

### 1.2.3 Kosovo Specialist Chambers

33. The Kosovo Specialist Chambers and Specialist Prosecutor's Office have jurisdiction over crimes against humanity, war crimes and other crimes under Kosovo law, committed between 1 January 1998 and 31 December 2000, in relation to allegations stemming from the 2011 PACE [report](#) on inhuman treatment of people and illicit trafficking in human organs in Kosovo.<sup>14</sup> They operate under Kosovo law but are staffed with international judges and prosecutors. The Specialist Chambers has thus far indicted 8 persons, all of whom are currently in their custody.<sup>15</sup> One case related to offenses against the administration of justice is currently in the appeals phase.<sup>16</sup> One trial involving charges of war crimes is currently underway ([Salih Mustafa](#)), while two other cases at the pre-trial phase.
34. The Commissioner's discussions in Pristina about the work of the Specialist Chambers drew on the exchanges she had with the Principals of the Specialist Chambers and Specialist Prosecutor's Office during her mission to the Hague in January 2022. One of the concerns shared by the Principals was that there was considerable disinformation in Kosovo regarding the institutions' work, which is why the outreach programme has been an integral part of the Chambers' work since its inception.
35. The Commissioner notes that a special unit was set up in the Kosovo Ministry of Justice to handle cooperation requests from the Specialist Chambers and Specialist Prosecutor's Office. Based on discussions in The Hague and in Kosovo, she considers that there is a need for the Kosovo institutions to further enhance their cooperation with the Specialist Chambers. In this respect, she notes that in its 2022 report on Kosovo, the European Commission underscored that "it is essential that Kosovo institutions provide full cooperation with the Specialist Chambers and Specialist Prosecutor's Office, enabling them to fulfil their mandate in full independence, without outside interference". UMMIK has noted that "the Specialist Prosecutor's Office continues to require the engagement and support of the international community, international organisations and individual States in all activities".<sup>17</sup>

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<sup>13</sup> See also European Commission, Kosovo report 2022 report, page 23. See also, Balkan Transitional Justice, [Do Serbia and Kosovo Really Cooperate on Court Cases?](#) , 1 March 2022.

<sup>14</sup> PACE, [Doc. 12462](#) Inhuman treatment of people and illicit trafficking in human organs in Kosovo, January 2011.

<sup>15</sup> Kosovo Specialist Chambers and Specialist Prosecutor's Office, [Pending cases](#), accessed on 11 October 2022.

<sup>16</sup> See the section of this Memorandum on *Witness protection and support in the context of war crimes criminal proceedings*.

<sup>17</sup> United Nations Security Council, UNMIK Report of the Secretary-General, April 2022, page 22.

#### 1.2.4 Witness protection and support in this context

36. The Commissioner is concerned that witness protection remains one of the main challenges for the prosecution of war-related crimes in Kosovo. As also noted by her predecessor, challenges arise from the fact that Kosovo has close-knit communities where witnesses' identities rarely remain secret even if they are relocated, and the potential witnesses' lack of trust in Kosovo institutions' ability to keep them safe.<sup>18</sup> The Commissioner was informed by her interlocutors that there were no witnesses included in the Kosovo protection mechanism at the time of her mission.
37. As regards witness protection in the Kosovo Specialist Chambers, the Registry includes a special Witness Protection and Support Office, while the Specialist Prosecutor's Office has its own Operational and Witness Security Unit. The Chambers provide for special measures to be adopted to protect vulnerable witnesses. It is reported that witness protection remains the biggest challenge in the work of the Specialist Chambers.<sup>19</sup>
38. In this regard, the Commissioner notes that the first ever judgement of the Specialist Chambers, delivered in May 2022, concerned a case of witness intimidation and violation of secrecy of the court.<sup>20</sup> The case relates to the anonymous transfer of war crime files containing the names of witnesses allegedly belonging to the Kosovo Specialist Chambers to a veterans' organisation in Kosovo. The Commissioner addressed this and several other developments in the region concerning witness intimidation in a [statement](#) published on 23 September 2020, where she stressed the importance of effective protection and support for witnesses in the context of wartime-related criminal proceedings for the fight against impunity for the crimes committed during the wars of the 1990s in the former Yugoslavia. The Commissioner reiterates that all necessary steps must be taken to ensure the provision of effective protection and support to witnesses in this context, including strengthening the witness protection infrastructure and providing specialised training for prosecutors and judges.

#### 1.2.5 Access to reparations, with a focus on victims of war-related crimes of sexual violence

39. The Commissioner reiterates that all victims of serious violations of international human rights and humanitarian law have the right to adequate, effective and prompt reparation for the harm suffered in line with the 2011 Council of Europe [Guidelines](#) on Eradicating Impunity for Serious Human Rights Violations and the '2005 UN Basic Principles and Guidelines'.<sup>21</sup> The application and interpretation of the Principles must be without any discrimination of any kind or on any ground, without exception.
40. During the mission, the Commissioner was informed about the progress in the implementation of the 2012 Law on the Status and Rights of Martyrs, Invalids, Veterans, Members of the Kosovo Liberation Army, Civilian War Victims and their Families in respect of victims of war-related crimes of sexual violence.<sup>22</sup> She notes that, in April 2022, the mandate of the government's Commission responsible for the verification and recognition of the status of victims of survivor of war related crimes of sexual violence ('the Commission') was extended for three years. As of June 2022, the Commission had received 1728 requests, and granted

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<sup>18</sup> The Commissioner's predecessor's 2017 Memorandum, para 23. See also, [Human Rights Watch, Kosovo: War Crimes Indictment Advances Justice](#), June 2020.

<sup>19</sup> BIRN, [New Court Faces Old Problems in Protecting Kosovo Witnesses](#), March 2021.

<sup>20</sup> Kosovo Specialist Chambers, the case of [Hysni Gucati and Nasim Haradinaj](#).

<sup>21</sup> 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

<sup>22</sup> This law entitles these categories of persons, to family or disability pension, medical and physical rehabilitation, paid health care, professional rehabilitation and priority in employment. It also provides for certain other privileges, such as exemption from the payment of property tax for victims with economic difficulties, and priority in accessing various social and administrative services.



survivor status in 1274 of these (1217 women and 57 men). 80 requests were still being processed, while the remaining requests had been dismissed.<sup>23</sup>

41. This law defines 'civilian victim' as "a person who died, or who was wounded and then died, at the hands of enemy forces, between 27 February 1998 and 20 June 1999, as well as persons who have suffered from war remnants of explosive devices, within three years after the war ended". The Commissioner's predecessor stressed that due to the law's temporal scope and the use therein of the term 'enemy forces', the victims who lost their lives after June 1999 and those who were victims of forces other than the forces which the relevant authorities consider as an 'enemy', many Kosovo Serbs and Roma are excluded from its scope. He encouraged a revision of the law with a view to broadening its scope so that all civilian war victims, without exception, have access to reparations. The Commissioner regrets that the law has not been amended.
42. The Commissioner's civil society interlocutors furthermore noted that the number of requests submitted to the Commission by survivors of war-related sexual crimes does not reflect the real extent of this phenomenon. Among the reasons for this feature the stigma associated with these crimes and the victims' fear that their identity might be revealed in the process, as well as the potential victims' inability to support their requests with the required medical documentation or witness testimonies. The need for the authorities to depart from a medical approach in respect of these victims' requests for reparations and to ensure better protection of victims' identity was stressed in this context.
43. The Commissioner raised these concerns in her discussion with the authorities. She considers that the scope of the aforementioned law should be broadened so that all civilian war victims, without exception, have access to adequate reparation. She further highlights that the creation of safe conditions for victims to come forward, including by preserving their privacy and avoiding re-traumatisation, must be prioritised.
44. Finally, the Commissioner commends the pivotal work carried out by civil society organizations and human rights defenders working in Kosovo in this field, and the support that they have provided to survivors of war-related crimes of sexual violence over the years, often filling the gap left by the authorities' inaction. The Commissioner has noted reports that the psychosocial, medical and legal assistance and training these organisations provide to survivors to ensure their rehabilitation, have had a significant positive impact on survivors' well-being and mental health.<sup>24</sup>

### **1.3 Establishing the truth about missing persons**

45. It is estimated that 6044 persons went missing as a result of the conflict in Kosovo. According to the International Committee of the Red Cross (ICRC), as of April 2021, 1,639 persons remain missing. While the fact that the truth could be established for about 70 per cent of the missing in Kosovo and the region is an unprecedented achievement at global level after a violent conflict, the Commissioner remains concerned that the search for missing persons has slowed down in recent years.
46. The 2011 Law No. 04/L-023 on Missing Persons remains the main piece of legislation governing the rights of missing persons and their families, and in particular the right to the truth. There are several national and international mechanisms working on the search for missing persons. Within the prime minister's Office, the Governmental Commission on Missing Persons (GCMP) is mandated to lead, supervise and coordinate activities with local and international institutions aimed at establishing the fate of missing persons in Kosovo.

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<sup>23</sup> UNMIK, "[Breaking their silence: survivors of conflict related sexual violence are rebuilding their lives with Medica Gjakova](#)", August 2022.

<sup>24</sup> Ibid.

47. The Working Group on Missing Persons (WGMP), chaired by the ICRC, continues to be the framework within which Belgrade and Pristina maintain the related dialogue under UN auspices. EULEX work together with the Institute of Forensic Medicine in this field by offering expertise and advice in the identification of potential mass graves and the exhumation and identification of victims. The Commissioner notes that EULEX has conducted a total of 692 field operations to locate missing persons, including 188 exhumations. The remains of 480 individuals have been identified, including 332 missing persons.<sup>25</sup>
48. The Commissioner notes that the issue of missing persons has been also included in the agenda of the EU-facilitated dialogue between Belgrade and Pristina. In October 2020 a draft political declaration was prepared by Belgrade and Pristina regarding missing persons, which stipulated the establishment of a joint commission, and unlimited access to the archives that may hold information about potential mass graves. The Commissioner understands that the declaration has not been signed due to a disagreement between Belgrade and Pristina on the use in the text of the term ‘forcibly disappeared person’.
49. The Commissioner regrets that important discussions about missing persons in Kosovo have been marred by disagreements and lack of cooperation. She echoes the calls made by civil society activists and families of missing persons on both sides, insisting that Belgrade and Pristina must overcome the stalemate and need to address this as a human rights and humanitarian issue. The Commissioner encourages the parties to resolve the disputes and cooperate on the resolution of the remaining cases of missing persons, putting the families of the missing persons at the centre of all their considerations.
50. The Commissioner further underlines the importance of opening of all military and police archives which may hold important information about missing persons. Equally important is regional cooperation in this context through the existing mechanisms and agreements between the parties involved. The Commissioner was therefore pleased to note that members of the Regional Coordination Network and the Missing Persons Group (MPG)<sup>26</sup> from Bosnia and Herzegovina, Kosovo, Montenegro and Serbia [gathered](#) on 13 September 2022 in Podgorica (Montenegro) to commemorate all victims of conflicts on the territory of the former Yugoslavia.

## **1.4 The human rights of persons forcibly displaced during the conflict**

### **1.4.1 General overview**

51. According to UNHCR, about 28 000 voluntary returns to and within Kosovo have been recorded from 2000 until 2019. As of April 2022 there were 15,683 internally displaced persons (IDPs) in Kosovo, of whom 139 lived in 15 collective centres.<sup>27</sup> UNHCR and the OSCE have noted a declining trend in recent period. From January to May 2022, for instance, only 30 persons returned to Kosovo.
52. The Commissioner shares the view expressed by her interlocutors that political will and sustainable funding are crucial to creating adequate conditions for sustainable return, including improved security and full access to social and economic rights for returnees. Furthermore, cooperation between authorities on the central and municipal level need to be stepped up. The importance of regional cooperation in this context is also highlighted. The Inter-institutional Initiative on Durable Solutions for Displaced Persons from Kosovo (the “Skopje Process”), initiated in 2014, has been mentioned by the Commissioner’s interlocutors in particular as

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<sup>25</sup> European Union External Action, [Searching for missing persons in Kosovo: an overview of EULEX Kosovo’s work](#), August 2022.

<sup>26</sup> The Missing Persons Group comprises senior representatives of the institutions in the region that are responsible for addressing missing persons issues. It plays a role in supervising operations under a Framework Plan signed in November 2018 at ICMP’s Headquarters in The Hague.

<sup>27</sup> OSCE, Community Rights Assessment [Report](#), July 2021, pp. 12 and 13.

having been instrumental in ensuring continued dialogue and co-operation in the region to find solutions for people who remain in displacement.<sup>28</sup>

#### 1.4.2 Major obstacles to sustainable returns

53. Many of the obstacles to sustainable returns noted by the Commissioner's predecessor in 2017 persist. The Commissioner is concerned that there are still frictions affecting potential returnees and receiving communities, due to unresolved war-related crimes or missing persons' cases, although other factors also play a role. An OSCE monitoring report noted that crimes against returnees can range from petty theft to arson and assault and that the most prevalent are burglaries of uninhabited Kosovo Serb homes and that such incidents discourage potential returnees.<sup>29</sup> The report also noted that "[a]lthough many of these crimes may have a predominantly economic motive and are reported to the Kosovo Police [...], a negative security perception has grown among returnees because many perpetrators have eluded justice".<sup>30</sup>
54. During her mission, the Commissioner visited a Kosovo Serb returnee in Gjakovë/Đakovica, who faced serious difficulties in regaining possession of her pre-war apartment, and who, upon return, has continued to face intimidations and threats. This prompted the Kosovo authorities to provide the apartment building where she lives with a 24-hour police protection, which was present on the site during the Commissioner's visit. The OSCE and NATO's Kosovo Force (KFOR) have been closely monitoring this case. In her discussion with the Commissioner, the returnee stressed her anxiety about the situation and concerns for her safety. The Commissioner notes that since her mission the Kosovo Ombudsperson issued a decision concerning the returnee's complaint against the Municipality of Gjakovë/Đakovica, in which he recommended that the authorities comply with a regulation governing the return of displaced persons by enabling her to use the apartment freely and without any obstacles.
55. The Commissioner understands that frictions have been more frequent in municipalities where some of the gravest human rights violations have been committed against Kosovo Albanians during the conflict, such as the municipality of Gjakovë/Đakovica and its surroundings.<sup>31</sup> Reportedly, since 2015 displaced Kosovo Serbs have been prevented from making pilgrimages on Orthodox Christmas in this municipality.
56. On the other hand, the Commissioner is encouraged by reports that she received during the mission that in some other municipalities, such as Klinë/Klina and Pejë/Meć, the return process has been more successful. According to the Commissioner's interlocutors, the success of the return process greatly depends on the preparedness of local communities for returns and the important role played by municipal offices for communities and return.
57. Obstacles persist also with regard to the enjoyment by displaced persons of their property rights, despite a solid legal and policy framework providing for special rights for displaced persons, including the 2017 Strategy on Property Rights, the 2018 Law on Immovable Property Tax and the 2018 Law on Treatment of Constructions without Permit.<sup>32</sup> The Commissioner notes reports indicating that the enjoyment of these rights has been undermined by a lack of effective response to illegal occupation, including non-enforcement of decisions upholding displaced persons' property rights, a slow justice system, as well as non-payment of compensation for destroyed or damaged property and lack of sustainable solutions for landless returnees.
58. The Commissioner is concerned that Roma returnees are in a particularly vulnerable situation. It has been reported that social housing schemes often favour certain social groups, such as

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<sup>28</sup> OSCE, [Assessment of Voluntary Returns in Kosovo](#), November 2019.

<sup>29</sup> OSCE, [Community Rights Assessment Report](#), July 2021, page 40.

<sup>30</sup> Ibid.

<sup>31</sup> Humanitarian Law Centre, [Dossier: Operation Reka](#), 24 October 2015.

<sup>32</sup> OSCE, [Community Rights Assessment Report](#), July 2021, page 41.

veterans, to the detriment of those who are the most socially vulnerable, such as members of the Kosovo Roma community.<sup>33</sup>

#### **1.4.3 Lack of implementation of the Constitutional Court judgement concerning the Visoki Dečani Monastery**

59. The Commissioner regrets that the authorities have not yet implemented the judgement of the Kosovo Constitutional Court from May 2016, confirming the ownership rights of the Visoki Dečani Monastery over 24 hectares of land in its vicinity. In September 2021, the Constitutional Court [notified](#) the Chief State Prosecutor of the non-implementation of its 2016 judgement.<sup>34</sup> While the Monastery has the material possession of this land, the local authorities have so far refused to register the ownership in the cadaster books.
60. In addition to serious concerns about the non-implementation of the Constitutional Court judgement, during her visit to the Visoki Dečani Monastery, the Commissioner listened to the clergy's misgivings regarding the planned construction of an international road through the special protective zone<sup>35</sup> of the Visoki Dečani Monastery, which raised serious issues for the protection and preservation of the cultural heritage and the environment. It is noted in this context that the Visoki Dečani Monastery was inscribed on the World Heritage List in 2004. In 2021, the Monastery was included in the list of seven most endangered heritage sites by [Europe Nostra](#), upon nomination by [Future for Religious Heritage](#), the European network for historic places of worship.
61. As discussed with the authorities, the Commissioner considers that the non-enforcement of the Constitutional Court judgement in this case raises important questions regarding the respect for the rule of law in Kosovo, and as such it needs to be implemented without further delays.

#### **1.4.4 Other relevant issues pertaining to social cohesion**

62. The Commissioner is seriously concerned by the lack of progress in addressing divisions along ethnic lines in public education since her predecessor's mission in 2017. Despite a [recommendation](#) of the Independent Commission for the Review of Serbian Language Teaching Materials<sup>36</sup> from 2010, on the importance of a single education system for all communities in Kosovo, two parallel education systems persist, one following the curriculum developed by the Ministry of Education, Science, Technology and Innovation, and the other following the Serbian curriculum. The Commissioner notes that formal co-operation between the two education systems remains almost non-existent, with the exception of a few cases where the same school premises or compounds are shared, and arrangements reached on maintenance and utilities. However, pupils in these schools usually attend classes in separate shifts or separate buildings within school compounds, and no formal activities are organized for these pupils to interact.
63. In her discussion with the Commissioner, the Minister of Education stressed the government's readiness to create conditions conducive to integration of children from non-majority communities and to improved interaction between children from different communities. As noted recently in the context of a research on children in divided education systems, which included children from Kosovo, children are less able to develop a sense of tolerance if they

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<sup>33</sup> Ibid, page 42.

<sup>34</sup> The Kosovo Criminal Code provides (Article 394) for the criminal offence of failure to execute court decision punishable by a fine or imprisonment of up to two years.

<sup>35</sup> The Kosovo Law on Special Protective Zones from June 2008 provides for the protection of Serbian Orthodox Monasteries, Churches and other religious sites as well as other communities in Kosovo, through the establishment of such zones throughout Kosovo. The road would connect the municipality of Deçan/Dečane with Plav and Gusinje (Montenegro).

<sup>36</sup> The commission was established in 2009 by the Ministry for Education, Science and Technology of Kosovo, in cooperation with the international community. Its task is to ensure that the curriculum and textbooks used in schools which follow the Serbian system are in conformity with the Constitution of Kosovo and relevant legislation.

lack the ability to engage with other children from different backgrounds.<sup>37</sup> The Commissioner considers that the existence of two parallel education systems is harmful for social cohesion, durable peace and reconciliation. She underlines the need for a single education system in Kosovo, while ensuring the protection of and respect for the particularities of each communities' culture and language.

64. The Commissioner is further concerned about the reported lack of effective implementation of the Law on the Use of Languages from 2006, especially with regard to the official use of the Serbian language, as one of the official languages. Examples of this problem, which were brought to the Commissioner's attention, include a lack of Serbian-language information from the Ministry of Health during the COVID-19 pandemic, the availability of Serbian versions of laws and judicial documents, as well as lack of use of the Serbian language in Parliament. Many interlocutors stressed the important work carried out by the Office of the Language Commissioner in this realm.<sup>38</sup>
65. The Third Deputy Prime Minister of Kosovo for Minority Issues and Human Rights mentioned that there are shortcomings in the implementation of the law also in some of the municipalities where Bosniak and Turkish are official languages. While the lack of interpreters is an obstacle, she underlined the need for strong political will in order for this issue to be effectively addressed. The Commissioner was informed by the Prime Minister about a new Balkan language department at the University of Pristina, within the Faculty of Philology, as one of the measures to address the shortcomings in this field. While this development is a step in the right direction in the long term, the Commissioner considers that more decisive short-term action is necessary. This includes stepping up the implementation of the Law on the Use of Languages with a view to protecting and promoting the language rights of non-majority communities.
66. Finally, the Commissioner is concerned about the negative implications for the human rights of both Kosovo Serbs and Kosovo Albanians, of the lack of the implementation of an agreement on mutual recognition of university diplomas reached in the framework of the EU-facilitated Belgrade-Pristina dialogue in 2016 (subsequently extended to include primary, secondary and vocational training diplomas). She stresses the need for all parties to fulfil their commitments in this regard and implement the agreement.

## **II. Freedom of the media**

### **2.1 Media Landscape**

67. The Constitution of Kosovo guarantees freedom of expression, freedom of information, prohibition of censorship, access to public documents and freedom of the media and pluralism. Kosovo has a comprehensive legal framework governing media and the media scene is vibrant. Several pieces of legislation regulate the work of journalists and the media, including the 2010 Law on Access to Public Documents, the 2012 Law on the Independent Media Commission, the 2013 Law on Protection of Journalists Sources and the 2018 Law on the Protection of Whistleblowers. The Commissioner notes that while there has been some progress since her predecessor's memorandum in 2017, the effective implementation of media legislation is yet to be fully effected. It is noted in this context that the Kosovo media freedom index by Reporters Without Borders has gone down by 9 points, from 78 in 2021 to 61 in 2022.
68. The Commissioner was informed by media experts that shortcomings in the implementation of the 2010 Law on Access to Public Documents persist. In particular, her predecessor's concern that public institutions are not always responsive to journalists' requests for access to public documents, while domestic courts are slow in responding to complaints relating to access to

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<sup>37</sup> ICRC, [Rebuilding peace in divided education systems](#), January 2020.

<sup>38</sup> This [office](#) was established in 2012 within the Prime Minister's office. It is tasked with overseeing the implementation of the Law on the Use of Languages.

information due to court backlogs, remains relevant. An important development in this context is the establishment in February 2019 of the Information and Privacy Agency, and the election, in June 2021, of a Data and Information Commissioner. The Commissioner is pleased to note the opinion of her interlocutors from the media sector attesting to the independence of the current Data and Information Commissioner in carrying out her mandate.

69. Kosovo decriminalised defamation in 2012, which is now a civil offense punishable by a fine. The Commissioner is concerned about the reported use by some politicians and businessmen of the so-called SLAPPs (strategic lawsuits against public participation), whereby defamation lawsuits are brought against journalists and human rights defenders, in particular environmental activists, with the aim of intimidating them. While there is no reliable data on the number of lawsuits brought against journalists before domestic courts, reportedly due to the lack of disaggregated data according to the profession of the defendant, civil society monitoring shows that during 2021 more than 40 lawsuits were filed, bringing the number of pending lawsuits against journalists before domestic courts to 100, the majority of which are reportedly SLAPPs.<sup>39</sup> The Commissioner draws attention to her [guidance](#) on the approach that should be taken to counter SLAPPs effectively.<sup>40</sup>
70. The Law on the Protection of Whistleblowers aims to guarantee protection for reporting on corruption in public institutions and private companies. The Commissioner noted criticism expressed by her interlocutors that although the law itself is very comprehensive when it comes to the protection of whistleblowers, it is not implemented in practice.
71. The Commissioner underlines the importance of initial and continuous professional training, especially of judges and prosecutors, for a Convention-compliant interpretation and application of domestic legislation. She emphasises in this context the Committee of Ministers Recommendation on the European Convention on Human Rights in university education and professional training.<sup>41</sup> The Commissioner was pleased to note the opinion of several interlocutors from the media sector that that the joint Council of Europe- European Union regional programme [Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe \(JUFREX\)](#), has had a very positive impact in Kosovo and that national judges have increasingly been using and referring to the ECHR case-law in their judgements. It is noted that the successor to JUFREX, the [Horizontal Facility: Freedom of Expression and Freedom of the Media in South-East Europe \(JUFREX 2\)](#), is running until the end of December 2022.
72. The Commissioner noted the particular circumstances under which journalists operate in the north of Kosovo. In their discussion with the Commissioner journalists from the north stressed that their work has been facilitated by improved freedom of movement, but funding issues persist, and many media rely on funding from Serbia. Language problems also persist, as it is often not possible to access information in Serbian, especially information from the government and political institutions.<sup>42</sup>
73. The Commissioner welcomes the government's Journalists-in-Residence Kosovo programme,<sup>43</sup> which has enabled 20 Ukrainian journalists and media workers to relocate to Kosovo. The program, funded by the government, covers living costs, salaries, and offices for a period of up to six months with the possibility of extension. This programme was initiated by

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<sup>39</sup> Association of Journalists of Kosovo, Kosovo [Indicators](#) on the level of media freedom and journalists' safety 2020, July 2021, page 13.

<sup>40</sup> Commissioner for Human Rights, Human Rights Comment, [Time to take action against SLAPPS](#), October 2020.

<sup>41</sup> Committee of Ministers, Recommendation [CM/Rec\(2019\)5](#) on the system of the European Convention on Human Rights in university education and professional training.

<sup>42</sup> See the section of this Memorandum on *Other relevant issues pertaining to social cohesion*.

<sup>43</sup> [ECPMF opens call for applications from Ukraine for the Journalists-in-Residence Programme in Kosovo](#), April 2022.

the European Centre for Press and Media Freedom and the European Federation of Journalists, and is implemented in cooperation with these two organisations, as well as the Association of Journalists of Kosovo (AJK), the National Union of Journalists of Ukraine and the Independent Media Trade Union of Ukraine.

## 2.2 Protection of journalists from violence and other obstacles to journalists' work

74. Threats and physical attacks against journalists and impunity for crimes against journalists remain issues of serious concern. According to Reporters Without Borders, journalists investigating drug trafficking or environmental pollution have been subject to physical attacks and prevented from reporting by criminal networks. It has also been reported “that independent media and investigative journalists suffer insults and fake news, often by political and religious groups”, while “Serbian-speaking journalists are intimidated for their independent reporting by the ruling party in the north of Kosovo”.<sup>44</sup>
75. The Commissioner’s media interlocutors registered 29 attacks against journalists in 2021, with online intimidation and threats becoming more common and targeting especially female journalists. In 2019 and 2021 several instances of violence against journalists were noted, such as the physical [attack](#) on a journalist in North Mitrovica, the [assault](#) against a journalist by the then-Acting Trade Minister, the [gun attack](#) on the car of a journalist in Mitrovica, as well as the [physical attack](#) by masked men against an investigative journalist. The Commissioner was also informed about the arrest of Tatjana Lazarevic, a journalists with KoSSev, in April 2020 by the police in the north of Kosovo, for violating the COVID-19 curfew, while she was carrying out investigative work. Her arrest had been perceived by many journalists as an attempt to intimidate journalists of this media outlet, which is known for its independent reporting in the north of Kosovo.
76. The Commissioner also notes with concern the difficulties faced by journalists working in areas characterized by tensions and violence, where the journalists themselves can be exposed to violence and other forms of obstruction. In one specific case in October 2021, journalists reporting on an anti-smuggling operation conducted by Kosovo police in the north of Kosovo were themselves attacked by people opposing the police action.<sup>45</sup>
77. Reports indicate that that attacks against journalists are not always treated with sufficient level of seriousness and that there is a lack of coordination between police, prosecution and courts in this regard. Domestic judges are also reported to use lenient sentences for crimes against journalists, with fines being the most common type of sentence imposed.<sup>46</sup>
78. The Commissioner is seriously concerned about the longstanding impunity for the murders and disappearance in Kosovo of seven Serb and six Kosovo Albanian journalists from 1998 to 2005, namely Afrim Maliqi, Aleksandar Simović, Bardhyl Ajeti, Bekim Kastrati, Đuro Slavuj, Enver Maloku, Shefki Popova, Xhemajl Mustafa, Ljubomir Knežević, Marjan Melonaši, Milo Buljević, Momir Stokuća, and Ranko Perenić, in relation to which her predecessor also raised his concerns.<sup>47</sup> She raised this issue in her discussions with the authorities, and regretted that no progress has been made in establishing the fate of these victims and accountability for these crimes.
79. In May 2018 the European Federation of Journalists adopted a resolution, upon a motion tabled by the Journalists’ Association of Serbia, the Association of Journalists of Kosovo, the Independent Journalists’ Association of Serbia and the Journalists’ Union of Serbia, calling on the Kosovo Specialist Chambers to investigate these crimes. In October 2021 the

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<sup>44</sup> Reporters Without Borders, World Press Freedom Index 2022 – Kosovo, May 2022.

<sup>45</sup> Balkan Insight, [Kosovo Pressed to Secure Journalists’ Safety After Attacks in North](#), October 2021.

<sup>46</sup> Association of Journalists of Kosovo, Kosovo [Indicators](#) on the level of media freedom and journalists’ safety 2020, July 2021, page 13.

<sup>47</sup> The Commissioner’s predecessor’s memorandum on Kosovo, paragraph 55.

Journalists' Association of Serbia, presented a new motion, calling for the prompt establishment of an International Commission of Experts to investigate the above-mentioned cases of murders and disappearances. To the Commissioner's knowledge there has been no follow up to these initiatives.

80. The Commissioner emphasizes that journalists and other media actors must be protected from all forms of attacks and stresses the need to end impunity for such attacks. All cases of attacks against journalists and past cases of murders and disappearance need to be effectively investigated and the perpetrators brought to justice. She recalls in this context the Council of Europe Committee of Ministers Recommendation on the protection of journalism and safety of journalists and other media actors.<sup>48</sup>

### **2.3 Ethical journalism and self-regulation**

81. The Independent Media Commission and the Press Council of Kosovo (the Council) continue to perform their role of media regulatory bodies and have their codes of conduct to which journalists should adhere. The Commissioner notes that self-regulation remains a challenge. According to the Commissioner's interlocutors, the Council works in an independent and transparent fashion. It lacks sustainable funding, given that only 10% of its budget comes from membership fees, while the rest of the funding is project-based. This poses serious challenges for the Council's work, especially on countering disinformation and training journalists in ethical and professional reporting. It has been reported that the lack of financial sustainability leaves media vulnerable to political and business interests.<sup>49</sup>
82. The Independent Media Commission, with regulation competencies in the broadcasting sector, is managed by a board of directors, appointed by the Kosovo Assembly. Concerns had long been raised, about the board's appointments of members based on political affiliation. The Commissioner was therefore pleased to note that this is gradually being improved, with the recent election of two new members of the Board, who are considered independent media experts.
83. The Commissioner stresses that the media must undertake to submit to firm ethical principles guaranteeing freedom of expression and the fundamental right of citizens to receive truthful information and honest opinions, in line with PACE Resolution on Ethics in Journalism.<sup>50</sup> She underlines the need to strengthen ethical journalism, ensure that the mechanisms for self-regulation are effectively used and secure sustainable funding for their work.

### **2.4 Major issues of concern related to public service media**

84. Public service media play a specific role with regard to the respect of the right to seek and receive information and the provision of varied and high-quality content, contributing to the reinforcement of democracy and social cohesion, and promoting intercultural dialogue and mutual understanding.
85. During her mission, the Commissioner was informed that the Radio-Television of Kosovo (RTK), continues to lack sufficient funding, while private broadcasters are comparatively better resourced. The Commissioner's media interlocutors have underlined that political actors attempt to influence the editorial and institutional independence of RTK. The Commissioner emphasises that public service broadcasters must be independent from the government and be able to function without its political interference, and their funding model should reflect this independence. While the specific funding model may vary, it must enable public service

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<sup>48</sup> Committee of Ministers, Recommendation [CM/Rec\(2016\)4](#) on the protection of journalism and safety of journalists and other media actors.

<sup>49</sup> European Commission, Kosovo Report 2021, page 32, October 2022.

<sup>50</sup> PACE, [Resolution 1003 \(1993\)](#) of the on Ethics of Journalism, adopted in July 1993.



broadcasters to meet the public service requirement of accessibility and affordability for the public at large.<sup>51</sup>

86. The Commissioner notes that in addition to unstable funding, the RTK has had some other structural problems. In July 2021, all members of the RTK Governing Board were dismissed by the Kosovo Assembly, reportedly in connection mostly with allegations of corruption and nepotism.<sup>52</sup> A new Board was appointed in December 2021. The Commissioner was pleased to hear from her interlocutors that the newly elected Board consists of independent experts and is hopeful that this development will continue the trend in improving the quality of public service media. It is also noteworthy that in the period since the Commissioner's mission, RTK elected a new Director General, whom the Commissioner met during the mission, a step which several international organizations assessed very positively.<sup>53</sup>
87. The Commissioner notes that RTK still does not have coverage of the entire territory of Kosovo, with Kosovo Serb communities mostly relying on local and Serbian broadcasters. The Commissioner was informed by her media interlocutors that RTK operates a Serbian-language channel, RTK2, and offers contracts to Serb journalists but that the lack of recognition of diplomas issued by Serbia and the University of North Mitrovica hampers the employability of these journalists.<sup>54</sup>

### **III. Issues related to women's rights and gender equality**

#### **3.1 General overview**

88. The Constitution of Kosovo enshrines gender equality as "a fundamental value for the democratic development of society, providing equal opportunities for both female and male participation in political, social, cultural and other areas of societal life". It provides that gender equality must be considered in appointments to a number of institutions, including the Parliament and the Constitutional Court. Kosovo also has several laws that promote gender equality and protect women's rights, including the Law on Gender Equality (2015), the Law on Protection from Discrimination (2019), and the Law on Protection against Domestic Violence (2010).
89. The [Kosovo Programme for Gender Equality 2020-2024](#) (the Programme) was approved by the Government in May 2020. It is based on 3 strategic pillars: economic empowerment and social welfare; human development, roles and gender relations; and, women's rights, access to justice and security. The Agency on Gender Equality established under the Law on Gender Equality is under the responsibility of the Office of the Prime Minister and its task, among others, is to coordinate the preparation of the Programme and to monitor and report on its implementation.
90. During her mission, the Commissioner met with women from all walks of life, including high-level politicians, human rights defenders, journalists, and ordinary citizens, and highly appreciated their commitment to asserting the important role of women in society and to fighting for gender equality. They were unanimous in the assessment that a crucial obstacle to the advancement of women's rights and gender equality in Kosovo lies in the deeply rooted patriarchal norms and cultural traditions which dominate people's perceptions of women's roles in society.
91. These gender stereotypes partly explain the shortcomings in the implementation of the gender equality legislation and the Programme mentioned above. More generally, gender inequality

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<sup>51</sup> PACE, [Recommendation 1878 \(2009\)](#) on the Funding of public service broadcasting, adopted in June 2009.

<sup>52</sup> Public Media Alliance, [Kosovo: Public broadcaster RTK's board sacked](#), July 2021.

<sup>53</sup> European Broadcasting Union, [Shkumbin Ahmetxhekaj Elected Director General of RTK in Kosovo](#), June 2022.

<sup>54</sup> See the section of this Memorandum on *Other relevant issues pertaining to social cohesion*.

remains an issue of concern in Kosovo in all spheres of life. In his 2021 Annual Report, the Ombudsperson stressed that gender inequality is present in many fields, including with regard to property rights, access to employment, political life and decision making, education, health and in the division of responsibilities in the family. The Commissioner notes that women with disabilities, rural women, women belonging to ethnic minorities and LGBTI women are faced with intersectional discrimination, bringing additional barriers and challenges.

### 3.2 Access to employment

92. As noted by the Ombudsperson and the Commissioner's interlocutors, gender inequality is particularly pronounced in the field of employment and career development. It has been reported that in 2020 the employment rate for women was only 14.4%, while for men it was 46.2%. It is noteworthy in this context that in the same year, in public universities at both Bachelor and Master level studies, there were 30 percent more female than male students, namely 34,532 and 24,266, respectively.<sup>55</sup>
93. The Commissioner notes that access to education plays a significant role in the economic empowerment of women and that occupational gender segregation remains an issue of concern in Kosovo whereby women tend to be under-represented in some sectors such as STEM (science, technology, engineering, and mathematics). In this context, the Commissioner welcomes an [initiative](#) by the government of Kosovo to provide 1,000 scholarships of EUR 1,000 each, specifically aimed at women wishing to study in the STEM sector.
94. An OSCE survey found that women in Kosovo are more commonly expected to run the household and care for the family and have less freedom socially and in relationships. It also noted that although it is becoming more acceptable for women to work outside the home, this is often decided by the husband, and does not replace or reduce any of a woman's responsibilities at home.<sup>56</sup>
95. The Commissioner is concerned by reports indicating that a high proportion of Kosovo women work in the informal sector, in which there is reportedly a rising trend of labour rights violations. It is estimated that 50% of workers in Kosovo work in the informal sector, and women represent a large portion of the informal workforce. Women in the private sector are reported to work longer than those in the public sector, at times over 10 hours a day. They are also paid less, work weekends and during official holidays, and receive pay irregularly. Furthermore, approximately 75% of these women never receive the overtime pay that they are legally owed.<sup>57</sup> Roma rights defenders have shared their concern with the Commissioner that this situation disproportionately affects Roma women, in particular those working in agriculture and that the authorities need to take more measures to improve the employment situation of Roma women.

### 3.3 Participation of women

96. The Law on Gender Equality foresees women and men's equal participation (50%), at all levels of decision-making in political and public life. The Commissioner is pleased to note that the implementation of this provision is among the government's priorities, and the Agency for Gender Equality plays an important role in this context.
97. Some progress in ensuring gender equality in political participation has been achieved in recent years, including an increase in the number of women representatives to the National Assembly (40 of the 120 seats), and in the government (out of 18 government members, six are women, including two deputy Prime Ministers). The Commissioner notes that women remain underrepresented in both local and central institutions and in political parties. As noted recently by the European Commission, political parties need to seriously address the issue of gender

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<sup>55</sup> Institute GAP, [Employment of women and their representation in Kosovo](#), Statistical report 2020.

<sup>56</sup> OSCE, [Survey on Well-Being and Safety of Women in Kosovo](#), November 2019

<sup>57</sup> Kosovo 2.0, [Working Women and the Pandemic](#), July 2021.

inequality in their programmes and statutes, and to take action to overcome the obstacles that limit women's participation in political life.<sup>58</sup>

### 3.4 Access to property rights and inheritance

98. The Commissioner notes the longstanding gender inequality with regard to property rights, although the right to property is one of the fundamental rights guaranteed by the Kosovo Constitution. Reportedly, women in Kosovo are often excluded from or decide to relinquish their inheritance right to male members of the family, crucially due to social pressure. The Ombuds has stressed the need for improved legal safeguards to ensure women's equal enjoyment of the right to property. In April 2021 the authorities extended an administrative instruction aimed at increasing the registration of joint immovable property on behalf of both spouses for six years. It has been reported that this measure has led to a noticeable increase in the registration of women as property owners, from only 104 in 2016 to 7,417 in 2020.<sup>59</sup> The Commissioner noted with interest information shared by the Minister of Justice that amendments to the Civil Code were in preparation to further strengthen the safeguards for women's equal enjoyment of the right to property.

### 3.5 Violence against women and domestic violence

99. The Commissioner welcomes the adoption by the Kosovo Assembly of an amendment to the Constitution in September 2020 that gives direct effect to the Istanbul Convention. In November 2020, a Draft Law on Prevention and Protection from Domestic Violence, Violence against Women and Gender-Based Violence was prepared by the authorities. Given that its scope is broader than that of the law governing domestic violence currently in place, the Commissioner stresses the importance of harmonising other relevant legislation and policies with the new law, once adopted. It is noted in this regard that on 14 September 2022 the draft law was approved by the parliamentary commission for human rights and gender equality of the Kosovo assembly.
100. The [National Strategy](#) on Protection against domestic violence and violence against women for the period 2022 – 2026 and an action plan for its implementation recognise domestic violence and violence against women as systemic problems “requiring systematic and coordinated response by the institutions through building policies in the area of prevention, protection, reintegration and empowering of survivors of domestic violence and gender-based violence as well as the punishment and rehabilitation through psycho-social treatment of perpetrators of these forms of violence.” Representatives of the authorities stressed to the Commissioner the important role played by the Council of Europe in monitoring the implementation of the National Strategy. The Council of Europe is currently implementing a project in Kosovo (“[Reinforcing the fight against violence against women and domestic violence.](#)”), one of the main activities of which is the assessment of the alignment of Kosovo legislation and other measures with the standards of the Istanbul Convention, applying the methodology of the baseline evaluation procedure of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). The assessment report is forthcoming.
101. In April 2021, the Ombudsperson published a report on the prevention of domestic violence, which noted a lack of coordination among relevant institutions and the need for the authorities to improve the quality of services and security of victims of domestic violence. In 2021, the Ombudsperson noted a lack of effective implementation of a law (on Electronic Surveillance of Persons whose Movement is Restricted by Court Decision) concerning electronic surveillance by the police of persons whose movement is restricted and recalled his earlier recommendations to the authorities to step up the implementation of this law to ensure better protection of the security and safety of victims of domestic violence.<sup>60</sup>

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<sup>58</sup> European Commission, Kosovo Report 2022, pp. 8 and 36.

<sup>59</sup> European Commission, Kosovo Report 2021, page 33.

<sup>60</sup> The Ombudsperson, Annual Report 2021, page 74, published in March 2022.

102. The Commissioner is concerned that violence against women and domestic violence continue to be a serious human rights issue in Kosovo. A survey by the OSCE in 2019 found that up to 57% of women had suffered psychological, physical, or sexual violence since the age of 15 years. According to the Commissioner's interlocutors, measures to combat the COVID-19 pandemic, such as movement restrictions and school closures have exacerbated gender-based domestic violence and increased the burden of unpaid care work placed on women. The Kosovo police registered 1915 cases of domestic violence in 2019, 2069 cases in 2020, and in 2456 cases in 2021.<sup>61</sup>
103. The Commissioner has noted concerns that the official numbers on gender-based violence do not reflect the reality on the ground, since instances of such violence, including sexual violence and rape, are rarely reported by survivors due to social stigma or a lack of trust in the institutions. The Commissioner noted with dismay the reports of a gang-rape of an 11-year-old girl, last August, which caused public outrage and demonstrations in Kosovo, and prompted several resignations of officials from the law enforcement sector. The five alleged perpetrators, including three minors, were promptly arrested and criminal proceedings are ongoing.<sup>62</sup> The Minister of Interior has publicly stated that the girl was sexually abused for more than one year, and all the information point to successive failures of the responsible institutions to protect her.
104. Concerning the justice system, NGOs have noted that domestic courts tend to give lenient sentences in cases of gender-based violence, while some judges continue to encourage family reconciliation in such cases. According to these NGOs, insisting on reconciliation in cases of gender-based violence may create an enabling environment for recidivism, placing victims at risk of further violence. The need for targeted training of members of the judiciary and law enforcement officers in this field has been noted.<sup>63</sup>
105. The Commissioner stresses that the promotion of gender equality, including by removing any barriers preventing women's empowerment, is a crucial tool in the prevention of violence against women and domestic violence. There is a clear need to tackle sexist prejudices against women and harmful stereotyped roles for women and men in Kosovo society, which generate inequalities and fuel social tolerance of violence against women and domestic violence. Harmonisation of domestic law with the Istanbul Convention and its effective implementation should also be prioritised. The Council of Europe's Committee of Ministers [Recommendation \(2019\)](#)<sup>64</sup> on preventing and combating sexism offers useful guidance on addressing these multifaceted problems.

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<sup>61</sup> Ibid. page 72.

<sup>62</sup> Euronews, [Thousands demonstrate in Kosovo over alleged rape of girl](#), 1 September 2022.

<sup>63</sup> OHCHR, Civil society [report](#) on human rights in Kosovo in 2020, paragraph 120, May 2021

<sup>64</sup> Committee of Ministers, [Recommendation](#) to member states on preventing and combating sexism, adopted in March 2019.