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21 June 2010

## The situation in Kosovo\* and the role of the Council of Europe

### Committee Opinion<sup>1</sup>

Committee on Legal Affairs and Human Rights  
Rapporteur: Mr Pieter OMTZIGT, Netherlands

#### A. Conclusions of the committee

The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Political Affairs Committee, Mr Björn von Sydow, on his excellent report and supports by and large the proposed draft resolution and draft recommendation.

The committee wishes, however, to propose some amendments to further strengthen the draft resolution.

#### B. Proposed amendments to the draft resolution

##### *Amendment A (to the draft resolution)*

In the draft resolution, at the end of paragraph 9, add the following:

*"Finally, the Assembly recalls that it has always expressed the hope, in its Resolutions 1375 (2004), 1453 (2005), 1417 (2005) and 1595 (2008), that access to the European Court of Human Rights be guaranteed for the whole population of Kosovo."*

##### *Amendment B (to the draft resolution)*

In the draft resolution, replace paragraph 10.3 by the following:

*"taking, without delay, concrete measures, in particular of a legislative nature, to improve the functioning of the judiciary, notably to reinforce its efficiency, competence, ethics and to guarantee its independence."*

##### *Amendment C (to the draft resolution)*

In the draft resolution, after paragraph 11.2, add the following new sub-paragraph:

*"ensure the effectiveness of the recently established independent control mechanism ('Human Rights Review Panel') by ensuring that it has the appropriate human, financial and juridical resources to carry out its mission to review and, if need be, help to redress human rights violations;"*

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1. Reference to committee: [Doc. 11676](#), Reference 3482 of 29 September 2008. See [Doc. 12281](#), tabled by the Political Affairs Committee. Opinion approved by the committee on 21 June 2010.

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



*Amendment D (to the draft resolution)*

In the draft resolution, after paragraph 11.2, add the following new sub-paragraph:

*“take into account any future opinions issued by the Venice Commission on mechanisms to review the compatibility of acts of UNMIK and EULEX with human rights standards in Kosovo;”*

*Amendment E (to the draft resolution)*

In the draft resolution, after paragraph 11, add the following new paragraph:

*“The Assembly invites the United Nations to:*

- ensure that UNMIK’s latest Administrative Direction No. 2009/1 of 17 October 2009 on the procedure before the Human Rights Advisory Panel does not undermine the work of this organ, and in particular the principles of legal certainty and fairness of proceedings;
- take into account any future opinions issued by the Venice Commission on mechanisms to review the compatibility of acts of UNMIK and EULEX with human rights standards in Kosovo;”

*Amendment F (to the draft resolution)*

In the draft resolution, after paragraph 13.1, add the following new sub-paragraph:

*“ensure effective protection of witnesses in relation to these investigations by enacting legislation in this respect without delay;”*

*Amendment G (to the draft resolution)*

In the draft resolution, after paragraph 13.3.1, add the following new sub-paragraph:

*“putting in place a balanced, impartial and pluralistic common system of teaching history;”*

*Amendment H (to the draft resolution)*

In the draft resolution, at the end of paragraph 13.3.6, add the following:

*“, as well as to conduct thorough investigations to ensure that authors of such crimes are charged and actually punished;”*

*Amendment I (to the draft resolution)*

In the draft resolution, at the end of paragraph 13.4, replace the words “including the European Convention on Human Rights and the Framework Convention on National Minorities” by

*“in particular the European Convention on Human Rights, the Framework Convention on National Minorities and the United Nations International Convention on the Rights of the Child of 20 November 1989;”*

*Amendment J (to the draft resolution)*

In the draft resolution, at the end of paragraph 13.5, add the following words:

*“, inter alia the European Social Charter and the Revised European Social Charter;”*

**C. Explanatory memorandum by Mr Omtzigt, rapporteur for opinion**

1. I can only congratulate Mr Björn von Sydow on his excellent report on the situation in Kosovo and the role of the Council of Europe.
2. I should like, however, to propose a few amendments to the draft resolution, in order to strengthen it.

*Amendment A*

In this amendment, the rapporteur deems it useful to reiterate, following the above-mentioned resolutions and while preserving the status-neutral approach of the Council of Europe, the aspiration of the Assembly that the European Court of Human Rights be accessible for all the inhabitants of Kosovo.

#### *Amendment B*

The poor respect for the rule of law in Kosovo, and the worrying state of the judiciary are rightly pointed out in the report. At paragraph 44 of the said report, it is recalled that there exists a strong risk of political interference in the composition of the Kosovo Judicial Council which, in the rapporteur's opinion, calls for the immediate adoption of a law to resolve this problem. This should be specified in the draft text.

#### *Amendment C*

In May 2010, a Human Rights Review Panel (HRRP) for EULEX Kosovo was set up. It is an independent accountability mechanism for alleged violations of human rights, which is to review complaints from any person claiming to be a victim of human rights violations by EULEX Kosovo in the conduct of its executive mandate (see website [www.hrrp.eu/index.php](http://www.hrrp.eu/index.php)). The rapporteur deems it useful to include a mention of the mechanism in the draft resolution, as well as the need for it to possess the appropriate human, financial and juridical resources to carry out its mission.

#### *Amendment D*

The Venice Commission has been asked by the Political Affairs Committee (see paragraph 68 of the report) to issue a follow-up opinion on mechanisms to review the compatibility of acts of UNMIK and EULEX with human rights standards in Kosovo. It therefore appears appropriate to remind the European Union to take into account, if need be, the key elements of the above-mentioned opinion when it is issued.

#### *Amendment E*

UNMIK Administrative Direction No. 2009/1 of 17 October 2009<sup>2</sup> has been strongly criticised by the Human Rights Advisory Panel in its 2009 annual report.<sup>3</sup> This directive introduced a new admissibility criterion (Section 2.2) which is immediately applicable to pending proceedings and imposes on the Advisory Panel the need to reconsider the admissibility of applications even if a decision on this has already been delivered (Sections 2.1 et 2.3), a matter which is problematic with respect to the concept of legal certainty. Moreover, the non-adversarial character of the proceedings during public hearings is clearly stated (Section 1.1.), which may pose problems in respect of the fairness of proceedings. As regards the opinion of the Venice Commission, the rapporteur refers to his explanatory note under Amendment D.

#### *Amendment F*

In Kosovo, there exists no law protecting witnesses, although a draft bill is currently under examination by the relevant ministries. The Kosovo institutions should therefore be invited to enact specific legislation in this respect. The rapporteur makes reference here to work undertaken on this subject by the Assembly's Committee on Legal Affairs and Human Rights on "The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans".

#### *Amendment G*

The Advisory Committee on the Framework Convention for the Protection of National Minorities, in its latest opinion on Kosovo (published on 2 June 2010), underlines that, with regard to education, attention should be paid to providing balanced and pluralistic history teaching, and to the teaching of official languages in schools. According to the rapporteur, dividing the education system into communities, in which history is taught according to the prejudices of each community, is certainly not the best way to incite schoolchildren to interact. The rapporteur considers that it is necessary to highlight that a common system of teaching history can constitute an effective means of bringing communities closer together.

#### *Amendment H*

The rapporteur recalls that impunity regarding inter-ethnic crimes is denounced by several organs of the Council of Europe: see, in this connection, Resolution ResCMN(2006)9 on the implementation of the Framework Convention for the Protection of National Minorities in Kosovo (Republic of Serbia), adopted by the Committee of Ministers in 2006, the latest report of the Council of Europe's Commissioner for Human

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2. See [www.unmikonline.org/human\\_rights/documents/Decisions/eng/AD2009-01.pdf](http://www.unmikonline.org/human_rights/documents/Decisions/eng/AD2009-01.pdf).

3. See [www.unmikonline.org/human\\_rights/documents/annual\\_report2009.pdf](http://www.unmikonline.org/human_rights/documents/annual_report2009.pdf), paragraphs 35-45.

Rights on the situation in Kosovo (document CommDH(2009)23) and the above-mentioned opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities. The Kosovo institutions should therefore be reminded of the need to investigate and prosecute inter-ethnic crimes.

*Amendment I*

The rapporteur wishes to focus on the respect of certain legal instruments that are in his view fundamental (ECHR and the Framework Convention), hence the adding of the words “in particular”. The draft resolution and recommendation (as well as the explanatory report) do not make any reference to the rights of the child, although this has been, on a pan-European level, one of the Council of Europe’s priorities since the Warsaw Summit of 2005. Reference to this international convention therefore seems appropriate.

*Amendment J*

The rapporteur recalls that economic, social and cultural rights are as important as civil and political rights protected by the European Convention on Human Rights. He therefore finds it opportune to also make specific mention of the revised European Social Charter.