



Resolution 1739 (2010)¹

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

Parliamentary Assembly

1. Since the unilateral declaration of independence of 17 February 2008, the Kosovo institutions consider themselves as the sovereign and legitimate authorities of Kosovo and have taken steps to affirm Kosovo's statehood. Sixty-nine members of the United Nations have recognised the independence of Kosovo. However, the question of compliance of the unilateral declaration of independence with international law is being examined by the International Court of Justice, following a request for an advisory opinion made by the United Nations General Assembly.
2. The United Nations Interim Administration Mission in Kosovo (UNMIK), set up by United Nations Security Council Resolution 1244 (1999), continues to be present in Kosovo, even if its staff has been considerably reduced and the scope for exercising executive functions has shrunk. It has been joined by the European Union Rule of Law Mission in Kosovo (EULEX), also acting under the aegis of Resolution 1244, whose main mandate is to monitor, mentor and advise the Kosovo institutions in the areas of the judiciary, customs and police. EULEX also holds an executive mandate in addressing war crimes as well as serious or organised crimes.
3. The Council of Europe applies a policy of status-neutrality towards Kosovo and recognises the continued validity of United Nations Security Council Resolution 1244. However, 33 of its member states have recognised Kosovo as a sovereign and independent state.
4. The Parliamentary Assembly is convinced that, in the present circumstances, the focus of its attention as regards Kosovo should not be on status but on standards. In particular, it believes that, irrespective of its status, Kosovo should be a safe place for all those who live in it and a place where standards of democracy, the rule of law and human rights of an equivalent level to that upheld by the Council of Europe are fully enforced.
5. In this context, the Assembly welcomes the increased level of security in Kosovo, as recognised by international actors on the ground, and the decrease in the number of interethnic incidents. It stresses, however, the need to closely monitor the security situation in Kosovo's northern municipalities, which remains volatile. It also regrets that, throughout Kosovo, different communities live separately, with a negligible level of interaction, and that interethnic dialogue and reconciliation are still objectives to attain.
6. The Assembly expresses deep concern about the poor respect for the rule of law in Kosovo, which affects the everyday lives of all its inhabitants, irrespective of the community they belong to, and their trust in the political system. It also hampers good governance, economic development and, in the long term, the prospects of European integration.
7. Despite a significant legislative effort to reform the administration, the judiciary and other key sectors, much needs to be done to consolidate the democratic functioning of the institutions, improve political stability and ensure a level of governance that would bring Kosovo in line with Council of Europe standards.

1. *Assembly debate* on 22 June 2010 (22nd Sitting) (see [Doc. 12281](#), report of the Political Affairs Committee, rapporteur: Mr von Sydow; and [Doc. 12302](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Omtzigt). *Text adopted by the Assembly* on 22 June 2010 (22nd Sitting). See also [Recommendation 1923 \(2010\)](#).

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



8. The participation of all Kosovo communities in the political system remains a major challenge, despite the fact that Kosovo Serbs living south of the Ibar River are more and more prepared to find a *modus vivendi* with the Kosovo authorities, as indicated by their increased turnout during the November 2009 local elections in Kosovo. In addition, some communities, such as Kosovo Serbs and Roma, Ashkali and Egyptians (RAE), continue to face discrimination and practical difficulties in the exercise of their rights and freedoms.
9. The Assembly notes that the Kosovo Constitution incorporates in domestic law the main international human rights instruments, including the European Convention on Human Rights (ETS No. 5), the Framework Convention for the Protection of National Minorities (ETS No. 157) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and that the Government of Kosovo has adopted the Human Rights Strategy and Action Plan 2009-2011. The Assembly, however, recalls that the incorporation of these instruments per se cannot be a guarantee of effective human rights protection if it is not backed by a firm political commitment to ensure implementation. 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.
10. In the light of these considerations, the Assembly calls on EULEX, UNMIK and the Kosovo institutions to strengthen their actions aimed at enhancing the rule of law in Kosovo, in particular by:
 - 10.1. taking public stances to condemn corruption, including in the political system;
 - 10.2. introducing without further delay comprehensive legislation on public procurement addressing the present legal and practical weaknesses;
 - 10.3. taking, without delay, concrete measures, in particular of a legislative nature, to improve the functioning of the judiciary, notably to reinforce its efficiency, competence and ethics and to guarantee its independence.
11. The Assembly encourages the European Union to:
 - 11.1. continue its policy of diversity on status and unity on engagement, while ensuring a European perspective for Kosovo, in the context of the Western Balkans;
 - 11.2. strengthen its EULEX mission by:
 - 11.2.1. improving its public image in Kosovo, through a more developed and inclusive communication policy;
 - 11.2.2. reinforcing its presence and role in the north of Kosovo;
 - 11.2.3. ensuring that the EULEX police and justice system is adequately funded, staffed and resourced in order to effectively address the legacy of impunity for war crimes and other serious interethnic crimes;
 - 11.3. 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;
 - 11.4. take into account any future opinions issued by the European Commission for Democracy through Law (Venice Commission) on mechanisms to review the compatibility of acts of UNMIK and EULEX with human rights standards in Kosovo.
12. The Assembly invites the United Nations to:
 - 12.1. 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;
 - 12.2. 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.
13. The Assembly calls on the authorities in Pristina and Belgrade to:
 - 13.1. adopt a constructive and pragmatic attitude in trying to solve the practical problems affecting Kosovo Serbs and other minority communities in or from Kosovo, in particular as regards the issuance of documents, the recognition of the validity of documents (such as identity cards, passports, driving licences and diplomas) and the availability of energy supply;

- 13.2. make further efforts in order to facilitate the recognition of property rights and the restitution of properties to their legitimate owners or, if this is not possible, the provision of equivalent compensation, along the lines set out in Assembly [Resolution 1708 \(2010\)](#) on solving property issues of refugees and internally displaced persons, and consistent with the case law of the European Court of Human Rights;
 - 13.3. establish an inclusive dialogue with the Kosovo Serb civil society in the north of Kosovo, also outside formal structures;
 - 13.4. continue to co-operate in the framework of the activities of the Working Group on Missing Persons and in the Reconstruction Implementation Commission (RIC) and establish dialogue on other issues of common concern;
 - 13.5. ensure full co-operation with the EULEX War Crimes Investigation Unit and the International Criminal Tribunal for the former Yugoslavia;
 - 13.6. take a flexible approach in the context of regional co-operation initiatives in order to facilitate the participation of their representatives, irrespective of status-related considerations;
 - 13.7. be proactive in promoting dialogue and reconciliation between communities, in policy and public discourse.
14. The Assembly calls on the Kosovo institutions to:
- 14.1. ensure full co-operation with EULEX in the context of investigations into serious or organised crime and war crime cases;
 - 14.2. ensure effective protection of witnesses in relation to these investigations by enacting legislation in this respect without delay;
 - 14.3. fully co-operate with the Kosovo anti-corruption agency, reinforce its independence and the professionalism of its staff, allocate adequate resources to it and ensure follow-up to its recommendations;
 - 14.4. take fully into account the multi-ethnic character of Kosovo, in particular by:
 - 14.4.1. scrupulously implementing the legislation on the rights of minorities, decentralisation and minority languages;
 - 14.4.2. putting in place a balanced, impartial and pluralistic common system of teaching history;
 - 14.4.3. creating the socio-economic conditions for the safe return and full integration of individuals from minority communities into society, including displaced persons and returnees;
 - 14.4.4. promoting the participation of individuals from minority communities in the political system and the public sphere;
 - 14.4.5. taking resolute action against discrimination on ethnic grounds, in both the public and private sphere;
 - 14.4.6. publicly condemning interethnic crimes and instructing the police to keep specific statistics on these crimes, as well as to conduct thorough investigations to ensure that authors of such crimes are charged and actually punished;
 - 14.5. ensure effective adherence to international human rights instruments incorporated in domestic law, in particular the European Convention on Human Rights, the Framework Convention for the Protection of National Minorities and the United Nations International Convention on the Rights of the Child of 20 November 1989;
 - 14.6. consider incorporating in domestic law additional Council of Europe conventions, with a view to adopting Council of Europe standards, *inter alia*, the European Social Charter (ETS No. 35) and the European Social Charter (revised) (ETS No. 163);
 - 14.7. ensure the independence of the media and promote the role of the media as a catalyst of interethnic dialogue and reconciliation, in particular by:
 - 14.7.1. restoring an independent budget for the public broadcaster RTK;
 - 14.7.2. ensuring the independence of the board of RTK;
 - 14.7.3. promoting the production, distribution and broadcasting of television and radio programmes in minority languages, especially Kosovo-wide;

- 14.7.4. supporting the efforts of media professionals to produce television and radio programmes, as well as written articles, portraying the situation of different communities in different parts of Kosovo;
- 14.8. take steps to address the situation of women and promote gender equality, in particular by:
 - 14.8.1. taking resolute action to fight against trafficking in human beings;
 - 14.8.2. introducing measures and programmes to address the situation of victims of trafficking and facilitate their reintegration into society;
 - 14.8.3. supporting or organising public campaigns against domestic violence;
 - 14.8.4. taking appropriate measures to promote the economic independence of women;
 - 14.8.5. combating discrimination against women in all fields, including in the context of inheritance law and practice and other civil cases, such as divorce, separation and custody of children;
 - 14.8.6. ensuring the investigation and prosecution of war crimes involving sexual violence and guaranteeing access to reparations for survivors;
- 14.9. take urgent steps to permanently relocate the Roma population of the camps of Cesmin Lug and Osterode Cesmin, which are heavily contaminated by lead, and provide medical treatment to those whose health has been affected, as also recommended by the Council of Europe Commissioner for Human Rights.
15. The Assembly calls on the Serbian authorities to:
 - 15.1. eliminate all practical obstacles for those displaced persons who wish to return, in particular as regards access to information, and recognition and transmission of documents, including cadastral information and property certificates;
 - 15.2. set up appropriate programmes to ensure the integration in Serbia of displaced persons from Kosovo who do not wish to or cannot go back.
16. The Assembly calls on Council of Europe member states to:
 - 16.1. refrain from forcibly returning to Kosovo individuals who might still be in need of international protection according to the relevant guidelines of the United Nations High Commissioner for Refugees;
 - 16.2. take into consideration Kosovo's implementation of the reintegration strategy and its capacity to sustain returns when deciding whether to return individuals to Kosovo and provide financial and technical assistance to the Kosovo authorities to assist with the implementation of that strategy.
17. In order to enhance the Council of Europe's role in Kosovo, the Assembly:
 - 17.1. encourages the Council of Europe Commissioner for Human Rights to continue his activities as regards Kosovo;
 - 17.2. invites the Secretary General of the Council of Europe to convey to the Organisation's Secretariat that direct working contacts with the Kosovo authorities, at all levels, are possible when justified by the need to ensure the smooth implementation of Council of Europe activities which respect status neutrality.
18. In order to contribute to the consolidation of the democratic functioning of Kosovo institutions, the Assembly:
 - 18.1. encourages Kosovo political parties to:
 - 18.1.1. introduce rules on their internal democratic functioning;
 - 18.1.2. promote gender equality in their structures, leadership and electoral lists;
 - 18.1.3. favour multi-ethnic membership, leadership and electoral lists;
 - 18.2. resolves to initiate a dialogue with representatives of the political forces elected to the Kosovo Assembly on issues of common interest, while taking into account the legitimate interests and concerns of Serbia and ensuring conformity with United Nations Security Council Resolution 1244.