



**Doc. 13088**

07 January 2013

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

### Report<sup>1</sup>

Committee on Political Affairs and Democracy

Rapporteur: Mr Björn von SYDOW, Sweden, Socialist Group

### Summary

Irrespective of the status of Kosovo, all people living in Kosovo should enjoy good governance, democracy, rule of law and the same legal and human rights as other people in Europe. The main challenge faced by Kosovo lies in the implementation of existing human rights and rule of law standards, in particular the fight against corruption and organised crime.

The current phase of the European Union-mediated dialogue between Pristina and Belgrade, at Prime Minister level, creates a window of opportunity for solving fundamental political problems along with technical matters.

The report calls on the Council of Europe to enhance its action regarding the promotion of democracy, human rights and rule of law standards, by expanding co-operation programmes and allowing the competent authorities in Kosovo to be directly involved in the implementation of Council of Europe activities and programmes. It also proposes that the Assembly intensifies and expands its own dialogue with representatives of the political forces elected to the Assembly of Kosovo and invites the Bureau of the Assembly to define the modalities thereof with full respect for the policy of status neutrality.

---

1. Reference to committee: Reference 3844 of 9 March 2012.

\* 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.



<b>Contents</b>	<b>Page</b>
A. Draft resolution .....	3
B. Draft recommendation .....	7
C. Explanatory memorandum by Mr von Sydow, rapporteur .....	9
1. Introduction .....	9
2. Recent institutional developments .....	9
3. Democracy, good governance and political stability .....	12
3.1. Free and fair elections .....	12
3.2. The functioning of democratic institutions .....	13
3.3. The situation in northern Kosovo .....	13
4. Rule of law .....	15
4.1. Impunity, accountability and access to justice .....	16
4.2. The fight against organised crime and corruption .....	17
4.3. The judiciary .....	17
4.4. Police .....	18
5. Human rights .....	18
5.1. Law and policy .....	18
5.2. The Ombudsperson .....	19
5.3. Human rights accountability of international organisations .....	19
6. Minority rights .....	19
7. Missing persons and displaced persons .....	21
8. Freedom of expression .....	22
9. The situation of women .....	23
10. Cultural and religious heritage .....	24
11. Kosovo and the European Union .....	24
12. Kosovo and the Council of Europe .....	25
13. Closing remarks .....	28

## A. Draft resolution<sup>2</sup>

1. The Parliamentary Assembly notes that, since the unilateral declaration of independence in 2008, Kosovo<sup>3</sup> continues to seek international recognition while further developing its democratic institutions.
2. The Kosovo authorities continue to share power with an international presence operating within the status-neutral framework of United Nations Security Council Resolution 1244. This presence, including the United Nations Administration Mission in Kosovo (UNMIK) and the European Union Rule of Law Mission in Kosovo (EULEX), has gradually been reduced over the years.
3. The Assembly believes that the current phase of the European Union-mediated negotiations between Pristina and Belgrade, at prime minister level, indicates a greater willingness of both sides to promote reconciliation and overcome the legacy of the past, and creates a window of opportunity for resolving fundamental political problems along with technical matters.
4. The Assembly notes that the Council of Europe continues to apply a policy of status neutrality towards Kosovo, despite the fact that 34 of its 47 member States have recognised Kosovo as a sovereign and independent State. Recalling its [Resolution 1739 \(2010\)](#) on the situation in Kosovo and the role of the Council of Europe, it emphasises once more that, irrespective of the status of Kosovo, the people living there should enjoy good governance, democracy, rule of law and the same legal and human rights as other people in Europe.
5. In this respect, the Assembly regrets that overall progress in improving the rule of law in Kosovo is slow, particularly with regard to the fight against organised crime and corruption, both in the north and south of Kosovo, and that the judiciary continues to suffer from political interference, inefficiency and lack of transparency and enforcement. The Assembly therefore welcomes the recent restructuring of EULEX that aims to prioritise certain rule of law areas, such as fighting corruption and organised crime, in particular in the north of Kosovo.
6. As already stressed in its [Resolution 1839 \(2011\)](#) on the political situation in the Balkans, the Assembly is particularly concerned about the situation, including the security of the Serbian community, in the north of Kosovo, where security incidents and tensions persist. It remains convinced that a political agreement on how to govern this area is a prerequisite for a sustainable solution and for the realisation of the European Union aspirations of both Belgrade and Pristina.
7. Since enhanced autonomy was granted to the Serb municipalities, the sentiments of the Serbs living south of the Ibar River appear to be changing, resulting also in a higher voter turnout. However, the Assembly regrets that concerns for their safety and the full respect of their rights still persist and believes that interaction between the Kosovo Serb and Albanian communities needs to be further promoted. Furthermore, the authorities' strategy to protect and promote the rights of the Roma, Ashkali and Egyptians communities living in Kosovo also needs to be implemented with more vigour.
8. In the light of the above, the Assembly calls on the authorities in Kosovo, EULEX and UNMIK to continue strengthening the rule of law and the legal, institutional and policy framework for combating corruption, in particular by:
  - 8.1. introducing concrete measures to ensure proper implementation of the legal framework to curb political interference in the work of the judiciary and providing the latter with adequate support, resources and training;
  - 8.2. empowering independent anti-corruption bodies and fast tracking the provision of data to judicial authorities concerning corruption cases;
  - 8.3. simplifying the supervision of public procurement and monitoring the enforcement of existing rules;
  - 8.4. improving legislation, policy and practice in the areas of money laundering, financing of terrorism, trafficking in human beings, drugs and weapons and asset confiscation;
  - 8.5. developing an adequate witness protection system;

---

2. Draft resolution adopted unanimously by the committee on 14 December 2012.

3. Any references to Kosovo in this text, 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.

- 8.6. providing the necessary funding and staff for an efficient, competent and multi-ethnic public administration system, and offering training in ethics and in the fight against corruption.
9. The Assembly welcomes the support of the European Union for the Council of Europe co-operation programmes and encourages it to:
  - 9.1. continue to offer a European perspective to the whole of the Western Balkans, including Kosovo;
  - 9.2. ensure that its policy dialogues with Kosovo focus particularly on strengthening the rule of law and are linked to incentives and priority conditions, in line with the recent recommendations of the European Court of Auditors;
  - 9.3. ensure that the normalisation process between Pristina and Belgrade goes hand in hand with the implementation of European human rights and rule of law standards in the whole region;
  - 9.4. support the Serbian authorities in finding sustainable solutions for and assisting the local integration in Serbia of internally displaced persons (IDPs) who do not wish to return, with a view to accelerating the normalisation process;
  - 9.5. strengthen its EULEX mission by:
    - 9.5.1. reinforcing its accountability and effectiveness in tackling high-level corruption and organised crime;
    - 9.5.2. focusing on the investigation and prosecution of war crimes, along with an effective and well-funded witness protection programme;
    - 9.5.3. implementing the recommendations of the opinion of the European Commission for Democracy through Law (Venice Commission) on the existing mechanisms to review the compatibility with human rights standards of acts by UNMIK and EULEX in Kosovo.
10. The Assembly calls on the authorities in Pristina and Belgrade to:
  - 10.1. engage in the European Union-mediated dialogue with an open mind and without preconditions;
  - 10.2. continue to ensure co-operation with the relevant EULEX bodies exercising executive law enforcement functions in Kosovo, including its War Crimes and Organised Crime Investigation Units, as well as with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and with the European Union Special Investigative Task Force (SITF);
  - 10.3. refrain from resorting to non-judicial means, such as taking to the media, in a manner that might be seen as a threat to the integrity of the judicial process;
  - 10.4. intensify efforts so as to avoid that the stand-off situation in the north of Kosovo being transformed into a frozen conflict and find ways to involve Kosovo Serb civil society in the dialogue;
  - 10.5. tackle cross-border organised crime and corruption also by making progress towards the creation of a Balkan arrest warrant and a pan-Balkan extradition mechanism, which must include Kosovo if they are to be effective; in this respect, the signature of an operational protocol between the Serbian authorities and EULEX would improve mutual assistance in corruption cases;
  - 10.6. allocate adequate resources to the Belgrade–Pristina Working Group on Missing Persons and strengthen regional co-operation to help clarify the fate of the missing;
  - 10.7. intensify technical co-operation to establish clear statistics relevant to refugee and IDP return and local integration, and continue providing support for the return and reintegration of refugees in their place of origin or, where appropriate, for integration in the place of displacement, in co-operation with the international community, and give priority to the promotion of access to basic rights, including housing, education, health, employment and social services;
  - 10.8. publicly condemn and investigate inter-ethnic crimes and all acts of religious intolerance and vandalism against religious or cultural symbols;
  - 10.9. support cross-border, grass-root and civil society initiatives aimed at reconciling citizens and fostering cultural change.

11. The Assembly calls on the authorities in Kosovo to:
  - 11.1. pursue judicial reform to further strengthen the independence, impartiality and transparency of the judiciary, in particular by:
    - 11.1.1. ensuring sufficient resources for the proper functioning of the courts, including in the Mitrovica district;
    - 11.1.2. providing security and protection to judges, prosecutors, litigants and witnesses;
    - 11.1.3. restructuring prosecution offices and filling vacant positions for minorities;
    - 11.1.4. upgrading the case-management system;
    - 11.1.5. improving awareness of human rights in judicial decision-making;
  - 11.2. strengthen the financial independence of the Assembly of Kosovo and of other independent institutions;
  - 11.3. implement the recommendations of the Ombudsperson Institution of Kosovo and ensure sufficient resources for its functioning;
  - 11.4. implement the provisions enshrined in the legal and institutional framework for the protection and promotion of minority rights and facilitate interaction between communities, also by:
    - 11.4.1. promptly investigating attacks motivated by ethnicity or religion, and improving data collection;
    - 11.4.2. ensuring that communities' members are employed in public administration, including at senior level;
    - 11.4.3. allowing children to receive education in their mother tongue in public schools and establish a procedure for registration of private educational institutions providing education in a language of their choice;
    - 11.4.4. allocating adequate resources to civil registration offices, reaching out to vulnerable communities and ensuring affordable registration fees;
    - 11.4.5. allocating adequate resources to the Office of the Language Commissioner, responsible for monitoring the Law on the use of languages;
    - 11.4.6. ensuring broadcasting of the Kosovo public broadcaster in the Serbian language;
    - 11.4.7. supporting the work of the Kosovo Property Claims Commission with a view to reducing the backlog of cases;
    - 11.4.8. implementing legislation on the protection of cultural heritage;
    - 11.4.9. allocating adequate funds for the implementation of the strategy for the integration of the Roma, Ashkali and Egyptian communities, and paying attention to the situation of the Turkish and Bosniak communities;
    - 11.4.10. ensuring fulfilment of all obligations relating to the issuance of licence plates, without discrimination;
  - 11.5. create the conditions for the sustainable return and reintegration of displaced and repatriated persons, in particular by:
    - 11.5.1. allocating adequate staff and resources to municipal offices for communities and working groups on returns;
    - 11.5.2. complying with international standards governing post-conflict property restitution;
  - 11.6. ensure the independence of the media and the adequate protection of journalists, in particular by:
    - 11.6.1. fully implementing the laws on the Radio Television of Kosovo (RTK) and on the Independent Media Commission (IMC);
    - 11.6.2. drafting a handbook detailing the proper procedures for handling cases of violence against journalists;
    - 11.6.3. fully implementing the law on access to official documents;

- 11.6.4. further promoting access to information for non-Albanian communities;
- 11.7. promote gender equality and the empowerment of women, in particular by:
  - 11.7.1. strengthening the fight against trafficking in human beings;
  - 11.7.2. implementing the 2012-2015 Action Plan on Domestic Violence;
  - 11.7.3. finalising standard operating procedures for victims of domestic violence and developing reintegration programmes for victims.
12. In order to enhance the Council of Europe's role in Kosovo, the Assembly reiterates its previous invitation to 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 necessary in order to ensure the smooth implementation of Council of Europe activities which respect the status neutrality.
13. In order to contribute to the democratic functioning of the institutions in Kosovo, the Assembly:
  - 13.1. encourages the Assembly of Kosovo to improve communication with independent institutions, such as the Ombudsperson Institution, and to ensure that they are allocated the necessary resources to carry out their mandate;
  - 13.2. encourages the Kosovo political parties to favour multi-ethnic membership and leadership;
  - 13.3. resolves to intensify and expand its own dialogue with representatives of the political forces elected to the Assembly of Kosovo and invites its Bureau to define the modalities thereof with full respect for the policy of status neutrality.
14. Finally, the Assembly remains committed to promoting democracy, human rights and the rule of law in Kosovo and therefore resolves to continue to closely follow both developments in these areas and the relevant Council of Europe activities.

## B. Draft recommendation<sup>4</sup>

1. Referring to its Resolution ... (2013) on the situation in Kosovo<sup>5</sup> and the role of the Council of Europe, the Parliamentary Assembly reiterates its stance that, irrespective of the status of Kosovo, the people living there should enjoy good governance, democracy, rule of law and the same legal and human rights as other people in Europe.
2. The Assembly notes that in its reply to [Recommendation 1923 \(2010\)](#) on the situation in Kosovo and the role of the Council of Europe, adopted on 12 January 2011, the Committee of Ministers affirmed its own commitment to the European perspective of all people living in Kosovo, acknowledging that “the Council of Europe monitoring process [would] only be truly meaningful if the relevant and competent authorities in Kosovo [were] directly involved in the monitoring process and responsible for following up the recommendations”.
3. The Assembly also welcomes the greater engagement of the Council of Europe in Kosovo through programmes aiming at strengthening democracy, human rights and the rule of law in Kosovo and through the activities of the Council of Europe Office in Pristina, which has been reinforced as requested by the Assembly.
4. However, the Assembly regrets that the Organisation has not been in a position to implement “other Council of Europe monitoring mechanisms” in Kosovo, as stressed by the Committee of Ministers in its reply. At the same time, it welcomes the recent proposal by the Secretary General of the Council of Europe to introduce the possibility of direct interaction between Council of Europe officials and the relevant and competent authorities in Kosovo on the basis of the functional responsibilities exercised by them.
5. Considering that the main challenge lies in the implementation of human rights and rule of law standards in Kosovo, the Assembly recommends that the Committee of Ministers:
  - 5.1. further enhance its action to promote human rights and rule of law standards in Kosovo and expand Council of Europe programmes, including through the work of key Council of Europe bodies and the Council of Europe Development Bank, in particular in the following areas:
    - 5.1.1. implementation of anti-discrimination legislation;
    - 5.1.2. independence and efficiency of the judiciary;
    - 5.1.3. action against corruption and evaluation of anti-money laundering measures and the financing of terrorism;
    - 5.1.4. action against trafficking in human beings;
    - 5.1.5. action to promote gender equality, and prevent and combat violence against women and domestic violence;
  - 5.2. ask the Council of Europe member States to:
    - 5.2.1. put an end to the forced return of Roma to Kosovo until such return can be shown to be safe and sustainable, in compliance with [Resolution 1768 \(2010\)](#) on Roma asylum seekers in Europe and with the recommendations of the Council of Europe Commissioner for Human Rights;
    - 5.2.2. continue to provide financial assistance so that existing action plans aimed at finding a sustainable solution for refugees and internally displaced persons are followed up by concrete action;
    - 5.2.3. contribute to the relevant co-operation programmes, according to the priorities set out by the Organisation;
  - 5.3. support the proposal by the Secretary General of the Council of Europe to ensure that Council of Europe officials are able to interact and have direct working contacts with the Kosovo authorities with a view to facilitating the implementation of Council of Europe activities and programmes, without prejudice to the status-neutral approach of the Organisation;

---

4. Draft recommendation adopted unanimously by the committee on 14 December 2012.

5. Any references to Kosovo in this text, 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.

5.4. strengthen the relevant work done by the Council of Europe in conflict and post-conflict regions on the revision and development of textbooks and teacher manuals, the organisation of teacher seminars and source material identification, as also stressed in [Recommendation 1954 \(2011\)](#) on reconciliation and political dialogue between the countries of the former Yugoslavia;

5.5. continue to co-operate closely with other international actors, in particular the European Union, the Organization for Security and Co-operation in Europe (OSCE) as well United Nations agencies, to improve co-ordination, enhance impact and avoid duplication of efforts.

## C. Explanatory memorandum by Mr von Sydow, rapporteur

### 1. Introduction

1. I was reappointed rapporteur on the situation in Kosovo on 6 October 2011. To date, two and a half years after the adoption of my first report in June 2010 and four years after Kosovo's unilateral declaration of independence in 2008, some progress has been made but many concerns remain, in particular in the areas of the rule of law and human rights.

2. Several important developments have occurred both at the internal and the international level. The situation has evolved as regards political stability, governance and democracy in Kosovo, and the attitude of the international community as a whole vis-à-vis Kosovo. The issue of the status of Kosovo, however, continues to be divisive.

3. The aim of the present report is twofold:

- to assess the developments since the adoption of Assembly [Resolution 1739 \(2010\)](#) and [Recommendation 1923 \(2010\)](#) on the situation in Kosovo and the role of the Council of Europe, in particular with regard to the situation of democracy, human rights and the rule of law;
- to identify a possible way forward, in particular with regard to the relations between Kosovo and the Council of Europe.

4. I had the opportunity to make a number of fact-finding visits to the region:

- 28-30 November 2010, on the eve of the elections (Pristina, Gračanica);
- 1-4 November 2011 (Pristina, Gračanica and Mitrovica);
- 18-20 January 2012 (Belgrade);
- 28-31 October 2012 (Pristina, Peja/Peç);
- 15-16 November 2012 (Belgrade).

5. On 15 December 2010 and on 30 May 2012, the Committee on Political Affairs and Democracy organised hearings with the participation of representatives of the political forces elected to the Assembly of Kosovo. On the second occasion, civil society representatives also took part. The committee organised a further exchange of views in Paris on 14 November 2012, with the participation of the Ombudsperson of Kosovo, representatives of the political forces elected to the Assembly of Kosovo and a representative from the Directorate General of Programmes of the Council of Europe. A fourth exchange of views with representatives of the political forces elected to the Assembly of Kosovo took place at the committee's meeting in Turin, on 14 December 2012.

6. Throughout 2011 and 2012, during the Assembly's part-sessions, I had the opportunity to meet a number of interlocutors in Strasbourg, in particular ambassadors, the Secretary General of the Council of Europe, the Council of Europe Commissioner for Human Rights, as well as civil society representatives, who have proved to be important sources of information. I have also made extensive use of reports of the United Nations Interim Administrative Mission in Kosovo (UNMIK), the European Union Rule of Law Mission in Kosovo (EULEX) and the OSCE.

7. Over the past five years, my intention as rapporteur on the situation in Kosovo has remained unchanged, namely to promote consensus on the necessity that people in Kosovo enjoy good governance, democracy, rule of law and the same legal and human rights as other people in Europe. Despite some developments, this has yet to be achieved.

### 2. Recent institutional developments

8. To date, four and a half years after Kosovo unilaterally declared its independence, 96 countries of the 192 United Nations member States have recognised Kosovo as an independent State, including 34 of the 47 Council of Europe member States,<sup>6</sup> and 22 of the 27 European Union member States.

9. Kosovo became a member of the World Bank and of the International Monetary Fund in 2009 and, on 16 November 2012, the Board of Governors of the European Bank for Reconstruction and Development (EBRD) decided to allow Kosovo to become a member of the EBRD, without prejudice to the positions of EBRD members on the status of Kosovo.

10. Although the International Court of Justice (ICJ) found, on 22 July 2010, that Kosovo's declaration of independence "did not violate general international law, Security Council Resolution 1244 (1999) or other Constitutional Framework",<sup>7</sup> the decision to recognise Kosovo, or not, will always remain a political matter for each State to decide.

11. I have therefore deliberately decided to leave the issue of recognition outside the scope of my report and limit myself to giving an overview of the institutional architecture in Kosovo, which remains complex. The Kosovo authorities do not have a monopoly on the use of force and still share power with an international presence, which has gradually been reduced over the years.

12. On 2 July 2012, the International Steering Group (ISG) for Kosovo, a 25-nation group that has recognised Kosovo and supervised the implementation of the "Ahtisaari Plan", announced that the Comprehensive Settlement Proposal (CSP)<sup>8</sup> had been successfully implemented and authorised the final steps to end supervised independence and to close the International Civilian Office (ICO) by the end of 2012.<sup>9</sup>

13. The ISG underscored that the principles and spirit that had governed the CSP needed to continue in the period after supervised independence. In this regard, the ISG welcomed Kosovo Prime Minister Thaçi's statement confirming Kosovo's ongoing commitment to respect and actively implement these principles.

14. The European Union plays a prominent role in the reconstruction and development of Kosovo and concentrates on fostering Kosovo's development of stable institutions and sustainable economic development and ensuring its European future. It is present in Kosovo through:

- the EU Office in Kosovo and the European Union Special Representative (EUSR), who, under the authority of the EU High Representative for Foreign Affairs and Security Policy, ensures that a political and technical dialogue is maintained with the Brussels institutions, offers support to the government of Kosovo in the political process and contributes to the development and consolidation of respect for human rights and fundamental freedoms;
- EULEX, which assists and supports the Kosovo authorities in the area of the rule of law, specifically the police, judiciary and customs; its mandate was recently extended until 2014 with a staff reduction of about 25% (2 250 officials); EULEX is currently undergoing major reforms aimed at prioritising certain rule of law areas, such as fighting corruption and organised crime, in particular in northern Kosovo, and supporting the EU agenda in terms of visa liberalisation, the Pristina-Belgrade dialogue and the rule of law structured dialogue;<sup>10</sup>
- the EU member State representations (currently 17 embassies and liaison offices).

15. EULEX operates under the overall authority, and within the status-neutral framework, of the United Nations, whose presence has been steadily reduced over the years. However, the Special Representative of the UN Secretary General, head of the 418-staffed UNMIK, still enjoys civilian executive power and ensures the co-ordination of the international civil presence operating under United Nations Security Council Resolution 1244.

---

6. The following Council of Europe member States have recognised Kosovo as an independent State: Albania, Andorra, Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, San Marino, Slovenia, Sweden, Switzerland, "the Former Yugoslav Republic of Macedonia", Turkey, United Kingdom.

The following member States have not recognised Kosovo as an independent State: Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Greece, Republic of Moldova, Romania, Russia, Serbia, Slovak Republic, Spain, Ukraine.

7. The opinion was requested by the United Nations General Assembly in 2008 on the question, "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law".

8. The Comprehensive Proposal for a Status Settlement for Kosovo was presented by the Secretary-General of the United Nations to the United Nations Security Council members on 26 March 2007. It was drafted by a team headed by President Martti Ahtisaari, Special Envoy of the Secretary-General. In its Declaration of Independence of 17 February 2008, the Assembly of Kosovo committed itself fully to implementation of the settlement, and invited the international presence, including the International Civilian Office, to deploy in Kosovo to supervise implementation.

9. Despite the closure of the ICO, the mandates of many international appointees have been extended until 2014, including for instance a sustained international presence within the Kosovo Auditor General, the Privatisation Agency of Kosovo, the Kosovo Property Agency, the Kosovo Pensions Savings Trust, the Independent Commissions for the Review of Serb Language Textbooks, the Constitutional Court, the Kosovo Judicial Council and the Supreme Court.

10. EULEX Programme Report 2012.

16. The OSCE retains the status of UNMIK's pillar for institution building, human rights protection and promotion, democratisation and access to services by all Kosovo communities. It also advocates timely and effective municipal responses to security incidents affecting minority communities throughout Kosovo, including Serbian communities, but also Albanian communities who live as a minority in Serbian administered municipalities.

17. For the past 12 years, the mission of the NATO-led Kosovo Force (KFOR) has contributed to maintaining a safe environment in Kosovo. Its troops have been gradually reduced over time to approximately 5 576. KFOR is also training the Kosovo Security Force, an all-voluntary, professional, multi-ethnic, lightly-armed force, and maintains the conditions necessary for other international organisations to operate. As shown by the deterioration of the situation in northern Kosovo in 2011, tensions remain and KFOR's action is still required to guarantee the population a stable environment, freedom of movement and security.

18. In September 2012, the Kosovo Agency of Statistics published the final results of the Population and Housing Census conducted in Kosovo, excluding the north, in April 2011. This provided the first internationally recognised census data for Kosovo since 1981. According to the census, 88% of the population are ethnic Albanians, 7% ethnic Serbs, and 5% belonged to other ethnic groups, including Bosniaks, Gorani, Roma, Ashkali, Egyptians and Turks.

19. The Serbian authorities continue to have an impact on the lives of the Kosovo Serbs and Serbian-funded structures still exist in the north, mainly in the areas of health and education, municipal administration, security services and judicial structures. However, their efficiency and effectiveness are more and more called into question by the local leaders themselves, whom I met during a visit to Mitrovica-north in November 2011. The local population faces a dire economic situation and remains dependent on social assistance from Belgrade.

20. During and since the Serbian parliamentary and presidential elections, which were held on 6 and 20 May 2012, four important developments have taken place, namely:

- During the election campaign, the issue of Kosovo was of marginal concern in relation to questions ranging from socio-economic issues, unemployment, privatisation, alleged corruption and, to a lesser extent, EU accession;<sup>11</sup>
- The efforts of Belgrade and Pristina, which demonstrated a good sense of responsibility and leadership with the support of the international community,<sup>12</sup> allowed the Serbian citizens living in Kosovo to exercise their right to vote; furthermore, Serbia decided not to organise local elections in Kosovo;<sup>13</sup>
- The newly elected President of Serbia, Tomislav Nikolić, shortly after his election, reaffirmed his country's commitment to honour fully all agreements reached in the European Union facilitated dialogue between Belgrade and Pristina and to resume negotiations at a higher political level. This was confirmed more recently by Prime Minister Ivica Dacic, appointed in October 2012 as the head of Belgrade's negotiation team, who said that the Government of Serbia was working to "build new bridges with Pristina", and "wants a peaceful settlement for Kosovo and a resumption of the dialogue between Belgrade and Pristina, which should encompass political issues along with technical ones", and stressed that "good will, preparedness to compromise and wisdom are necessary for finding a definite solution to the Kosovo issue";<sup>14</sup>
- Prime Ministers Dacic and Thaçi met in Brussels on 19 October, 7 November and on 4 December 2012, in meetings chaired by the EU High Representative Catherine Ashton, and undertook to work together to normalise relations and to implement all the agreements.

---

11. OSCE/ODIHR Limited Election Observation Mission Final Report – Republic of Serbia, Parliamentary and early presidential elections, 6 and 20 May 2012.

12. The OSCE played a facilitating role and the voting proceeded peacefully in the 90 polling stations that were set up in 28 locations in Kosovo to service some 110 000 eligible voters (Serbian citizens living in Kosovo).

13. Despite Belgrade's formal objection, only two municipalities in the North (Zvečan and Zubin Potok) held local elections, which however have not been recognised by any of the local or international stakeholders.

14. Prime Minister Dacic, speaking at the Belgrade Security Forum on 21 September 2012.

### 3. Democracy, good governance and political stability

21. Important developments in terms of governance and political stability in Kosovo have taken place over the past two years and major reforms have been implemented, bringing Kosovo closer to European standards. However, sustained efforts are needed to improve the functioning of the democratic institutions, in particular the Assembly of Kosovo, as well as to build an efficient public administration and judicial system and to implement effectively the rule of law.

#### 3.1. Free and fair elections

22. The last general elections were held on 12 December 2010, following the withdrawal of the Democratic League of Kosovo (LDK) from the coalition government led by the Democratic Party of Kosovo (PDK) and the decision of the then acting President Krasniqi to dissolve the Assembly and to hold extraordinary elections.

23. The elections took place without violence, but were marred by irregularities, as highlighted by several international observers. The Parliamentary Assembly did not observe these elections. For my part, I went to Kosovo from 28 to 30 November 2010, namely two weeks before the elections, in my capacity as rapporteur, and met, *inter alia*, all seven main players in the elections, including the two new parties, the Movement for Self-Determination (*Vetevendosje*) and the liberal FER party (which later merged into the *Vetevendosje*).

24. These were the first parliamentary elections since the declaration of independence and were run without the involvement of the international administration. Incidents of irregularities and fraud included multiple voting and vote manipulation. As a consequence of the reported irregularities, the Central Election Commission (CEC) decided to recount votes from 681 polling stations throughout Kosovo and to repeat the vote in five municipalities, on 9 January 2011. The level of irregularities in these contests was much lower.

25. On 10 January 2011, a European Parliament delegation that monitored the elections issued a statement stressing that "some serious shortcomings underscored insufficient political will, including at the grass-roots level, to conduct a genuine election in line with international standards and good electoral practices". On 12 January 2011, the European Network of Election Monitoring Organisations announced that "a high number of irregularities during the Assembly of Kosovo elections have severely affected the trust in the democratic process in Kosovo".

26. The CEC announced that 47.8% of the 1 630 000 registered voters cast their ballots, representing an increase of 18.3% compared to the 2007 elections. The Democratic Party of Kosovo of Prime Minister Hashim Thaçi won 34 of the 120 seats in the Assembly, followed by the Democratic League of Kosovo with 27, Vetëvendosje (self-determination movement) with 14, the Alliance for the Future of Kosovo (AAK) with 12 and the New Kosovo Alliance (AKR) coalition with 8 seats.

27. Kosovo Albanian political parties won a total of 95 seats and Kosovo Serb parties won an extra 3 (2 for the Independent Liberal Party and one for the United Serbian List), in addition to the 10 seats reserved for them. The "other communities" won 2 seats (one for the Kosovo Turk Democratic Party (KTDP), and one for the Ashkali Integration Party (PAI)), in addition to the 10 seats set aside for them (4 for the Roma, Ashkali and Egyptian communities, 3 for the Bosniak community, 2 for the Turkish community and one for the Gorani community).

28. The participation of the Kosovo Serb community was mixed. Over 21 000 Kosovo Serbs voted south of the Ibar River, the largest turnout since the 2001 elections, while in the north the turnout was negligible.

29. Since the LDK and the AAK refused to participate in a PDK-led coalition, the PDK eventually formed a governing coalition with the AKR and with the overwhelming majority of the Kosovo Serb and "other communities" parties, thus enjoying the support of 64 deputies. Of the 19 ministries, the Kosovo Serbs head three ministries, compared with two in the previous government, including the Ministry for Local Government Administration, whose Minister is also one of the six Deputy Prime Ministers. Among the Deputy Ministers, three are Serbs and eight come from other communities.

30. On 22 February 2011, the Assembly of Kosovo elected AKR leader Behgjet Pacolli as the President of Kosovo, with 62 votes, and appointed a government led by Prime Minister Thaçi. In March 2011, opposition members challenged the legality of the presidential election process, which was subsequently found to be in violation of the constitution by a Court ruling, due to the absence of a second candidate and the lack of the necessary quorum.

31. In April 2011, the name of Ms Atifete Jahjaga, until then the Deputy General Director of the Kosovo police, was put forward as the consensual candidate, following a compromise agreement between the government and the LDK which involved further electoral system reforms. Ms Jahjaga was then elected by the Assembly of Kosovo with 80 votes in favour and 101 deputies present. In July 2012, Kosovo's Constitutional Court held that President Jahjaga should serve a full five-year term, until 2016, and not until 2013, when the electoral reform is to be in place, as previously agreed in a political deal by PDK, LDK and AAK.

32. The Assembly of Kosovo established an ad hoc committee dealing with general electoral reforms, which, in May 2012, produced a first draft of an amended law on elections with the assistance and guidance of an election working group of international and local stakeholders, co-ordinated by the OSCE. Draft amendments establishing the direct election of the president and the reshaping of his or her constitutional powers are currently being discussed.

33. The nationalist movement Vetëvendosje, which obtained 12.66% of the votes in the 2010 elections, continues to be active and opposes the international presence, the decentralisation process, the Belgrade–Pristina dialogue mediated by the European Union and the negotiation for the final status of Kosovo. Its President, Mr Albin Kurti, is also Chairperson of the Parliamentary Foreign Affairs Committee. The movement has often been responsible for incidents of violence.

### **3.2. The functioning of democratic institutions**

34. Democratic institutions in Kosovo are still developing. A number of bodies and independent institutions complain of political interference. There is still no clear division of powers between the legislative, the executive and the judiciary branches of power. It is worth noting that the separation of powers is not only a key feature in any democracy but also a prerequisite to move the economy forward, attract foreign investment and create wealth.

35. The OSCE mission is working to support the functioning of the Assembly of Kosovo and of the independent institutions and actively supports political parties' development. This includes strengthening the capacity of non-Albanian parliamentary groups to increase their legislative and oversight input in the work of the Assembly.<sup>15</sup> However, the capacity of the Assembly to scrutinise draft legislation and the work of the government has been called into question by several observers, due to the dominant role of the governing coalition, and there are concerns that the rules of procedure are not always followed. A better scrutiny of legislation and monitoring of the implementation of policies and law are needed and the financial independence of the Assembly has to be strengthened.

36. Our committee, for its part, has initiated a dialogue with representatives of the political forces elected to the Assembly of Kosovo on the basis of [Resolution 1739 \(2010\)](#), and has since held four hearings on the situation in Kosovo. At least one representative from the majority and one from the opposition took part in these meetings and the committee strove to ensure that the Serb component was also represented. In my view, the Parliamentary Assembly should deepen its engagement with the Assembly of Kosovo and find ways to involve members of the Assembly of Kosovo in its debates.

37. A number of independent institutions, including the Kosovo Judicial Institute, the Independent Media Commission, the Central Election Commission, the Ombudsperson institution and the Independent Oversight Board for Civil Service of Kosovo are also operational in Kosovo. It remains of key importance to build their capacities, to strengthen the relations between them and the Assembly of Kosovo and to safeguard their independence from political interference.

### **3.3. The situation in northern Kosovo**

38. The situation in northern Kosovo, which has always been tense due to a long stand-off over "cross-border" trade, degenerated in July 2011. Clashes and episodes of violence began when the Kosovo Police crossed into the northern municipalities in an attempt to control two custom gates along the administrative checkpoint to enforce an embargo on imports from Serbia as a reciprocal measure in response to Serbia's refusal to admit goods originating from Kosovo since 2008. This attempt had not been co-ordinated with the international presence nor with the communities on the ground.

39. In reaction, local Kosovo Serbs set up roadblocks to block access to the gates and on all major roads in northern Kosovo, thus severely restricting freedom of movement and access by road. Clashes erupted on several other occasions in the last year, leaving dozens of peacekeepers and protesters injured and two dead.

---

15. OSCE, The state of independent institutions in Kosovo, 12 July 2012.

40. On 6 October 2011, following a debate under urgent procedure, the Parliamentary Assembly adopted [Resolution 1839 \(2011\) on the political situation in the Balkans](#), calling upon the people in North Kosovo to act with restraint and to co-operate without delay with KFOR and EULEX, and urging the authorities in Belgrade and Pristina to resume the EU-mediated dialogue on all outstanding issues in a spirit of co-operation and reconciliation.

41. Although almost all roadblocks were removed following the intervention of KFOR forces, tension remained high until the end of 2011 and, to date, the situation remains fragile. Despite some improvements, it is regrettable that the implementation of the EULEX mandate is still hampered by roadblocks and recurrent security incidents.<sup>16</sup>

42. Inevitably, the flare up of tension has slowed down Serbia's bid to obtain EU candidate status, which was delayed at the EU summit in December 2011 but eventually granted in March 2012.

43. It is regrettable that, on 14 and 15 February 2012, despite criticism from the Government of Serbia, the Kosovo authorities and the international community, the northern Kosovo municipalities conducted a "referendum" on the question "Do you accept the institutions of the Republic of Kosovo?". UNMIK and other international institutions stressed that the "referendum" had no legal consequences.

44. Looking forward, Belgrade and Pristina must continue to seek ways to minimise the risks of further conflict and focus on the implementation of an agreement reached in 2012 on "Integrated Borders Management (IBM)" in the EU-mediated dialogue, thus building confidence and leading to a diplomatic and gradual resolution of the stand-off. In my view, this should be done in consultation with the community leaders, regardless of their legitimacy, as they are the only representatives on the ground that enjoy the trust of the people.

45. Only a gradual integration, resulting from comprehensive and inclusive talks, political compromises and agreement, can ensure durable and peaceful results which will be accepted by all parties and by the population. Forceful methods may create further tensions and dangers and should be avoided in a still fragile region.<sup>17</sup>

46. The fact that Serbia did not organise local elections in northern Kosovo in 2012 is a welcome development. It is worth recalling that local elections in 2008 had led to parallel municipal governments in the Serbian municipalities in the north.

47. My talks with the community leaders, as well as with the authorities in Belgrade and Pristina, strengthened my belief that a continuing stand-off does not serve the medium- and longer-term interests of anyone involved and that a political agreement on how to run northern Kosovo is a prerequisite for a sustainable solution and for the realisation of the EU aspirations of both Belgrade and Pristina.

48. At the same time, as I stressed after my 2011 visit to North-Mitrovica, there is a strong need to inspire a sense of confidence in Kosovo Serbs living in the north and intensive and sustained efforts must be made by the authorities both in Pristina and in Belgrade, with the support of the international community, to ensure equal rights and opportunities for all people living in this area.<sup>18</sup>

49. The initiative of the Kosovo authorities, announced on 23 May 2012, to set up an administrative office in northern Mitrovica, diverting funds from the UNMIK Administration Mitrovica, was rejected by northern Kosovo Serb leaders, who called on the population to boycott it. On 6 July 2012, the office was opened and began providing services such as registration services, cadastre records and construction permits. This move seems to me too precipitate and I can only reiterate the conclusions of my visit to northern Kosovo: imposed solutions will not work and will not deliver reconciliation, co-operation and progress. Kosovo leaders must be willing to discuss compromise solutions, in a spirit of dialogue and reconciliation, with the support of the international community.

50. I therefore very much agree with the outgoing International Civilian Representative in Kosovo, Peter Feith, whom I met in Pristina last year, and who recently warned the European Union not to allow the stand-off in northern Kosovo to become "a frozen conflict in the heartland of Europe", the north Kosovo Serb community should be allowed to have "privileged relations" with Belgrade in health care and education but any financial

---

16. Report of the European Union High Representative for Foreign Affairs and Security Policy to the United Nations Secretary-General on the activities of EULEX (covering the period from 16 April to 15 July 2012).

17. International Crisis Group, Kosovo and Serbia: a little goodwill could go a long way, 2 February 2012.

18. Assembly press statement, "[North Kosovo: PACE rapporteur appeals for compromise](#)", 4 November 2011.

transfers between them should be done transparently and “not in brown envelopes”, while partitioning Kosovo is “not an option”.<sup>19</sup> This seems also to be the intention of the Serbian Prime Minister, Mr Dacic, whom I met in Belgrade on 15 November 2012.

51. Municipalities in the north could co-operate with each other, as foreseen in the Ahtisaari plan, and form associations, in accordance with the European Charter on Local Self-Government (ETS No. 122), while continuing to co-operate with the institutions in Belgrade and receiving financial and technical assistance.<sup>20</sup>

#### 4. Rule of law

52. My talks with EULEX and other interlocutors confirmed that several weaknesses affect the rule of law system, namely:

- the still fragile link between the prosecution and police offices on investigations;
- insufficient co-ordination between relevant ministries on rule of law cross-cutting matters and between police and customs on border management issues;
- the lack of proper implementation of the legal framework to curb political interference in judicial authorities;
- the need to strengthen the anti-corruption legal, institutional and policy framework;
- the need to develop an adequate witness protection system;
- the need to ensure public administration reforms, including the necessary funding and staffing;
- the persisting difficulty in generating reliable data for cross-analysis.

53. According to UNMIK, the number of murders, cases of unauthorised possession of weapons, and shooting incidents remained significant in 2012. Organised crime continued to be of concern throughout Kosovo, mainly involving smuggling and narcotics trafficking. Crime affecting minority communities continued to include low-level harassment, intimidation, simple assaults, and property-related crime, mainly committed in the minority-populated areas south of the Ibar River.

54. The OSCE found that trafficking remains a serious human rights concern because the Kosovo justice system often does not correctly apply the legal framework regulating the crime of trafficking. Correct analysis and application of the law would increase the likelihood of ending impunity for traffickers and reducing the number of new trafficking victims.<sup>21</sup>

55. On 30 May 2012, the European Commission launched a “Structured Dialogue on the Rule of Law” with a focus on the judiciary, the fight against organised crime and corruption, and with the aim of ensuring the necessary co-ordination between the key actors. This forum meets twice a year, sets priorities for reform in the area of the rule of law and monitors results.

56. On 30 October 2012, the European Court of Auditors levelled criticism against EULEX’s action in Kosovo alleging that crime and corruption are still rampant and that the police are not yet capable of dealing with serious financial crimes, such as money laundering. The judiciary continues to suffer from political interference, inefficiency and lack of transparency and enforcement. Kosovo’s limited capacity to protect key witnesses and the difficulties of relocating witnesses abroad are important shortcomings. EU member States are judged to have seconded insufficient and unqualified staff to EULEX, and for too short periods.<sup>22</sup>

57. According to the aforementioned report, improved legislation, policy and practice, including the management accountability and performance of the international community and EULEX in particular, are needed notably in the following areas:

- money laundering;
- financing of terrorism;
- trafficking in human beings, drugs and weapons;

19. “EU must avoid frozen conflict in Northern Kosovo, says Feith”, *Europolitics International*, 23 September 2012.

20. “Rohan: Ahtisaari’s Plan Not to Be Changed”, *V.I.P. Daily News Report*, 25 October 2012.

21. OSCE Mission in Kosovo, *Defining and Prosecuting the Crime of Human Trafficking*, October 2011.

22. European Court of Auditors, *Special Report No. 18/2012: European Union Assistance to Kosovo related to the rule of law*, 30 October 2012.

– asset confiscation.

58. In this respect, the work of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), as well as the Pompidou Group on combating drug abuse and drug trafficking can prove useful to the Kosovo authorities, also in the framework of the EU "Structured Dialogue on the Rule of Law".

#### **4.1. Impunity, accountability and access to justice**

59. Important developments have taken place in the prosecution of war crimes in the past two years. However, a culture of impunity, often encouraged by members of the Kosovo Government, remains one of the most serious human rights concerns and the presence of international investigators, prosecutors and judges, especially where cases involve high-profile defendants, remains crucial in eradicating this culture.<sup>23</sup>

60. Impunity persists for war crimes committed by both sides in the 1999 armed conflict. Only a few of the Serbian military, police and paramilitary forces responsible for war crimes against Kosovo Albanians have been brought to justice. Mr Vladimir Vukcevic, Serbia's War Crime Prosecutor, whom I met during my last visit to Belgrade, stressed the need to sign an operational protocol between Serbia and EULEX to allow the Prosecutor's Office to gather evidence from Kosovo.

61. Even fewer members of the Kosovo Liberation Army (KLA), responsible for war crimes against Kosovo Serbs, Roma and members of other minority communities, have been prosecuted and convicted. On 16 November 2012, three former KLA rebel fighters, current members of the NATO-trained Kosovo Security Force (KSF), were arrested by EULEX police over war crimes committed against civilians in 1999. On 21 November 2012, Kosovo's Supreme Court ordered the retrial of Fatmir Limaj and three other members of the KLA for war crimes, overturning a court ruling which had found that evidence by a key witness, Agim Zogaj, who apparently committed suicide while under a witness protection scheme, was inadmissible.

62. Despite significant progress made by EULEX in the investigation and prosecution of war crimes, the number of cases brought to prosecution, when compared to the number of outstanding cases, is small. Cases of enforced disappearances and abductions have not yet been investigated, while the bodies of over 1 700 persons have still not been exhumed, identified, and returned to their relatives. Witness protection, before, during and after proceedings in cases of crimes under international law, is still considered inadequate. Furthermore, access to justice represents a special concern in northern Mitrovica, where the district court functions with limited capacity, with the help of EULEX.

63. Furthermore, I discussed with the authorities in Belgrade the introduction of a "Balkan Arrest Warrant", a pan-Balkan extradition treaty similar to the European Arrest Warrant, which is meant to speed up extradition procedures and curb political influence over the judiciary. I believe that Kosovo should not be left out and remain a safe haven for the perpetrators of cross-border crimes. Serbia's internal politics should not dictate decisions concerning criminal investigations related to organised crime.

64. In January 2011, the Assembly adopted [Resolution 1782 \(2011\)](#) on the investigation of allegations of inhuman treatment of people and illicit trafficking in human organs in Kosovo, based on a report by Dick Marty. The report alleged an extensive range of crimes in the period between 1998-2000, including abductions, illegal detentions, inhuman treatment and extrajudicial killings of detainees, and murders for the purpose of harvesting and trafficking of human organs.

65. I believe that establishing the truth about the crimes committed is an essential precondition for lasting stability. However, the allegations contained in Mr Marty's report fall outside the scope of my report. I shall merely limit myself to taking note that, in May 2011, an EU Special Investigative Task Force (SITF) was set up in Brussels to investigate and prosecute any offences alleged in the Marty report and that, on 17 October 2011, Mr Clint Williamson was officially designated by the EULEX Head of Mission as a Prosecutor under the legal authority of the Special Prosecution Office for Kosovo. A further welcome development is that Albania has recognised the exclusive authority of the SITF to investigate and prosecute all crimes alleged in the report through the adoption of a Law on co-operation with the SITF, passed unanimously by the Albanian Parliament on 10 May 2012.

---

23. See, in particular, the thorough and well-documented report by Amnesty International on Kosovo: Time for EULEX to prioritize war crimes, April 2012.

66. On 4 June 2012, the Government of Kosovo announced the establishment of the Inter-ministerial Working Group on Dealing with the Past and Reconciliation to deal with human rights violations that occurred during the 1998-1999 war and the transition period. The investigation and prosecution of war crimes must be a priority for EULEX, along with an effective and well-funded witness protection programme, without which prosecutions cannot take place. EULEX must also ensure that it leaves behind an independent, impartial and effective justice system.

#### **4.2. The fight against organised crime and corruption**

67. Over the past two years, mixed panels of local and EULEX judges have adjudicated several cases involving abuses of official position. Corruption, misuse of official duty or authority, mistreatment in exercising duties, misuse of economic authorisation, the issuing of unlawful judicial decisions, solicitation of bribes or attempt to obtain bribes, tax evasion and money laundering are among the main criminal charges. Corruption remains widespread and it affects access by citizens to public services and often involves high-ranking officers.

68. The authorities have started to tackle this issue. In February 2012, President Jahjaga inaugurated a National Anti-Corruption Council tasked with setting strategic priorities in the fight against corruption in Kosovo, suggesting legislative amendments and regulations and facilitating inter-agency co-ordination.

69. The legislative framework for the fight against corruption has been improved (new legislation includes public procurement, financing of political parties, whistle-blowers, declaration of assets, preventing conflict of interest) but needs to be further strengthened and fully implemented. Anti-corruption bodies have weak powers, the supervision of public procurement is complex and, according to the European Court of Auditors, the complexity and fragmentation increase the risk of corruption.

70. Furthermore, according to UNMIK reports, the impasse between the Ministries of Justice in Kosovo and Serbia on mutual assistance in corruption cases persists, despite the active involvement and mediation of UNMIK.<sup>24</sup> I raised this issue during my talks with the Serbian State Secretary at the Minister of Justice and Public Administration, who seems to have no reservations in co-operating with the Kosovo authorities through the mediation of EULEX.

71. In my view, the EU-Council of Europe joint project against economic crime in Kosovo (PECK) needs to be upgraded and given the necessary political support, including through the input of the Group of States against Corruption (GRECO) and the active involvement of the Kosovo authorities, both at the technical and the political level.

#### **4.3. The judiciary**

72. Since the adoption of [Recommendation 1923 \(2010\)](#), progress has been made. The Division for International Legal co-operation in the Ministry of Justice has increased its capacity and the Kosovo Judicial Council has started addressing key priorities. All members of the Kosovo Prosecutorial Council have been appointed and the Council has started to function. The salaries of judges and prosecutors have been increased.

73. The Ministry of Justice invited EULEX to participate in a working group to review a “judicial package” (Law on the Kosovo Prosecutorial Council, Law on the State Prosecutor, Law on the Kosovo Judicial Council, Law on Courts and Law on the Special Prosecution Office of Kosovo).

74. Despite these positive developments, the justice sector is still perceived as being corrupt and untrustworthy. Significant backlogs of cases persist and there are still reports of threats and intimidation of judges, especially in sensitive cases, such as property rights, and political interference in the work of the judiciary is still an issue of concern. Despite an increasing interest by the Serbian community to join the judiciary, only 9.37% of staff belong to minority communities.

75. Recently, while the Assembly of Kosovo was considering constitutional and election law amendments, the Kosovo Constitutional Court complained of political interference. The independence of the Constitutional Court is crucial especially in times of reform. In my view, the Constitutional Court could benefit from the expertise and advice of the European Commission for Democracy through Law (Venice Commission), the Council of Europe's advisory body on constitutional matters.

---

24. Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo to the United Nations Security Council, S/2012/275, 27 April 2012.

76. The Assembly of Kosovo has adopted important legislation such as laws on witness protection, on criminal liability of legal persons for criminal offences and the law on international legal co-operation.

77. Kosovo should be urged to pursue judicial reform to further strengthen independence, impartiality and transparency. Among the key priorities are:

- further reducing the backlog of cases;
- ensuring a sufficient budget for the proper functioning of the courts, including the Mitrovica district;
- restructuring the prosecution offices and filling vacant positions for minorities;
- upgrading the case-management system and fast-tracking the flow of data concerning corruption cases;
- providing security and protection to judges, prosecutors, litigants and witnesses;
- improving awareness of human rights in judicial decision-making.

78. During my talks with the management of the Kosovo Judicial Council, I realised that there is scope for further Council of Europe involvement through training programmes for judges on the application of the European Convention of Human Rights (ETS No. 5), both with regard to initial training and further professional development.

#### **4.4. Police**

79. Polling data in 2009 and 2010 found the Kosovo Police to be the most trusted Kosovo institution.<sup>25</sup> Organisational restructuring has led to an improved perception of the Kosovo police by the public. The police has met its training targets and achieved diversity in terms of ethnicity and gender, with 10% of ethnic Serbs and 15% of women officers. It has a low level of corruption.

80. However, obstacles remain due to the lack of judicial personnel, which impedes the prosecution, conviction, and punishment of criminals, despite successful police investigations. One of the biggest challenges resides in the north, where Kosovo Serbs do not accept EULEX as a neutral force and the Kosovo Police is rejected, leaving NATO reservists to do the job.

81. Better resource management, increased multi-ethnicity, retention and promotion of community representatives in the police, targeted community policing and the fight against organised crime and witness protection remain priority areas for the Kosovo police.

### **5. Human rights**

#### **5.1. Law and policy**

82. Kosovo is a member neither of the United Nations nor of the Council of Europe. It is not in a position to ratify relevant international human rights instruments, nor is it subject to regular reporting put in place by international bodies. The government strategy to incorporate key international human rights instruments into domestic law, as foreseen in the constitution, was part of the action plan on human rights 2009-2011.

83. The Human Rights International Contact Group, under the joint co-ordination of UNMIK and the Office of the High Commissioner for Human Rights in Kosovo, advocates remedial action by the Kosovo authorities, in particular with regard to property rights and security incidents.

84. However, a lack of focus and a multitude of different bodies dealing with the protection of human rights and fundamental freedoms characterise the human rights institutional set-up. Even the non-governmental organisation (NGO) and advocacy sector is inefficient as it is quite politicised. Furthermore, general knowledge of human rights instruments remains limited.

85. In September 2012, the Council of Europe and the European Union launched a joint capacity-building project aimed at improving the implementation of human rights standards in Kosovo. The Ombudsperson Institution, ministerial and municipal human rights units and civil society organisations are directly involved. This is a welcome development which will hopefully strengthen the human rights guarantees in Kosovo.

---

25. Morgan Greene, Jonathan Friedman, Richard Bennet, "Rebuilding the Police in Kosovo", Foreign Policy, 18 July 2012.

86. However, the fact that there is no legal basis for the exercise of jurisdiction by the European Court of Human Rights represents a serious obstacle to the enjoyment of human rights by the people of Kosovo. This should be given proper consideration by all stakeholders, including Serbia and the Council of Europe.

## **5.2. The Ombudsperson**

87. The Ombudsperson and five deputy Ombudspersons are appointed by the Assembly of Kosovo. All public institutions in Kosovo are obliged by law to respond to the Ombudspersons' inquiries.

88. The institution faces challenges in terms of budget. Close co-operation between the Ombudspersons and the Assembly of Kosovo is crucial and adequate financing and strong political support are prerequisites for its proper functioning.

89. Presenting the 2011 Ombudsperson's annual report,<sup>26</sup> Mr Sami Kurteshi, elected Ombudsperson in 2009, regretted the lack of impact of the Ombudspersons' recommendations on the State authorities. He underlined a worrying "tendency of various State authorities to minimise the role of the national independent institutions, in general by disregarding their findings, by not implementing their findings or by even putting unlawful efforts to affect their independency stipulated by the constitution".<sup>27</sup> It is deeply regrettable that, according to the Ombudsperson, over the years, no reaction has been received by any public institution regarding the implementation of his office's recommendations.

90. When addressing the committee in Paris on 14 November 2012, Mr Kurteshi complained about judicial performance and non-implementation of court decisions and the Ombudsperson's recommendations. On a positive note, the Ombudsperson stated that, in co-operation with local NGOs, he has set up a task force which acts as a national prevention mechanism in Kosovo and also stressed his institution's efforts to promote the integration of the Roma, Ashkali and Egyptian communities in public and social life.

## **5.3. Human rights accountability of international organisations**

91. In June 2009, as chairperson of the committee, I asked the Venice Commission to prepare a follow-up opinion on the mechanisms to review the compatibility with human rights standards of acts of UNMIK and EULEX in Kosovo, which was adopted on 17 and 18 December 2010. The Venice Commission welcomed the establishment, in November 2007, of the UNMIK Human Rights Advisory Panel, largely in line with its own recommendations of 2004, and urged this Panel and UNMIK to find a solution so that the over 450 cases currently pending before the Panel may be processed before UNMIK leaves Kosovo. As at 1 October 2012, progress has been made and out of 587 cases received, only 287 remain pending.<sup>28</sup>

92. The Venice Commission also welcomed the establishment of the EULEX Human Rights Review Panel in November 2009, and encouraged this Panel to maintain its proactive attitude. It nevertheless advised the Council of the European Union to reconsider some of the features of the Panel, in particular with regard to its independence, the non-binding nature of its recommendations as well as the review of the insurance procedures to allow financial compensation for human rights violations.<sup>29</sup>

## **6. Minority rights**

93. A wide range of institutions and mechanisms deal with minority issues, both at the local and central levels, including the Communities Consultative Council (CCC), the Advisory Office on Good Governance, Human Rights, Equal Opportunities and Gender (AOGG), the Office for Community Affairs (OCA), the Ministry of Communities and Returns (MCR), the Ministerial Human Rights Units (HRUs), the Human Rights coordinator (HRC), the Ombudspersons, the Committee on the Rights and Interests of Communities (CRIC), and the Ministry for Local Governance and Administration. However, as also stressed by the Director of the European Centre for Minority issues (EMCI) during the hearing organised by our committee on 30 May 2012, the lack of effective implementation of the provisions enshrined in the legal and institutional framework for the protection and promotion of minority rights and insufficient institutional capacities remain major challenges with a view to fully ensuring the integration of minority communities in Kosovo.

26. [www.ombudspersonkosovo.org/repository/docs/48705\\_Raporti%202011%20ANGLISHT.pdf](http://www.ombudspersonkosovo.org/repository/docs/48705_Raporti%202011%20ANGLISHT.pdf).

27. Speech of the Ombudsperson, Mr Sami Kurteshi at the Assembly of the Republic of Kosovo, 17 September 2012.

28. [www.unmikonline.org/hrap/Eng/Documents/Statistical-summary-eng.pdf](http://www.unmikonline.org/hrap/Eng/Documents/Statistical-summary-eng.pdf).

29. Venice Commission, Opinion on the existing mechanisms to review the compatibility with human rights standards of acts by UNMIK and EULEX in Kosovo, 17-18 December 2010.

94. As I myself experienced during my last visits to Kosovo, the sentiments of the Serbs living south of the Ibar River are changing since Kosovo has embarked on a decentralisation process which has allowed more autonomy to the Serb municipalities, resulting also in a higher voter turnout. Many Serbs feel more involved and told me that they “come from Kosovo and want to have a say”. However, concerns for their safety and the full respect of their rights still exist and interactions between the Kosovo Serb and Albanian communities remain very limited. The situation in the north is especially complex, as I have outlined above, and the sentiment of isolation remains strong.

95. As I learned during my visit to the region, some practical problems persist and raise questions. In Kosovo, two types of licence plates are currently in use. “KS” (Kosovo) licence plates, which allow entrance into the territory of Serbia proper, and “RKS” (Republic of Kosovo) licence plates which are not allowed into Serbia. The general belief is that local Serbs would opt for the “KS” plates, but in reality this would make them easily identifiable when travelling within Kosovo. For this reason, the majority of Serbs living south of the Ibar river have opted for RKS licence plates, in the hope of safeguarding anonymity. However, it turns out that RKS licence plates assigned to residents of Serb villages are nevertheless clearly identifiable by the last two letters of the licence plates. In this way, it is sufficient to look at the last two letters of the RKS licence plates to know the ethnicity of the persons travelling in the vehicles. This raises issues under Articles 2 and 5.i of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 4 of the Framework Convention for the Protection of National Minorities (ETS No. 157), which are directly applicable in Kosovo.<sup>30</sup>

96. The new generations mostly learn only one of the two official languages (Albanian or Serbian), which creates a significant barrier to inter-community communication and integration. There is no curriculum available in the Serbian language in Kosovo institutions; the Serb and other non-Albanian communities (Roma, Gorani) make use of a parallel education system run by Serbia. The lack of high quality textbooks and curricula in Turkish and Bosniak is a further problem. In addition, discrimination, lack of effective implementation of the curriculum in the Romani language, low attendance and high dropout rates continue to be key challenges facing the Roma, Ashkali and Egyptian communities. Finally, the Gorani community, which mostly makes use of the Serbian parallel system of education, is in a particularly vulnerable situation. In Dragaš, Gorani teachers have been prevented from using Kosovo-administered school premises, as they have not signed contracts with the municipality.<sup>31</sup>

97. I would like to stress that isolation prepares the ground for future conflict. History teaching is an essential tool to overcome isolation, promote tolerance, prevent hatred and avoid history becoming the hostage of nationalistic feelings. As stressed by Mr Pietro Marcenaro in his report on reconciliation and political dialogue between the countries of the former Yugoslavia,<sup>32</sup> we must continue to support the relevant work done by the Council of Europe in conflict and post-conflict regions on the revision and development of textbooks and teacher manuals, the organisation of teacher seminars and source material identification.

98. The OSCE Community Rights Assessment Report, published in July 2012,<sup>33</sup> also underscored that, despite an advanced legislative framework in place to protect and promote the rights of communities in Kosovo, only limited progress has been made in its implementation since 2010. The OSCE also issued an assessment of the viability of returns and security concerns, which are important. Security incidents against returnees are continuing and have increased in some areas, which adds to the general perception that return is not welcome. Budgetary constraints, property issues, compliance with the legislative framework and the lack of political will are the major challenges in the protection of the rights of the communities.

99. Around a hundred Kosovo Roma and Ashkali families have been resettled from the lead-contaminated Česmin Lug and Osterode camps to the Roma Mahalla neighbourhood, in southern Mitrovica, which I visited in November 2011. However, Kosovo Roma, Ashkali and Egyptian communities still have limited access to housing, health care, education, social protection and employment and several Kosovo Roma and Ashkali families still live in a lead-contaminated camp in Osterode. Sustained efforts, funds, political will and better co-ordination between central and local level institutions are needed to improve the situation. The European Commission and the Kosovo Ministry for European Integration have identified 40 actions to boost the implementation of the Roma, Ashkali and Egyptians Strategy and Action Plan, which needs to be implemented at central and local level.

---

30. Further Support to Refugees and IDPs in Serbia, Freedom of movement: issuance of RKS license plates to members of non-Albanian communities in Kosovo, 2012.

31. ECMI Kosovo, Policy Brief – Minority Education Issues in Kosovo, 2011; ECMI Kosovo, Policy Brief – Language Policy in Kosovo, 2011.

32. Assembly Recommendation 1954 (2011) and Resolution 1786 (2011), Doc. 12461.

33. [www.osce.org/kosovo/92244](http://www.osce.org/kosovo/92244).

100. On a positive note, the Kosovo authorities have allocated €3.4 million to aid repatriated persons, including minority communities, and the Kosovo police provide 24-hour protection at 23 Serbian religious and cultural heritage sites.

101. It is of key importance to facilitate more interaction between the communities living in Kosovo with a view to promoting the cultural and social inclusion of all of them, in particular by:

- recognising the fundamental importance of inter-ethnic dialogue to promote tolerance and mutual understanding;
- ensuring that communities' members are employed in public administration, including at senior level;
- further investing in language training in Albanian and Serbian targeted at municipal officials;
- allocating adequate resources to civil registration offices, reaching out to vulnerable communities and ensuring affordable registration fees;
- promptly investigating attacks motivated by ethnicity or religion, and improving data collection;
- continuing to implement decentralisation;
- allowing children to receive education in their mother tongue in public schools and establish a procedure for registration of private educational institutions providing education in a language of their choice;
- allocating a budget to the Office of the Language Commissioner, responsible for monitoring the Law on the use of languages;
- ensuring broadcasting of the Kosovo public broadcaster in the Serbian language;
- supporting the work of the Kosovo Property Claims Commission dealing with conflict-related and mainly inter-ethnic property claims with a view to reducing the backlog of cases;
- allocating funds for the implementation of the strategy for the integration of the Roma, Ashkali and Egyptian communities;
- implementing legislation on protection of cultural heritage and of the Serbian Orthodox Church.

102. A variety of projects aimed at supporting minority communities are currently funded by the European Union (including EU-Council of Europe joint projects), the OSCE, United Nations bodies as well individual foreign affairs ministries.

103. According to Kosovo's Constitution, the Council of Europe Framework Convention for the Protection of National Minorities is directly applicable to Kosovo and takes precedence over Kosovo legislation. Kosovo has clear obligations to ensure that its own legislation, policies and practices meet Council of Europe requirements.

## **7. Missing persons and displaced persons**

104. The issue of missing persons continues to be a major obstacle to reconciliation. Out of 6 024 cases reported to the International Committee of the Red Cross (ICRC), the fate and whereabouts of 1 766 missing persons has yet to be clarified. Over the past year, the authorities in Belgrade and Pristina have pursued their efforts to account for missing persons in accordance with their commitments within the Belgrade-Pristina Working Group on Missing Persons, a humanitarian forum chaired by the ICRC. However, the group's Chairperson is concerned about the slow pace of the process and has called for more resources and regional co-operation to help identify the fate of the missing.

105. Several challenges also remain with regard to repatriated persons, refugees and internally displaced persons (IDPs), with over 17 000 people concentrated mainly in the Mitrovica region, in Gracanica and the surrounding Kosovo Serb-populated villages. At the local level, although several municipalities have established municipal offices for communities and working groups on returns, they frequently lack adequate staff, resources and initiatives and are dependent on other stakeholders or international organisations.

106. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), since 2010, 24 020 persons "voluntarily" returned to Kosovo.<sup>34</sup> The lack of available land and the limited number of houses being built constitute major obstacles for returnees. Returns based on re-admission arrangements for both majority and minority populations have decreased over time (1 079 returns in 2010, 751 in 2011 and 362 in 2012) and the same can be said for "assisted" voluntary returns.

107. “Forced returns” from Western European countries remain steady, and this is a specific problem for those communities which are considered at risk (around 600 persons in 2010, 2011 and 2012). In particular, significant challenges remain with regard to reintegrating and providing sustainable solutions for persons from Roma, Ashkali and Egyptian communities forcibly repatriated from Western European countries, a trend which has increased over recent years. The situation is especially hard on children, few of whom stay in school due to the lack of language skills, curriculum differences and poverty.<sup>35</sup> European States should comply with the recommendations of the Assembly<sup>36</sup> and the Council of Europe Commissioner for Human Rights and stop the forced returns of Roma until a return can be shown to be safe and sustainable.

108. The process of post-conflict property restitution is not yet complete and some 70% of the pending cases are from the Mitrovica area, according to the Kosovo Property Agency (KPA), the mass-claim mechanism established in Kosovo to resolve specific categories of conflict-related property claims. Apart from the cases awaiting adjudication before the KPA, a significant number of conflict-related property claims are also dealt with by the local courts and the great majority of claimants are IDPs. Local authorities should provide unimpeded access to a court for everyone, regardless of a person’s status and this right should be interpreted in the light of the international standards governing post-conflict property restitution, and recognise the specific obstacles faced by IDPs.<sup>37</sup> On a positive note, in 2012, the government mandated a property rights coordinator to develop a strategy and action plan for the protection of property rights in Kosovo, particularly those of IDPs and vulnerable groups.

109. Additional issues that were brought to my attention during my last visit to Belgrade concern the situation of IDPs in Serbia, which seems to have been forgotten against the backdrop of the larger picture of normalisation of relations between Belgrade and Pristina. According to the UNHCR’s IDP needs assessment of February 2011, 97 286 IDPs in need live in Serbia, in urban areas. They are Serbs in majority, followed by Roma. 74.5% of the Roma IDP population are in need, in comparison to 41.7% of non-Roma IDPs. Unemployment among IDPs in need is 39%, while unemployment among the general population is around 20%. Housing is the main need for IDPs and 49% of the IDPs in need own an apartment/house in Kosovo, which in most cases has been destroyed or occupied. 24.1% of IDPs in need suffer from chronic diseases, while 8.5% could be classified as disabled. 8% of IDPs lack basic documents (identity card or birth certificate). This percentage is much higher among the Roma (17.6%) than among the non-Roma (5.5%). A small percentage (20%) of IDPs expressed a willingness to return to Kosovo. Very few Roma expressed an interest to return to Kosovo (8.8%).<sup>38</sup>

110. Until the IDP issue is addressed and resolved, there will always be a human and tangible legacy of the conflict. Finding durable solutions for and assisting the local integration of IDPs living in Serbia, where many want to stay, could accelerate the “normalisation” process between Belgrade and Pristina. The European Union could provide further assistance in this area.

## 8. Freedom of expression

111. Freedom of expression remains a source of concern. Pressure and threats against independent media have continued. The media company Koha Group, which broadcasts the Kohavision television channel and publishes the daily newspaper *Koha Ditore*, has been particularly targeted. The public broadcaster Radio Television of Kosovo (RTK) is vulnerable to political interference as its independence and financial sustainability are not yet guaranteed.

112. The Association of Professional Journalists of Kosovo (APJK), the Press Council of Kosovo (PCK) and the Independent Media Commission have raised their voices against political interference.

113. Kosovo has introduced a number of improvements in the area of legislation with the establishment of the law on access to information, the decriminalisation of libel and improvement of the criminal code. I also welcome the adoption by the Assembly of Kosovo of the laws on Radio Television of Kosovo (RTK) and on the Independent Media Commission (IMC), in March 2012. The law on RTK provides the public broadcaster

---

34. UNHCR Office of the Chief of Mission Pristina, Statistical overview, update end of September 2012.

35. “Silent harm” – A report assessing the situation of repatriated children’s psycho-social health, March 2012 – UNICEF–Kosovo in co-operation with the Kosovo Health Foundation and Publications; UNICEF–Kosovo in co-operation with the German Foundation for Kosovo, “No place to call home” – Repatriation from Germany to Kosovo as seen and experienced by Roma, Ashkali and Egyptian children, August 2011.

36. [Resolution 1768 \(2010\)](#) on Roma asylum seekers in Europe.

37. Access to Justice for Internally Displaced Persons from Kosovo, The European Union’s Programme for the Republic of Serbia, June 2012.

38. UNHCR, Assessment of the needs of internally displaced persons in Serbia, February 2011.

with safeguards for its editorial independence, as well as public responsibility, and also envisages a sustainable solution for its financing. The law on the IMC guarantees that this regulatory body will be able to exercise its competences in promoting ethical and technical standards among Kosovo's broadcast media and will hopefully preserve the IMC's necessary independence. It is crucial that these laws are now fully implemented.

114. Furthermore, the Kosovo Ministry of Interior should draft a handbook detailing the proper procedures for communicating with and handling cases of violence against journalists and the Kosovo Prosecutorial Council should draft, enact and ensure the implementation of a policy detailing methods of dealing with cases of violence against journalists. This policy also needs to ensure that prosecutors understand the pressing importance of ensuring the adequate protection of journalists.<sup>39</sup>

115. Kosovo has a law on access to official documents which is not fully implemented and journalists are still denied access. Access to information for non-Albanian communities needs to be further promoted.

## 9. The situation of women

116. With the support of the Office of the High Commissioner for Human Rights (OHCHR) in Kosovo and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the Agency for Gender Equality in the office of the Prime Minister has established a working group to develop an action plan to implement Security Council Resolution 1325 (2000) on women's protection and participation in decision-making and peace-making processes.

117. 33% of the members of the Assembly of Kosovo are women. Speaking at a hearing organised by the committee on 14 November 2012, Ms Teuta Sahatqija, member of the Assembly of Kosovo and Chairperson of Women Caucus, a group of women parliamentarians working towards strengthening the position of women in politics and in society, under the auspices of the OSCE, wished to establish a dialogue with women parliamentarians in the Serbian Parliament. When I discussed this issue with women parliamentarians from the Serbian Parliament in Belgrade, I found an opening and an interest in organising such a meeting with the Women's Caucus of the Assembly of Kosovo, which can only but be encouraged.

118. UNMIK, the OSCE, UN-Women, UNDP, the Kosovo Women's Network, as well as a number of women's organisations are actively engaged in an effort to promote gender equality, combat violence against women and improve access to justice.

119. At the beginning of 2012, the Action Plan on Domestic Violence for 2012-2015 was finalised. Greater financial and human resources are needed to assist victims of domestic violence and I can only but welcome the Kosovo Agency for Gender Equality's plans to organise training in 2012 on preventing domestic violence, with the support of the OSCE, and the appointment in July 2012 of a national co-ordinator. The Kosovo authorities should finalise standard operating procedures for victims of domestic violence and consider developing reintegration programmes for victims who decide to leave shelters

120. According to UNICEF data, Kosovo is a place of origin, destination and internal trafficking in girls and women for sexual exploitation. Whereas the existence of trafficking into Kosovo of foreign women and girls has been known since 1999, the existence of trafficking in Kosovar women and girls has only recently been fully acknowledged.

121. In this regard, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210) as well as the Convention on Action against Trafficking in Human Beings (CETS No. 197) can indeed be useful tools which could help Kosovo improve the situation of women.

122. During a meeting with a number of chairpersons of the Assembly of Kosovo on 30 October 2012, I discussed with Ms Suzan Novoberdaliu, Chairperson of the Committee on Human Rights, Gender Equality, Missing Persons and Petition, the possibility for members of the Assembly of Kosovo to join the Parliamentary Assembly's Parliamentary Network "Women Free from Violence". This may help Kosovo raise its legal and policy standards in the area of the prevention of violence against women, the protection of its victims and the effective prosecution of the perpetrators.

---

39. Institute for Development Policy (INDEP), *The State of the Media in Kosovo*, June 2012.

## 10. Cultural and religious heritage

123. Kosovo has started implementing the Council of Europe and UNESCO conventions on cultural rights.

124. According to KFOR, the Kosovo police have managed well the transfer of responsibility for guarding historical and religious sites from KFOR. However, acts of vandalism and religious intolerance persist, especially against Serbian Orthodox Churches. Serbian Orthodox sites have been renovated in co-operation with the Church and the Serbian authorities and donations from the Russian Federation. Turkey and Albania also funded the restoration of Islamic and Catholic sites. In April 2012, the law on the Velika Hoča/Hoçë e Madhe and the law on Prizren Historic Centre, aimed at protecting religious and cultural heritage, were approved. However, according to the OSCE, there are very few municipalities which actively promote the cultures of non-majority communities, particularly the numerically smaller communities such as the Ashkali, Egyptians or Kosovo Montenegrins.

125. On 31 October 2012, I visited the monastery in Peja/Peć, spiritual home of the Serbian Orthodox Church, with its beautiful 14th century frescos, which should be a reason for many tourists to visit this region. In 2006, the Patriarchate was placed on UNESCO's "World Heritage List" as an extension of the Visoki Dečani site, which was overall placed on the "List of World Heritage in Danger".

126. I am firmly of the view that the protection of religious and cultural heritage is an issue of great political significance and is an integral part of the cultural identity and the history of Kosovo.

127. The Council of Europe is doing important work in this area, mainly through the "EU–Council of Europe Joint Programme Support to the Promotion of Cultural Diversity in Kosovo".

128. During my last visit to Kosovo, I was informed by the Greek Ambassador, Head of the Liaison Office of Greece in Pristina, that the Greek Government, notwithstanding the fact that it does not recognise Kosovo, actively supports the establishment of the Implementation Monitoring Council, a supervisory structure on the implementation of the plans regulating special protection zones and other cultural heritage sites. This body includes the European Union, the OSCE, the Serbian Orthodox Church, as well as the Kosovo Ministries of Culture and of Environment and Spatial Planning. It is regrettable that the Council of Europe, despite its efforts on the ground to promote cultural diversity and liaise with the Kosovo municipalities, does not take part in this body on account of its status neutrality. However, this does not prevent other international organisations, or individual non-recognisers, such as Greece, from actively participating in this initiative.

## 11. Kosovo and the European Union

129. The European Union has given a clear European perspective to the whole of the Western Balkans, including Kosovo.

130. On 14 June 2012, the European Commissioner for Home Affairs, Cecilia Malmström, handed over a road map for visa liberalisation to the Kosovo authorities and Kosovo has already submitted its first report.

131. In the period 2010-2012, Kosovo received €206 million of financial aid under the Instrument for Pre-Accession Assistance. Kosovo also benefits from a wide range of EU programmes, such as Tempus and Erasmus Mundus, as well as the European Instrument for Democracy and Human Rights. Following the agreement of the EU Foreign Affairs Council of 15 October 2012 on Kosovo's participation in programmes of the European Union, negotiations are due to start for the conclusion of a framework agreement on Kosovo's involvement in the EU programmes which are open to all countries of the Western Balkans.

132. On 10 October 2012, the European Commission adopted a Communication on a Feasibility Study for a Stabilisation and Association Agreement (SAA) with Kosovo, a process launched in 2009, which confirmed that "Kosovo is largely ready to open negotiations for a Stabilisation and Association Agreement", in a situation where EU member States maintain different views on status. With a view to negotiating and implementing this agreement, Kosovo needs to make progress in a number of important areas, namely:

- the implementation of all agreements reached between Belgrade and Pristina;
- a visible and sustainable improvement in the relations between Kosovo and Serbia;
- addressing the problems in northern Kosovo, while respecting the particular needs of the local population;

- in the fields of the rule of law, public administration, protection of minorities and trade capacities and intensified reforms on the judiciary, electoral legislation, the Assembly's capacity, human and fundamental rights (in particular freedom of expression, property rights and data protection), trade and internal market issues.

133. Belgrade and Pristina began a dialogue under the auspices of the European Union in March 2011, which led to several agreements to improve the daily life of the Kosovo population. The agreements reached include certification of diplomas, civil registry books, cadastre records, integrated management of crossing points, regional representation and co-operation, and free movements of goods.

134. Regrettably, not all agreements have been implemented. Some of them depend on the promulgation of related legislation and others are not being implemented in good faith, such as the provisions covering vehicle licence plates and high insurance costs, which effectively reduce free movement. Different interpretations of how to implement the agreement on regional representation and co-operation, also known as the "asterisk agreement", which allows Kosovo to represent itself at all regional meetings with the nameplate of "Kosovo\*",<sup>40</sup> have resulted in problems regarding the participation of Pristina and Belgrade delegations in regional meetings, which now seem to be resolved. However, the agreement has not addressed the key bones of contention between the parties, namely the status of north Kosovo and Pristina, and the situation remains unstable.<sup>41</sup>

135. The dialogue was put on hold due to the Serbian elections in May 2012. On 19 October and on 7 November 2012, Mr Thaçi and Mr Dacic, meeting in Brussels at the invitation of Baroness Ashton, undertook to work together to implement the agreements reached and normalise relations with a view to improving the life of the citizens, finding a solution for north Kosovo and advancing the European agenda. On 4 December 2012, the Prime Ministers reviewed progress made on the implementation of the IBM (Integrated Borders Management) agreement and agreed to each appoint a liaison officer at the gates. The EU Delegation in Belgrade and the EU Office in Pristina will provide offices for the liaison officers. Prime Minister Thaçi confirmed that he has already established a multiethnic special police unit within the Kosovo Police that will be tasked with the protection of religious and cultural heritage. Both sides also agreed to look into ways to ensure a transparent flow of money in support of the Serb community in Kosovo. They also agreed to intensify co-operation between the respective commissions for missing persons and to continue work on energy and telecoms at the level of experts.

136. The Kosovo Prime Minister obtained a parliamentary mandate to negotiate with Belgrade through a resolution adopted on 18 October 2012 by 68 of the 120 members of the Assembly of Kosovo, which supports the process of normalisation between the "two independent and sovereign States", with the aim of resolving the problems between them, improving citizens' lives and moving forward on the path to EU membership.

137. There is, however, internal opposition to the EU-mediated dialogue by the Self-Determination Movement (Vetevendosje), which has led to a number of protests and clashes. In my view, as the dialogue aims at normalising relations and establishing co-operation on practical issues, this should not represent a threat but rather an opportunity for Kosovo.

## 12. Kosovo and the Council of Europe

138. The Committee of Ministers, in its reply to Assembly [Recommendation 1923 \(2010\)](#), confirmed its own commitment to the European perspective of all the people living in Kosovo, who should benefit from the same level of standards for democracy, human rights and the rule of law as all other Europeans.<sup>42</sup>

139. In particular, the Ministers stressed that "the Council of Europe monitoring process would only be truly meaningful if the relevant and competent authorities in Kosovo are directly involved in the monitoring process and responsible for following up the recommendations". The Ministers also instructed the Secretariat to prepare a feasibility study on the implementation of other Council of Europe monitoring mechanisms in Kosovo and align its interaction with the relevant and competent authorities in Kosovo to the practice of other status-neutral international organisations. As a result of this engagement, the Council of Europe Office in Pristina has been strengthened, including in the areas of analysis and project development.

---

40. The asterisk refers to a "new footnote" that states: "This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ opinion on the Kosovo Declaration of Independence".

41. Istituto Affari Internazionali, "Beyond the Asterisk Agreement", IAI Working Papers 12, 21 July 2012.

42. Reply from the Committee of Ministers adopted at the 1102nd meeting of the Ministers' Deputies on 12 January 2011, [Doc. 12465](#).

140. Monitoring activities in Kosovo take place under special agreements concerning the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and the Framework Convention for the Protection of National Minorities, which were signed with UNMIK in 2004.

141. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a number of visits to Kosovo in 2007, 2010 and 2011. It received very good co-operation from all competent authorities in Kosovo, including UNMIK, EULEX and other relevant authorities (including the Ministers of Justice, of the Interior and of Labour and Social Welfare) and had immediate and unrestricted access to all places of detention. In its October 2011 report, the CPT found persistent ill-treatment in police custody and lack of legal safeguards for those forcibly placed in psychiatric facilities. Special attention needs to be paid to the prevention of torture and ill-treatment. Problems of lack of space in prisons and overcrowding also need to be addressed.

142. Two monitoring cycles on the implementation of the Framework Convention for the Protection of National Minorities have taken place since 2004, which led to two resolutions adopted by the Committee of Ministers in June 2006 and July 2011. Official contacts are maintained with UNMIK. During the visits, the Advisory Committee also meets the competent authorities and institutions at central and local level, including the Kosovo Police Service and municipal authorities. Recent developments in the implementation of the Framework Convention include: the Strategy for the Integration of the Roma, Ashkali and Egyptian communities, adopted in 2008; the closure of one of the lead-contaminated camps, Česmin Lug, in Northern Kosovo in October 2010 and the provision of alternative housing to remaining residents; the ongoing reconstruction of all damaged Serbian Orthodox religious sites by the Reconstruction Implementation Commission; the inclusion of the Montenegrin community within the scope of application of the Framework Convention through an amendment of the Law on Communities of December 2011. The third cycle monitoring visit of the Advisory Committee on the Framework Convention took place in December 2012.

143. In terms of co-operation programmes, the engagement of the Council of Europe in Kosovo is significant and has increased in recent years. The volume of projects amounts to around €10 million, mainly funded by the European Union, and they focus on three main areas:

- enhancing Human Rights Protection in Kosovo, aimed at improving the implementation of standards enshrined in the European Convention on Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Framework Convention for the Protection of National Minorities;
- Project against Economic Crime in Kosovo (PECK), aimed at strengthening institutional capacities to counter corruption, money laundering and the financing of terrorism, in accordance with European standards;
- support to the promotion of cultural diversity in Kosovo.

144. A possible project on “Support towards the implementation of anti-discrimination legislation” has also been developed but is still unfunded. Such a project would combine support to the anti-discrimination mechanisms, technical training for lawyers and NGOs on how to apply the provisions of the anti-discrimination law and draw from the case law of the European Court of Human Rights. Wider work on public perception would also be carried out. A number of multilateral/regional initiatives are also implemented in Kosovo, focusing on the protection of minority and vulnerable groups.

145. In the field of justice, possibilities for a co-operation project on the independence and efficiency of the judiciary is being discussed with the Kosovo Judicial Council and funding is needed. Another project has been proposed to provide capacity-building expertise in the implementation of CPT standards and is also still unfunded.

146. In order to be more efficient in the implementation of projects, the Council of Europe Office in Pristina has been reinforced both in its capacity, staff and capacity for political analysis and early warning, as requested by both the Assembly and the Committee of Ministers (see [Recommendation 1923 \(2010\)](#) and the reply to it). I was able to appreciate myself the high level of professionalism and competence of the Office during my visits in 2011 and 2012.

147. In 2011 and 2012, the Committee of Ministers Rapporteur Group on Democracy (GR-DEM) discussed for several months a draft agreement between UNMIK and the Council of Europe on the framework for the implementation of Council of Europe monitoring mechanisms in Kosovo, but could not reach consensus on

the competences of UNMIK or on the implementation of the draft agreement. Despite this failure, there seems to be a shared will among the Ministers' Deputies to enhance the standing of Council of Europe standards in Kosovo, in accordance with the reply adopted by the Committee of Ministers on 12 January 2011.

148. Speaking in the free debate during the June 2012 part-session, while welcoming the commitment of the authorities in Belgrade and Pristina to resolve outstanding issues through EU-mediated dialogue, I wondered where the Council of Europe stands and whether it cannot or should not do more to raise the living standards in the region and develop good neighbourly relations.

149. I welcome the recent informal discussion held by the Committee of Ministers during a working lunch on "Protection of Human Rights in Europe: closing the gaps", which took place on 13 June 2012. The Ministers rightly identified a number of problems in Europe, particularly the implementation of Council of Europe standards in post-conflict areas, such as Kosovo, that are partially or wholly beyond the reach of the Organisation. They stressed that the Council of Europe should enhance its action regarding the promotion of human rights standards in those areas.

150. On 10 October 2012, the Secretary General of the Council of Europe, speaking at the meeting of the Ministers' Deputies in Strasbourg, briefed them on the bilateral meetings he had held in New York between 22 and 28 September 2012 with the Serbian Foreign Minister, Mr Ivan Mrkic, and the Kosovo Prime Minister, Mr Taçi. I am pleased that the Secretary General stressed the importance of focusing on what the Council of Europe can do in Kosovo in a constructive and pragmatic way, in order to support the dialogue between Belgrade and Pristina, and that he reaffirmed his strong belief that no European should be excluded from the benefits provided by the European Convention on Human Rights.

151. The meeting between the Secretary General and Prime Minister Taçi opened a new chapter in the relations between the Council of Europe and Kosovo. However, to date, the question remains unanswered: how can all people in Kosovo benefit from the European Convention on Human Rights?

152. It is worth noting that there are a number of Council of Europe expert bodies or networks, in addition to the CPT and the Advisory Committee on the Framework Convention for the Protection of National Minorities, which can be of great value to the people of Kosovo, such as:

- the Group of Experts on Action against Trafficking in Human Beings (GRETA);
- the Group of States against Corruption (GRECO);
- the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL);
- the Committee of Experts of the European Charter for Regional or Minority Languages;
- the Venice Commission;
- the Pompidou Group on combating drug abuse and drug trafficking;
- the European Committee of Social Rights;
- the Council of Europe Development Bank.

153. The whole region is losing out on important benefits that can be offered by the rule of law, a more secure and stable political and economic environment, a strong legal framework, and an efficient and effective justice system, police and public administration.

154. I call on the Committee of Ministers to play its role, along with the international community, and to ensure that Kosovo remains high on its agenda.

155. As a matter of fact, it is worth noting that some of the non-recognisers, such as Greece, already have direct interaction through project frameworks. Recently, the Council of Europe's Secretary General and the Serbian Foreign Minister, Mr Mrkic, reached an agreement to introduce a new footnote (agreement on regional representation and co-operation) related to Council of Europe documents issued in the framework of the implementation of the Council of Europe–European Union joint programmes in Kosovo.

156. A greater engagement could, for instance, be achieved by intensifying co-operation programmes and widening their scope and their reach. From my discussions with Council of Europe officials, including the Secretary General, I understand that there is scope for expanding Council of Europe programmes if the necessary funding is made available.

### 13. Closing remarks

157. As I said, following my recent visit to Kosovo, my impression is that the democratic interplay has improved over the years, but democracy needs time. Sustained efforts are needed to improve the functioning of democratic institutions, to build an efficient public administration, independent institutions and judicial system, to do away with a culture of impunity and to implement effectively the rule of law. The legislative framework for the fight against corruption needs to be further strengthened and fully implemented.

158. Kosovo faces a number of challenges, including the normalisation of relations between Pristina and Belgrade within the framework of the European Union-mediated dialogue, freedom of movement in northern Kosovo, media freedom, returnees, refugees and internally displaced persons, and access to information and education for all communities living in Kosovo, including vulnerable groups.

159. The main challenge lies in the implementation of human rights and rule of law standards. In my view, the Council of Europe is well placed to play a significant role if all member States, recognisers and non-recognisers alike, can agree, in good faith, that all those who live in Kosovo cannot be forgotten and should enjoy the same human rights protection and benefit from the same standards of democracy and the rule of law as all other people living in Europe who enjoy the protection of the European Convention on Human Rights and other Council of Europe conventions.

160. In its reply to Assembly [Recommendation 1923 \(2010\)](#), the Committee of Ministers stated that “[t]he monitoring process will only be truly meaningful if the relevant and competent authorities in Kosovo are directly involved in the monitoring process and responsible for following-up the recommendations. Furthermore, the Committee of Ministers shares the view of the Parliamentary Assembly that the implementation of other Council of Europe monitoring mechanisms is an indispensable component of a Council of Europe contribution to raising standards of democracy, human rights and rule of law in Kosovo”.

161. Despite positive developments with Council of Europe–European Union programmes, to date, this objective has not been achieved. There is no implementation of “other Council of Europe monitoring mechanisms” and only limited direct interaction with the Kosovo authorities.

162. Status-neutral organisations, such as the United Nations, the OSCE and the European Union, have direct interaction with the Kosovo authorities and this is also the case with 34 Council of Europe member States which have recognised Kosovo as well as certain non-recognisers. I must therefore conclude that the Committee of Ministers has not aligned its interaction with the competent authorities in Kosovo to the practice of the above-mentioned status neutral international organisations, as explicitly pointed out in its reply to our recommendation.

163. I therefore call on the Committee of Ministers to be flexible, pragmatic and ready to engage in genuine and constructive direct interaction with the Kosovo authorities, while respecting status neutrality. In this respect, I welcome and fully support the recent proposal by the Secretary General of the Council of Europe to introduce the possibility of direct interaction between Council of Europe officials and the relevant and competent authorities in Kosovo on the basis of the functional responsibilities exercised by them; a proposal that ensures the implementation of Assembly [Recommendation 1923 \(2010\)](#) and of the Committee of Ministers’ reply thereto.

164. I also expect the Organisation to implement the Committee of Ministers’ reply and put forward concrete proposals on ways to expand co-operation programmes in the areas mentioned above, with special emphasis on human rights and the rule of law, and to allow the competent authorities in Kosovo to be directly involved in the implementation of Council of Europe activities and programmes.

165. For its part, the Assembly should expand the dialogue with representatives of the political forces elected to the Assembly of Kosovo and invite its Bureau to define the modalities thereof in full respect of the policy of status neutrality. It should remain committed to promoting democracy, human rights and the rule of law in Kosovo and continue to closely follow both developments in these areas and the relevant Council of Europe activities.