



**Doc. 15964**

15 April 2024

## Application by Kosovo\* for membership of the Council of Europe

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

Committee on Legal Affairs and Human Rights

Rapporteur: Ms Azadeh ROJHAN, Sweden, Socialists, Democrats and Greens Group

### A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the Committee on Political Affairs and Democracy and its rapporteur, Ms Dora Bakoyannis (Greece, EPP/CD) for the excellent draft Opinion on Kosovo's application for membership of the Council of Europe.
2. It shares the conclusion in the draft Opinion that Kosovo has reached the minimum standard required for membership of the Council of Europe also in the field of legal affairs and human rights, though reform must be continued and the implementation of the legal framework for the rule of law and the protection of human rights, including minority rights, needs to be further improved.
3. The committee considers that Kosovo is a 'European State' for the purposes of Article 4 of the Statute of the Council of Europe and the criteria of statehood under international law.
4. The committee notes, however, that Kosovo's statehood is not recognised by all members of the Council of Europe. It considers that Kosovo's accession to the Council of Europe is without prejudice to the bilateral legal and political recognition of its statehood by the member States of the Organisation. Kosovo's accession to the Council of Europe would nevertheless require all member States to "collaborate sincerely and effectively" in treating Kosovo as a member of the Organisation and in working functionally within the framework of the Organisation with Kosovo as a member. A failure to do so could amount to a breach of Article 3 of the Statute.
5. The committee therefore supports the draft Opinion's conclusion favouring Kosovo's accession to the Council of Europe, in view of the commitments and obligations enumerated in paragraph 14 of the draft Opinion.
6. The committee also stresses the importance of the recommendations addressed to Kosovo in paragraph 15 of the draft statutory opinion, in particular, the need for Kosovo to accede to protocols 1, 4, 7, 12, 13 and 16 to the European Convention on Human Rights (ETS No. 5) and to the Criminal Law Convention on Corruption (ETS No. 173), thereby also joining the Group of States against Corruption (GRECO).
7. The committee would like to address some additional recommendations to Kosovo in order to further strengthen the rule of law and the protection of human rights of all persons under its jurisdiction. It would also propose an amendment in order to include monitoring the progress in implementing the recommendations in paragraphs 15 and 16 in the future monitoring procedure for Kosovo.

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

Reference to Committee: Bureau decision, Reference 4730 of 28 April 2023. Reporting Committee: Committee on Political Affairs and Democracy. See [Doc.15958](#). Opinion approved by the committee on 15 April 2024.



## B. Proposed amendments

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

After paragraph 15, insert the following paragraph:

*“The Assembly invites Kosovo to: -*

*fully participate in the Council of Europe’s Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) and the Financing of Terrorism and to thereafter implement its recommendations without delay;*

*- amend the composition of the Kosovo Prosecutorial Council (KPC) in line with the recommendations of the European Commission for Democracy through Law (Venice Commission) in its Opinion CDL-AD(2023)043 adopted on 15-16 December 2023;*

*- refer the new draft law on expropriations to the European Commission for Democracy through Law (Venice Commission), for an opinion;*

*- ensure self-restraint of politicians, who should refrain from criticising decisions of the judiciary;*

*- improve respect for administrative procedures, in particular for expropriations and public appointments and consider introducing an administrative complaint procedure;*

*- launch procedural reforms to tackle the excessive length of judicial proceedings and consider creating a specific remedy for excessive length of proceedings;*

*- reduce excessive recourse to pre-charge and pre-trial detention for unduly lengthy periods of time and without proper reasons;*

*- promote the use of de-escalatory policing techniques, especially by police deployed in the north of Kosovo;*

*- improve language training and education to meet the constitutional requirements for bilingualism in actual practice, especially in the police force and the justice system;*

*- foster awareness among police officers, prosecutors and judges of hate crimes and strengthen their ability to treat victims of such crimes with sensitivity; improve the response of these actors in the judicial system to the issue of domestic violence.”*

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

In paragraph 20, after the words “with a view to ensuring compliance with commitments and obligations”, add the following words:

*“and monitoring the implementation of its recommendations”.*

## C. Explanatory memorandum by Ms Azadeh Rojhan, rapporteur for opinion

### 1. Introduction

1. The Secretary General of the Council of Europe received an application for Kosovo’s membership of the Council of Europe on 12 May 2022. The Committee of Ministers transmitted this application to the Parliamentary Assembly for consultation on 24 April 2023, for its Opinion on the application.<sup>2</sup> The Committee on Political Affairs and Democracy appointed Dora Bakoyannis (Greece, EPP/CD) as rapporteur on 19 June 2023 and she visited Kosovo on 1-3 November 2023.<sup>3</sup>

2. On 21 June 2023, I was appointed as rapporteur for opinion of the Committee on Legal Affairs and Human rights. Béatrice Fresko-Rolfo (Monaco, ALDE) was appointed as rapporteur for opinion of the Committee on Equality and Non-Discrimination on 14 September 2023. As rapporteurs for opinion, we visited

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2. [Doc. 15957](#).

3. AS/Pol(2023)36, Introductory memorandum, Statutory Opinion on the application for membership set out in the letter of 12 May 2022 addressed to the Secretary General of the Council of Europe, in line with Statutory Resolution (51) 30.

Kosovo on 3-6 December 2023. During our visit, we met with representatives from the government, the judiciary, the Kosovo Assembly, the Ombudsperson, the Language Commissioner, civil society and the international community, and I am grateful to them all for their insights and their time. The programme of the visit is contained in appendix. Prior to the visit we also had the benefit of reading the Eminent Lawyers' report.<sup>4</sup>

3. My conclusion is that Kosovo meets the criteria for membership. Continued progress is needed as concerns respect for the rule of law and human rights, as is the case for many members of the Council of Europe. I have identified below areas where further work might be needed, and, importantly, this includes the attitude of government representatives, including at ministerial level, towards the rule of law and respect for the independence of the judiciary.

## 2. Criteria for membership

4. The criteria for membership are set out in article 4 of the Statute of the Council of Europe which provides that “[a]ny European State which is deemed to be able and willing to fulfil the provisions of Article 3 may be invited to become a Member of the Council of Europe by the Committee of Ministers”. Article 3 of the Statute provides that “[e]very Member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I”.

5. According to Chapter I (which contains article 1) of the Statute of the Council of Europe “[t]he aim of the Council of Europe is to achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress”, which is to be pursued through the organs of the Council “by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms”.

6. In order to accede to the Council of Europe, Kosovo must thus be (1) a European State; (2) able and willing to collaborate sincerely and effectively in the aim of greater unity between its members for the purpose of safeguarding and realising the ideals and principles of the Organisation, and (3) able and willing to accept the principles of the rule of law and respect for human rights.

## 3. A European State

7. Not all member States of the Council of Europe have recognised Kosovo as a State. It is therefore prudent to address the criteria of statehood and implications of accession to avoid any ambiguity or confusion.

8. The criteria for statehood are that a State, as a person of international law, should possess (a) a permanent population; (b) a defined territory; (c) a government; and (d) the capacity to enter into relations with other States.<sup>5</sup> As stated by the eminent lawyers, their “examination and visit show that the Kosovo authorities exercise jurisdiction over a territory and population and have considerable international activities”.<sup>6</sup> The eminent lawyers did not raise any statehood-related concerns about Kosovo becoming a member of the Organisation, considering that “the recognition of States is, in general, seen as distinct from the matter of membership in international organisations”.<sup>7</sup> It was moreover clear from the work undertaken in preparation of this opinion that Kosovo has a permanent population, a defined territory, a government and the capacity to enter into relations with other States. This is true even if some States have not recognised Kosovo as a State. Consequently, Kosovo meets the criteria for membership notwithstanding the fact that not all members of the Council of Europe have recognised Kosovo as a State.

9. However, the effect of admission of a country as a member of the Council of Europe should not imply recognition for non-recogniser States. This flows from both State practice and legal doctrine.<sup>8</sup>

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4. [AS/Bur\(2023\)64](#), “Report on the conformity of Kosovo’s legal system with Council of Europe standards”.

5. The criteria for statehood are set out in Article 1 of the Montevideo Convention on the Rights and Duties of States of 1933 which has been recognised as reflecting customary international law; James Crawford (2006), “The Creation of States in International Law” (2nd ed.). New York, NY, USA: Oxford University Press, p. 40.

6. [AS/Bur\(2023\)64](#), op. cit.

7. *Ibid.*, in paragraph 17.

8. For example, some States do not recognise Israel despite it being a member of the United Nations. See also the Federal Republic of Germany’s non-recognition of the German Democratic Republic.

10. That said, in line with a member State's obligations under the Statute of the Council of Europe, all members of the Council of Europe have an obligation to "collaborate sincerely and effectively in the realisation of the aim" of the Organisation (Article 3 of the Statute). It is therefore incumbent upon all members to co-operate fully with the Organisation, including with States members of the Organisation where this relates to the business and effective functioning of the Council of Europe and its aim.

11. Therefore, whilst the accession of Kosovo to the Council of Europe does not imply recognition by a non-recogniser State, all member States must sincerely co-operate, within the framework of the Organisation, with Kosovo as a member of the Organisation. To do otherwise would risk breaching a member State's obligations under the Statute and in particular the duty of sincere and effective collaboration under its article 3.

12. As a consequence, no discriminatory conditions should be attached to Kosovo's membership that would, for example, amount to discrimination on the grounds of nationality. For instance, passports of Parliamentary Assembly or Congress of Local and Regional Authorities members from Kosovo must be accepted for travel necessary for those roles; the same goes for the members of the Organisation's monitoring bodies appointed in respect of Kosovo. Such conduct is also required by the General Agreement on Privileges and Immunities of the Council of Europe.

#### **4. Is Kosovo able and willing to collaborate sincerely and effectively in the aim of greater unity between the members of the Council of Europe for the purpose of safeguarding and realising the ideals and principles of the Council of Europe?**

13. In my view, the answer should be "yes". Kosovo is clearly familiar with a relatively advanced level of co-operation with the international community in relation to the rule of law and human rights given its recent history. The challenge that could potentially be posed by the non-recognition by a minority of member States of the Council of Europe can be addressed through practical measures and by highlighting the obligation on all member States to sincerely and effectively co-operate within the framework of the Organisation and in the realisation of its aims.

#### **5. Is Kosovo able and willing to accept the principles of the rule of law and respect for human rights?**

14. Kosovo has seen substantial progress in respect for the rule of law and human rights in recent years. The European Convention on Human Rights (ETS No. 5), the Framework Convention for the Protection of National Minorities (ETS No. 157) and the Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention") are all directly applicable under the Constitution and protected under the law of Kosovo. Indeed, Kosovo's courts are also required to have regard to the case law of the European Court of Human Rights when adjudicating and, on the whole, seem to do so. Across the board, all interlocutors noted the excellent quality of Kosovo's laws and constitutional protections in terms of respect for the rule of law and human rights. However, the clear perspective of my interlocutors was that implementation of these standards and laws required further work for these laws and protections to be effective.

#### **6. Conclusions of the Eminent Lawyers' report**

15. The Eminent Lawyers' report concluded that in Kosovo "legal rules are generally in line with international standards" or even go beyond these standards.<sup>9</sup> However, there have been tensions with Serbia and with the Kosovo Serb community. The eminent lawyers considered that increased co-operation with the Council of Europe, including the extension of the jurisdiction of the European Court of Human Rights, could contribute to the improvement of the situation. In terms of democracy, they concluded that Kosovo is a functioning parliamentary democracy providing a level of self-government in accordance with Council of Europe standards, but that progress on an association of Serb majority municipalities could improve the situation. As concerns the rule of law, they found that the legal framework in Kosovo generally corresponds to Council of Europe standards, with strong guarantees for the independence of the judiciary, but that specific individual issues remained around the length of proceedings, the non-implementation of the Decani judgment, the handling of tensions in the north, and the executive not always fully respecting the independence of the judiciary through undue criticism. As concerns human rights, they made recommendations relating to education, language rights and minority rights.

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9. AS/Bur(2023)64, op. cit.

## **7. My assessment in light of the Eminent Lawyers' report, of the results of the fact-finding visit to Kosovo and of the draft Opinion prepared by the Committee on Political Affairs and Democracy**

16. Broadly speaking, the Eminent Lawyers' report was understood by all interlocutors I met in Kosovo as representing a balanced and fair picture of the state of democracy, rule of law and human rights in the country. Some elements contained in the report perhaps deserve more attention than others and in respect of some elements, matters have further developed since that report was produced.

17. Recommendation relating to the issue of the Association of Serb majority municipalities: the Eminent Lawyers recommended that "the Kosovo authorities abandon their opposition to the establishment of the Association and enter into negotiations in good faith on the possible statute of such an association which would have to be fully in line with the Kosovo legal order". Meanwhile, Prime Minister Albin Kurti has agreed to the establishment of such an Association and thus has apparently abandoned 'opposition' to this. This is in accordance with Kosovo's international obligations resulting from the acceptance, in 2013, of the Brussels Agreement, as the draft Opinion rightly recalls. But it should also be noted that successful progress on this does not depend solely on the central Government of Kosovo, and therefore the Assembly's recommendations on this need to be carefully calibrated to reflect that. It should also be recalled that an association of this type is not usually a requirement for membership of the Council of Europe, nor a reflection of the minimum legal standards of the Council of Europe. As a consequence, whilst this endeavour can be encouraged provided it is likely to result in constructive progress, we should avoid being too prescriptive around the details lest this be a hostage to fortune or interfere with or undermine separate negotiations on the normalisation of relations.

18. In relation to respect for the rule of law, the Eminent Lawyers and my interlocutors in Kosovo agreed that the legal framework is good, but that there were challenges in places with the implementation of the law. Overall, I am satisfied that the rule of law is respected to the requisite standard for membership. However, there is obviously scope for improvement, and ongoing work.

19. In my opinion, the following issues merit specific attention:

- a. The long-awaited implementation of the Kosovo Constitutional Court judgment on the Visoki Decani Monastery Case on 14 March 2024: it should be recalled in this context that the decisions of the Constitutional Court are binding on the judiciary and all legal and natural persons and institutions in Kosovo (Art 116(1) of the Constitution), and it is notable that according to the Constitutional Court, all but 3 of the approximately 2 000 judgments in respect of which the Constitutional Court has made a non-enforcement decision and notified the State Prosecutor, have been implemented.<sup>10</sup> This shows a general ability to respect the rule of law, effective procedures for enforcement, and holds promise for Kosovo's ability to execute judgments of the European Court of Human Rights. But the Visoki Decani Monastery case serves as an example that in rare cases, there were inexcusable delays and reluctance for timely and effective implementation of judgments. The Cadastre (Land Registry) of the municipality continued to fail to enter the name of the Monastery in the relevant Land registry notwithstanding the clear obligation to do so and the clear judgment of the Constitutional Court. Such a persistent and blatant lack of respect for the rule of law was concerning, particularly in light of the intransigence on the part of the executive who seemed more willing to set out reasons for non-execution than to take action to encourage better compliance with the rule of law. I therefore supported the position of Ms Bakoyannis, who made the execution of this judgment a pre-condition for presenting her draft preliminary Opinion to the Committee on Political Affairs and Democracy. On a positive note, this, and other cases, demonstrate the independence of the judiciary and its respect for the rule of law – in particular the higher Courts – as it was clearly capable of ruling on cases independently of government interests and wishes. In future, the Prosecutor's Office should act more swiftly in respect of such a blatant and persistent refusal by officials to comply with binding court judgments, and give priority to such cases.
- b. Respect by the executive for the independence of the judiciary: the Eminent Lawyers' report recommended that the "Kosovo authorities should fully respect the independence of the judiciary including by refraining from undue criticism undermining trust in the judiciary". It was therefore very regrettable that even in our meetings with them, some ministers seemed to fail to understand the

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10. The Constitutional Court monitors the implementation of its decisions and in the event of any delay, it may make a decision of non-enforcement and must notify the State Prosecutor [Rule 60 of the Rules of Procedure (No. 01/2023) of the Constitutional Court]. The three judgments pending implementation following such a non-enforcement decision are [KI08/09](#), The Independent Union of Workers of IMK Steel Factory in Ferizaj; [KI132/15](#), Visoki Decani Monastery; and [KI90/16](#), Branislav Jokić.

importance of respecting the independence of the judiciary, specifically the importance of refraining from seeking to exert pressure or influence over the judiciary through personal attacks against judges and polemic criticism of judgments or other court decisions, including in relation to ongoing criminal trials. It is unclear whether this is a problem specific to individual current ministers or a wider problem owing to an inadequate culture of restraint on the part of politicians. A better culture of respect for the independence of the judiciary and the separation of powers should be encouraged, with a focus on greater restraint. I therefore welcome that the Kosovo authorities have committed to fully respecting the independence of the judiciary including by refraining from undue criticism undermining the trust in the judiciary, as reflected in the draft Opinion.

- c. Respect for administrative processes and the adequacy of decision making: Specific examples cited during our visit concerned not only expropriations, but also more general issues with respect to the rule of law and the need to follow the correct legal processes. This included a lack of willingness to genuinely redress the situation in instances where the correct processes had not been followed. This in turn frequently obliges persons at the receiving end of such decisions to rely on the courts to remedy mistakes, thus adding to the excessive case load of the courts and delayed judgments. Examples included failure to follow the correct procedures with regard to purported expropriations in the north of Kosovo (accompanied by the lack of a proactive approach by the administrative authorities to correct these failings – thus forcing the courts to intervene). We also heard a number of concerns about undue political interference in public appointments processes and concerns that public officials were unable to take effective decisions, thereby impacting the possibility of citizens to obtain an outcome as regards their rights without the need to go to court, for example in respect of pensions or other payments. That said, significant work is clearly ongoing to tackle corruption and to improve processes, though some of this will take time to bear fruit. An improved culture of respect for legal processes and the appropriateness and adequacy of decision making would be of significant benefit to the citizens of Kosovo and to the rule of law. Concrete remedial action could consist in establishing an internal administrative complaint mechanism analogous to the German *Widerspruchsverfahren*, which would allow the senior echelons of the relevant administrative authorities to swiftly correct the mistakes of the lower echelons without the issue having to be taken to court, which should always be a remedy of last resort.
- d. Fight against corruption and organised crime: while it has been noted that Kosovo has made progress in the fight against corruption and organised crime, its fully-fledged participation as State party to the enlarged agreement on the Group of States against Corruption (GRECO) and in the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) is worth pursuing without delay. Kosovo would have much benefit to derive from the peer review process put in place by these bodies and from a swift implementation of their recommendations. Membership in GRECO is the automatic consequence of the ratification of the Council of Europe's Criminal or Civil Law Conventions on Corruption. The timely ratification of these conventions, included as a commitment for the Civil Law Convention on Corruption (ETS No. 174) and a recommendation in the draft Opinion, is therefore particularly important.

20. As concerns respect for human rights, the overarching framework of protection for human rights is good, in particular the constitutional protections and the embedding of the European Convention on Human Rights ("the Convention"). However, in specific areas, there are real risks that, were Kosovo to accede to the Convention, its laws and/or practices would not respect the requirements of the Convention, as interpreted and applied by the European Court of Human Rights (the Court). Whilst these issues are not a barrier to accession, it is highly likely that Kosovo will need to make efforts to address them in order to avoid the Court finding violations of Convention rights, in particular in the following areas:

- a. Pre-charge and pre-trial detention (article 5 of the Convention). There seems to be excessive recourse to pre-charge and pre-trial detention, for unduly lengthy periods of time; based on insufficiently reasoned grounds for the deprivation of liberty; often with inadequate defence rights (including a lack of timely translation of information supporting the detention); and an inadequate consideration of alternatives to pre-charge/pre-trial detention. Of even more concern, there were reports of efforts by politicians to publicly criticise and place pressure on members of the judiciary to intimidate them into detaining suspects in cases where detention might not have been necessary (and thus could be found arbitrary). A concerted effort is required to address these failings and to improve practices.
- b. Excessive length of proceedings (article 6 of the Convention). There are well-known concerns regarding the excessive length of proceedings, with particular problems relating to the appellate court sending cases back for retrial (often many times). There was, however, a real recognition by the judiciary of the scale of the problem, and responded with plans for training judges, amendments to the applicable laws

and guidelines, and plans to tackle poor practices where they persisted. The creation of a specific remedy for excessive length of proceedings modeled on similar legislation in other member States and the implementation of improvements of administrative practices recommended above (paragraph 18) could bring some relief.

- c. Hate crimes and domestic violence (articles 2 and 3 as read with article 14 of the Convention). In relation to hate crimes, the laws and the practice of the police seem good, but more work is needed to ensure that potential hate motivations of crimes are investigated and prosecuted. Further training and efforts to promote awareness and sensitivity of these issues are needed. Guidance should be rolled out for the prosecution service and the judiciary, to improve their awareness of hate crimes and their ability to recognise hate elements of offences; and to ensure that victims of such offences are treated with sensitivity. Moreover, the police, prosecution and judiciary should improve their response to domestic violence and related offences, especially violence against women. In this context, I should like to highlight that the Kosovo Assembly has already in September 2020 made the Istanbul Convention directly applicable in Kosovo.<sup>11</sup>
- d. Anti-Discrimination and LGBTI rights (articles 8 and 14 of the Convention and Protocol No. 12 to the Convention (ETS No. 177)). In line with the Court's case law, same-sex partnerships should be recognised. Whilst the draft Civil Code made reference to this, to be regulated by a separate law, it has yet to be adopted by the Kosovo Assembly. Without this, couples in same-sex relationships are unable to benefit from the same rights as those in heterosexual relationships. In relation to transgender rights, whilst Kosovo's courts have recognised gender recognition, there is still no legislation enabling this to be done without recourse to the courts (such as through entry on a register). Further efforts will also be needed to avoid discrimination in relation to the right to family life, for example as regards adoption. Given the sensitive nature of all issues pertaining to discrimination, Kosovo should also be requested to sign and ratify Protocol 12 to the Convention, which adds a free-standing general prohibition of discrimination to the protection afforded by article 14 of the Convention, which is accessory to the rights afforded by its other provisions. I am pleased that the ratification of these protocols is already included in the list of recommendations in paragraph 15 of the draft Opinion. As to the draft civil code, I leave it up to the opinion by the Committee on Equality and Non-Discrimination to consider adding a specific recommendation.
- e. Recommendations relating to the police: I agree with the Eminent Lawyers and the Committee on Political Affairs and Democracy that the use of special police forces in northern Kosovo is evidently a source of tension, but I also consider that this is a complex issue. There have been notable instances of disorder and risks to life in northern Kosovo with the stockpiling of weapons, significant levels of criminality and the killing of a policeman. Moreover, the withdrawal of Kosovo Serbs from institutions (and the subsequent intimidation of Serbs who remained or joined) has affected the composition of the police in northern Kosovo. Given the risks to security in the area, there is a duty on the State to ensure sufficient security to protect life and safety. That said, policing must reduce and not exacerbate such risks. I would therefore suggest that the focus should be more on the quality of policing. Ideally, recruitment should be encouraged from the local community. More specifically, police deployed in the north of Kosovo should use (and necessarily be trained in) de-escalatory policing techniques, ideally using community-based policing. Only police who speak the local language (which is also an official language) should be deployed in northern Kosovo. I heard from multiple sources how few police speak both languages; this needs to be tackled and moreover can be tackled through improved mandatory language training. I therefore recommend that only police speaking the local language to a sufficient degree be deployed in northern Kosovo, that they be trained in de-escalatory policing techniques, and that all efforts be made to recruit police from the local community.
- f. Language issues in the justice system: Improvements to language training and education are clearly needed to ensure sufficient translators and interpreters to meet the constitutional requirements for bilingualism. Failings in this respect have a potential negative impact on all who come into contact with the justice system, including not only the police (see above), but also the prosecution service, the courts, probation services and in detention centres. There are consequent risks of unjust results in their dealings with the police and justice system for those less able to interact meaningfully with the authorities due to language barriers. I will however leave the detailed comment on this overall recommendation to the rapporteur of the Committee on Equality and Non-Discrimination.

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11. See "The National Assembly of Kosovo\* decides to apply the Istanbul Convention", Council of Europe, 25 September 2020.

- g. Protection of the peaceful enjoyment of possessions and right to education: whilst Protocol No. 1 to the Convention (ETS No. 9) on, *inter alia*, the right to property and the right to education is transposed into domestic law by the Kosovo Constitution, its signature and ratification, in addition to that of the Convention itself, are necessary in order to grant the European Court of Human Rights jurisdiction over any alleged violations. Given the importance of property issues in Kosovo, in particular in the areas with strong minority populations, I should like to stress the importance of the commitment requested in the draft Opinion to sign and ratify Protocol No. 1. It should be noted that Article 1 of Protocol 1 as interpreted by the Court provides protection against expropriations without adequate procedural safeguards, compensation and without justification by a public interest purpose. The Ahtisaari Plan, the implementation of which the draft Opinion proposed by the Committee on Political Affairs and Democracy rightly requires, goes beyond these protections. The property of the Orthodox Church is protected against any expropriation, including for purposes and following procedures that would generally satisfy Article 1 of Protocol No. 1. The safeguards and procedures set out in the law need to be followed at all times. This is all the more important when dealing with expropriations in national minority areas where sensitivities are heightened. It is important that the executive realises and recognises that mistakes were made. These need to be rectified, with appropriate explanations in fair proceedings. The executive must address past failings – restarting the expropriation process *ab initio* if necessary. In relation to the new draft law on expropriation, reference to the European Commission for Democracy through Law (Venice Commission) for opinion could be envisaged to help address any concerns or criticisms that might arise.
- h. Abolition of the death penalty in all circumstances: given the Assembly's long-standing rejection of the death penalty, I should also like to support the recommendation in the draft Opinion for Kosovo to sign and ratify Protocol No. 13 to the Convention (ETS No. 187).
- i. Protocol No. 16 to the Convention (CETS No. 214): whilst it would be inappropriate to require signature and ratification of Protocol No. 16 as a firm commitment, given that a number of member States of the Council of Europe have not yet signed it five years after its entry into force, it would be strongly advisable for Kosovo to take this step. Protocol No. 16 allows the highest national courts to request the European Court of Human Rights to give advisory opinions on the interpretation of the Convention. This option would be particularly valuable for Kosovo as a country with a relatively young judiciary, required by its own constitution to directly apply the Convention as interpreted by the Court. I therefore fully support the recommendation to this effect in paragraph 15 of the draft Opinion.

## 8. Conclusions and recommendations

- 21. I support the recommendation of the Committee on Political Affairs and Democracy that Kosovo be invited to become a member of the Council of Europe.
- 22. Kosovo is a "European State" for the purposes of Article 4 of the Statute of the Council of Europe and the criteria of statehood under international law. It is however not recognised as such by all members of the Council of Europe.
- 23. Kosovo's accession to the Council of Europe is without prejudice to the bilateral legal and political recognition of its statehood by the member States of the Organisation.
- 24. However, Kosovo's accession to the Council of Europe would require all member States to "collaborate sincerely and effectively" in treating Kosovo as a member of the Organisation and in working functionally within the framework of the Organisation with Kosovo as a member. A failure to do so could amount to a breach of Article 3 of the Statute.
- 25. Kosovo is willing and able to accept the principles of the rule of law and respect for human rights. It has a strong legal framework for the protection of the rule of law and human rights and whilst some further work should be done in implementing these protections, this is no barrier to accession.
- 26. Kosovo is willing and able to collaborate sincerely and effectively in achieving greater unity between the members of the Council of Europe for the purpose of safeguarding and realising the ideals and principles of the Organisation.
- 27. Kosovo therefore meets the criteria for accession, and this accession should be encouraged to improve the positive impact of Council of Europe membership also in the wider region.

28. This assessment is based on the acceptance, by Kosovo, of the list of commitments included in paragraph 14 of the draft Opinion submitted by the Committee on Political Affairs and Democracy and on the expectation that Kosovo will in due course follow the recommendations in paragraph 15 of the draft Opinion and those in the proposed new paragraph 16 designed to further strengthen the rule of law and the protection of human rights in Kosovo, whose implementation should be followed by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), as proposed in an amendment to paragraph 20 of the draft Opinion.

**Appendix – Programme of the fact-finding visit to Kosovo, from 4 to 6 December 2023**

**Monday, 4 December 2023**

- 07:30-08:30: Working breakfast with QUINT Embassies:
- Ambassador Jörn Rohde, Germany
  - Ambassador Antonello De Riu, Italy
  - Mr Ralan L Hill, Political Economic Counselor, United States
  - Mr Cyprien François, Deputy Head of Mission, France
  - Ms Melanie J.H. Scarlett, Head of External Politics, Reconciliation and Integration Team, United Kingdom
- 09:00-10:00: Meeting with Mr Albin Kurti, Prime Minister of Kosovo
- 10:30-11:00: Meeting with Mr Blerim Sallahu, Deputy Minister of Justice
- 11:15-12:00: Meeting with Ms Eva Palatova, Deputy Head of EU Office, and
- Mr Jarmo Helppikangas, Head of Rule of Law, European Union Special Representative (EUSR) Office
  - Mr Stefano Gnocchi, Head of human Rights, EUSR Office
  - Ms Reyes Charle-Cuellar, Gender Adviser, EUSR office
- 12:15-13:45: Working lunch with civil society representatives:
- Association of Journalists of Kosovo
  - Handikos
  - Kosovo Law Institute
  - Youth Initiative for Human Rights
  - Group for Legal and Political Studies
  - QIKA
- 14:00-15:00: Meeting with Mr Naim Qelaj, Ombudsperson, and
- Ms Majlinda Sinani-Lula, Deputy Ombudsperson
  - Mr Srdan Sentić, Deputy Ombudsperson
- 15:15-16:15: Meeting with Mr Michael Davenport, Ambassador, Head of the OSCE Mission, and
- Mr Nicholas Mazik, Deputy Director, Human Rights and Communities Department
  - Ms Therese Abrahamsen, Deputy Chief of Political Affairs and Communications
- 16:30: Meeting with Ms Arbërie Nagavci, Minister of Education, Science, Technology and Innovation
- 19:00: Dinner with Ambassador Jonas Westerlund, Ambassador of Sweden, and
- Ms Danijela Barišić, Ambassador of Croatia
  - Mr Rastislav Kostilník, Head of the Liaison office of the Slovak Republic in Pristina

**Tuesday, 5 December 2023**

- 09:00: Meeting with Mr Nenad Rašić, Minister of Communities and Returns
- 10:00: Meeting with Ms Caroline Ziadeh, Special Representative of the Secretary-General for Kosovo and Head of the United Nations Interim Administration Mission in Kosovo
- 11:30: Meeting with representatives of Gračanica / Graçanicë civil society:
- Romano Kham
  - Center for Peace and Tolerance
  - FDMC
  - Avenija
  - Step for a better future
  - Roma Youth Vision

- 13:30: Meeting with representatives of civil society (non-majority communities)
- ACDC
  - Roma Versitas Kosovo
  - New Social Initiative
- 15:00: Meeting with Dr Atakan Koro, Chairperson of the Consultative Council for Communities, and
- Mr Petar Dordević, Vice-Chairperson,
  - Ms Valentina Ivić, Vice-Chairperson,
  - Ms Elizabeth Gowing, Advisor to the Prime Minister on Community Affairs
- 16:00: Meeting with the National Assembly Committee Chairs/Vice-Chairs:
- Mr Hydajet Hyseni, First Vice-Chair, Committee on Rights and Interests of Communities and Returns
  - Mr Visar Krasniqi, Committee on Legislation, Mandates, Immunities, Rules of procedure of the Assembly and Oversight of the Anti-Corruption Agency
  - Mr Adnan Rrustemi, Chair, Committee on Legislation, Mandates, Immunities, Rules of procedure of the Assembly and Oversight of the Anti-Corruption Agency
- 17:30: Meeting with Ms Donika Gërvalla Schwarz, Deputy Prime Minister and Minister of Foreign Affairs and Diaspora
- 19:00: Working dinner with members of the delegation to the Parliamentary Assembly of the Council of Europe:
- Ms Saranda Bogujevci, Chairperson of delegation
  - Mr Arben Gashi, Deputy Chairperson of delegation
  - Ms Ariana Musliu-Shoshi

**Wednesday, 6 December 2023**

- 8:30: Meeting with LGBTIQ+ civil society groups:
- Centre for Social and Group Development
  - Centre for Equality and Liberty
- 9:30: Meeting with Mr Slaviša Mladenović, Language Commissioner