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Current situation in Kosovo

Report
Committee on Political Affairs and Democracy
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Summary

The current situation in Kosovo is largely determined at present by the outcome of the status negotiations which should be concluded by the end of the year. The undecided status of Kosovo casts uncertainty over the further political stabilisation of the entire western Balkan region.

The Assembly considers this issue of vital importance for the geopolitical balance, political stability and economic prosperity of the western Balkans, a key region for the Council of Europe, and wishes to address it in a cautious but resolute manner.

Regardless of the outcome on the status of Kosovo, whether it be increased autonomy within Serbia or independence, the Assembly resolves to assist both Serbia and Kosovo in facing the challenges ahead and assisting both in the fields of reference of the Council of Europe, namely good governance, democracy, rule of law, respect for human rights and of the rights of national minorities.

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A. Draft resolution

1. Since Parliamentary Assembly Resolution 1453 (2005) on the current situation in Kosovo, several changes have affected the province. Nevertheless, the disappearance of a symbolic figure such as President Ibrahim Rugova and a reshuffling in the leadership of the Provisional Institutions of Self-Government (PISG) have not impaired political continuity; in February 2006, negotiations on technical issues started under the mediation of United Nations Special Envoy Martti Ahtisaari.

2. The beginning of direct status talks between Serbia and Kosovo Albanian representatives in July has marked a new stage in the search for a solution to the issue of Kosovo's status. The Parliamentary Assembly reiterates its conviction that Kosovo's status should be defined as a matter of urgency, in order to bring stability to the people of the region; create the conditions for the development of fully responsible, accountable and representative institutions of Kosovo enjoying the trust of the population as a whole; strengthen democracy; establish the foundations for economic growth; and contribute to the further consolidation of peaceful and neighbourly relations in the western Balkans in the perspective of their progressive European integration.

3. The Assembly is concerned about the unlikelihood of reaching an agreed solution on the status issue given the positions held by the two negotiating parties: there is no sign of willingness from Serbia to move away from the demand for Kosovo to be autonomous under Serbian sovereignty on the one hand, and from Kosovo Albanians to step back from the demand for Kosovo's full independence on the other.

4. While respecting Serbia's interest and right to preserve its territorial integrity, the Assembly believes that Kosovo's independence – subject to certain conditions – is the solution which is liable to ensure the greatest chances of durable, long-term peace and stability for Kosovo and the entire region, in addition to being the one which corresponds to the will of the majority of Kosovans. The Assembly therefore encourages Serbia to adopt a more flexible and pragmatic attitude during the status negotiations, as well as to reopen a discussion within Serbia's main institutions to that effect.

5. The Assembly is aware that the latest months have been particularly daunting for Serbia, in view of Slobodan Milosevic's death and the way it has been perceived by its public opinion, the tense relations with the International Criminal Tribunal for the former Yugoslavia (ICTY) due to Serbia's failure to apprehend Ratko Mladic and other war criminals, the resulting suspension of the Stabilisation Association Agreement (SAA) with the European Union and the dissolution of the state union with Montenegro. At this delicate stage of the status process, it is the responsibility of the Serbian political leadership to play an active role in preventing any further aggravation of the feeling of victimisation within public opinion as well as the spreading of anti-European attitudes.

6. A negotiated and mutually accepted solution to Kosovo's status is the best guarantee that the outcome will not be disputed in the future. However, should a deadlock protract negotiations beyond a reasonable time-frame, thus perpetuating insecurity and instability and rendering a normalisation of the lives of people in Kosovo impossible, it might be necessary to envisage the eventuality of an internationally-imposed solution as the last and extreme resort.

7. For stabilisation in the western Balkans, regardless of the future status of Kosovo, a number of conditions should be met, including the compliance of Kosovo's constitutional framework with European standards relating to democracy, good governance, the rule of law, human rights and the protection of national minorities; special safeguards for minority communities; the full applicability throughout its territory of the main international instruments in these fields, including the European Convention on Human Rights and the Framework Convention on National Minorities; and the acceptance of an international presence. Furthermore, there should be a clear commitment from Kosovo and other regional actors not to seek or encourage any further change of international borders in the region and to recognise Kosovo's current frontiers as permanent.

8. As regards the insufficient implementation of the Standards for Kosovo, the Assembly welcomes the progress highlighted in the last technical assessment presented by the former Special Representative of the UN Secretary-General (SRSG), Søren Jessen Petersen, and expects that the parallel process of status definition will further contribute to channelling the PISG's efforts towards the full achievement of the Standards.

9. The situation of Serbs and minority communities in Kosovo is an issue of primary concern for the Assembly, irrespective of the outcome of Kosovo's status. In this respect, it welcomes the initiative of the establishment of a Communities Security Council as a sign of the continued attention paid by Kosovo's

present institutions to inter-ethnic relations and reconciliation. The Assembly, however, regrets the continued refusal of Kosovo Serbs to participate in Kosovo's public and political life and considers this attitude as counter-productive.

10. It is fundamental for the establishment of good inter-ethnic relations, the development of confidence in the institutions and the respect of the rule of law that all minority communities in Kosovo have access to effective remedies against discrimination, that ethnically-motivated crimes are properly investigated and that their perpetrators are prosecuted and condemned.

11. Finally, as regards the issue of the current applicability of Council of Europe instruments in Kosovo and the functioning of mechanisms for the protection of human rights, the Assembly, while welcoming NATO's decision to enable the Committee for the Prevention of Torture (CPT) to have access to KFOR detention facilities throughout Kosovo, regrets that the mandate of the Ombudsperson institution, as reformed by UNMIK Resolution 2006/6, has been limited and considers that the effectiveness, authority and independence of the mechanism of the Human Rights Advisory Panel should be closely monitored.

12. In light of the foregoing, the Assembly calls on the two negotiating parties to:

12.1. pursue the negotiations on Kosovo's future status, having as their primary objective the attainment of fair standards for all inhabitants of Kosovo, recognising that the maintenance of such standards may require an international presence and monitoring for some time;

12.2. take careful account of the Bosnian experience, post-Dayton, in finalising the technical arrangements concerning decentralisation, which demonstrates that the open-ended linking of functions to ethnic origin both undermines the coherence of a state and is a long-term barrier to reconciliation, integration and the development of an exclusively citizens polity, so that if such a course is followed to accelerate agreement and give re-assurance, it should be limited in time.

13. In addition, the Assembly calls on Serbia to:

13.1. reopen a discussion within its main institutions, including the parliament, with a view to approaching the issue of Kosovo's status in a flexible and pragmatic manner and, in this context, give appropriate consideration to the benefits deriving from Kosovo's conditional independence;

13.2. encourage the active participation of Kosovo Serbs in Kosovo's public and political life.

14. The Assembly calls on both Serbia and the PISG to multiply their efforts aimed at raising awareness among their public at large on the country's recent history and explaining the importance and functions of the different European institutions, including that of the ICTY; as well as preparing the public of different possible outcomes of the status issue in Kosovo;

15. The Assembly also calls on the PISG to:

15.1. intensify their efforts towards the full implementation of the Standards for Kosovo, giving priority to the situation of all minority communities, noting the special vulnerability of the Roma, Ashkali and Egyptian (RAE) community, and in particular:

15.1.1. ensure the full and effective implementation of the anti-discrimination legislation;

15.1.2. investigate all cases of alleged ethnically-motivated crimes and fight against the impunity of their perpetrators;

15.1.3. investigate all cases of abductions and disappearances against minorities, occurring before or after the establishment of UNMIK in Kosovo, and ensure that those responsible are brought to justice;

15.1.4. investigate and prosecute all cases of war crimes and crimes against humanity committed prior to 1999 and ensure full co-operation with the ICTY.

16. Finally, in the prospect of its future increased responsibility in Kosovo during the post-status stabilisation period, the Assembly calls on the European Union to associate more closely the Council of Europe with its activities and to give due attention to Council of Europe monitoring processes.

B. Draft recommendation

1. Referring to its Resolution … (2006) on the current situation in Kosovo, the Parliamentary Assembly reiterates the historical role of the Council of Europe in improving good governance, strengthening democracy and the rule of law, raising human rights standards and improving the protection of national minorities in Europe. The Assembly is convinced that a similar role should be played also as regards Kosovo, with a view to contributing to the full implementation of the Standards for Kosovo.

2. Similarly, the Assembly believes that the Council of Europe should give special support to Serbia, a member state which is going through a delicate political phase, and to the development of friendly and neighbourly relations between all the main actors in the western Balkans.

3. The Assembly therefore asks the Committee of Ministers to:

3.1. expand the role of the Council of Europe in Kosovo, in particular as regards:

3.1.1. the protection of human rights;

3.1.2. the protection of national minorities;

3.1.3. the use of minority languages;

3.1.4. inter-cultural dialogue;

3.1.5. the fight against corruption, organised crime, money-laundering and trafficking in human beings;

3.1.6. democratisation and financing of political parties;

3.1.7. the accountability of the police;

3.1.8. the independence and the efficiency of the judiciary;

3.2. communicate with the United Nations Office of the Special Envoy of the Secretary-General for the future status process for Kosovo (UNOSEK) in order to ensure that standards and mechanisms of the European Convention on Human Rights be fully applied and integrated in the Status Agreement for Kosovo;

3.3. increase the information activities of the Council of Europe in or addressed to Serbia, as well as the activities relating to history teaching, human rights education, youth and inter-cultural dialogue;

3.4. in the prospect of its increased involvement in Kosovo during the post-status stabilisation period, engage in a dialogue with the appropriate European Union bodies to secure an enhanced role for the Council of Europe;

3.5. reconsider the request made by the Ministry of Justice and the Ministry of Interior of Kosovo (PISG) to receive Council of Europe expertise through the temporary appointment of a human rights' adviser to their institutions;

3.6. give an increased role to the institution of the Commissioner for Human Rights of the Council of Europe to assist in enhancing the protective role of the Ombudsperson in Kosovo.

C. Explanatory memorandum, by Lord Russell-Johnston

1. Introduction

1. My predecessor in the capacity of Assembly rapporteur on the current situation in Kosovo, Mrs Marianne Tritz (Germany, SOC), began her report by saying that 2005 could be the year of Kosovo. She wondered whether this was merely a slogan or something that could come true. In light of the often repeated statement that the negotiations on the status of Kosovo may be concluded by the end of this year, I cannot but ask myself the same question. Will 2006 be the year of Kosovo? In particular, will a solution to the status issue be found? What will it be? Will it be the result of an agreement between the two parties to the negotiations or will it have to be imposed on them?

2. In addition to questions, I share some convictions with my predecessor: first of all that the undecided status of Kosovo casts uncertainty over the further political stabilisation of the entire region, including its perspective of European integration; it affects its economic recovery and prevents a number of displaced persons and refugees from Kosovo from reaching a decision whether to return to their homes; it also has a negative impact on the formation of a solid political leadership and fully responsible, accountable and representative institutions in Kosovo, enjoying the trust of all the population. As a result, it is imperative that a solution to the status issue is found as a matter of urgency.

3. Secondly, like Mrs Tritz, I think that the main concern of the Assembly and the Council of Europe as regards Kosovo should be on the full implementation of standards: irrespective of its status, Kosovo should be an area which is safe for all those who live in it, where Council of Europe standards in the fields of democracy and good governance, rule of law, protection of human rights and rights of all national minorities are fully enforced, where recourse to the European Court of Human Rights is available to everyone and where the values of democracy, tolerance, multiculturalism and inter-ethnic tolerance are shared by its inhabitants and institutions. The assistance of the Council of Europe will be necessary for Kosovo to fully achieve these standards.

4. This being said, I believe that the Assembly should not be afraid to state its position as regards the future status of Kosovo. At the moment, the province is formally part of Serbia, a member state of our Organisation. The legitimate interests of Belgrade to preserve the territorial integrity of the country and to ensure the adequate protection of the rights of ethnic Serbs in Kosovo deserve the greatest consideration. It would be short-sighted, however, to ignore that there is a clear issue on the table whether Kosovo should continue to be part of Serbia – even if with a special regime of autonomy – or whether it should become independent – even if sovereignty would be conditional upon a number of international commitments and obligations. This issue is of vital importance for the geopolitical balance, political stability and economic prosperity of the western Balkans, a key region for the Council of Europe, and should therefore be addressed by the Assembly in a cautious but resolute manner.

5. This report reflects my general assessment of the current situation in Kosovo on the basis of two visits which I conducted in April and September 2006 as well as my personal views concerning the best solution that can be envisaged for the status issue. I would like to stress that during all my visits I was warmly welcomed and express my gratitude to all the interlocutors I met. I should probably underline that it was my intention to meet with all parties concerned by the situation in Kosovo. However, both in April and September, I was not able to meet with either President Tadic´ or Prime Minister Kostunica. Their agenda, regrettably, did not allow for such a meeting to take place.

2. Current situation in Kosovo

2.1. Political situation

6. As a matter of fact, 2006 has already brought forward a number of changes for Kosovo:

– negotiations on technical issues (such as decentralisation, cultural heritage and the economy), under the mediation of the UN Special Envoy Martti Ahtisaari, started in February; since July, direct status talks between the two negotiating teams have also begun;

– the leadership of the Provisional Institutions of Self-Government (PISG) has changed; and

– Joachim Rücker has been appointed as Special Representative of the UN Secretary-General (SRSG), following Søren Jessen Petersen's resignation.

7. The new SRSG took up his functions on 1 September and it is therefore premature to make any speculation about how he intends to conduct his work at the head of UNMIK. It should be highlighted, however, that his appointment is a choice of continuity

– he was previously in charge of UNMIK's reconstruction and economic development division – which has been criticised by those who disapprove of the way in which the privatisation process has been handled. SRSG Rücker expects to be the last official to hold this capacity in Kosovo.[1] I believe that he could facilitate a smooth handing over of the international presence from UNMIK to the European Union, particularly in view of the forthcoming German Presidency.

8. As far as the leadership of the PISG is concerned, the main changes are:

– following the death of Ibrahim Rugova, Fatmir Sejdiu has become the second President of Kosovo. He is now leading the Kosovo Albanian Negotiating Team;

– following the resignation of Bajram Kosumi (Alliance for the Future of Kosovo, AAK), Agim Ceku (AAK), former Head of the Kosovo Protection Corps, has taken over the functions of Prime Minister. The appointment of this former commander of the Kosovo Liberation Army (KLA) has raised serious criticism in Serbia, where he is accused of war crimes. It should be noted, however, that no charges were brought against him by the International Criminal Tribunal for the Former Yugoslavia (ICTY). In addition, since his appointment, Prime Minister Ceku has undertaken various initiatives to enhance the dialogue between the PISG and Kosovo Serbs;

– following the resignation of Nexhat Daci (LDK), Kole Berisha, from the same party, became President of the Kosovo Assembly.

9. Notwithstanding these changes, political stability has been preserved. The new government is – like the previous one – dominated by an AAK and LDK coalition, with the Democratic Party of Kosovo (PDK) in opposition. Most ministers of the previous government have been retained. Also, another element of continuity is that Lufti Haziri, former Minister of Local Government Administration, has become Deputy Prime Minister and is currently in charge of the key file of decentralisation within the Kosovo Albanian Negotiating Team.

10. That said, it is a cause for concern that many of these reshuffles are due to internal party struggles for the control of the institutions, accompanied by mutual accusations of inefficiency and corruption: Kosovo Albanian political parties reflect clan logics and interests; their internal democracy is also very weak. In addition, all the main political parties have intelligence structures which they have inherited from the time of the conflict and which still exercise remarkable influence. Clientelism and corruption are endemic, with obvious consequences on good governance, efficiency of the institutions and even the size of the civil service. Despite their potential for innovation, women and youth are marginalised from the political process.

11. In these circumstances, it is not surprising that the public attitude towards the PISG and UNMIK is one of mistrust. According to recent polls,[2] over 50% of Kosovo Albanians are dissatisfied with the performance of UNMIK, 42% are dissatisfied with the government and 40% with the assembly. The highest level of dissatisfaction among Kosovo Albanians is towards local authorities. As a matter of fact, 64% of Kosovo Serbs, on their part, say they are dissatisfied or very dissatisfied with the law-enforcement bodies, be they KFOR or the Kosovo Police Service.

12. Furthermore, the legitimacy of the PISG is affected by the refusal of Kosovo Serbs to participate in their work. The Kosovo Serbs have continued to show no signs of willingness to participate in the PISG, mainly because they consider the PISG to be discriminatory towards the Kosovo Serbs and offering them solely the choice between becoming a national minority or leaving Kosovo. In the eyes of Kosovo Serb political leaders, the solution to the status issue of Kosovo cannot be the independence of Kosovo but rather an increased autonomy for Kosovo Albanians which would also result in an increased autonomy for Serbian municipalities. I was told during my meetings with Kosovo Serb political leaders that they fully endorsed the proposal of the Serbian Negotiation Team, a team in which Kosovo Serbs are not represented.

13. An additional matter of concern affecting Kosovo public life is the issue of missing persons. The estimated figure which I was given is approximately 2 800 missing persons, of which 500 Serbs and the rest mainly Albanians. However, this is only an estimate. Indeed, I received different figures from different interlocutors.

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1. Transcript of the press conference given by SRSG Designate Joachim Rücker, 15 August 2006.
2. Figures quoted in this paragraph are from the UNDP early warning report, Kosovo, Report 13, January to June 2006.

14. While the attitude towards the prosecution of crimes and war crimes in Kosovo still needs to be improved significantly, the judiciary is not remaining inactive. In August this year, a major case involving KLA fighters resulted in the conviction on charges of war crimes of General Krasniqi, his brother and another fighter. As for the March 2004 events, 240 persons were indicted and sentenced, among them 26 were convicted for serious crimes and handed over to international prosecutors. However, it should be stressed that all public signs of support towards individuals accused of war crimes by those exercising public functions in Kosovo should be condemned. By that, I am referring to the personal visit Prime Minister Ceku paid to Krasniqi, and his statements of appreciation of the general given to the press.

2.2. Reconciliation and the situation of national minorities

15. The legacy of the Milosevic regime is widely felt in Kosovo, especially by Kosovo Albanians who were the main victims of its policies and practices and suffered so severely in the war (10 000 is the estimated number of deaths among Albanians while 1 000 is the estimated number of deaths among Serbs). The legacy of ethnic segregation and isolation of the 1980s and 1990s has left little scope for building cross-ethnic relations or trust. At the same time, in the post-1999 period, minorities such as Serbs and Roma are still affected by the violence which they have suffered, as a result of massive displacement and inter-ethnic tensions and the events of March 2004 in particular, have seriously eroded trust between different ethnic groups and the reconciliation process is difficult, especially between the two largest communities – Albanians and Serbs.[3]

16. This situation, however, does not affect the entirety of Kosovo, and some examples of municipalities with a peaceful inter-ethnic coexistence do exist, especially in the south, for example in Prizren. The results of the most recent opinion polls on inter-ethnic tolerance also show an encouraging trend: 52% of Kosovo Albanians respondents declared that they agreed to work with Kosovo Serbs – as opposed to 48% in December 2005 and 26% in December 2002.[4]Likewise, 58% of Kosovo Serb respondents declared that they agreed to work with Kosovo Albanians compared to 51% in December 2005 and 21% in December 2002.

17. According to the opinion on the implementation of the Framework Convention for the Protection of National Minorities in Kosovo, adopted by the Advisory Committee on 25 November 2005, persons belonging to minority communities continue to face particularly serious problems, amongst others, in the following areas:

– freedom of movement. “The overall situation remains disconcerting, involving a large number of persons unable to return to their homes as well as serious obstacles in terms of access to various services, ranging from health services to courts and public transportation”,[5]and

– access to employment and participation in economic life. The unemployment rate reaches 70% within minorities. Serbs largely depend on the financial support they receive from Belgrade, although it should be borne in mind that Belgrade has even called on Serbs and other minorities to refuse salaries from UNMIK or the PISG. Some progress can be seen in the employment of persons from minorities in the public sector, at municipal and central levels, as well as in the police, while, in the private sector, additional efforts have to be made to avoid direct or indirect discrimination.

18. In general, cases of harassment and other ethnically motivated incidents are decreasing but still occur. However, as former SRSG Jessen Petersen acknowledged when reporting to the UN Security Council last June,[6]minorities have a tendency to proclaim all incidents affecting them as “ethnically motivated”. On the other hand, it can also be assumed that many incidents are not reported because of lack of confidence in the law-enforcement officials and a perceived high degree of impunity. It is difficult to say whether this perception is well founded: there is no comprehensive data on the status of investigations and prosecutions of ethnically motivated incidents since 1999. This serious lacuna should be addressed as a matter of urgency: in light of Kosovo’s recent past and present situation, it is essential that the work of the police and the judiciary in this domain is fully transparent.

3. According to the Statistical Office of Kosovo, in 2000, 88% of the Kosovan population was Albanian, 7% Serbian and 5% belonged to other ethnic groups (Roma, Turks, Bosnians, Vlachs).
4. Figures quoted in this paragraph are from the UNDP early warning report, Kosovo, Report 13, January to June 2006.
5. Ibid., paragraph 40.
6. Security Council, SC/8758, 20 June 2006.

19. The situation of Roma, Ashkali and Egyptians (RAE) in Kosovo is of particular concern, especially for the internally displaced persons (IDPs) for which there are no immediate signs of improvement. There is a need for a long-term strategy for the social and economic integration of the RAE on the model of national strategies that have been developed in several European countries. It is very clear that the RAE are under-represented in the political and administrative structures of Kosovo.

20. If fully implemented, the anti-discrimination legislation introduced in 2004 could prove to be a fundamental instrument to address the situation of national minorities, as it provides far-reaching guarantees against direct and indirect discrimination, in the public and private spheres. In practice, however, discrimination is still persistent and, in any event, since it came into force, the relevant legislation has hardly ever been invoked because of the afore-mentioned lack of trust in the authorities, including the judiciary.

21. The latest technical review of the implementation of the Standards for Kosovo, presented by former SRSG Jessen Petersen and covering events until 30 April 2006, testifies to a greater willingness on the part of the Kosovan leadership to reach out to minority communities, particularly Kosovo Serbs. The most recent example of this has been Prime Minister Ceku's initiative to establish a Communities Security Council, bringing together the Government of Kosovo, UNMIK, KFOR and other actors, with a view to promoting improvements in the living conditions of Kosovo's most vulnerable communities.

2.3. Decentralisation

22. Decentralisation has proved to be the most complex technical issue on the table. After an unsuccessful attempt by the PISG to start five pilot projects – some of which were in Serbian-majority municipalities – decentralisation is now being negotiated under the auspices of the UN Special Envoy Martti Ahtisaari and concrete results are expected by the end of September. The thorniest aspects concern, on the one hand, the enlargement of the borders of some municipalities, in particular Mitrovica; on the other, the extensive competences to be attributed to the municipalities in the areas of education, health, security and justice. The Kosovo Albanian Negotiating Team has so far refused to accede to these demands coming from its Serbian counterpart, with the argument that such a model of asymmetrical decentralisation would lead to the creation of cantons and would create the conditions for an eventual partition of Kosovo in the future.

23. In my view, the issue of decentralisation should be tackled with a great deal of care and attention. It is my understanding that ethnic division is the defining element of this decentralisation process. Indeed, if this amounts to permanent or semi-permanent ethnic enclaves, the idea itself of decentralisation is dangerous. There is a genuine risk of applying to Kosovo the shortcomings of the Dayton Agreements concerning Bosnia and Herzegovina.

2.4. Mitrovica

24. Mitrovica remains one of the most contentious issues dividing Kosovo Serbs and Kosovo Albanians. It is my understanding that the Kosovo Albanian proposal would be to have two municipalities in one integrated city of Mitrovica, whereas the Kosovo Serbs would like to see north Mitrovica unite with the three Serbian municipalities around Mitrovica north: Zvecan, Zubin Potok and Leposavic. Both views seem at present irreconcilable. The situation in Mitrovica is fragile and prone to conflict escalation. Although, on the surface, the situation seems calm, recent events such as the grenade attack by a young Albanian in a café in north Mitrovica, prove that the situation is very volatile and that violence can escalate in a matter of minutes.

25. One other issue of concern is the situation of the Roma who were displaced during the war and who live in camps in northern Kosovo. Their living conditions are deplorable and continue to deteriorate. Three out of the four camps have been contaminated by lead due to a nearby lead mine. UNMIK took measures to decontaminate and arrange a camp (Osterode camp in north Mitrovica, which I have visited) where Roma are temporarily relocated before a possible return to Roma Mahala (the area where they were previously living in south Mitrovica). A reconstruction project is currently under way to encourage the return of Roma to Roma Mahala. So far, 48 apartments have been reconstructed and 93 Roma families,[7] from camps in Mitrovica, Montenegro and Serbia, have applied for them, thus demonstrating their readiness to return to Roma Mahala.

7. Figures provided during my meeting with Joe Kazlas, UNMIK Deputy Regional Representative, co-Chair of the Steering Group of the Return Project to Roma Mahala, Mitrovica South.

26. From my visit to Roma Mahala with actors of the international community, I was under the clear impression that this Roma Mahala reconstruction is considered by the international community involved in the project to be an important step forward in facilitating returns. This achievement is due largely to the improved co-operation of the municipality of south Mitrovica with the international actors and its readiness to allow Roma returns.

27. Concerning the Roma issue, the work undertaken by the Council of Europe Roma co-ordinator, who assessed the situation of Roma in Kosovo, should be highlighted. He finalised his report[8] in May 2006 and one of his main conclusions stresses that the return of thousands of RAE from host countries without the necessary infrastructure to sustain them would generate a considerable risk of a secondary displacement, an added burden on the Kosovan economy and possible political and social destabilisation.

2.5. Human rights mechanisms

28. One long-standing anomaly in the human rights enforcement system has recently been addressed. The Council of Europe and NATO have succeeded in resolving the question of access for the European Committee for the Prevention of Torture (CPT) to NATO run detention facilities in Kosovo. I can only but welcome this recent development which will soon allow Council experts to visit all the detention facilities in Kosovo to verify whether the treatment of persons deprived of their liberty complies with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

29. Concerning the reformed ombudsperson institution in Kosovo it is my impression that the handing over of the institution directly to a local actor was perhaps too early considering the general lack of trust in the local institutions as a whole. Equally, the volume of work which may fall on the ombudsperson may necessitate to have more than one ombudsperson, as was proposed to me by Mrs Sanda Raskovic-Ivic, President of the Co-ordination Centre for Kosovo and Metohija. Moreover, it is to be regretted that UNMIK Resolution 2006/6 limits the jurisdiction of the new ombudsperson.

30. The Human Rights Advisory Panel was set up by UNMIK in 2006, partly on the basis of a Council of Europe recommendation and is charged with scrutinising (draft) UNMIK regulations and subsidiary instruments for compliance with international human rights standards, along with other tasks such as hearing appeals from the UNMIK Claims Office, and addressing to UNMIK opinions on issues, other than individual complaints, brought to its attention by the ombudsperson. This mechanism falls short of expectations within Council of Europe circles, including the Assembly, because its recommendations are not binding on the SRSG. The effectiveness, authority and independence of this mechanism should be closely monitored.

2.6. The socioeconomic situation

31. Kosovo is one of the poorest areas in Europe. Its per capita income is estimated at US$1 565 per annum; 37% of the population lives below the poverty line; 15% lives in extreme poverty;[9] the unemployment rate is 39.7% (I suspect that is an underestimate). The labour market is characterised by a high proportion of registered job-seekers, two-thirds of whom are unqualified. Most job-seekers belong to the age group 25-39.[10] Education and health care are considerable problems. During most of the 1990s the Albanian population of Kosovo was either excluded from, or boycotted, the then Yugoslav state education and health systems. Today, half of the adult population has only completed primary education and 6% are illiterate. Despite some improvements in the primary school enrolment rates and the illiteracy rate among children and youths, the quality of education remains a problem. Due to insufficient space and classrooms, schools operate on 3 to 4 shifts per day. Health care is among the worst in South-East Europe. The infant mortality rate is the highest in the region.

32. Private and foreign investments in Kosovo are very low, for reasons ranging from the security situation to the problems of corruption and organised crime, without mentioning the uncertainty stemming from the undecided status of Kosovo.

33. Kosovo, however, has economic potential: the mining and energy sectors, for instance, can be a key source for future growth. Kosovo has abundant resources of minerals, particularly lignite, lead and zinc, and relatively low transport costs to western European markets. Besides, the utilisation of lignite holds potential for the energy sector to pick up and become an engine of growth. The shortage of alternative new power sources

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8. Report of the Chair of the MS-S-Rom and the Council of Europe Co-ordinator of Activities concerning Roma and Travellers following their mission to Kosovo (Serbia), 26 February to 1 March 2006.
9. Source for these figures: World Bank, “Kosovo brief 2006”.
10. Source for the figures about unemployment: Statistical Office of Kosovo (SOK), “Kosovo in figures 2005”.

elsewhere in the region could offer an opportunity for Kosovo to export energy, provided that the existing infrastructure is rehabilitated. Also agriculture is a potential source of growth, even if at the moment much of Kosovo's agricultural land is under-used, due to the prevalence of small-scale agriculture.

34. The PISG and the international community should support Kosovo's socioeconomic development, in particular by:

– improving education levels;

– creating employment opportunities, particularly for young people;

– helping the agriculture sector to become more efficient and competitive;

– improving health care; and

– increasing the efficiency and equity of social service delivery.

35. I am convinced that, if these measures are taken, Kosovo's economy could take off and become viable.

3. Current situation in Serbia

36. I am fully aware of how delicate this period is for the future of the western Balkans, and in particular Serbia. I do not exclude that the outcome of the referendum in Montenegro might have consequences on the negotiations on Kosovo's status: Montenegro has a substantive Serb minority (if it can be called so, as it represents approximately 31% of the population against 43% of Montenegrins), its population has a lot in common with Serbs in terms of ethnic origin, language, religion and culture. As the will of the majority of the population of Montenegro to separate from Serbia has been recognised, why should not the same apply for Kosovo, whose population is mostly Albanian (88% of the Kosovo population), with very little in common with Serbs (7% of the Kosovo population)?

37. Of course there is a counter-argument that Montenegro was already a state and has simply regained its independence, while Kosovo has never been a state but always part of Serbia – within or outside the framework of a wider federation. I am not sure, however, that this formal criterion can be convincing in light of the willingness of the overwhelming majority of the population of Kosovo to gain independence from a country which is perceived as being responsible for discrimination, persecution and ethnic cleansing against the majority population of the province. One cannot ignore that nearly 90% of the population of Kosovo refuse to remain under the Serbian umbrella or the fact that, since the conflict in 1998-99, the new Serbian democratic regime has made no attempt to woo the majority population or to encourage a return under Serbian authority.

38. On the other hand, the stability of Serbia should also be a major consideration. The death of Slobodan Milosevic has highlighted that a significant part of the Serbian population is not fully aware of the hideous crimes that were perpetrated during his regime, and even consider him as a victim that had to be sacrificed to the ICTY to enable Serbia to proceed on the path of European integration and regain its standing in the international community. It is clear that this feeling of "persecution" should not be aggravated by not wellthought-through statements or decisions. An effort of awareness-raising among the Serbian public at large is necessary, to cast a clear and objective light on the country's recent history, to explain the importance and functions of the different international institutions – including the ICTY – and to prepare the public for future scenarios, including the different possible outcomes of the status issue.

39. One can only but encourage those organisations or individuals which try to cast this clear and objective light on Serbia's recent past. However, smear campaigns against such organisations or individuals, such as those which occurred early September,[11]should be condemned. They do not contribute towards a general sense of stability.

40. This process of awareness-raising is all the more necessary in the context of the future integration of Serbia into the European Union. Certainly, progress towards reforms in the field of economy, democracy and human rights, together with a genuine and meaningful co-operation with the ICTY, will bring the country closer to EU membership. However, for these reforms to be lasting and irreversible, preparedness to acknowledge its past, to share European values and live peacefully with other ethnicities – be they in the same or a neighbouring country – are fundamental preconditions.

11. A smear campaign targeting the chairs of three NGOs: Biljana Kovac˘ic˘ Vuc˘o, Natas˘a Kandi´c and Sonja Biserko.

4. A status for long-term stability

41. At the outset of direct status negotiations between the two parties, their positions are polarised and there is no sign of a compromise.

42. I have read with interest an article by Serbian Prime Minister Kostunica published in the *Washington Post* in July, prior to his address to the UN Security Council.[12]This article sets out in a very clear manner the arguments why Kosovo should not become independent. The main points are:

– depriving a sovereign state of a part of its territory to meet the aspirations for independence of an "ethnic group who threatens violence" does not have any foundation in international law and "is morally and historically impermissible";

– independence for Kosovo "would be viewed as a precedent and set off similar demands elsewhere";

– "an independent Kosovo would be a hotbed of chronic tension in the region, both because of the probability of new territorial demands and because of its economic unviability and its network of organised crime";

– above all, the independence of Kosovo would imperil democracy in Serbia. I quote: "Let us recall that Serbia liberated itself from a communist regime on its own by investing enormous effort and taking huge risks. Can such a country, by any measure a democratic one, survive the forcible taking of 15% of its territory?".

43. In the following weeks, other statements have clarified or confirmed the Serbian position:

– the solution of the status issue must be the result of a compromise and cannot be imposed;[13]

– there cannot be any predefined time frame to solve the status issue;[14]

– a partition of Kosovo is out of the question;[15]

– Serbia will not give up Kosovo in exchange for an accelerated accession to the EU;[16]

– Serbia will not recognise Kosovo's independence;

– independence of Kosovo will trigger very dangerous turbulences in the western Balkans and in history "no boundary changes have ever been done through agreements but only through war".[17]

44. Similar arguments were also deployed by the representatives of the three Serbian municipalities around Mitrovica North, who firmly declared that decentralisation would be beneficial for both Albanians and Serbs and that a rushed solution on the status of Kosovo would only be counter-productive.

45. The reason why I spell out the Serbian position in such detail is because I think that some of their arguments are well-founded.

46. For instance, the definition of a status for Kosovo could, potentially, have short-term consequences on:

– the situation in Presevo Valley (South Serbia), inhabited by a substantial Albanian minority;[18]

– the Republika Srpska (Bosnia and Herzegovina), where political leaders have already warned that in case Kosovo became independent they would favour uniting with Serbia or become themselves independent;

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12. Vojislav Kostunica, Prime Minister of Serbia, "Justice for Serbia, Kosovo independence imperils our democracy", *Washington Post*, 12 July.
13. Government of Serbia, "Solution to Kosovo status must not be imposed or talks time-restricted", press release of 7 August 2006.
14. *Idem*.
15. This was reiterated with particular emphasis following an interview of Dr Sanda Raskovic-Ivic, head of the Co-ordination Centre for Kosovo-Metohija (CCK), with the BBC in August.
16. Government of Serbia, "Serbia will not renounce Kosovo-Metohija for accelerated EU accession", press release of 31 July 2006. "According to the Prime Minister, in trying to solve the Kosovo-Metohija issue, Serbia has presented only arguments of law and not force and this is the road that Serbia plans to pursue. The argument of force is very often on the side of the others, certain parts of the international community, who sometimes condition Serbia's European integration with renunciation of Kosovo-Metohija …. There are certain defined conditions for all countries that want to become EU members and no country was forced to give up part of its territory in order to join the EU …. Serbia cannot be such a case either."
17. Minister for Foreign Affairs in Serbia, Mr Vuk Draskovic, during my meeting with him in Belgrade.
18. The estimated number of Albanians living in the Presevo Valley is 100 000 people.

– "the former Yugoslav Republic of Macedonia", where a political balance between the two main ethnic components (Macedonian and Albanian) has been found but is not completely consolidated; and

– the region in general, due to possible population movements.

47. However, I do not think that the arguments put forward by Serbia outweigh the arguments in favour of the independence of Kosovo: in my opinion, in the long-term, conditional independence is the only status that gives the greatest chance of long-lasting peace, durable stability and economic development, for Kosovo itself and the region. I cannot believe, in light of Kosovo's history and recent past, as well as of the aspirations of the great majority of its population, that the province can go back to any form of effective sovereignty by Serbia, even if the largest possible autonomy is granted to it. Any solution of this kind would be one leading to additional conflict. Rather than setting out the conditions for stabilisation, it would protract or even increase instability, requiring an even more important international presence for a longer term.

48. I agree with Prime Minister Kostunica that there is a risk that Kosovo's independence will be used as a precedent to legitimise other secessionist claims. I am convinced, however, of the uniqueness of each situation and I cannot accept the argument that a refusal to apply automatically the Kosovo precedent to other cases would make a case for double standards. There cannot be an issue of double standards when situations are not comparable.

49. Above all, I share Prime Minister Kostunica's concern that Kosovo's independence could put at risk political stability in Serbia. I also understand that it would be difficult for the current leadership to explain to the Serbian public how such an outcome has become possible. However, the responsibility of this state of affairs lies in part with Serbian politicians, who have nurtured the widespread feeling of victimisation among public opinion and have never given any sign of preparedness to accept the loss of Kosovo, at least publicly. Irrespective of the outcome of the status issue, I call on the sense of responsibility of Serbian political forces to avoid aggravating anti-European and nationalist attitudes any further or capitalising on such feelings to gain political advantages. The likelihood of genuine reconciliation between Serbia and Kosovo is, in my view, higher if Kosovo becomes independent. Not granting independence to Kosovo would only nurture and aggravate a deep grievance among Kosovo Albanians. It should be kept in mind that, if independence is granted to Kosovo, it would be subjected to a series of international agreements including Council of Europe commitments and values.

50. In order to give guarantees of stability following independence, the acquisition of full sovereignty by Kosovo should be, in my view, conditional upon:

– the compliance of its constitutional framework with European standards in the field of democracy, good governance, the rule of law, human rights and the protection of national minorities;

– Kosovo's participation in the main international instruments in these fields, including the European Convention on Human Rights and the Framework Convention for the Protection of National Minorities, and their full applicability;

– the introduction of further special safeguards for minority communities;

– the commitment not to seek or encourage any further change of international borders in the region and to recognise its current frontiers as permanent;

– the acceptance of an international presence.

51. Could Serbia ever accept this solution? At this stage, it does not seem so. Serbian leaders do not step back from their negotiating position and have also denied having a back-up plan, which would consist in demanding a partition of Kosovo, namely concerning Mitrovica North. I agree that the eventuality of a partition – which has also been ruled out by the Contact Group – should be excluded.

52. In the case that a negotiated solution is not possible, would it be conceivable for the international community to impose a solution? This is a painful question which needs to be asked. Personally, I am convinced that a negotiated solution should be sought, and should be reached within a reasonable time frame, which means by the end of this year. However, should a deadlock protract negotiations beyond a reasonable time frame, thus perpetuating insecurity and instability and rendering a normalisation of the lives of people in Kosovo impossible, it might be necessary to envisage the eventuality of an internationally-imposed solution as the last and extreme resort.

53. Finally, the possibility of having a concrete perspective of EU membership should not be misrepresented or underestimated. In Serbia, it should not be portrayed as a bargaining chip in exchange for Kosovo's independence but as an opportunity for consolidating democracy and improving the well-being and living standards of Serbian citizens; for Kosovo, it should be an incentive to work towards the strengthening of the institutions and the economy, good governance and the fight against corruption and organised crime.

5. Conclusions and recommendations

54. I have included my recommendations in the preliminary draft texts attached to this report. I would like, however, to mention some aspects of the current situation in Kosovo which I consider of the utmost importance.

a. I believe that the future status of Kosovo should be the one that offers the greatest chance of long-lasting peace, durable stability and economic development. This means, in my opinion, that Kosovo should become independent.

b. The positions of the two negotiating teams on the status issue cannot be reconciled. I am afraid that if negotiations are not successful within a reasonable time frame, a solution will be imposed. This, for me, can be only the last and extreme resort.

c. I consider the refusal of Kosovo Serbs to participate in the political process in Kosovo as counter-productive and short-sighted. I understand that their position is very delicate – politically and economically – but they should be on the front line to defend their rights and interests and try to have an impact on the decision-making process, at all levels. I am concerned about the role of Serbia in shaping this attitude of non-engagement.

d. In the context of status definition, decentralisation is a key issue: a balance should be found between addressing the legitimate concerns and interests of the Serb and other non-Albanian communities, enhancing good governance and efficiency of public service throughout Kosovo and preventing the danger of a "territorialisation of diversity", in other words the segmentation of society along ethnic lines. The risk of repeating the errors of the Dayton Agreements for Bosnia and Herzegovina should not be taken lightly. The Dayton Agreements were meant to stop a war and did not carry any long-term solution for the country. Kosovo cannot build its future on ethnic division but should aim rather at ethnic integration. The decentralisation proposal put forward could be very harmful for Kosovo if it were to be the long-term arrangement. However, I appreciate that, until confidence is restored, some temporary arrangements might have to be endorsed, but if that happens the arrangements ought to be time-phased.

e. The protection of minorities and the introduction of mechanisms and guarantees to ensure that they can participate in the socioeconomic, religious, cultural and public life of Kosovo without any discrimination is an objective to be achieved whatever the outcome of the status issue.

f. I am concerned about the lack of consolidation of the PISG, even if I think that, as long as Kosovo's status is not defined, this will continue to be a problem. Whether autonomous or independent, Kosovo needs a political class which is capable of running it, representative of all the population and accountable.

g. Whatever the status of Kosovo, different ethnicities must be able to live together and respect each other. This applies to both majority and minority communities. I believe that the PISG, Kosovo Serb leaders and political forces in Belgrade should be more active in promoting inter-ethnic reconciliation.

h. Last year, my predecessor, Mrs Tritz, called on the Council of Europe to increase its engagement as far as Kosovo was concerned, and identified some areas of excellence in which the contribution of the Organisation could be very valuable. During my visits to Kosovo, I had the clear impression that, however appreciated, the Council of Europe was not very visible *in situ*, and that other organisations were the main reference in the fields of good governance, democracy, rule of law and respect of human rights and of the rights of national minorities. I must say that I was also disappointed by the non-committal reply of the Committee of Ministers to the Assembly's proposals for a reinforced action by the Council of Europe.[19]Therefore, in the draft texts that I submit to the Political Affairs Committee for adoption, I strongly reiterate this proposal. Moreover, the call for reinforced action by the Council of Europe in this region was echoed on both Albanian and Serbian sides.

Reporting committee: Political Affairs Committee. Reference to committee: Reference No. 3114 of 24 June 2005.

Draft resolution and draft recommendation adopted by the committee on 18 September 2006.

Members of the committee: Mr Abdülkadir **Ates¸** (Chairperson), Mr Konstantin Kosachev (Vice-Chairpersons), Mr Zsolt Németh (Vice-Chairpersons), Mr Giorgi Bokeria (Vice-Chairpersons), Mr Miloš **Aligrudić**, Ms Birgir Ármannsson, Mr Giuseppe Arzilli, Mr Claudio Azzolini, Mr Miroslav Beneš, Mr Radu-Mircea Berceanu, Mr Gerardo Bianco, Mr Aleksander Biberaj, Mr Luc Van den Brande, Ms Beáta Brestenská, Ms Anna Ćurdová, Mr Noel Davern, Mr Dumitru Diacov, Mr Michel Dreyfus-Schmidt, Mr Adri Duivesteijn, Ms Josette Durrieu, Mr Mikko Elo, Mr Joan Albert Farré Santuré, Mr Per-Kristian Foss, Mr Jean-Charles Gardetto, Mr Charles Goerens, Mr Daniel Goulet, Mr Andreas **Gross**, Mr Jean-Pol Henry, Mr Joachim Hörster, Mr Renzo Innocenti, Mr Ivan Ivanovski, Mr Tadeusz Iwiński, Mr Elmir Jahić, Mr Milosˇ **Jeftić**, Mr Oleksandr Karpov, Mr Oskars Kaste¯ns, Mr Yuriy Kostenko, Ms Darja Lavtizˇar-Bebler, Mr Göran **Lindblad**, Mr Younal Loutfi, Mr Mikhail Margelov, Mr Tomasz Markowski, Mr Dick Marty, Mr Frano Matušić, Mr Murat Mercan, Mr Jean-Claude Mignon, Mr Marko Mihkelson, Ms Nadezhda Mikhailova, Mr Mirzazada, Mr Joao Bosco Mota Amaral, Ms Natalia Narochnitskaya, Ms Carina Ohlsson, Mr Boris Oliynyk, Mr Theodoros Pangalos, Ms Elsa Papadimitriou, Ms Maria Josefa Porteiro Garcia, Mr Christos Pourgourides, Mr Gordon Prentice, Mr Gabino Puche (remplaçant: Mr Pedro **Agramunt**), Mr Lluís Maria **de Puig**, Mr Jeffrey Pullicino Orlando, Lord **Russell-Johnston**, Mr Peter **Schieder**, Mr Ingo Schmitt, Mr Adrian Severin, Ms Hanne Severinsen, Mr Samad Seyidov, Mr Leonid Slutsky, Mr Michael Spindelegger, Mr Rainder Steenblock, Mr Zoltán Szabó, Baroness Taylor of Bolton, Mr Mehmet Tekelioğlu, Mr Tigran Torosyan, Mr José Vera Jardim, Ms Birutė Vėsaitė, Mr Varujan Vosganian, Mr David Wilshire, Mr Bart van Winsen (remplaçant: Mr Dirk **Dees**), Mr Wolfgang Wodarg, Ms Renate Wohlwend, Mr Marco Zacchera (remplaçant: Mr Italo **Bocchino**), Mr Krzysztof Zaremba.

Ex officio: MMr Mátyás Eörsi, Mats Einarsson.

NB: The names of those members present at the meeting are printed in bold.

The draft resolution and draft recommendation will be discussed at a later sitting.

19. "The Committee of Ministers intends to review the case for re-inforced Council of Europe action in Kosovo in the light of the comprehensive review of the situation made by Ambassador Eide and the decision by the United Nations Security Council of 24 October 2005 fully supporting the start of the political process for determining Kosovo's future status. The Committee of Ministers will continue to follow the process and carefully consider the most appropriate means for the Council of Europe to sustain its engagement", paragraph 5 of the reply, Doc. 10749, 25 November 2005.