



Provisional version, as adopted by the Committee on 1 June 2010

## The situation in Kosovo<sup>1</sup> and the role of the Council of Europe

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### A. Draft resolution

1. Since the unilateral declaration of independence of 17 February 2008, the Kosovo<sup>2</sup> institutions consider themselves as the sovereign and legitimate authorities of Kosovo and have taken steps to affirm Kosovo's statehood. 69 members of the United Nations have recognised the independence of Kosovo. However, the question of compliance of the unilateral declaration of independence with international law is being examined by the International Court of Justice, following a request for an advisory opinion made by the UN General Assembly.
2. The United Nations Civilian Administration in Kosovo (UNMIK), set up by the United Nations Security Council Resolution 1244, continues to be present in Kosovo, even if its staff has been considerably reduced and the scope for exercising executive functions has shrunk. It has been joined by the European Union Rule of Law Mission in Kosovo (EULEX), also acting under the aegis of Resolution 1244, whose main mandate is to monitor, mentor and advise the Kosovo institutions in the areas of the judiciary, customs and police. EULEX also holds an executive mandate in addressing war crimes as well as serious or organised crimes.
3. The Council of Europe applies a policy of status-neutrality towards Kosovo and recognises the continued validity of United Nations Security Council (UNSC) Resolution 1244. 33 of its member states have, however, recognised Kosovo as a sovereign and independent state.
4. The Assembly is convinced that, in the present circumstances, the focus of its attention as regards Kosovo should not be on status but on standards. In particular, the Assembly believes that, irrespective of its status, Kosovo should be a safe place for all those who live in it and a place where standards of democracy, the rule of law and human rights of an equivalent level to that upheld by the Council of Europe are fully enforced.
5. In this context, the Assembly welcomes the increased level of security in Kosovo, as recognised by international actors on the ground, and the decrease in the number of inter-ethnic incidents. It stresses, however, the need to closely monitor the security situation in Kosovo's northern municipalities, which remains volatile. The Assembly also regrets that, throughout Kosovo, different communities live separately, with a negligible level of interaction, and that inter-ethnic dialogue and reconciliation are still objectives to attain.
6. The Assembly expresses deep concern about the poor respect for the rule of law in Kosovo, which affects the everyday lives of all persons in Kosovo, irrespective of the community they belong to, and their trust in the political system. It also hampers good governance, economic development and, in the long term, the prospects of European integration.
7. Despite a significant legislative effort to reform the administration, the judiciary and other key sectors, much needs to be done to consolidate the democratic functioning of the institutions in Kosovo, improve political stability and ensure a level of governance that would bring Kosovo in line with Council of Europe standards.

<sup>1</sup> 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.

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8. The participation of all Kosovo communities in the political system remains a major challenge, despite the fact that Kosovo Serbs living south of the Ibar are more and more prepared to find a *modus vivendi* with the Kosovo authorities, as indicated by their increased turn-out during the November 2009 local elections in Kosovo. In addition, some communities, such as Kosovo Serbs and Roma, Ashkali and Egyptians (RAE) continue to face discrimination and practical difficulties in the exercise of their rights and freedoms.

9. The Assembly notes that the Kosovo Constitution incorporates in domestic law the main international human rights instruments, including the European Convention on Human Rights, the Framework Convention on National Minorities and the Convention on the Prevention of Torture, and that the Kosovo government has adopted a Strategy and Action Plan on Human Rights 2009-2011. The Assembly, however, recalls that the incorporation of these instruments *per se* cannot be a guarantee of effective human rights protection if it is not backed by a firm political commitment to ensure implementation.

10. In the light of these considerations, the Assembly calls on EULEX, UNMIK and the Kosovo institutions to strengthen their actions aimed at enhancing the rule of law in Kosovo, in particular by:

10.1. taking public stances to condemn corruption, including in the political system;

10.2. introducing without further delay comprehensive legislation on procurement addressing the present legal and practical weaknesses;

10.3. taking concrete steps to improve the state of the judiciary, in particular with a view to enhancing its efficiency, competence, ethics and independence;

11. The Assembly encourages the European Union to:

11.1. continue its policy of diversity on status and unity on engagement, while ensuring a European perspective for Kosovo, in the context of the western Balkans;

11.2. strengthen its EULEX mission by:

11.2.1. improving its public image in Kosovo, through a more developed and inclusive communication policy;

11.2.2. reinforcing its presence and role in the North of Kosovo.

12. The Assembly calls on the authorities in Pristina and Belgrade to:

12.1. adopt a constructive and pragmatic attitude in trying to solve the practical problems affecting Kosovo Serbs and other minority communities in or from Kosovo, in particular as regards the issuance of documents, the recognition of the validity of documents (such as identity cards, passports, driving licences and school diplomas) and the availability of energy supply;

12.2. make further efforts in order to facilitate the recognition of property rights and the restitution of properties to their legitimate owners or, if this is not possible, the provision of equivalent compensation, along the lines set out in Assembly Resolution 1708 (2010) on Solving property issues of refugees and internally displaced persons and consistent with the case law of the European Court of Human Rights;

12.3. establish an inclusive dialogue with the Kosovo Serb civil society in the North of Kosovo, also outside formal structures;

12.4. continue to cooperate in the framework of the activities of the Working Group on Missing Persons and in the Reconstruction Implementation Commission (RIC) and establish dialogue on other issues of common concern;

12.5. ensure full cooperation with EULEX War Crimes Investigation Unit and the International Criminal Tribunal on the former Yugoslavia (ICTY);

12.6. take a flexible approach in the context of regional cooperation initiatives, in order to facilitate the participation of their representatives, irrespective of status-related considerations;

12.7. be pro-active in promoting reconciliation and dialogue between communities, in policy and public discourse.

13. The Assembly calls on the Kosovo institutions to:

13.1 ensure full co-operation with EULEX in the context of investigations into serious or organised crime and war crime cases;

13.2. fully cooperate with the Kosovo anti-corruption agency, reinforce its independence and the professionalism of its staff, allocate adequate resources to it and ensure follow-up to its recommendations ;

13.3. take fully into account the multi-ethnic character of Kosovo, in particular by:

13.3.1. scrupulously implementing the legislation on the rights of minorities, decentralisation and minority languages;

13.3.2. creating the socio-economic conditions for the full integration of individuals from minority communities in society, including displaced persons and returnees;

13.3.3. creating the conditions for the safe return and reintegration of displaced persons wishing to return;

13.3.4. promoting the participation of individuals from minority communities in the political system and the public sphere;

13.3.5. taking resolute action against discrimination on ethnic grounds, in both the public and private sphere;

13.3.6. condemning publicly inter-ethnic crimes and instructing the police to keep specific statistics on these crimes;

13.4. ensure effective adherence with international human rights instruments incorporated in domestic law, including the European Convention on Human Rights and the Framework Convention on National Minorities;

13.5. consider incorporating in domestic law additional Council of Europe conventions, with a view to adopting Council of Europe standards;

13.6. ensure the independence of the media and promote the role of the media as a catalyst of inter-ethnic dialogue and reconciliation, in particular by:

13.6.1. restoring an independent budget for the public broadcaster RTK;

13.6.2. ensuring the independence of the board of RTK;

13.6.3. promoting the production, distribution and broadcasting of television and radio programmes in minority languages, especially Kosovo-wide;

13.6.4. supporting the efforts of media professionals to produce TV and radio programmes, as well as written articles, portraying the situation of different communities in different parts of Kosovo;

13.7. take steps to address the situation of women and promote gender equality, in particular by:

13.7.1. taking resolute action to fight against trafficking in human beings;

13.7.2 introducing measures and programmes to address the situation of victims of trafficking and facilitate their re-integration in society;

13.7.3. supporting or organising public campaigns against domestic violence;

13.7.4. taking appropriate measures to promote the economic independence of women;

13.7.5. combating discrimination against women in all fields, including in the context of inheritance law and practice and other civil cases, such as divorce, separation and custody of children;

13.8. take urgent steps to relocate permanently the Roma population of the camps of Cesmin Lug and Osterode Cesmin, which are heavily contaminated by lead, and provide medical treatment to those whose health has been affected, as also recommended by the Council of Europe Commissioner for Human Rights;

14. The Assembly calls on the Serbian authorities to:

14.1. eliminate all practical obstacles for those displaced persons who wish to return, in particular as regards access to information, and recognition and transmission of documents, including cadastral information and property certificates;

14.2. set up appropriate programmes to ensure the integration in Serbia of displaced persons from Kosovo who do not wish to or cannot go back.

15. The Assembly calls on Council of Europe member states to:

15.1. refrain from forcibly returning to Kosovo individuals who might still be in need of international protection according to the relevant UNHCR guidelines;

15.2. take into consideration Kosovo's capacity to sustain returns when deciding whether to return individuals to Kosovo.

16. In order to enhance the Council of Europe's role in Kosovo, the Assembly:

16.1. encourages the Council of Europe Commissioner for Human Rights to continue his activities as regards Kosovo;

16.2. invites the Secretary General of the Council of Europe to convey to the Organisation's secretariat that direct working contacts with the Kosovo authorities, at all levels, are possible when justified by the need to ensure the smooth implementation of Council of Europe activities which respect status neutrality.

17. In order to contribute to the consolidation of the democratic functioning of Kosovo institutions, the Assembly:

17.1. encourages Kosovo political parties to:

17.1.1. introduce rules on their internal democratic functioning;

17.1.2. promote gender equality in their structures, leadership and electoral lists;

17.1.3. encourage multi-ethnic membership, leadership and electoral lists;

17.2. resolves to initiate a dialogue with representatives of the political forces elected to the Kosovo Assembly on issues of common interest, while taking into account the legitimate interests and concerns of Serbia and UNSC Resolution 1244.

## B. Draft recommendation

1. Referring to its Resolution....(2010) *on the situation in Kosovo*<sup>3</sup> and the role of the Council of Europe, the Assembly is of the view that, although divided on the issue of status, Council of Europe member states should be united in supporting a greater involvement of the Council of Europe in Kosovo, for the benefit of all its inhabitants.
2. Although more than two thirds of Council of Europe member states have recognised Kosovo as an independent state, the Organisation implements a policy of status-neutrality towards Kosovo. In these circumstances, the Assembly believes that the Council of Europe engagement in Kosovo should aim at raising standards in the field of democracy, human rights and the rule of law, so that people in Kosovo can enjoy an equivalent level of rights as that upheld by the Council of Europe, irrespective of the status of Kosovo.
3. To this end, the Council of Europe should broaden the range of its activities in Kosovo and demonstrate pragmatism, flexibility and imagination in finding formulas which would enable the broadest possible range of Council of Europe activities and mechanisms to apply in Kosovo, while respecting its current policy of status-neutrality.
4. In the light of these considerations, the Assembly recommends the Committee of Ministers to:
  - 4.1. clearly formulate the political commitment that the Council of Europe should contribute to raising the standards of democracy, human rights and the rule of law in Kosovo and consider this as a priority area for the work of the Organisation;
  - 4.2. give priority to activities aimed at improving the rule of law, fighting corruption, organised and economic crime and reinforcing the judiciary in Kosovo;
  - 4.3. continue its activities in the field of education, as well as protection and rehabilitation of the cultural heritage in Kosovo, which play a fundamental role in fostering reconciliation and inter-ethnic dialogue;
  - 4.4. support the continuation and further development of activities which bring together individuals from different Kosovo communities;
  - 4.5. take a pro-active approach in negotiating new modalities to ensure the continuation of the work of the Committee for the Prevention of Torture (CPT) and the Advisory Committee for the Protection of National Minorities in Kosovo and ensure that the reports issued by these bodies are addressed directly to those authorities which have real and effective authority in the relevant domain, and which can subsequently implement the relevant recommendations;
  - 4.6. initiate a feasibility study on how to extend the implementation of other Council of Europe monitoring mechanisms to Kosovo;
  - 4.7. conduct a study on the relevance and applicability of the case law of the European Court of Human Rights to the issue of restitution of properties or provision of equivalent financial compensation to the case of Kosovo;
  - 4.8. support activities aimed at fostering gender equality, fighting violence against women, including domestic violence, and trafficking in human beings in Kosovo;
  - 4.9. set up activities aimed at strengthening the independence of the media in Kosovo;
  - 4.10. step up activities on the situation of the Roma, Ashkali and Egyptian (RAE) community in Kosovo;
  - 4.11. reinforce the role, visibility and capacities of the Council of Europe office in Pristina, in particular by enhancing its resources and capacity for political analysis and early warning;

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4.12. continue to cooperate closely with the complex institutional lay-out present in Kosovo, including international actors and Kosovo institutions, and reinforce its contacts with civil society and non-governmental organisations;

4.13. ensure that the policy of status-neutrality is implemented in such a way as not to prevent direct working contacts between Council of Europe staff and the Kosovo authorities, at all levels, when such contacts are justified by the need to ensure the smooth implementation of Council of Europe activities which respect status neutrality.