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Political Affairs Committee

Situation in Kosovo¹

Rapporteur: Mr Björn von SYDOW, Sweden, Socialist Group

**Information note by the rapporteur on his fact-finding visit to Kosovo
(21-26 February 2010)**

¹ Throughout this note, 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.

1. Background

1. This mission report summarises the key findings and impressions from my last visit to Kosovo from 21 to 26 February 2010 (*see attached programme*).
2. In the framework of the preparation of my report on the situation in Kosovo, I had previously carried out fact-finding visits to Kosovo (2-5 February 2009), Belgrade (8-9 June 2009) and the EU Institutions in Brussels (25-26 November 2009).
3. During this second visit to Kosovo, I decided to focus on some aspects which I consider as priorities. I will include more detailed findings from the visit in the preliminary draft report which I will present to the Political Affairs Committee during the April part-session 2010.

2. The rule of law

4. At present, the poor record in the respect for the rule of law is the main problem in Kosovo. It affects ordinary individuals in their everyday life, irrespective of the community they belong to. It also affects governance, the functioning of the political system and the administration, people's trust in the institutions and the private sector. It is a hindrance to economic development, as foreign and local investors are reluctant to commit resources in these circumstances.

2.1. Corruption

5. Corruption is so widespread that it could be defined as endemic. Several interlocutors pointed out that it is so deeply rooted in society that a considerable effort of awareness-raising should be made to encourage ordinary people to report cases of corruption. On the other hand, it is not infrequent that, when cases of corruption are reported, they are based on rumours or are deliberately calumnious.

6. In an attempt to counter corruption, the Kosovo Anti-corruption agency (KAA) has been established. It has a threefold mission:

- fighting corruption, by:
 - conducting administrative investigations on potential corruption cases *ex officio* or by the request of a party, and forwarding cases to the Public Prosecutor's Office of Kosovo for further examination and/or judicial action when there is sufficient evidence;
 - drafting bills for supplementing the legal framework in the area;
 - drawing up the Action Plan against corruption and ensuring its implementation;
- preventing corruption, by:
 - reviewing asset declarations by high-level Kosovo officials;
 - raising cases of conflict of interest;
 - registering gifts accepted by officials;
- training the civil service on the relevant legal framework and organising awareness-raising campaigns.

7. In two years of work (2007 and 2008; the 2009 report is under preparation), the Agency opened 270 files and transmitted 100 to the Prosecutor's Office. So far, judicial proceedings were concluded in only a few minor cases of corruption and – to use an expression which I heard repeatedly in Kosovo – 'no big fish has been caught' yet.

8. Despite the adoption of the Anti-corruption strategy, the legislative framework is not complete. In particular, several interlocutors regretted the lack of resolve of the Kosovo authorities in adopting a new procurement law as a matter of urgency.

9. Misconduct in procurement activities is a frequent form of corruption. On several occasions, procurement officers have been tried. The suspicion, however, remains that procurement officers are only the weak link in a chain, and that the real responsibility lies with political figures who never leave a trace.

10. At present, discussions are taking place in the Kosovo Assembly on the drafting of new procurement legislation. The Anti-corruption agency participates in these discussions and supports three main ideas:

- to make it possible to identify who, politically, is responsible for the allocation of a given tender;
- to conduct more attentive examination of the information provided by firms when competing for a tender – which has often proved to be false;
- to introduce a clause on conflict of interest.

11. The Anti-corruption agency regularly participates in meetings with similar structures within the region, in order to exchange information and best practice. It is supported by the European Commission through a number of projects aimed at improving the expertise and the professionalism of its staff.

2.2. *The judiciary*

12. In my memorandum on the situation in Kosovo, I have already described the main problems affecting the judiciary. In this mission report, I would like to highlight some additional aspects:

- the motivation of judicial staff is low. A simple consideration can help understand the situation: due to the lack of career progress during the years of the war and of the UNMIK administration, the average age of judges in municipal courts (the first instance of the judiciary) is 55. This affects their motivation, their flexibility to adapt to new legislation and their willingness to distance themselves from certain practices;
- the great majority of corruption cases involve members of the judiciary (according to some interlocutors 80% of cases);
- only 1/3 of serving judges have passed the ethic vetting procedure, which has caused the under-staffing of some courts;
- training of judges who are already in the profession is not adequate.

13. Special mention should be made of the issue of relations between the EULEX judicial component and Kosovo judges, which are not always straightforward. I was left with the impression that:

- Kosovo judges resent the presence of EULEX judges and do not agree with their working methods;
- communication between Kosovo and EULEX judges is not good, and it is not easy for EULEX judges to have access to relevant information and to the files;
- EULEX judges reproach the slow pace at which Kosovo judges tackle their workload, which leads to many people spending as long as two years in pre-trial detention, after which cases are normally transferred to EULEX judges for them to exercise executive functions.

14. In addition, EULEX faces some challenges of its own:

- the mandate of monitoring, mentoring and advising is not easy to implement considering the ratio between the EULEX judicial component and Kosovo judiciary: in Prizren, for instance, the proportion between EULEX prosecutors and Kosovo prosecutors is 1 to 17. It is therefore difficult for EULEX to have a complete overview of the cases being dealt with;
- it is not easy to combine the monitoring, mentoring and advising mandate with the exercise of executive functions (the latter being applied in urgent cases or when it is reasonable to believe that the sensitive nature of the case would submit Kosovo judges to excessive outside pressure, such as in corruption cases involving high profile figures and war crimes cases);
- the work of EULEX judges and prosecutors is slowed down by the need for interpretation and translation, not only to read the files and hear cases but also to communicate with Kosovo colleagues;
- to monitor, mentor and advise, EULEX staff must be experienced. However, according to the current recruitment procedure, the staff are given very short notice before being deployed, with the result that many of those with a consolidated experience do not apply or do not accept the job. It was mentioned to me that it would be better if EULEX could set up a roster of judges and prosecutors from which to draw when needed.

15. The biggest challenge for the EULEX judicial component, however, is public opinion. The rapid enrichment of some figures close to or from the Kosovo political leadership is under everybody's eyes. Civil society had high expectations that EULEX would manage to tackle such high-level cases of corruption and involvement in criminal activities – in a nutshell, that EULEX would 'catch the big fish'. This has not happened yet. As I was told by EULEX officials, investigations are underway but there is not sufficient evidence to issue indictments.

16. During my visit, I met ordinary people who expressed disappointment and frustration at the performance of EULEX. A few of them considered it a misdirection of purpose that EULEX was after some 'low profile criminal cases' (such as the incrimination of a leader of the extremist movement *Vetevendosje* for inciting to violent behaviour during a demonstration) rather than tackling exemplary cases which would give a clear signal to the society as a whole that the time of impunity is over. The representatives of some opposition parties also argued that it was a deliberate choice by EULEX not to undermine the current political leadership in Kosovo.

17. I regret this misjudgement over the role of EULEX, which is a status-neutral technical mission with the purpose of strengthening the rule of law in Kosovo: it is neither an international tribunal nor a political body. Despite its mandate and nature, however, EULEX operates in a highly political environment, its actions have a political impact, are liable to political manipulation and subjected to political assessment. I was pleased, therefore, to hear that EULEX is actively promoting round tables and other exchanges with the Kosovo civil society.

3. The situation of the Serbian community

18. One year after my last visit to Kosovo, I was struck by the change I saw in the Serbian community, with a deepening gap between Kosovo Serbs living in the North and those living South of the Ibar.

19. More and more Kosovo Serbs in the South are prepared to find a *modus vivendi* with the Kosovo authorities, provided that they are afforded the widest possible autonomy and the highest standards of minority rights, including the right to receive education and deal with the administration in their own language. This trend is also testified by the unexpected increased participation of Kosovo Serbs in the South during the November local elections.

20. Serbs living in enclaves in the South told me that they do not have security concerns and can exercise freedom of movement. However, they continue to face serious problems: some of them are common to all communities, such as high unemployment and untrustworthy judiciary; others are specific to them, such as lack of recognition of documents, and real or perceived discrimination. In any case, even if there is no inter-ethnic violence, communities continue to live separately and their level of interaction is negligible.

21. The situation in the North, on the other hand, is tense:

- Kosovo Serbs in the North continue to believe that the status of Kosovo is an open question;
- they are nervous about the Strategy for the North, launched by the Kosovo authorities in consultation with the ICO, which they consider as an attempt by Pristina to affirm its illegal authority over the North, de facto;
- in addition, political differences between majority and opposition forces in Belgrade (where the government is a coalition between DS and the Socialists) and the North of Kosovo (where DSS and the radicals are the main parties) have local repercussions:
 - in a number of key municipalities in the North, new mayors from the DS party have been put in place following exceptional procedures, and replaced DSS mayors;
 - the DSS representatives whom I met in North Mitrovica complained that their voice is not sufficiently heard in Belgrade, particularly in the Ministry for Kosovo and Metohija, and fear that the current government might soften its position on Kosovo as a token to progress towards EU integration.

22. I was also struck by the lack of information which affects the Serbian community, especially in the North. I am convinced that the exposure of the Serbian community to a variety of media, offering different points of view on the situation in Kosovo, could play a positive role in defusing tensions and helping people make better-informed decisions. In this regard, I strongly encourage the project of the Kosovo Association of Journalists to promote the exchange of stories and reports between journalists belonging to different communities.

4. Property issues

23. Property issues will be dealt extensively in my report on the situation in Kosovo, as I believe the restoration of property rights and financial compensation for the loss of properties are essential premises for people to resume a normal life.

24. During my recent visit I was told that the Kosovo Property Agency (KPA) should conclude processing all the registered claims (40,000) by the end of 2011. This time-line includes a set-back of around 6 months due to the need to reconsider a number of claims (possibly 87%) in which notification mistakes were made: as a result of lack of cooperation between the KPA and the Kosovo cadastral agency, the signposts placed on plots to indicate property rights following KPA decisions did not correspond to the exact location of the plots as indicated in the cadastral registry.

25. A positive development which will help improve the situation of Kosovo Serbs who are displaced in Serbia is the conclusion of a memorandum of understanding between the Kosovo Property Agency and the Office of the UN High Commissioner for Refugees (UNHCR) in Belgrade, under which UNHCR agrees to channel information and documentary evidence presented by Kosovo Serbs in Belgrade to the KPA in Kosovo, in order to finalise decisions on property claims. This memorandum of understanding – which has not been finalised yet - would help circumvent the difficulties created by the decision of the Serbian authorities to close down the KPA office in Belgrade, following the entry into force of the Kosovo Constitution and the transferral of KPA under the authority of the International Civilian Representative.

5. The media

26. Political influence on the media is a major problem.

27. First of all, print media cannot ensure its sustainability only through sales (according to estimates made by the Kosovo Association of Journalists, approximately each newspaper sells 3000 copies per day, at a price of 20 cents). This has made newspapers greatly reliant on advertising as a source of funding. However, this affects their editorial independence because nearly all the advertising consists of job ads placed by the government, as the main employer in Kosovo. On average, one third of daily newspapers is used for advertising. This leads to a situation of generalised self-censorship, in which journalists and editors avoid being too critical of the government and the institutions for fear of losing their main source of funding.

28. A more specific problem affects the independence of the public broadcaster, RTK. The RTK used to be financed through licence fees which were collected with electricity bills. This form of financing was stable and ensured the independence of the broadcaster. However, in November 2009, the Constitutional Court found that this procedure was unconstitutional. As a result, financing through the licence fees was discontinued. At present, RTK is funded through the ordinary Kosovo budget, until an alternative source of financing is found. Needless to say, this affects the independence of the public broadcaster.

29. Additional issues that were brought to my attention include:

- the lack of understanding, amongst the political class, of the role of a public broadcaster, and the confusion with the concept of 'state broadcaster';
- the political pressure exercised on the former Board of the RTK, where several prominent figures were forced to resign;
- the lack of knowledge of the media sector amongst the newly-elected board of the RTK.

6. The situation of women

30. In Kosovo, there are a number of active women NGOs. In the Kosovo Assembly, an informal group of women parliamentarians has been set up. They all complained about the patriarchal model of Kosovo's society and the difficulty for women to have their voice heard. Some NGO representatives pointed out that the international presence in Kosovo, in particular UNMIK, has not done much to promote gender equality and has sometimes even set a bad example. I strongly believe that women in Kosovo can give an important contribution to reconciliation between communities and to the strengthening of the democratic character of the institutions.

31. Although from a legal point of view gender equality and non-discrimination on gender grounds are recognised, the implementation of the law is a different matter. The situation of women is particularly bad in rural areas. In general, it is rare for women to have an independent source of income, they hardly ever own the property where they live and they are disadvantaged in the context of inheritance. In these circumstances, even when they are victims of domestic violence, they have a strong incentive not to divorce, also because, as a rule, the custody of children is given to the father.

32. At the moment, there are 1000 cases of domestic violence which have been reported to the police, but this is likely to be only the tip of the iceberg.

33. Women who have been victims of trafficking encounter great difficulties in reintegrating in society: involvement in prostitution carries a great social stigma; there are no programmes or social measures aimed at assisting these women.

7. Conclusions

34. This mission confirmed my conviction that the Council of Europe should strengthen its involvement in Kosovo. In addition to continuing to work in the areas of the protection of the cultural and religious heritage and education, the Council of Europe should play a pro-active role in offering its expertise in its areas of excellence: democracy, the rule of law and human rights, with absolute priority being given to the rule of law.

35. In my report on the situation in Kosovo I will, therefore, recommend that:

- Council of Europe member states embrace with resolve an approach of *'diversity on status but unity on engagement'* as regards Kosovo;
- the Committee of Ministers sets up activities aimed at improving the rule of law, fighting corruption and economic crime and reinforcing the judiciary in Kosovo;
- new modalities to ensure the resumption of the work of the Committee for the Prevention of Torture (CPT) and the Advisory Committee of the Framework Convention on National Minorities should be developed. In effect, the Agreement signed in 2004 between the Council of Europe and UNMIK to ensure the work of these bodies in Kosovo might need updating, in the light of the new situation on the ground (the change in the functions of UNMIK and the deployment of EULEX) ;
- the issue of how to extend the application in Kosovo of other Council of Europe monitoring mechanisms should be given attentive consideration;
- further thought should be given to how to implement Council of Europe activities in the field of freedom of the media, gender equality and anti-trafficking in Kosovo.

36. I also remain of the opinion that, in the light of the shortcomings observed in the functioning of democratic institutions in Kosovo, the Parliamentary Assembly might wish 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.

Appendix 1 - Programme of the visit (21 – 26 February 2010)**21 February: Pristina**

- 19:00:21:00 Working dinner with the participation of:
- Ms Orsolya Szekely, Head of the Council of Europe Office
 - Ms Ingrid Johansson, Head of the Swedish diplomatic mission
 - Mr Yves de Kermabon, Head of Mission, EULEX
 - Mr Michael Giffoni, Ambassador of Italy, EU Representative for the North
 - Mr Nuno Luzio, Senior Political Officer, OSCE
 - Mr Dmitry Shlapachenko, Office of Political Affairs, UNMIK
 - Mr Andrew Ginsberg, UNHCR

22 February: Pristina

- 09:00-09:30 Mr Hasan Preteni, Head of the Anti-Corruption Agency
- 09:40-10:20 Mr Hajredin Kuqi, Deputy Prime Minister
- 10:30-11:00 Mr Jakup Krasniqi, Chairman of the Kosovo Assembly
- 12:00-12:30 Mr Sami Kurteshi, Ombudsperson, and members of his office
- 12:45-13:15 Mr Xhevat Azemi, Director, and Mr Scott Bowen, Deputy Director, Kosovo Property Agency
- 14:00:14:30 Mr Fatmir Sejdiu, President
- 15:00: 16:00 Round table with EULEX Heads of Components
- 16:15-16:50 Ms Lirije Osmani, President ad interim of the Kosovo Judicial Council
- 17:00-17:30 Mr Ramush Haradinaj, Alliance for The Future of Kosovo (AAK)
- 17:40-18:10 Ms Mimoza Kusari-Lila, New Kosovo Alliance (AKR)
- 18:30-19:00 Mr Pieter Feith, EU Special Representative

23 February: Leposavic, Mitrovica and Vucitrn**Leposavic**

- 09:10-09:40 Visit to Kosovo Albanian returnees in the village of Kosutovo

Mitrovica

- 11:20-12:15 Meeting with representatives of political parties in Mitrovica North

- 12:30-13:00 Meeting with EULEX judges and prosecutors at North Mitrovica District Court
- 13:10-13:40 Meeting with EULEX Police in North Mitrovica
- 14:30-15:00 Visit to Roma mahalla

Vuciturn

- 15:20-16:00 Meeting with the judges of the municipal court
- 16:30- 17:30 Visit to the village of Banjska

24 February: Lipjan, Gracanica, Pristina

- 08:30-09:00 Meeting with Mr Shukri Buja, Mayor, and members of the Municipal Council
- 09:10-09:40 Visit to Rubovc and meeting with local Kosovo Serbs

Gracanica

- 10:20-10:50 Meeting with Mr Mihailo Scepanovic, Serbian National Party (SNS)
- 10:55-11:30 Meeting with the local OSCE Office
- 11:40-12:10 Meeting with Serbian returnees
- 12:20- 12:50 Meeting with Mrs Rada Trajkovic, President of the Executive Board of the Serbian National Council

Pristina

- 15:00-16:00 Meeting with the Women Caucus of the Kosovo Assembly
- 16:15-17:00 Meeting with members of the Independent Media Commission
- 17:15-18:00 Meeting with Ms Vjosa Dobruna, former Chairperson of the Board of the Kosovo television (RTK)
- 18:10-18:40 Meeting with the directors of women NGOs
"Aureola",
"Coalition of the Kosovo Women",
"Women for Women"

25 February: Mamusa, Prizren, Pristina

Mamusa

- 09:00-09:30 Meeting with Mr Abdyl Hadi Krasniqi, Deputy Mayor

Prizren

- 09:50-10:20 Mr Ramadan Muja, Mayor, and members of the municipal assembly

10:50-11:50 Meeting with EULEX Justice and Police Office

Pristina

15:00-16:00 Mr Mentor Shala, Association of Professional Journalists in Kosovo

16:00-17:00 Press Conference

17:15-17:45 Meeting with Mr Andy Sparkes, British Ambassador, Chairperson of the supervisory board of the Kosovo Property Agency

17:50-18:20 Mr Sylejman Shaqiri, RTK Chair

18:40-19:20 Mr. Peter Mossop, Programme Officer for Kosovo, NGO Civil Rights Defenders

26 February: Prevala

10:00-10:30 Lecture for the students of the Pristina Institute for Political Studies

Appendix 2 – Press release

25/02/2010

Political Affairs

Kosovo*: 'people need the rule of law, regardless of the community they belong to,' says PACE rapporteur

Strasbourg, 25.02.2010 – "In Kosovo, there are more than 2 million Europeans who need the rule of law, good governance and respect for human rights, regardless of the community they belong to," said Björn von Sydow (Sweden, SOC), rapporteur of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe (PACE), speaking today at the end of a five- day visit to Kosovo.

"During my visit, I travelled extensively in Kosovo, meeting ordinary people from all communities. All of them highlighted widespread corruption, lack of a trustworthy judiciary and poor implementation of the law. This state of affairs undermines governance, affects the trust of people in the authorities, and jeopardises the prospect of Kosovo's economic development, as international investors are reluctant to commit resources here," he pointed out.

"A truly European Kosovo requires the full involvement of all its communities. Politically, the increased participation of Kosovo Serbs in the South in the November local elections is an important step forward", the rapporteur noted.

"At the moment, 33 out of 47 Council of Europe member states have recognised Kosovo as an independent and sovereign state. This divide should not prevent the Organisation from deploying a broad range of instruments in Kosovo, for the benefit of all communities, and expanding its activities in the field of human rights and the rule of law," he added.

"In my report, I will explore ways to establish a dialogue between PACE and the political forces represented in the Kosovo Assembly, in order to help improve the functioning of democratic institutions in Kosovo. I hope that his report will be debated in June during the PACE plenary session (21-25 June 2010)," Mr von Sydow concluded.

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