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Application by Kosovo* for membership of the Council of Europe

Report¹

Committee on Political Affairs and Democracy

Rapporteur: Ms Dora BAKOYANNIS, Greece, Group of the European People's Party

Summary

Kosovo's aspirations to join the Council of Europe should be met with a positive response. Membership would lead to the strengthening of human rights standards by ensuring access to the European Court of Human Rights to all those who are under Kosovo's jurisdiction. It would also enable the Council of Europe to have greater oversight of domestic developments and to deploy all the instruments at its disposal to contribute to consolidating democracy and the rule of law. Furthermore, membership of the Council of Europe would represent a milestone in the process of Kosovo's European integration.

Membership of the Council of Europe should catalyse momentum for Kosovo to continue to make progress in strengthening human rights, democracy and the rule of law and address outstanding challenges. Amongst them are a gap between the normative framework and its effective implementation; the need to improve the protection of the rights of non-majority communities and to foster a climate and public discourse which is conducive to trust, reconciliation and inclusion; focusing on language, education and youth policies to ensure that Kosovo's multi-ethnic society is cohesive rather than fragmented along ethnic or language cleavages; ensuring full compliance with the rule of law irrespective of political considerations; promoting inter-institutional respect; and strengthening the quality and efficiency of the judiciary.

In this context, the implementation of the 2016 judgment of the Constitutional Court in the case of the Visoki Dečani monastery is a breakthrough. In addition, the Parliamentary Assembly should expect that substantial and tangible steps are taken with a view to establishing the Association of Serb majority municipalities and that expropriations are conducted in the strictest respect of the law and in full compliance with the Ahtisaari Plan.

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

Reference to committee: Bureau decision, Reference 4730 of 28 April 2023.



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A. Draft Opinion²

1. Kosovo³ applied for membership of the Council of Europe on 12 May 2022 with a letter signed by Ms Donika Gërvalla-Schwarz, Deputy Prime Minister and Minister of Foreign Affairs and Diaspora. On 24 April 2023, the Committee of Ministers transmitted the letter to the Parliamentary Assembly for consultation, in pursuance of Statutory Resolution (51) 30 A adopted on 3 May 1951. The decision on the transmission clarifies that it is “without prejudice to the Committee of Ministers’ future consideration of this application to accede to the Council of Europe”.
2. Having taken note of the eminent lawyers’ report, the Assembly acknowledges that Kosovo’s legal framework is broadly in line with Council of Europe standards and that its Constitution is a very progressive instrument, incorporating the key provisions of the Ahtisaari Plan and providing for the direct applicability of the European Convention on Human Rights (ETS No. 5) and its Protocols, the Framework Convention for the Protection of National Minorities (ETS No. 157), the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, “Istanbul Convention”) as well as some United Nations human rights instruments.
3. The Assembly acknowledges the progress made by Kosovo in the areas of human rights, democracy and the rule of law and commends the advancements made by the current government, including as regards the fight against corruption and a civil partnership for same-sex couples (“Civil Code”).
4. The Council of Europe, in synergy with the international community, has supported the strengthening of standards in Kosovo through a wide range of activities including legal advice, co-operation and specific solutions which have enabled Council of Europe monitoring mechanisms to regularly assess the situation in specific areas of human rights law. Kosovo joined the Council of Europe Development Bank (CEB) in 2013 and the European Commission for Democracy through Law (Venice Commission) the following year. Since 2016, a delegation of the Assembly of Kosovo has participated in the work of the Parliamentary Assembly. The Association of Kosovo Municipalities participates in the work of the Congress of Local and Regional Authorities.
5. The Assembly believes that Kosovo’s aspirations to join the Council of Europe should be met with a positive response. Membership would lead to the strengthening of human rights standards by ensuring access to the European Court of Human Rights to all those who are under Kosovo’s jurisdiction. It would also enable the Council of Europe to have greater oversight of domestic developments and to deploy all the instruments at its disposal to contribute to consolidating democracy and the rule of law. Furthermore, membership of the Council of Europe would represent a milestone in the process of Kosovo’s European integration.
6. Kosovo’s membership of the Council of Europe would be the culmination of a dialogue which has developed over a span of two decades but should in no way be seen as the end of a process. On the contrary, membership should catalyse momentum for Kosovo to continue to make progress in strengthening human rights, democracy and the rule of law and address outstanding challenges and matters of concern.
7. Amongst such issues are a gap between the normative framework and its effective implementation; the need to improve the protection of the rights of non-majority communities and to foster a climate and public discourse which is conducive to trust, reconciliation and inclusion; focusing on language, education and youth policies to ensure that Kosovo’s multi-ethnic society is cohesive rather than fragmented along ethnic or language cleavages; ensuring full compliance with the rule of law irrespective of political considerations; promoting interinstitutional respect; and strengthening the quality and efficiency of the judiciary.
8. Since Kosovo applied for membership of the Council of Europe, the security situation in Kosovo’s northern municipalities has considerably deteriorated in parallel with a stall of the normalisation of relations with Serbia and in the dialogue between Pristina and Belgrade facilitated by the EU Special Representative Mr Miroslav Lajčák. Many events have contributed to a serious escalation of tensions, including: land expropriations; the decision to enforce the use of Kosovo car licence plates; violent demonstrations; the mass resignation of Kosovo Serbs from the police, the judiciary and public offices; local elections which gave results deprived of democratic legitimacy; the use by the Kosovo authorities of the special police for ordinary police tasks; and the enforcement of the decision to introduce the euro for financial transactions to the exclusion of other currencies, later postponed.

2. Draft Opinion adopted by the committee on 27 March 2024.

3. * 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.

9. On 24 September 2023, a major security incident in Banjska resulted in the death of a Kosovo police officer and three Serb assailants. The gravity of this attack, its consequences and the attackers' connections with Belgrade abundantly showed that the risk of open violence in Kosovo is all too real and that security depends on the protection of the rights of the Serb community, the de-escalation of tensions and the normalisation of relations between Kosovo and Serbia.

10. Against this background, the Assembly welcomes as a major breakthrough the implementation, on 14 March 2024, of the judgment of the Constitutional Court in the case of the Visoki Dečani monastery, which had been awaiting execution since 2016. Its implementation is a tangible sign of the commitment of the government to act in full accordance with the rule of law, irrespective of political considerations. The Assembly and the Committee of Ministers should continue to follow this matter with a view to ensuring that the judgment is fully implemented.

11. The Assembly considers the establishment of the Association of Serb majority municipalities an important step and a way to enhance the democratic participation and empowerment of Kosovo Serbs and ensure the protection of their rights. The Assembly considers that the establishment of the Association should feature in the Committee of Ministers' future consideration of Kosovo's application to accede to the Council of Europe, as a post-accession commitment for Kosovo.

12. Furthermore, the Assembly expects that expropriations are conducted in the strictest respect of the law and that any future legislation in this area is fully in compliance with the Ahtisaari Plan, including with regard to the protection of the properties of the Serbian Orthodox Church. In this context, the Assembly recommends that the draft Law on Expropriation of Immovable Property which has been submitted to the Assembly of Kosovo be amended accordingly, at the earliest possible date.

13. Against this background, the Assembly welcomes the commitment made in a letter dated 3 March 2024 by Mr Albin Kurti, Prime Minister of Kosovo, to sign and ratify an extensive list of Council of Europe conventions, including:

13.1. at the time of accession: the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);

13.2. within one year of accession:

- the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2) and its Protocols Nos. 1 and 6 (ETS Nos. 10 and 162)
- the Framework Convention for the Protection of National Minorities (ETS No. 157)
- the European Charter for Regional and Minority Languages (ETS No. 148)
- the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210)
- the Council of Europe Convention on Action against Trafficking in Human Being (CETS No. 197)
- the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126)
- the European Convention on the Suppression of Terrorism (ETS No. 90)
- the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196)
- the Protocol amending the European Convention on the Suppression of Terrorism (ETS No. 190)
- the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)
- the European Charter of Local Self-Government (ETS No. 122);

13.3. within two years of accession:

- the European Convention on the Exercise of Children's Rights (ETS No. 160)
- the European Convention on Nationality (ETS No. 166)
- the European Social Charter (revised) (ETS No. 163)
- the Civil Law Convention on Corruption (ETS No. 174)
- the Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191)

- the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) and its protocols
- the European Convention on the International Validity of Criminal Judgments (ETS No. 70)
- the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116)
- the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 82)
- the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182);

13.4. as well as:

- the Council of Europe Convention on the Avoidance of Statelessness in related to State Succession (CETS No. 200)
- the Convention on Cybercrime (ETS No. 185) and its Additional Protocol (ETS No. 189)
- the European Convention on the Legal Status of Migrant Workers (ETS No. 93)
- the European Cultural Convention (ETS No. 18)
- the European Convention on the Recognition of University Qualifications (ETS No. 32)
- the Convention on the Academic Recognition of Qualifications concerning Higher Education in the European Region (ETS No. 165)
- the European Convention on the Equivalence of Diplomas leading to Admission to Universities (ETS No. 15)
- the Convention on the Elaboration of a European Pharmacopoeia (ETS No. 50).

14. Furthermore, the Assembly takes note of and welcomes the following commitments undertaken by the Kosovo authorities:

14.1. as regards the functioning of democratic institutions and the respect of the rule of law:

14.1.1. fully respect the independence of the judiciary including by refraining from undue criticism undermining trust in the judiciary;

14.1.2. continue to improve the quality and effectiveness of the judiciary;

14.1.3. continue to fight against corruption and organised crime;

14.1.4. ensure that expropriations are conducted in the strictest respect of the law and that any future legislation in this area is fully in compliance with the Ahtisaari Plan, including with regard to the protection of the properties of the Serbian Orthodox Church; amend accordingly the draft Law on Expropriation of Immovable Property, which has been submitted to the Assembly of Kosovo, at the earliest possible date;

14.1.5. take all measures to de-escalate tensions in the north of Kosovo and refrain from decisions which may affect the rights and living conditions of the Serb community and lead to a further deterioration of the security situation;

14.1.6. take urgent measures to promote the reintegration of Kosovo Serbs in the police force, the judiciary and the prosecution in the north of Kosovo;

14.1.7. refrain from using special police in the north of Kosovo for ordinary police tasks, ensure that they are deployed only in case of necessity, and step up co-operation with KFOR (Kosovo Force) and EULEX (European Union Rule of Law Mission in Kosovo);

14.2. as regards human rights and protection of non-majority communities:

14.2.1. ensure the effective implementation of the legal framework for the protection of national minorities;

14.2.2. take substantial and tangible steps with a view to implementing all articles of the Brussels and of the Ohrid Agreements which includes establishing the Association of Serb majority municipalities as soon as possible;

14.2.3. address urgently the absence of a comprehensive and co-ordinated approach on minority matters and rights; such an approach needs to be developed and implemented in co-operation with those concerned and in ways which reflect the specific needs of different communities;

14.2.4. allocate sufficient resources to effectively implement the legislation on the use of languages and ensure the legal entrenchment, independence and provision of adequate resources for the Office of the Language Commissioner;

14.2.5. step up measures to support the socio-economic integration and political participation of persons belonging to non-majority communities;

14.2.6. take visible and meaningful measures to promote reconciliation between Kosovo's communities, including in political discourse; adopt concrete strategies for inter-community dialogue and for reconciliation-oriented spaces and activities, in particular in education, in order to pave the way for inclusive societal development and trust;

14.2.7. promote teaching of non-majority languages in schools;

14.2.8. ensure the effective access to good quality primary and secondary education and textbooks for all children, including children with disabilities, children belonging to non-majority communities and children from disadvantaged groups;

14.3. as regards international relations:

14.3.1. continue to engage in the EU-facilitated dialogue and honour the commitments and obligations undertaken under its aegis;

14.3.2. put genuine efforts into the process of normalisation of relations with Serbia;

14.3.3. settle international disputes in a peaceful manner and promote good neighbourly relations in the region.

15. The Assembly also recommends that Kosovo signs and ratifies the following Council of Europe Conventions and Partial Agreements:

- Protocols 1, 4, 7, 12, 13 and 16 to the European Convention on Human Rights
- the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)
- the Criminal Law Convention on Corruption (ETS No. 173)
- The enlarged partial agreement setting up the Council of Europe international cooperation group on drugs and addictions (Pompidou Group)
- the enlarged partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine.

16. In light of the above, the Assembly considers that Kosovo is able and willing to:

16.1. fulfil the provisions of Article 3 of the Council of Europe Statute which stipulates that "[e]very member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms";

16.2. collaborate sincerely and effectively in the realisation of the aim of the Council of Europe as specified in Chapter I of the Statute, thereby fulfilling the conditions for accession to the Council of Europe as laid down in Article 4 of the Statute.

17. The Assembly, therefore, recommends that the Committee of Ministers:

17.1. invite Kosovo to become a member of the Council of Europe with the name "Kosovo";

17.2. allocate 3 seats to Kosovo in the Parliamentary Assembly.

18. While supporting Kosovo's membership of the Council of Europe, the Assembly is aware of the unprecedented circumstances of this application, as a number of Council of Europe member States do not recognise Kosovo as a State. Diplomacy, dialogue and compromise are necessary to ensure that the

prospective admission of Kosovo does not create a fracture in the unity of Council of Europe member States, thus undermining the spirit of the Reykjavik Summit. The Assembly, therefore, invites the Committee of Ministers to ensure that:

18.1. Kosovo's membership of the Council of Europe is without prejudice to individual member States' positions as regards the statehood of Kosovo;

18.2. member States, irrespective of the position they may express in relation to Kosovo's membership application, respect the decision made by the Committee of Ministers and collaborate sincerely and effectively in its implementation, ensuring the smooth functioning of Council of Europe's institutions, bodies and mechanisms;

18.3. once Kosovo is admitted as a member State for the purposes of the Council of Europe Statute, the Organisation discontinues its status-neutral policy.

19. Likewise, the Assembly calls on the Committee of Ministers to spare no diplomatic and political effort to ensure that Kosovo's membership is not only beneficial to Kosovo and all those who are under its jurisdiction but is also a factor of stability, democratic security and peace in the Western Balkans and Europe.

20. With a view to ensuring compliance with commitments and obligations, the Assembly decides, pursuant to its [Resolution 1115 \(1997\)](#), to open the monitoring procedure for Kosovo as from its accession to the Council of Europe.

B. Explanatory memorandum by Ms Dora Bakoyannis, rapporteur

1. Introduction

1.1. Kosovo's membership application

1. On 12 May 2022, through a letter by Ms Donika Gërvalla-Schwarz, Deputy Prime Minister and Minister of Foreign Affairs and Diaspora, Kosovo⁴ applied for membership in the Council of Europe. On the same day, the Secretary General of the Council of Europe transmitted the application to the Chair of the Committee of Ministers “for possible follow up by the Committee of Ministers in accordance with the Statute of the Council of Europe”.⁵

2. Nearly one year later, on 24 April 2023, during an extraordinary meeting the Ministers' Deputies took the following decision:

“Recalling the decision, expressed at the 8th Session of the Committee of Ministers in May 1951, to consult the Parliamentary Assembly before deciding on applications for membership of the Council of Europe in conformity with the provisions of the Statute;

Recalling the Brussels Agreement of 27 February 2023 and the Ohrid Agreement of 18 March 2023 and its Implementation Annex, reached in the EU-facilitated dialogue led by the High Representative, and the importance of all parties implementing them expediently and in good faith;

Decided to transmit to the Parliamentary Assembly for consultation the letter of 12 May 2022 addressed to the Secretary General of the Council of Europe (document DD(2022)200), without prejudice to the Committee of Ministers' future consideration of this application to accede to the Council of Europe.”

3. As a result of this transmission, on 25 May 2023, on the proposal of the President, the Bureau of the Assembly appointed Mr Thomas Markert and Ms Sia Spiliopoulou Åkermark as the two eminent lawyers who would “draw up a report for the attention of the Bureau assessing the conformity of the applicant's legal system with Council of Europe standards”.

4. Following their appointment by the Bureau, the eminent lawyers prepared a report on the basis of their expertise and of a fact-finding visit which they carried out from 24 to 28 September 2023. Their report⁶ was submitted to the Bureau at its meeting on 27 November 2023, and subsequently declassified. I would like to thank them for their assessment, which gives me and the rapporteurs for opinion a very solid basis to carry out our political work.

1.2. The admission procedure

5. According to the [Statute](#) of the Council of Europe,

“Article 3

Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I.

Article 4

Any European State which is deemed to be able and willing to fulfil the provisions of Article 3 may be invited to become a member of the Council of Europe by the Committee of Ministers. Any State so invited shall become a member on the deposit on its behalf with the Secretary General of an instrument of accession to the present Statute.”

4. * 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.

5. Decision CM/Del/Dec(2023)1464 bis/2.4, document [DD\(2022\)200](#). See [Doc.15957](#).

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

6. The procedure for the admission of new member States is governed by Statutory Resolution (51) 30 A adopted by the Committee of Ministers on 3 May 1951, which reads:⁷

“The Committee decided that, before inviting a State to become a Member or an Associate Member of the Council of Europe, in accordance with the provisions of Articles 4 and 5 of the Statute, or inviting a Member of the Council to withdraw, in accordance with the provisions of Article 8, the Committee would, in conformity with established practice, first consult the Consultative Assembly”.

7. The preparation of Assembly Opinions on applications for membership is referred to the Committee on Political Affairs and Democracy for report, with other Assembly committees being seized for opinions on the main report. I was appointed as rapporteur of the Committee on Political Affairs and Democracy in June 2023. Subsequently, Ms Azadeh Rojhan (Sweden, SOC) was appointed rapporteur for opinion of the Committee on Legal Affairs and Human Rights and Ms Béatrice Fresko-Rolfo (Monaco, ALDE) was appointed rapporteur for opinion of the Committee on Equality and Non-Discrimination.

8. The Assembly is not constrained to a given schedule when preparing its Opinion. In fact, in the past this took from a few months to a number of years. The Opinion will require a two-thirds majority of the votes cast to be adopted by the Assembly. It will be transmitted to the Committee of Ministers and will contain a recommendation whether to invite the applicant to join the Organisation and, if so, it will include a list of commitments and obligations.

9. The preparation of the Assembly Opinion is to be considered as a political process during which the Assembly rapporteurs engage with the authorities of the applicant to clarify concerns, conditions and expectations which will then be translated into the list of commitments and obligations to be evaluated under the Assembly’s monitoring procedure once and if the application is successful.

10. While the Assembly’s Opinion is advisory, the final decision on any membership application is made by the Committee of Ministers. If the decision is made by the Committee of Ministers meeting in the format of the Ministers’ Deputies, unanimity is required; if the decision is made by the Ministers, in principle a vote with a two thirds majority is sufficient. In the history of the Council of Europe, decisions on admissions have always been made at the level of Deputies, with the exception of the admissions of Armenia and Azerbaijan which were decided by the Ministers by consensus.

11. I would like to thank the Kosovo authorities, as well as the representatives of the international community, the Serbian Orthodox Church, and media and civil society, for sharing with me their views as regards the situation in Kosovo during the visit I paid to Pristina and north Mitrovica from 1 to 3 November 2023.⁸ I am particularly grateful to Mr Albin Kurti, Prime Minister of Kosovo, for his warm welcome in Pristina and for the in-depth conversation that we had as a follow up to it in December 2023. I would also like to thank Mr Glauk Konjufca, President of the Assembly of Kosovo, for addressing the Committee on Political Affairs and Democracy in Strasbourg on 23 January 2024, and Mr Miroslav Lajčák, EU Special Representative for the Belgrade-Pristina Dialogue and other Western Balkans regional issues, for meeting me in Brussels on 21 February 2024.

2. Scope of the report

12. Being aware of the complexity of some of the issues which are crucial for this membership application, I have tried to streamline the content of this report to highlight only what is strictly relevant and has not already been addressed by others. The eminent lawyers’ report provides an extensive analysis of Kosovo’s compliance with Council of Europe standards in the areas of democracy, human rights and the rule of law. Without repeating the eminent lawyers’ findings, I endorse their conclusions and recommendations⁹. Additional analysis will be provided by the two rapporteurs for opinion of the Committee on Legal Affairs and Human Rights, and of the Committee on Equality and Non-Discrimination.

3. A sound legal framework with implementation issues

13. As highlighted by the eminent lawyers, the drafting of Kosovo’s legal framework has been strongly influenced by the international community, a fact which has contributed to its general compliance with international standards.

7. [Resolution \(51\) 30 A \(3 May 1951\) – Admission of New Members \(coe.int\)](#).

8. The programme of the visit can be found in Appendix IV.

9. See Appendix III.

14. The Constitution of Kosovo is a very advanced legal instrument, which incorporates the key provisions of the Ahtisaari Plan and has been shaped by the legal expertise provided by the Council of Europe through the European Commission for Democracy through Law (Venice Commission). Under Article 22 of the Constitution, the European Convention on Human Rights (ETS No. 5) and its protocols, the Framework Convention for the Protection of National Minorities (ETS No. 157), and some UN human rights instruments are directly applicable in Kosovo. Following a constitutional amendment introduced in 2020, the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, “Istanbul Convention”) was added to this list. In case of conflict, the Constitution recognises their pre-eminence over domestic law. Furthermore, according to Article 53 of the Constitution, “human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the decisions of the European Court of Human Rights.”

15. While Kosovo’s legal framework is broadly in line with Council of Europe standards, there are problems with its implementation. I would like to recall from the start that, according to the eminent lawyers, “partly the implementation problems are similar to those encountered in other countries in the region, partly they are due to the specific situation in Kosovo and the tensions between the majority community and the Kosovo Serb community”, coupled with the tensions between Kosovo and Serbia. These tensions are not only relevant for the situation with respect to human and minority rights, but also impact the functioning of the democratic institutions and the judicial system.

4. The judgment of the Constitutional Court on the Visoki Dečani monastery

16. The implementation of the judgment of the Constitutional Court on the land dispute involving the Visoki Dečani monastery in Dečan/Dečane municipality¹⁰ has become central in the consideration of Kosovo’s application for membership of the Council of Europe. This judgment, dating back to 2016, recognises the legal ownership of 24 hectares of land to the Serbian Orthodox Church. Not only was it not implemented for eight years by successive governments, but it was also harshly criticised by prominent political figures, thus undermining the role of the Constitutional Court, who is the guarantor of the Constitution.

17. During my visit to Pristina, I was given different explanations of the reasons why the judgment had not been implemented, ranging from its far-reaching consequences should it be used as a precedent, to the fact that it would legitimise wrongful decisions made by Slobodan Milošević regime.

18. I discussed the matter with the Prime Minister and the President of Kosovo as well as with Father Sava, who is the Abbot of the Visoki Dečani monastery. I was clear that the judgment is a major rule of law case and must be implemented, as demanded unanimously by the international community. The monastery is a treasure which belongs to all communities in Kosovo. Its rights need to be restored. The monastery needs to be protected, respected and open to all.

19. In the aftermath of the visit, following a phone call with Prime Minister Kurti, I was informed in writing by the Deputy Minister of Foreign Affairs, in his capacity as chair of the Coordination Group, that the issue remained contested before Kosovo courts. When addressing the Committee on 23 January 2024, President Konjufca confirmed this explanation, saying that “in 2021, the municipality of Dečan/Dečane initiated a case before the Basic Court of Pristina alleging that the documentation in relation to the contested land is incomplete because the Dečani monastery has never submitted the land contract and other documents to the local institutions, and that the earlier judgments have not delineated the specific geographical size of the contested land”. He added that “government intervention in this pending case would constitute interference in the judicial process”.

20. Following the written explanation of the Deputy Minister of Foreign Affairs of Kosovo and the oral statement of the President of the Assembly of Kosovo, I consulted a number of legal experts, who confirmed the validity and applicability of the Constitutional Court decision from 2016. They insisted in the nature of *res judicata* of the decision, meaning that the decision is final and binding and that any attempt to review such decision would result in a general climate of legal uncertainty, reducing public confidence in the judicial system and consequently in the rule of law.

10. Judgment of 20 May 2016 in case No. KI 132/15.

21. During the meeting of the Committee on Political Affairs and Democracy on 5 March 2024, I presented an information note in which I recalled that, on 22 September 2021, the Constitutional Court issued a Decision on non-enforcement of its judgment related to the Visoki Dečani Monastery. The Constitutional Court subsequently notified the State Prosecutor of this new decision, the State Prosecutor having responsibility for taking the necessary actions as foreseen by the Criminal Code.

22. Visoki Dečani Monastery was recognised as applicant, and Father Sava as authorised person on behalf of the Monastery, by the Constitutional Court decision to assess the referral as admissible. In its decision, the Constitutional Court clearly explained the reason why the Monastery's referral was assessed as admissible. In the motivation, the Constitutional Court not only referred to previous Constitutional Court practices in comparable cases, but also explained why the requirement on exhausting all legal remedies before appealing to the Constitutional Court had been satisfied.

23. The decision to recognise the ownership of the Monastery over the disputed parcels was based on a settlement agreement between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Monastery, and recognised by the Special Chamber of the Supreme Court. The acceptance by both UNMIK and the Special Chamber of this settlement, *de facto* recognised the agreement of a gift from the Republic of Serbia to the Monastery as non-discriminatory. As a result, in order to comply with the legal framework and with the rule of law principle, the Cadastral Agency of Kosovo should have executed the decision and registered the property in the Monastery's name.

24. While it is true that neither the President nor the Prime Minister can interfere in court proceedings, institutions are responsible for the implementation of court decisions. In this specific case, the Ministry of Environment, Spatial Planning and Infrastructure (MESPI) was responsible for pursuing the registration of land parcels in cadastral records. In fact, while the Kosovo Cadastral Agency is the central authority for maintenance of the cadastral database, property registers, mapping and geographic information system, formally it is subordinated to MESPI.

25. In my information note presented to the Committee on Political Affairs and Democracy on 5 March 2024, I made it clear that the non-enforcement of a decision assessed by the Constitutional Court as *res judicata* should be viewed as a political choice and a major failure of Kosovo institutions to respect the rule of law principle.

26. I am therefore, satisfied that, on 14 March 2024, I was informed by the Minister of Foreign Affairs and Diaspora that the Constitutional Court judgment has been implemented, with the registration of the 24 hectares of land in the name of the Monastery. This is a major sign, from the part of the Kosovo authorities, of their courage and willingness to make difficult decisions with a view to complying with the rule of law. It also testifies to the importance they attach to Council of Europe membership.

5. The Association of Serb majority municipalities

27. It is obvious that the establishment of an inter-municipal association is not a requirement under Council of Europe standards. In the case of Kosovo, however, the establishment of the Association of Serb majority municipalities is an indispensable milestone towards the normalisation of relations between Pristina and Belgrade, an international obligation, and a way to enhance the democratic participation of Kosovo Serbs and ensure the protection of their rights. Needless to say, the establishment of the Association would weigh very heavily in charting a European path for Kosovo.

28. The First agreement on principles governing the normalisation of relations concluded between Kosovo and Serbia in 2013 under the EU-facilitated dialogue reads: "There will be an Association/Community of Serb majority municipalities in Kosovo" in accordance with the European Charter of Local Self-Government and Kosovo law and the Association/Community will have "full overview of the areas of economic development, education, health, urban and rural planning". This agreement, which was signed by the Prime Ministers of Kosovo and Serbia, was ratified as an international agreement on 27 June 2013 by the Assembly of Kosovo.

29. A document entitled "Association/Community of Serb majority municipalities in Kosovo – general principles/ main elements" was prepared in 2015 to implement the 2013 agreement. The then President of Kosovo referred this document to the Constitutional Court for an examination of constitutionality. The Constitutional Court found that it raised constitutionality issues.

30. The Court's main concern revolved around the ambiguity of the term "exercise full overview" which was taken to signify that the Association would have executive powers, while the Constitution only provides for two levels of governance: central and local. Furthermore, the Court noted that the principles regarding the

organisational structure of the Association/Community raised concerns regarding respect for the diversity of communities who reside within the participating municipalities, and the reflection of this diversity in the staffing and structures of the Association/Community as required by the Constitution. The Court found that the Association/Community alone could not be vested with full and exclusive authority to promote the interests of the Kosovo Serb community in its relations with the central authorities.

31. The position of the Constitutional Court was misused by Kosovo politicians to argue that the establishment of an Association of Serb majority community was unconstitutional *per se*. Nevertheless, the Constitutional Court had explicitly held that “the Association/Community of Serb majority municipalities is to be established as provided in the First Agreement, ratified by the Assembly of the Republic of Kosovo and promulgated by the President of the Republic of Kosovo”.

32. The lack of progress towards the establishment of an Association of Serb majority municipalities has been a major source of dissatisfaction and distrust amongst the Kosovo Serb community, especially in the north, and tensions between Pristina and Belgrade.

33. On 27 February 2023, the EU-facilitated dialogue yielded a major result: the Agreement on the path to normalisation between Kosovo and Serbia,¹¹ which is complemented by an Implementation Annex,¹² negotiated in Ohrid on 18 March 2023.

34. According to Article 4 of the 2023 Brussels agreement “[t]he Parties proceed on the assumption that neither of the two can represent the other in the international sphere or act on its behalf. Serbia will not object to Kosovo’s membership in any international organisation”. According to its Article 7, “[b]oth Parties commit to establish specific arrangements and guarantees, in accordance with relevant Council of Europe instruments and by drawing on existing European experiences, to ensure an appropriate level of self-management for the Serbian community in Kosovo and ability for service provision in specific areas, including the possibility for financial support by Serbia and a direct communication channel for the Serbian community to the Government of Kosovo. The Parties shall formalise the status of the Serbian Orthodox Church in Kosovo and afford strong level of protection to the Serbian religious and cultural heritage sites, in line with existing European models”.

35. The importance of the 2023 Brussels Agreement and the Ohrid Annex cannot be stressed enough. It should be recalled that, in its decision to transmit Kosovo’s application to the Assembly, the Committee of Ministers explicitly referred to them and to the EU-facilitated dialogue. This is the first time in the history of the Organisation that, in the consideration of a membership application, a direct link is made to a political process being facilitated by another international organisation.

36. A deadlock developed over the sequencing modalities to implement the Agreement and its Annex. While Belgrade insisted that concrete steps towards establishing the Association/Community needed to take priority, Pristina maintained that no article of the Agreement could be a precondition for the implementation of other articles, and that articles needed to be advanced “independently”. While the European Union announced that the Ohrid Annex had been agreed, the President of Serbia, Aleksandar Vučić, denied publicly having given his consent.

37. The above situation is described and commented upon in the report of the eminent lawyers. Since their visit to Kosovo, however, there have been further developments. In October 2023, Miroslav Lajčák, the EU Special Representative for the Belgrade-Pristina Dialogue and other Western Balkans regional issues, presented a new draft Statute establishing the Association of Serb majority municipalities. During my meeting with him in Pristina, Prime Minister Kurti confirmed what had already been reported in the media: he was ready to sign it.

38. I strongly encouraged him to do so and, I argued, he could do so without further delay and preconditions, since the establishment of the Association aims, first and foremost, to the greater democratic participation of Kosovo citizens. In addition, in my meetings with the representatives of various parties represented in the Assembly of Kosovo, I underlined that it would be a sign of political maturity for all political forces to support the establishment of the Association, and to prioritise Kosovo’s interests rather than trying to get political gains for themselves.

11. [Belgrade-Pristina Dialogue: EU Proposal – Agreement on the path to normalisation between Kosovo and Serbia, EEAS \(europa.eu\)](#).

12. [Belgrade-Pristina Dialogue: Implementation Annex to the Agreement on the Path to Normalisation of Relations between Kosovo and Serbia, EEAS \(europa.eu\)](#).

39. During my meeting with Mr Miroslav Lajčák, in Brussels, on 21 February 2024, I was informed that no progress had been achieved towards the establishment of the Association, and that the Dialogue had been essentially paused. I regret this and I believe that the establishment of the Association should feature prominently in the Committee of Ministers' future consideration of Kosovo's application to accede to the Council of Europe.

6. Land expropriations in Serb majority municipalities

40. Expropriations are an important rule of law issue which also has broad political repercussions, which are amplified in Kosovo's specific context.

41. Since 2022, in the Serb majority municipalities of Leposavić and Zubin Potok, the Kosovo authorities have initiated cases of expropriation for 118 parcels of land. Representatives of the international community, including the European Union, the European Union Rule of Law Mission in Kosovo (EULEX), the Organization for Security and Co-operation in Europe (OSCE) and the United States have expressed deep concerns about these decisions, arguing that the procedure did not comply with Kosovo's own laws and regulations.¹³

42. Among other issues, the decisions did not identify, as required by Article 44 of the Constitution and the Ahtisaari Plan, the public purpose or public interest making these expropriations necessary. This manner of proceeding is not compatible with the rule of law and further undermines trust between the Serb community and Kosovo institutions. The authorities should refrain from any expropriations which are not fully in line with the Kosovo Constitution and legal system, while also making greater efforts to communicate the reasons for the expropriations to the parties directly affected as well as to the general public, especially in the current heightened security situation of the northern municipalities. It is to be noted that the well-foundedness of the criticism levelled by the international community was confirmed by a court annulling the expropriation decision in January 2024, based on the government's failure to adequately motivate its necessity and explain its public purpose.¹⁴

43. During my visit to Kosovo, I also raised concerns about a new draft law on expropriation of immovable properties proposed by the government. This draft law leaves out the provision set out in Article 3.1 of the current law,¹⁵ which reads: "Movable and immovable property and other assets of the Serbian Orthodox Church shall be inviolable and shall not be subject to expropriation". The provision of the current law derives directly from the Ahtisaari Plan, namely Article 1.4 of Annex V which states: "Kosovo shall guarantee that the movable and immovable property and other assets of the Serbian Orthodox Church shall be inviolable and shall not be subject to expropriation".

44. As noted also by other international actors, this omission risks creating legal confusion, may lead to contradictory interpretations of Kosovo's legal framework in a particularly sensitive area and increase the likelihood of legal disputes.

45. It is of the utmost importance that the Kosovo authorities ensure the scrupulous respect of the Ahtisaari Plan in relation to the protection of the rights of non-majority communities, including as regards expropriations. I make, therefore, a strong call for any new legislation in this field to be fully aligned with the Ahtisaari Plan and to avoid legal uncertainty. As regards the draft law under preparation, explicit mention should be added of the protection of the properties of the Serbian Orthodox Church against expropriations.

7. The situation in the northern municipalities

46. In recent months, the situation in the northern municipalities, a region which is currently administered by Kosovo Albanian mayors who do not enjoy popular legitimacy, and in which Kosovo Serbs represent approximately 96% of the population, has given rise to grave concerns. Here, education and health services are provided by the structures financed by Belgrade. The population is dependent upon salaries and allowances drawn from the Serbian State budget. The economy is based on the dinar. Serbian flags and other Serbian State symbols are displayed in public places, and the border is porous, allowing for the often uncontrolled passage of people and goods between Kosovo and Serbia.

13. [Statement on Government's decision the expropriation of land for public interest in the municipalities of Leposavić/Leposaviq and Zubin Potok, EEAS \(europa.eu\).](#)

14. [Decision on land expropriation in the north annulled; "Nenezić: After the judgment becomes final, we'll send a request to remove the bases", KoSSev.](#)

15. Law No.03/L-139, as amended by Law No.03/L-205 and Law No.04/L-115.

47. The integration of Kosovo Serbs into Kosovo institutions in the north is one of the main achievements of the EU-facilitated dialogue. The 2013 Brussels Agreement provided for Kosovo northern municipalities to be integrated into the Kosovo legal system, and for the integration of Kosovo Serbs in the judiciary and the Kosovo police, including in leading positions.

48. This process, supported by the international community, has been overall successful. Recent events, however, have shown that progress is fragile and greater efforts are necessary to preserve achievements.

49. Unfortunately, since Kosovo applied for membership of the Council of Europe, tensions have flared up on several occasions. I will not describe all the incidents that have occurred, many of which have resulted in fatalities. For the purpose of this Opinion, however, I think it is important to mention a few significant events, which highlighted the magnitude of the challenges.

50. On 29 June 2022, the Kosovo government announced that Serbian car licence plates would be de-registered and that the use of Kosovo licence plates would become obligatory. This announcement was met with concern by the European Union, as a move to address unilaterally a long-standing bilateral dispute. Even if the entry into force of this decision was later postponed, it led to violent protests, provocations and roadblocks by Kosovo Serbs in the North, against a background of rising inflammatory rhetoric from Pristina and Belgrade. The Kosovo authorities deployed special police forces in the North, while Serbia put its military at the border with Kosovo on high alert.

51. Special police forces are almost exclusively composed of Albanian, and also only Albanian-speaking, police officers. Because of this, their attitude, and their equipment, they are perceived as intimidating by the population in the North, which further aggravates tensions.

52. Against the background of continued protests, in November 2022 Srpska Lista representatives collectively resigned from their functions in Kosovo institutions – the central government, the Assembly of Kosovo, as well as mayors and members of municipal assemblies in the north. Furthermore, Kosovo Serbs in the northern municipalities left the police, the judiciary and the prosecution service. Various attempts to recruit new police officers amongst the Kosovo Serb community, or to transfer Kosovo Serb police officers from the south of Kosovo, failed because the persons concerned were subjected to pressure and intimidation by Belgrade or their own community.

53. A new challenge arose, as elections to reconstitute local governments had to be postponed because of security concerns. They were finally held on 23 April 2023, with Srpska Lista and Belgrade calling on the population to boycott them. The very low turnout (3.47% of voters) led to a situation where four Kosovo Albanians mayors were elected. They had to be escorted to the municipal buildings and protected against demonstrators. Dozens of people, including KFOR personnel, were injured in these protests.

54. Due to the lack of decisive steps to de-escalate, on 1 July 2023 the Council of the European Union introduced restrictive measures vis-à-vis Kosovo, which also impact high level visits and financial support. These measures are temporary and fully reversible, depending on the steps taken to de-escalate the tensions in the north of Kosovo. According to the European Union, Kosovo has taken steps in the right direction, but more remains to be done. At the time of writing, the restrictive measures are still applied.

55. It was apparent from the outset that these elections lacked legitimacy and that the conditions for the return of Kosovo Serbs to local governance, policing and the judiciary in the north of Kosovo should be restored as soon as possible. But the deadlock lasted for several months, between the elected mayors refusing to resign, and the collection of signatures to ask for their recall proceeding unconvincingly. Finally, following the successful collection of signatures, new elections have been called for 21 April 2024. The fact remains that new elections will give legitimate results only if the Kosovo Serb population participates, without interference and fear of intimidation. The Assembly and the Council of Europe should attentively follow the situation.

56. On 24 September 2023, a security incident of unprecedented gravity occurred in Banjska, during which a Kosovo police officer and 3 Serbian armed gunmen were killed. As the eminent lawyers remarked arriving in Kosovo on that very date, “the level of resourcing and organisation of this attack, including the discovery of significant heavy weaponry and ammunition, and the alleged direct connections between some of the assailants and the Belgrade authorities illustrated yet another escalation of tensions and security threat”.

57. The Assembly held a current affairs debate on “The situation in the North of Kosovo following the recent attack and the need for de-escalation” during the October 2023 part-session and the European Parliament adopted a Resolution on the recent developments in the Serbia-Kosovo dialogue, including the situation in the northern municipalities in Kosovo.¹⁶ Following a motion for a resolution on “Responding to the violent attacks

in the North of Kosovo”¹⁷ tabled by Mr Knut Abraham (Germany, EPP/CD) and other members of the Assembly, in January 2024 the Committee on Political Affairs and Democracy asked that the motion be referred to it for report.

58. During my visit to North Mitrovica, I had the opportunity to meet civil society representatives, the four former mayors of the northern municipalities who had resigned in April 2022 and the newly elected leader of Srpska Lista, Mr Zlatan Elek. They described a situation of heightened tension, excessive use of force by the police, obstacles to having effective access to justice, and interference with a number of rights – from the right to health to the right to education. Their narrative about the situation is the opposite of the narrative put forward by the authorities. They denounce what they consider to be a deliberate effort by the Pristina authorities to drive Kosovo Serbs out of Kosovo.

59. I was struck by the refusal by the representatives of Srpska Lista to condemn the authors of the attack and their putting all the responsibility on the Pristina authorities for escalating the situation.

60. The security situation in northern Kosovo, following the attack of 24 September 2023, justifies the presence of Kosovar special police forces in the region for extraordinary operations. Nevertheless, numerous testimonies and reports, including the reports of UNMIK to the United Nations Security Council, regret the abusive use of those special forces in the north for the execution of ordinary police tasks, also before the events of 24 September.

61. I would like to recall that, in July 2023, at a meeting with EU Special Representative Miroslav Lajčák in Bratislava, the Kosovo authorities agreed that the presence of special police forces in the north should be limited to extraordinary situations and their presence should follow a joint potential threat assessment with KFOR and EULEX. These terms, however, are not consistently implemented.

62. The latest source of tensions was, in February 2024, the enforcement of regulations decided by Kosovo’s Central Bank to prevent banks and other financial institutions in the North from using currencies other than the euro in cash transactions. Given that the Serbian Government is supporting financially critical health and education institutions in northern Kosovo, these regulations are perceived as hostile to the survival of the Serbian community in the region.

63. The issue was at the centre of an urgent debate in the United Nations Security Council called by Serbia, with the participation of Prime Minister Albin Kurti and President Aleksandar Vučić. Briefing the Security Council, Caroline Ziadeh, Special Representative of the Secretary-General and head of UNMIK, said the new regulations would affect tens of thousands of Kosovo Serbs living in four northern municipalities and, more broadly, the economy, which depends on their purchasing power. She added that limited public explanation was offered, despite the fact that, since 1999, the Serbian dinar has served as the *de facto* primary currency for cash and commercial transactions in Kosovo-Serb majority areas. Regardless which side takes them and what justifications are provided, and in the absence of unambiguous public communications, such actions predictably exacerbate an environment of insecurity and mistrust,” she said, adding that unilateral actions are “cause for great concern”.¹⁸

64. While the implementation of this decision has been postponed due to international pressure, I am concerned at the way it was taken, without considering transitional measures to mitigate its impact on the population. While the de-escalation of tensions is not an easy process, decisions of this kind have the opposite effect.

8. Statehood and recognitions

65. Since declaring independence, Kosovo has made it a priority of its foreign policy to seek recognition of its statehood and engage in multilateral co-operation. The programme of the current government says that “The Republic of Kosovo will strengthen its international subjectivity. This applies to the efforts for recognition and mutual diplomatic relations, membership in international organizations, economic co-operation, cultural exchanges, as well as to the whole spectrum of bilateral and multilateral cooperation”.¹⁹

16. Texts adopted – Recent developments in the Serbia-Kosovo dialogue, including the situation in the northern municipalities in Kosovo – Thursday, 19 October 2023 (europa.eu).

17. Doc. 15845.

18. Security Council debates Kosovo’s new rules on Serbian currency, UN News.

19. Programme of the government, 2021-2025, paragraph 2.17.2.

66. Council of Europe member States do not have a common position as regards the applicant's statehood. While 34 of them have recognised Kosovo as an independent and sovereign State, the remaining 12 have not. For Serbia, "Kosovo and Methoja" is an integral part of its territory, and this is even enshrined in the preamble of the Serbian Constitution.

67. The eminent lawyers confined themselves to the assessment of the conformity of Kosovo's legal system with Council of Europe standards and did not tackle the issue whether Kosovo meets the requirements to join the Council of Europe under its Statute, which in Article 4 refers to any "European State". In their view, the assessment concerning statehood is a political decision. They highlighted, however, that the international presence in Kosovo does not have any executive powers, that the Kosovo authorities exercise jurisdiction over the territory and the population of Kosovo, and that Kosovo has international relations.

68. Without explicitly mentioning it, therefore, the eminent lawyers referred to the Montevideo Convention of 1933 on the Rights and Duties of States, which according to State practice and doctrine codifies customary international law, and implicitly said that Kosovo fulfils the relevant criteria. The lawyers also recalled that the Advisory Opinion of the International Court of Justice found that Kosovo's declaration of independence was not contrary to international law, including Resolution 1244 of the United Nations Security Council.

69. Recognition is a prerogative of States. As a result, the ultimate assessment whether Kosovo is "a European State" for the purposes of the Council of Europe Statute will lay with each member State when casting a vote in relation to Kosovo's membership application. The Council of Europe's internal rules accept that this decision does not require unanimity but may be reached by two thirds of its members.

9. Conclusions

70. The progress made by Kosovo in the areas of democracy, human rights and the rule of law must be acknowledged. Its legal system is broadly in line with Council of Europe standards and membership of the Organisation would help Kosovo bridge the gap between the law and its implementation by ensuring the Council of Europe's greater oversight and influence on domestic developments. Above all, it would give access to the European Court of Human Rights to all those who are under Kosovo's jurisdiction – irrespective of their nationality or community – thereby ensuring that their rights are protected by the highest European judicial institution. Membership of the Council of Europe would also represent a key milestone in the process of Kosovo's further European integration.

71. Kosovo's aspirations to join the Council of Europe should be met with a positive response. Welcoming Kosovo into the Council of Europe's fold, however, would not be the end but the beginning of a process. I hope that, on the strength of the climate of trust which has been established over many years of co-operation and reinforced through our dialogue in the context of the membership application, Kosovo will use the opportunity of membership to consolidate its democracy and democratic culture, to gain the trust and allegiance of all communities, and to become an agent of stability in the region.

72. In the ongoing dialogue between the Council of Europe and Kosovo, some issues stand out for their importance. In the first instance, while welcoming the long overdue implementation, by the current government, of the 2016 judgment of the Kosovo Constitutional Court in the case of the Visoki Dečani monastery, the Assembly should continue to follow this matter and recommend that the Committee of Ministers should do the same.

73. The Assembly should also expect from the Kosovo authorities substantial and tangible progress as regards the Association of Serb majority municipalities, with a view to its establishment as soon as possible.

74. Furthermore, the Assembly should demand from the Kosovo authorities that expropriations are conducted in the strictest respect of the law and that any future legislation in this area is fully in compliance with the Ahtisaari Plan, including with regard to the protection of the properties of the Serbian Orthodox Church.

75. In a letter transmitted to me dated 3 March 2024, Prime Minister Albin Kurti commits Kosovo to signing and ratifying a number of Council of Europe treaties upon and following accession. These commitments are reflected in the draft Opinion attached to this explanatory memorandum.

76. In addition, by a letter dated 22 March 2024 and signed by the Prime Minister, the President and the President of the Assembly of Kosovo, the authorities have undertaken a number of commitments, including to:

- take all measures to de-escalate tensions in the north of Kosovo and refrain from unilateral decisions which may lead to a further deterioration of the security situation;

- take urgent measures to promote the reintegration of Kosovo Serbs in the police force, the judiciary and the prosecution in the north of Kosovo;
- refrain from using special police in the north of Kosovo for ordinary police tasks, ensure that they are deployed only in case of necessity, and step up co-operation with KFOR and EULEX;
- ensure the effective implementation of the legal framework for the protection of national minorities;
- allocate sufficient resources to effectively implement the legislation on the use of languages;
- promote teaching of non-majority languages in schools;
- step up measures to support the socio-economic integration and political participation of persons belonging to non-majority communities;
- take visible and meaningful measures to promote reconciliation between Kosovo's communities;
- continue to engage in the EU-facilitated dialogue and honour the commitments and obligations undertaken under its aegis;
- put genuine efforts into the process of normalisation of relations with Serbia;
- commit to settling international disputes in a peaceful manner and to promoting good neighbourly relations in the region.

77. After accession, compliance with the above commitments and obligations should be monitored by the Assembly in the context of its monitoring procedure.

78. While supporting Kosovo's membership of the Council of Europe, the Assembly should call on the Committee of Ministers to take into consideration the specific circumstances relating to this application, to ensure that Kosovo's membership of the Council of Europe is not only beneficial to Kosovo and its citizens but also a factor of stability, democratic security and peace in Europe.

79. For the first time in the history of the Organisation, not all Council of Europe member States consider the applicant as a State. While admission of a new member does not require unanimity, admitting a new member following a vote would be an unprecedented course of action. Diplomacy, dialogue and compromise are necessary to ensure that the admission of Kosovo does not create a fracture in the unity of Council of Europe member States, which would be contrary to the spirit of the Reykjavik Summit.

80. Appropriate safeguards should be introduced in the Committee of Ministers' decision to ensure that Kosovo's membership of the Council of Europe is without prejudice to individual member States' positions as regards the statehood of Kosovo beyond the institutional framework of the Organisation, notably in their bilateral relations. At the same time, all member States, including those who may vote against, should respect the decision made by the Committee of Ministers and collaborate sincerely and effectively in the realisation of the aims of the Council of Europe, ensuring the smooth functioning of its institutions, bodies and mechanisms. The Organisation as such can no longer pursue its status-neutral policy once Kosovo is admitted as a member. As a result, the use of the asterisk and the footnote would not be necessary, thereby rendering the current practice obsolete.

81. Finally, the Assembly should stand ready to discuss Kosovo's membership application with the Committee of Ministers in the format of the Joint Committee.

Appendix 1 – Letter of 3 March 2024, addressed by Prime Minister Albin Kurti to members of the Bureau of the Parliamentary Assembly



Republika e Kosovës
Republika Kosova - Republic of Kosovo
Qeveria – Vlada - Government
Zyra e Kryeministrit / Kancelarija Premijera / Office of the Prime Minister

Date: 03/03/2024
Ref: 027/2024

Dear members of the PACE Bureau,
Ms Bakoyannis,

Allow me at the outset to thank the PACE Bureau members, the two eminent lawyers, the rapporteurs and PACE Secretariat for an excellent and speedy assessment of our membership to the Council of Europe.

Following the publication of the report of Eminent Lawyers, the visit of PACE rapporteurs to Kosova in November 2023, and the hearing of the Political Affairs Committee in the January PACE session, we have taken a number of actions to address the PACE recommendations for Kosova's membership.

First, as regards the report of the Eminent Lawyers, while their report finds that "the legal rules are generally in line with international standards, or, as is the case for the Constitution, go beyond these standards", the High-level Coordinating Group for Kosova's membership in the Council of Europe has prepared a comprehensive overview outlining the measures undertaken by our institutions to comply with recommendations of the Eminent Lawyers (Appendix 1). These actions encompass, among others, the adoption of the Strategy for the Protection and the Promotion of the Rights of Communities and their Members 2023-2027, along with the Action Plan.

Second, the Government of Kosova would like to take this opportunity to provide you with a list of Conventions that we commit to sign and ratify shortly after accession to the Council of Europe (Appendix 2). We firmly believe that accession to these instruments will contribute to fostering democracy, strengthening the rule of law, and bolstering the protection of human rights in Kosova.

Third, as regards the issue of Decani Monastery allow me to emphasize at the outset that Kosova does not object to implementation of any court decision. Following the visit of the rapporteurs to Kosova, I have asked the relevant government ministers and my legal team to analyze carefully the present case. We inform you that on 17 December 2020, the Kosovo Cadaster Agency has officially instructed the Deçani Municipality Cadaster Office to insert cadaster data of the property (Decision no. 03/3539/20) as a matter of execution of the Constitutional Court decision. That decision remains in force and resembles the legal position of a governmental executive agency. However, this decision has been challenged at the Basic Court which has delayed to consider the case. I would like to assure you that the Government's view is that all court decisions, including the decisions of the Constitutional Court should and will be implemented as a matter of the rule of law principle. We remain committed to this principle especially given the expectation that our roadmap towards full membership at the Council of Europe is nearing a tangible outcome. This constitutes a legally binding position for the Government of the Republic of Kosova in the context of its communication with you as the rapporteur and PACE.

In light of the above, Kosova has undertaken all steps to assist PACE in taking a favourable position on our membership application in the April PACE session. As you have a key role in this historic process for Kosova and the Council of Europe, we urge that you value the hard work and commitment of our Government and people and propose to the Political Affairs Committee and Democracy, and then the Parliamentary Assembly for the next session, to recommend that the Committee of Ministers invite Kosova to join the Council of Europe.

The membership in the Council of Europe primarily serves the interests of the citizens of Kosova, including minority communities and vulnerable groups, by providing access to the European Court of Human Rights and other protective mechanisms within the Council of Europe.

Kosova has worked for 16 years with key Council of Europe instruments and is already a full member of the Venice Commission and Council of Europe Development Bank. Since 2008 we have granted a constitutional rank and directly applied the European Convention on Human Rights, the Strasbourg case-law, the Framework Convention on Minorities, and since 2020 also the Istanbul Convention. The legal framework is matched by efforts of implementation in practice. According to the World Justice Project, Kosova ranked first in Europe and second globally for improvement in rule of law. In the Transparency International Index Kosova was the second-best scoring country in the Western Balkans, and in the 50th edition of the Freedom House report, Kosova ranked second in Europe in terms of annual improvement in the field of political rights and civil liberties. In the past years we have worked tirelessly to not only reach the Council of Europe standards but also show that we are here to join as a progressive nation. It is worth noting that in 2020 we have unilaterally adopted the Istanbul Convention, and this year the Ministry of Justice has proposed a draft Civil Code that foresees registered civil unions between persons of the same sex. While we have taken these measures because we believe in them, we ask you to consider our work and efforts also for accession purposes.

We thank you once again for the fair and prompt assessment on our application as we await to enhance our collaboration through the membership to the Organisation.

Yours sincerely,



Albin Kurti
Prime Minister of the Republic of Kosova

To:
PACE Bureau members
Ms. Dora BAKOYANNIS
Rapporteur for the Political Affairs Committee of the PACE
on the application by Kosovo for membership of the Council of Europe

Ms. Azadeh Rojhan, Rapporteur for Kosovo, Committee on Legal Affairs and Human
Right
Ms. Béatrice Fresko-Rolfo, Rapporteur for Kosovo, Committee on Equality and Non-
discrimination

Council of Europe Conventions that Kosova will sign and ratify upon accession/within one to two years of accession²⁰

1. **European Convention on Human Rights** (ETS No. 5) (upon accession)
2. **General Agreement on Privileges and Immunities of the Council of Europe** (ETS No. 2) and its **Protocols Nos. 1 and 6** (ETS No. 10 and 162) (to ratify within one year of accession at latest)
3. **The Framework Convention for the Protection of National Minorities** (ETS No. 157) (to sign and ratify, within one year of accession)
4. **The European Charter for Regional or Minority Languages** (ETS No. 148) (to sign and ratify, within one year of accession)
5. **Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence** (CETS No. 210) (to sign and ratify, within one year of accession)
6. **The European Convention on Suppression of Terrorism** (ETS No. 90) (to confirm in writing that it considers itself bound by it at the date of accession)
7. **Council of Europe Convention on the Avoidance of Statelessness in related to State Succession** (CETS No. 200) (to sign at the date of accession and ratify it without delay)
8. **Council of Europe Convention on Action against Trafficking in Human Beings** (CETS No. 197) (to sign and ratify within one year of accession)
9. **The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment** (ETS No. 126) (to sign and ratify, within one year of accession)
10. **The European Convention on the Exercise of Children's Rights** (ETS No. 160) (to sign and ratify within two years of accession)

20. The first appendix mentioned in Mr Kurti's letter of 3 March 2024 can be found [here](#).

11. **The European Convention on Nationality** (ETS No. 166) (to sign and ratify within two years of accession)
12. **The European Social Charter (revised)** (ETS No. 163) (to sign upon accession and ratify within two years of accession)
13. **The Protocol amending the European Convention on the Suppression of Terrorism** (ETS No. 190) (to sign and ratify within one year of accession)
14. **The European Convention on the Prevention of Terrorism** (CETS No. 196) (to sign and ratify within one year of accession)
15. **The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism** (CETS No. 198) (to sign and ratify within one year of accession)
16. **The Civil Law Convention on Corruption** (ETS No. 174) (to sign and ratify within two years of accession)
17. **The Additional Protocol to the Criminal Law Convention on Corruption** (ETS No. 191) (to sign and ratify within two years of accession)
18. **The European Charter on Local Self-Government** (ETS No. 122) (to sign and ratify without delay and at the latest within one year of accession)
19. **The European Online Convention on Transfrontier Co-operation between Territorial Communities or Authorities** (ETS No. 106) and its protocols (to sign and ratify within two years of accession)
20. **Convention on Cybercrime** (ETS No. 185) and its Additional Protocol (ETS No. 189) (to sign and ratify within three years of accession)
21. **The European Convention on the International Validity of Criminal Judgments** (ETS No. 70) (to sign and ratify within two years of accession)
22. **The Convention on the Compensation of Victims of Violent Crimes** (ETS No. 116) (to sign and ratify within two years of accession)
23. **The European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes** (ETS No. 82) (to sign and ratify within two years of accession)
24. **The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters** (ETS No. 182) (to sign and ratify within two years of accession)
25. **European Convention on the Legal Status of Migrant Workers** (ETS No. 93)
26. **European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations** (ETS No. 124)
27. **European Cultural Convention** (ETS No. 18)
28. **European Convention on the Academic Recognition of University Qualifications** (ETS No.32)
29. **Convention on the Recognition of Qualifications concerning Higher Education in the European Region** (ETS No. 165)
30. **European Convention on the Equivalence of Diplomas leading to Admission to Universities** (ETS No. 15)
31. **Convention on the Elaboration of a European Pharmacopoeia** (ETS No. 50)

Appendix 2 – Letter of 22 March 2022 addressed to Ms Dora Bakoyannis from the Kosovo* authorities



Republika e Kosovës
Republika Kosova - Republic of Kosovo

Date: 22/03/2024
Ref: 063/2024

Dear Madam Bakoyannis,

Allow us to start by expressing our deep appreciation for your work and your commitment as a Rapporteur on Kosova's membership application to the Council of Europe.

We are pleased that the draft Opinion of 21 March 2024 which will be submitted for adoption to the Committee on Political Affairs and Democracy on 27 March 2024, and to PACE in the April 2024 session, supports Republic of Kosova's membership in the Council of Europe. We are of the view that there is no better way to mark the 75th anniversary of the Council of Europe than by welcoming a state that, just like the Organization has emerged from the ashes of war, but has become a promoter of human rights, rule of law and democracy.

In your letter dated 21 March 2024, you provided us with the "proposed commitments which Kosova will be required to honor once it joins the Council of Europe". Your correspondence indicates that this list, requiring a response from the Kosova state institutions, constitutes an integral component of our application process and represents an important step in the process of Kosova's full membership to the Council of Europe.

In this context, taking into account and on the basis of Kosova's constitutional law, we would like to take this opportunity to inform you that we will faithfully honor the list of commitments indicated in Appendix I of your letter dated 21 March 2024 upon Kosova becoming a member state to the Council of Europe.

We thank you for your collaboration as we wait to enhance our cooperation through full membership to the Council of Europe.

Sincerely,

Vjosa Osmani Sadriu
President of the
Republic of Kosova

Albin Kurti
Prime Minister of the
Republic of Kosova

Glauk Konjufca
Speaker of the Assembly
of the Republic of Kosova

To: Dora Bakoyannis, Rapporteur
Committee on Political Affairs and Democracy, PACE

Conventions

As regards the functioning of democratic institutions and the respect of the rule of law:

- fully respect the independence of the judiciary including by refraining from undue criticism undermining trust in the judiciary;
- continue to improve the quality and effectiveness of the judiciary;
- continue to fight against corruption and organised crime;
- ensure that expropriations are conducted in the strictest respect of the law and that any future legislation in this area is fully in compliance with the Ahtisaari Plan, including with regard to the protection of the properties of the Serbian Orthodox Church; amend accordingly the draft law on Expropriation of Immovable Property, which has been submitted to the Assembly of Kosovo, at the earliest possible date;
- take all measures to de-escalate tensions in the north of Kosovo and refrain from decisions which may affect the rights and living conditions of the Serb community and lead to a further deterioration of the security situation;
- take urgent measures to promote the reintegration of Kosovo Serbs in the police force, the judiciary and the prosecution in the north of Kosovo;
- refrain from using special police in the north of Kosovo for ordinary police tasks, ensure that they are deployed only in case of necessity, and step up co-operation with KFOR and EULEX.

As regards human rights and protection of non-majority communities:

- ensure the effective implementation of the legal framework for the protection of national minorities;
- take substantial and tangible steps with a view to implementing all articles of the Brussels and of the Ohrid Agreements which includes establishing the Association of Serb majority municipalities as soon as possible;
- address urgently the absence of a comprehensive and co-ordinated approach on minority matters and rights. Such an approach needs to be developed and implemented in co-operation with those concerned and in ways which reflect the specific needs of different communities;
- allocate sufficient resources to effectively implement the legislation on the use of languages and ensure the legal entrenchment, independence, and provision of adequate resources for the Office of the Language Commissioner;
- step up measures to support the socio-economic integration and political participation of persons belonging to non-majority communities;
- take visible and meaningful measures to promote reconciliation between Kosovo's communities, including in political discourse; adopt concrete strategies for inter-community dialogue and for reconciliation-oriented spaces and activities, in particular in education, in order to pave the way for inclusive societal development and trust;
- promote teaching of non-majority languages in schools;

- ensure the effective access to good quality primary and secondary education and textbooks for all children, including children with disabilities, children belonging to non-majority communities, and children from disadvantaged groups.

As regards international relations:

- continue to engage in the EU-facilitated dialogue and honour the commitments and obligations undertaken under its aegis;
- put genuine efforts into the process of normalisation of relations with Serbia;
- settle international disputes in a peaceful manner and promote good neighbourly relations in the region.

Appendix 3 – Conclusions of the eminent lawyers’ report on the compliance of the legal system of Kosovo with the Council of Europe’s fundamental principles

(Report declassified by the Bureau on 27 November 2023)

PART VI: KEY CONCLUSIONS

1. The legal framework in Kosovo was strongly influenced by the International Community and this influence certainly contributed to the fact that the legal rules are generally in line with international standards, or, as is the case for the Constitution, go beyond these standards. This does not mean, however, that there are no problems with respect to the implementation of the standards in practice.
2. Partly these are problems similar to those encountered in other countries in the region, partly these are problems due to the specific situation in Kosovo and the tensions between the majority and the Kosovo Serb community (and to the tensions with Serbia). These tensions are not only relevant for the situation with respect to human and minority rights, but also impact the functioning of the democratic institutions and the judicial system.
3. Increased co-operation with the Council of Europe could contribute to the improvement of the situation. Local interlocutors among the authorities as well as civil society believe firmly that the extension of the jurisdiction of the European Court of Human Rights to Kosovo would contribute considerably to the improvement of respect for human rights.
4. As regards Council of Europe standards of **democracy**, Kosovo can be regarded as a functioning parliamentary democracy, and it provides a level of local self-government generally in accordance with Council of Europe standards. To further improve the situation:
5. The authorities should abandon their opposition to the establishment of an association of Serb majority municipalities and enter into negotiations in good faith on the establishment of such an association.
6. With respect to the **rule of law**, the legal framework in Kosovo generally corresponds to Council of Europe standards and provides in particular strong guarantees for the independence of the judiciary. In practice, while the Constitutional Court plays an important role furthering the rule of law, there are still problems with the functioning of the ordinary courts and the current tensions make the situation of the courts in the north quite difficult. While the political organs recently have shown more determination to fight corruption and organised crime, they do not always fully respect the independence of the judiciary and there is a worrying tendency to excessively use special police forces in northern Kosovo.
7. To improve the situation, the authorities should in particular:
 - implement without further delay the judgment of the Constitutional Court in the Visoki Decani case;
 - fully respect the independence of the judiciary including by refraining from undue criticism undermining trust in the judiciary;
 - continue their efforts to reform the judiciary, in co-operation with the Council of Europe and fully respecting Council of Europe standards;
 - take the necessary steps to ensure that property claims by refugees and IDPs are adjudicated within reasonable time;
 - continue their efforts to combat corruption and organised crime and ensure the proper implementation of the new legislation in this area;
 - refrain from using special police forces in northern Kosovo to carry out ordinary police tasks and ensure that such forces are deployed only where necessary and in close co-ordination with KFOR and EULEX.
8. Regarding the respect for **human rights**, including the rights of minorities, the authorities should in particular:
 - ensure the effective access to good quality primary and secondary education and textbooks for *all* children, including children with disabilities and children belonging to other disadvantaged groups such as Roma, Ashkali and Egyptians;
 - address urgently the absence of a comprehensive and co-ordinated approach on minority matters and rights. Such an approach needs to be developed and implemented in co-operation with those concerned and in ways which reflect the specific needs of different communities;

- address the persisting problems in the implementation and monitoring of language legislation, including at the municipal level and ensure as a matter of priority the legal entrenchment, independence, adequate resources and continuity of functioning of the Language Commissioner;
- adopt concrete strategies for inter-community dialogue and for reconciliation-oriented spaces and activities, in particular in education, in order to pave the way for inclusive societal development and trust.

Appendix 4 – Programme of the rapporteur’s fact-finding visit to Kosovo

Wednesday, 1 November 2023

- 20h00 Working dinner with the international community:
- Ambassador Jeff Hovenier, United States
 - Ambassador Jörn Rohde, Germany
 - Mr Cyprien Francois, Deputy Head of Mission, France
 - Mr Paul O’Connor, Deputy Head of Mission, United Kingdom
 - Ambassador Tomáš Szunyog, Head of the European Union Office, EU Special Representative
 - Ambassador Michael Davenport, Head of the OSCE
 - Ambassador Heleni Vakalli, Head of the Liaison Office of Greece

Thursday, 2 November 2023

- 10h00 Meeting with Ms Vjosa Osmani Sadriu, President of Kosovo
- 12h45 Working lunch with media representatives
- 14h00 Meeting with Mr Albin Kurti, Prime Minister of Kosovo
- 17h30 Meeting with Father Sava, Abbot of the Visoki Dečani Monastery

Friday, 3 November 2023

- 9h00 Working breakfast with the delegation of the Assembly of Kosovo to the Parliamentary Assembly:
- Ms Saranda Bogujevci, Chairperson of the delegation
 - Mr Arben Gashi, deputy Chairperson
 - Mr Enis Kervan, member
 - Ms Ariana Musliu, substitute member
 - Mr Besnik Tahiri, substitute member
- 11h30 Meeting with Mr Glauk Konjufca, President of the Assembly of Kosovo
- 14h30 Meeting with Srpska Lista (in North Mitrovica):
- Mr Zlatan Elek, President
 - Mr Dragisa Milović, former mayor of Zvečan
 - Mr Milan Radojević, former mayor of North Mitrovica
 - Mr Zoran Todić, former mayor of Leposavić
 - Mr Srđan Vulović, former mayor of Zubin Potok
 - Mr Igor Simić, former member of the Assembly of Kosovo
- 16h00 Meeting with civil society organisations (in North Mitrovica):
- Advocacy Center for Democratic Culture
 - New Social Initiative
 - NGO CASA
 - NGO AKTIV