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The International Protection of Human Rights in Post-War Kosovo

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ABSTRACT

The application and incorporation of international instruments for the protection of human rights into national legislation is an advancement and a step forward in the creation of the conditions and favorable environment for ensuring respect, promotion and protection of the human rights according to the international standards set in the treaties. This thesis contributes to the identification of the consequences of the lack of access to international mechanisms for the protection of human rights, despite the inclusion of international instruments and the unilateral will to apply them in national legislation. Throughout this paper and by taking Kosovo as a case study through an evaluation will be showed that the lack of accountability has taken place during the UN Administration in Kosovo, due to the lack of international mechanisms to address human rights violations through individual complaints. After identifying the presence of impunity as a result of non-accountability, this research paper explores the effectiveness of new established national mechanisms in post-independent Kosovo in attempting to provide human rights protection and the challenges for ensuring such protection will be assessed. Kosovo's membership in the Council of Europe and its mechanisms, in particular its inclusion under the jurisdiction of the European Court of Human Rights and its benefits in improving the situation of human rights protection will be illustrated, leading to the recommendation of the inclusion of the latter in this Human Rights Organization.

TABLE OF ABBREVIATIONS

CoE	Council of Europe
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
UNMIK	United Nations Mission in Kosovo
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICSECR	International Covenant on Social, Economic, and Cultural Rights
UN	United Nations
NATO	North Atlantic Treaty Organization
KFOR	Kosovo Force
SRSG	Special Representative of the Secretary-General

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INTRODUCTION

1.1 PROBLEM DIAGNOSIS

According to the International Law on Human Rights, states assume international obligations when they ratify international human rights instruments (conventions, treaties), which they adapt and incorporate into national legislation for practical implementation, and for their violation states are supposed to be held accountable, or citizens should have an address beyond the installed domestic mechanisms, to address them when the state violates human rights. Kosovo has been applying the International Law on Human Rights since the war ended in 1999, however, its citizens have not yet acquired the right to refer to the European Court of Human Rights when their rights are violated. As a consequence of this, the unaccountability of government institutions has turned out to be pronounced and impunity has turned into a disturbing phenomenon for the further development of society.

It has been argued that Kosovo's possible membership in the Council of Europe would affect the increase of standards and improve the protection of human rights in two ways: First, by having access to the European Court, private individuals would be given the right to file complaints when their human rights as stipulated in the Constitution and the ECHR are violated through which states could be held accountable and secondly, through supervisory mechanisms and their direct positive impact in improving the human rights situation. The suspension of Russia from the Council of Europe has created a favorable momentum for Kosovo in its integration path towards membership in the Council of Europe, even though there are still different attitudes and doubts about Kosovo's membership in this organization. These events make up the right moment to write this paper about how for two decades citizens of Kosovo didn't have access to any international mechanisms for the protection of human rights and what impact has it caused in practice. At the very end, but not in terms of importance, this paper aims to get the attention of the international community on the issue of human rights in this part of European continent.

1.2 RESEARCH QUESTIONS

This paper will identify the consequences of the non-accession of the citizens of Kosovo to the international mechanisms for the protection of human rights during the administration of the United Nations Organization, and then evaluate the efforts of the post-independent institutions of Kosovo in building national mechanisms. In 2008, for the protection of human rights, the installation of national mechanisms and the identification of challenges for such protection, as well as will illustrate how Kosovo's accession to the Council of Europe would be a way to improve and raise the protection of human rights in Kosovo. The main purpose of this paper is to contribute to the various debates about the consequences of non-action in the international mechanisms that are of a judicial nature, in the field of human rights in Kosovo. To do this, this paper aims at giving answers to the following research questions: (1) *Have there been human rights violations in Kosovo during the United Nations Interim Administration in Kosovo?* (2) *To what extent are protected human rights in post-independent Kosovo?* and, (3) *Is Kosovo willing to meet the criteria for membership in the Council of Europe, and can the latter improve the human rights situation?*

1.3 SCOPE

The scope of this work extends to the post-war period in Kosovo: the period of the administration of the United Nations and the period after the declaration of independence until the period when Kosovo applies for membership in the Council of Europe, therefore, throughout this paper we will refer to the national law, international law, as well as the international organizations to the extent that is required to clarify the obstacles of bringing international mechanism for the protection of human rights towards citizens of Kosovo. It will be seen that the inclusion of international instruments into the domestic law without being granted with the access to the international mechanisms is insufficient for ensuring full protection of human rights.

1.4 METHODOLOGY

To answer the questions of this paper, detailed researches have been performed by browsing literature from different books and official documents as a primary source such as Council of Europe documents, regulations, and national legislation of Kosovo along with the secondary sources such as international reports, several articles, and different data from the well-known international organizations such as Amnesty International, Human Rights Watch and other international platforms and indexes which provide sufficient recordings on the human rights issues. Moreover, a comparative approach has been used throughout the paper, more specifically in the chapter 4 when answering the question of whether Kosovo has the ability and the willingness to meet the membership criteria set by the Council of Europe. Finally, the paper through its chronological order and comparisons has put it on surface the call towards international human rights organizations on the necessity of being more human centered rather than state centered when it comes to the international protection of human rights.

1.5 STRUCTURE

The structure of this research paper is organized and divided in five chapters. Chapter 2 will first and foremost make an introduction to the concept of International Protection of Human Rights and by elaborating Kosovo as a case study it will be shown that the violation of human rights has triggered the conflict which later led to war. In particular the chapter aims at showing how the UNMIK failed in protecting human rights in Kosovo, regardless of the inclusion of the International Instruments for the protection of human rights into the domestic law. Following the chapter 1, an evaluation will be made in Chapter 3 on the establishment of the national mechanisms for human rights protection in post-independent Kosovo with a special focus on assessing their effectiveness in the protection of human rights.

Finally, Chapter 4 will be more focused in exploring Kosovo's ability and willingness to meet the criteria for membership in the Council of Europe and throughout this evaluation it will be shown that access to the European Court of Human Rights as a human rights mechanism could be very beneficial for the citizens of Kosovo and how the latter would improve the situation of the human rights protection.

INTERNATIONAL PROTECTION OF HUMAN RIGHTS IN KOSOVO DURING UN ADMINISTRATION

This chapter is organized into three parts, where each part deals with a specific issue related to the international protection of human rights during the Provisional Administration of the United Nations, in post-war Kosovo. The first section begins by outlining the concept of International protection of human rights, and by taking Kosovo as a case study we will show that non-protection of human rights triggers conflict. The second part of the chapter provides an overview of the legal framework, legislation, and international instruments included in the Applicable Law as a failed attempt to build a national system for the protection of human rights as an urgent need in a society that has just emerged from the war, showing that in this period there have been human rights violations. The third part will be more focused on identifying and analyzing the lack of UNMIK's accountability for the human rights violations which has been developed as a result of the local population's non-access to international mechanisms to address these violations.

2.1. THE CONCEPT OF INTERNATIONAL PROTECTION OF HUMAN RIGHTS

In the contemporary world, international human rights law in most cases refers to promotion of human rights which is covered sufficiently as a concept by various studies, in contrast to international protection of human rights which seems to be more problematic in terms of its functioning in practice, and as such requires extra attention to address it.¹ The idea of internationally protected human rights originated from the tragic events of World War II², and its aftermath, and highlighted the importance of ensuring international protection of human rights in response to the tragic events of that time and as an oath not to allow the recurrence of atrocities that occurred before.

¹ B, G. Ramcharan, *The Concept and Present Status of the International Protection of Human Rights*, (1989), page. 9 <https://brill.com/view/book/9789004478312/B9789004478312_s005.xml> accessed 22/06/2022.

² Franciszek Przetacznik, *The socialist Concept of Protection of Human Rights*. *Social Research* 38, no.2 (1971).

The issue of human rights in the past has been treated as an area of internal competence of each state, therefore their regulation is done through national legislation, laws, declarations, or the Constitution³, excluding the involvement of the international community in dealing with and receiving in the protection of the human rights of different states as it is considered as interference in the internal affairs of another state.⁴

The establishment of the United Nations (UN) immediately after the end of World War II, in 1945, marks a major achievement in the preservation of peace, the promotion, and international protection of human rights in the whole world.⁵ This achievement could not be better fulfilled than with the most important document in the promotion and protection of human rights, although it did not have any legal and binding force on the states⁶, again, it served to confirm once again the principle that Human rights are now not only a national issue of states but on the one hand, they are placed under international protectorate and on the other hand, their violation by states is a matter of international interest.⁷ For the efforts and goals of the United Nations, expressed in the United Nations Charter and the Universal Declaration, to be better complemented and put into practice, regional systems are being set up, such as the European system of human rights (Council of Europe), in 1949, followed by the American and African systems, to provide and ensure the protection of human rights appropriate to the region covered by these systems.⁸

The International Law on Human Rights has been well developed and supplemented by conventions, treaties, and other documents of a legal and binding nature for states⁹ such as the International Covenant on Civil and Political Rights, adopted in 1966 and came into force in 1967, which guarantees, among

³ Jordan Daci, *Human Rights*, third edition, Tirane, 2011, page.56

⁴ Zejnullah Gruda, *International Protection of Human Rights*, Prishtine (2010), page. 4

⁵ Peter Nadin., “The United Nations: A History of Success and Failure.” *AQ: Australian Quarterly* 90, no. 4 (2019): 11–17. The article can be found here: <https://www.jstor.org/stable/26773344>. Accessed 22/06/2022.

⁶ John P. Humphrey., “The Universal Declaration of Human Rights.” *International Journal* 4, no. 4 (1949): page 366

⁷ John Trent and Laura Schnurr., “Promoting and Protecting Human Rights.” In *A United Nations Renaissance: What the UN Is, and What It Could Be*, 1st ed., 98–123. Verlag Barbara Budrich, 2018. See more: <https://doi.org/10.2307/j.ctvdf03xp.9>.

⁸ Thomas Buergenthal., “The Evolving International Human Rights System.” *The American Journal of International Law* 100, no. 4 (2006): Page, 785, The journal can be found here: <http://www.jstor.org/stable/4126317>.

⁹ United Nations, *Peace, dignity and equality on a healthy planet, The Foundation of International Human Rights Law*. See more: < <https://www.un.org/en/chronicle/article/international-human-rights-law-short-history>> accessed 15/06/2022.

others, the right to free movement, the right to life, freedom of religion, freedom of speech, freedom of assembly, and the right to a fair trial.¹⁰ The second generation of human rights consists of the International Covenant on Social, Economic, and Cultural Rights, based on which states are obliged to ensure and protect their citizens the right to work, the right to health, the right to education, and the right to non-discrimination.¹¹

Thus, viewed from a national perspective, states today play an extremely important role in the protection of human rights, because it is universally known that they are called to be the main guarantors, initially at the domestic level, with the duty to protect the rights of citizens¹², through the internal legal system, the judicial system, policies, and procedures envisaged to ensure full enjoyment and protection in practice. As Roosevelt had said:

‘Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, and equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere’¹³

From this perspective, the question arises as to whether the protection of human rights is sufficient only at the national level, without any international oversight? If the national level does not provide protection and does not create the conditions for the enjoyment of human rights as stipulated and defined in the international treaties in the field of human rights, then should an international mechanism come

¹⁰ Multilateral International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December, 1966. Document no. 14668. See the whole text: <<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>>, accessed 15/06/2022.

¹¹ International Covenant on Economic, Social and Cultural Rights, United Nations, 1967. See more about ICESCR <https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch_iv_03.pdf> accessed 15/06/2022.

¹² Global Citizenship Commission. “Responsibility for Human Rights.” In *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World*, edited by Gordon Brown, 1st ed., 2:71–80. Open Book Publishers, 2016. <http://www.jstor.org/stable/j.ctt1bpmb7v.13>.

¹³ Eleanor Roosevelt “The Great Question” remarks delivered at the United Nations in New York on March 27, 1958. See more: <<https://harpers.org/2007/12/roosevelt-on-human-rights-in-the-small-places/>> accessed 23/06/2022.

into play to ensure that these rights are protected first and foremost at the national level as well as ensuring accountability of the human rights violators? As we will see later in this paper through concrete examples we will show how necessary it is to introduce human rights under the international protectorate, and not only through involvement in international instruments (treaties, conventions), but through international mechanisms (Courts), especially in cases where the states themselves are the main abusers and violators of human rights of citizens within its jurisdiction.

According to International Law, when states become part of various international human rights treaties, by ratifying them and making them part of their domestic legislation, they assume the international legal obligation to protect human rights according to the standards as defined precisely in those instruments.¹⁴ The obligation of the state to respect human rights is expressed in the Declaration on the Rights and Duties of States:

‘Every State has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedom, without distinction as to race, sex, language, or religion’¹⁵

Furthermore, in this statement, respectively Article 13 requires that:

‘Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.’¹⁶

As noted above, there are many cases when states fail to meet their obligations under the treaties and International Human Rights Law, and the situation becomes even worse when the state

¹⁴ United Nations, The Office of the High Commissioner for Human Rights, ‘International Human Rights Law, instruments and mechanisms.’ See more, < [¹⁵ United Nations, Draft Declaration on Rights and Duties of States, 1949. See the whole text of the Declaration: \[https://legal.un.org/ilc/texts/instruments/english/draft_articles/2_1_1949.pdf\]\(https://legal.un.org/ilc/texts/instruments/english/draft_articles/2_1_1949.pdf\) accessed 24/06/2022.](https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law#:~:text=The%20obligation%20to%20protect%20requires,enjoyment%20of%20basic%20human%20rights.> accessed 24/06/2022.</p></div><div data-bbox=)

¹⁶ Ibid.

becomes the main abuser and violator of these human rights protected by the international instruments.¹⁷ For example, Yugoslavia, part of which Kosovo was also an autonomous province and constituted one of the national minorities within Serbia back then, had first signed and ratified the United Nations Charter and later the other two instruments such as The International Covenant on Civil and Political Rights (ICCPR), and The International Covenant on Economic, Social and Cultural Rights (ICESCR), in 1967¹⁸, which constituted the International Bill of Human Rights. However, the issue of human rights violations was brought to attention by the Parliamentary Assembly of the Council of Europe in 1995, based on which it expressed its concern about those violations including torture, police brutality, arbitrary arrest, political trials, and irregularities in legal proceedings.¹⁹

Furthermore, according to the report of the International Organization *Human Rights Watch* in 1996, the violation of civil and political rights in particular against Albanians has been evident. This report shows that the Albanians were imprisoned by the repressive regime and brought to prisons without any court decision and were held in detention, mistreated, and beaten.²⁰ The judicial system has been under the absolute control of the Serbian state, in which case the right to a fair trial, the right to a fair hearing, and the right to an effective remedy have been denied constantly, especially after the abolishment of Kosovo's autonomy in 1989.²¹ According to this document, between 1995 and 1996, at least 19 Albanians died in detention centers as a result of abuses, and ill-treatment caused to them by police officers. In addition, many other rights have been denied to Albanians, for example, the right to free movement.²²

¹⁷ Michael Stohl, David Carleton, George Lopez, and Stephen Samuels., "State Violation of Human Rights: Issues and Problems of Measurement.", *Human Rights Quarterly* 8, no.4 (1986), Page.595. See more: < <https://doi.org/10.2307/762194>.> accessed 26/06/2022.

¹⁸ See the original document of the Multilateral International Covenant on Civil and Political Rights. It was adopted by the General Assembly of the United Nations on 19 December, 1966. Yugoslavia was among other signatory parties.

¹⁹ See report doc. No. 7444 (December, 1995), of the Parliamentary Assembly of the Council of Europe. Available here: < <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=7034&lang=EN>>

²⁰ See the report issued by the Human Rights Watch, on December 1996, Vol 8, No.18., "Persecution Persists: Human Rights Violation in Kosovo". The report can be found here: < <https://www.hrw.org/reports/1996/Serbia.htm>> accessed 25/06/2022.

²¹ Ibid.

²² UN Document., Secretary General 'Human Rights situation in Kosovo, 1997. The report can be found here: <<https://reliefweb.int/report/serbia/un-ga-human-rights-situation-kosovo-report-secretary-general> >accessed 25/06/2022.

Moreover, the issue of human rights violations in Kosovo during that period of time was raised by Amnesty International through its reporting. Kosovo Albanians have always been denied the right to obtain passports and other civil documents, leaving some others stateless.²³ As a result of systematic human rights violations, Human Rights Watch Helsinki had asked the United Nations to reject Yugoslavia's request to become its member, as long as it does not respect and protect human rights throughout its territory regardless of ethnicity.²⁴

According to the conventional definition *'human rights are internationally agreed values, standards or rules regulating the conduct of states towards their own citizens under their jurisdiction and towards non-citizens.'*²⁵

This section showed by illustrating the case of Kosovo that non-respect and non-protection of international human rights also internal causes conflict, putting a whole society in great danger and insecurity.

2.2. THE DEPLOYMENT OF THE UN INTERIM ADMINISTRATION IN KOSOVO

In this section, we shall first and foremost turn our attention back briefly to the establishment of the new international administration in Kosovo and its organizational structure, then consider its obligations to rebuild institutions and the legal framework for protecting human rights. Lastly, its capacity in creating an efficient judiciary system will be argued.

NATO air intervention against Serbian military and police forces, along with the reaching of a peace agreement on June 9, 1999²⁶, paved the way for the establishment of a new international civilian

²³ Amnesty International., 'Yugoslavia- A Human Rights Crisis in Kosovo Province-1998', This report was prepared based on the information gathered during Amnesty International mission in Yugoslavia to investigate human rights violations. See more about the report : < <https://www.amnesty.org/es/wp-content/uploads/2021/06/eur700321998en.pdf>> accessed 26/06/2022.

²⁴ Ibid.

²⁵ Peter R.Baehr, Human Rights : Universality in Practice 1 (1999)

²⁶ Bashkim Sh. Kajtazi, *Building an independent judicial system in Kosovo, Prishtine*, (2010), page 38,

administration, unique in nature and the mandate it carried with it on the basis of which it would undertake the reconstruction of the society and the provisional institutions of self-government of Kosovo.²⁷ In a post-war country, accompanied by an institutional and legal vacuum, it has been extremely difficult to guarantee the International Protection of Freedoms and Human Rights.²⁸ As Jan Knippers Black expressed in her book *'Initial response to abuse may take the form of outrage that impels mobilization sufficient to give rise to laws and institution.'*²⁹

In order to ensure international protection of human rights in countries that have experienced conflict and war, it is first necessary: a) to build lasting peace because it is essential to ensure the enjoyment of human rights³⁰, b) to guarantee human security, which is closely linked to human dignity and today is placed in the center of attention due to the importance that has for human rights³¹, c) reconstruction from scratch of institutions, especially the judicial system and the legislative framework, as well as, d) protection and advancement of human rights.³²

To achieve these objectives, UNMIK, according to resolution 1244 has been structured and organized in three main pillars:

- The first pillar - consisted of the police and the judiciary (United Nations competence),
- The second pillar - constituted the construction of civil administration (competence of the United Nations),
- The third pillar - was the democratization and establishment of institutions (competence of the Organization for Security and Cooperation in Europe), and

²⁷ Simon Chesterman, International Peace Institute 'Kosovo in Limbo: State-Building and "Sustainable Autonomy"' (2001), New York. Page 4. The whole article can be found here: < https://www.jstor.org/stable/pdf/resrep09567.pdf?refreqid=fastly-default%3A45e265214784d4e0e422206746a26b5e&ab_segments=0%2F5YC-6442%2Ftest&origin=search-results> accessed 24/06/2022.

²⁸ Ibid.,

²⁹ Jan Knippers Black., 'The Politics of Human Rights Protection', (2009). Page 46.

³⁰ Zlatko Isakovic, '*Choosing between peace and human rights*'?, page 37, (2001)

³¹ United Nations, Office for the Coordination of Humanitarian Affairs "*Human Security in Theory and Practice*", Page 4. The handbook can be found here: <<https://www.unocha.org/sites/dms/HSU/Publications%20and%20Products/Human%20Security%20Tools/Human%20Security%20in%20Theory%20and%20Practice%20English.pdf>> accessed 25/06/2022.

³² See article 10 of the UN resolution 1244. The whole text of the resolution is included in the United Nations Digital Library and can be found here: < <https://digitallibrary.un.org/record/274488?ln=en>> accessed 25/06/2022.

- The Fourth pillar - constituted economic reconstruction (competence of the European Union).³³ Meanwhile, the NATO Military Mission in Kosovo (KFOR) was responsible for providing security in the territory of Kosovo.³⁴

According to the mandate given by the United Nations, this interim administration has exercised all the authorities and powers that a normal state exercises.³⁵ It is of the utmost importance to consider that the highest authority in Kosovo during the administration of the United Nations in Kosovo has been the Special Representative of the Secretary-General (SRSG), the UN, in charge of exercising all three powers: legislative power, executive power, and the judiciary.³⁶ All these powers were transferred to the Kosovo authorities immediately after the declaration of Independence, in 2008. As we will see later throughout this chapter, the non-separation of powers is contrary to democratic principles and that has called into question the credibility of this authority, especially among the local population in Kosovo.³⁷

The incorporation of international instruments for the protection of human rights (Universal Declaration of Human Rights and several protocols of the European Convention on Human Rights) was partially completed based on the Regulation no. 2000/59³⁸, on the Applicable Law in Kosovo, which means that they have become part of the national legislation (which consisted of regulations issued by UNMIK and laws applied before 1989). The application of these instruments had to be taken into account by all institutions, including the judiciary:

- Universal Declaration of Human Rights,
- European Convention for the Protection of Human Rights and Freedoms,
- International Covenant on Civil and Political Rights,

³³ Mathias Ruffert., “The Administration of Kosovo and East Timor by the International Community.” *The International and Comparative Law Quarterly* 50, no.3 (2001): Page 619. This journal article can be found here: <https://www.jstor.org/stable/761707?read-now=1&refreqid=excelsior%3A2cf9b29ca9708358e7e8eee1468a3164&seq=7>

³⁴ The North Atlantic Treaty Organization. ‘NATO’s role in Kosovo’. See more about the objectives of the NATO and KFOR presence in Kosovo here: https://www.nato.int/cps/en/natolive/topics_48818.htm. Accessed 25/06/2022.

³⁵ See article 6 of the UN resolution 1244, on the role of the Special Representative of the UN Secretary General.

³⁶ See section 1 of the UNMIK Regulation 1999/1, 25 July 1999, on the Authority of the Interim Administration in Kosovo. The regulation can be found here: https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999_01.htm < accessed 25/06/2022.

³⁷ Ibid.

³⁸ UNMIK Regulation no. 2000/59 regulated the inclusion of the internationally human rights standards. Available here: https://unmik.unmissions.org/sites/default/files/regulations/02english/E2000regs/RE2000_59.htm <

- International Covenant on Economic, Social, and Cultural Rights
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- International Convention on the Rights of the Child.

One of the most vital forms of ensuring the protection of human rights at the national level is an independent judiciary, whose role is irreplaceable in providing institutional protection of human rights.³⁹ As noted above, at the time UNMIK was stationed in Kosovo, there was no court system in place, however, it managed to establish a structure to deal mainly with criminal cases. 24 courts were formed at the municipal level throughout the territory of Kosovo, however, UNMIK and the international community in Kosovo have failed to build an efficient and independent judiciary system.⁴⁰ A proper judicial and police system would contribute to the establishment of accountability as one of the main principles of a democratic and prosperous society.

UNMIK's failure to build a justice system is linked to two elements:

- Lack of lawyers and experts in the field of justice from the ranks of the civilian population (this has come as a result of the denial of the right of Kosovo Albanians to education after 1989 when Serbia abolished Kosovo's autonomy and installed a repressive regime against the population), and the ban to practice the profession of lawyer, judge or prosecutor of those few individuals who had completed their education in the field of Justice.⁴¹ This has undoubtedly caused delays in building the justice system in the country during UN Interim Administration;

- Most of the judges and prosecutors who were later elected by the UN authorities did not have the necessary professional knowledge of applicable law and did not receive initial training on

³⁹ Fahed Abul Ethem., *"The Role of Judiciary in the Protection of Human Rights and Development: A Middle Eastern Perspective."*, Fordham International Law Journal., Volume 26, Issue 3, (2002)., Page:

⁴⁰ Seth G. Jones, Jeremy M. Wilson, Andrew Rathmell and K. Jack Riley. "Establishing Law and Order After Conflict", (RAND Corporation, 2005). Available here: <https://www.jstor.org/stable/10.7249/mg374rc11>>

⁴¹ International Crisis Group. 'The Rule of Law in Independent Kosovo', *International Crisis Group (2010)*, Page: 13. Available here: < <http://www.jstor.org/stable/resrep37031.6>>

international human rights standards. In addition to building the judicial and prosecutorial system, UNMIK has been responsible for investigating crimes committed during and after the conflict.⁴²

Amnesty International, which monitored UNMIK's work in the field of justice from 1999-2000, highlights the failure of international prosecutors and judges recruited by UNMIK, who were part of the prosecutorial and judiciary system of Kosovo back then.⁴³ This report highlights UNMIK's inability to investigate cases of enforced disappearances that occurred during and after the war. For example, in the 27 cases of abduction and enforced disappearance, no individual was brought to justice even though there was evidence to start an investigation.⁴⁴

Another example that brings to attention UNMIK's failure to provide justice to victims has been when many women who were sexually abused during the war in Kosovo presented their cases and testimonies to UNMIK police⁴⁵, however, the latter has not taken any legal action to initiate investigations and examine the testimonies given by war victims.⁴⁶ Failure to take action to investigate such cases is contrary to any international standard relating to the right of victims to seek justice.⁴⁷ As noted above, international human rights instruments became part of the applicable law in Kosovo, however, this has not been sufficient to ensure the implementation of those standards in practice. In the period 1999-2000, several ethnically motivated killings took place for which UNMIK police and KFOR forces have not conducted the necessary investigations to bring to justice the perpetrators of these criminal offenses. In this case, the right to life and human security have not been guaranteed according to the standards set by the International Covenant on Civil and Political Rights.⁴⁸

⁴² Wendy S. Betts, Scott N. Carlson & Gregory Gisvold, *The post-conflict transitional administration of Kosovo and the lessons-learned in efforts to establishing a judiciary and rule of law*, 22 MICH.J.INT'L L. 371 (2001).

⁴³ Amnesty International, *Kosovo: UNMIK's Legacy*, The failure to deliver justice and reparation to the relative of abducted, (2013). The report can be found here: < <file:///C:/Users/HP/Downloads/Kosovo%20UNMIKs%20Legacy.pdf>> accessed 25/06/2022.

⁴⁴ Ibid.

⁴⁵ Judita Krasniqi., "*Human Rights Violations in Post-Conflict Areas as a Threat to Peace and Security: UN Mission in Kosovo*". *Securitologia No 2*, s. 68-8, (2017): Page, 77. DOI: 10.4467/24497436SCU.17.008.9786. Available here: < <https://www.ejournals.eu/Securitologia/2017/No-2/art/13135/>> accessed 28/06/2022.

⁴⁶ Ibid.,

⁴⁷ Ibid.,

⁴⁸ See page 18 and 22 of the Amnesty International report on the human rights violation in Kosovo under UNMIK administration. (July,2006). The report can be found here: < <https://www.amnesty.org/en/wp-content/uploads/2021/08/eur700112006en.pdf>> accessed 09/07/2022.

The failure of UNMIK to guarantee the human rights deriving from the International Law on the Protection of Human Rights is also documented by the ex-officio investigations conducted by the Ombudsman who came to the conclusion that in reality, UNMIK did not show any efficiency in the investigation of murder cases, especially in the first year after the war in Kosovo, making impunity as commonplace and a dangerous precedent for the future. UNMIK's lack of accountability will be covered in the next section of this chapter.⁴⁹

2.3. LACK OF ACCOUNTABILITY

Now that we have highlighted the UN's failure to establish an efficient prosecutorial and judicial system, this section will focus primarily on exploring the human rights violations committed by UNMIK and identifying the accountability gaps for addressing them.

The promotion and protection of human rights are one of the main pillars of any United Nations peacekeeping mission.⁵⁰ Peace agreements in the past did not include the protection of human rights issues, for example during the Cold War, the protection of human rights did not constitute the main substance of the peace agreements, they were more of a traditional character, with the sole purpose: a ceasefire.⁵¹ Compared to the peace agreement that brought an end to the war in Bosnia⁵², the Kosovo peace agreement does not contain any provisions regarding the protection of human rights.⁵³ The failure to address human rights principles in such an agreement has prompted Amnesty International to respond with a number of recommendations for the parties to the agreement to introduce the issue of human rights

⁴⁹ Ibid.

⁵⁰ United Nations Peacekeeping, *Promoting Human Rights*, < <https://peacekeeping.un.org/en/promoting-human-rights>> accessed 12/06/2022.

⁵¹ Ramzi Badran., "Intrastate Peace Agreements and the Durability of Peace." *Conflict Management and Peace Science* 31, no. 2 (2014): Page 195-196

⁵² The United Nations, General Framework Agreement for Peace in Bosnia and Herzegovina, 30 November 1995. Article VII mentions the protection of the displaced persons and calls upon application of the highest human rights standards. See the whole text of the peace agreement here, in particular page 4: https://peacemaker.un.org/sites/peacemaker.un.org/files/BA_951121_DaytonAgreement.pdf accessed 27/06/2022.

⁵³ UN; Military-Technical Agreement between the international security force(KFOR) and the Government of Federal Republic of Yugoslavia and the Republic of Serbia. (1999). The original agreement is available here: < https://peacemaker.un.org/sites/peacemaker.un.org/files/990615_MilitaryTechnicalAgreementKFORYugoslaviaSerbia.pdf> accessed 28/06/2022.

protection in Kosovo, ensuring the protection of minorities and the urgency of conducting war crimes investigations.⁵⁴

Although from a legal perspective, the peace agreement has no legally binding force⁵⁵, it nevertheless constitutes a document based on the joint efforts of the parties involved to pave the way for building a lasting peace through the human rights approach.⁵⁶ Peace is primarily the basis for creating a proper and secure environment in which the full enjoyment of human rights is possible, however, there can be no peace if human rights are not respected and protected. There are two components that are connected and complement each other.⁵⁷ If we analyze the UNMIK mandate from the perspective of democratic principles, UN resolution 1244 has produced an international interim administration that in fact has not provided institutional transparency for the actions it has taken in all of Kosovo's state-building processes.⁵⁸ Viewed through this context, the Special Representative of the Secretary-General (SRSG) of the United Nations, as the highest authority, is authorized under *UNMIK Regulation No. 19999/1 on the powers of the interim administration in Kosovo* to exercise all three powers at the same time: The same authority that issues regulations executes them and administers the judicial system.⁵⁹ Thus, as an authority, the SRSG, in addition to being able to appoint any person to exercise certain functions in the civil administration in Kosovo, was also able to dismiss any judge and appoint another, without any transparent procedure.⁶⁰ The centralization of the three powers at the disposal of an individual or public authority makes it impossible for him to subject himself to the law and the principle of accountability as required in any system of democratic governance, and as such is contrary to

⁵⁴ See all the recommendations set by the Amnesty International related to the Peace Agreement here: <<https://www.amnesty.org/ar/wp-content/uploads/2021/06/eur700911999en.pdf>> accessed 28/06/2022.

⁵⁵ Bell, Christine. "Peace Agreements: Their Nature and Legal Status." *The American Journal of International Law* 100, no. 2 (2006): See page. 385. More information can be found here: <http://www.jstor.org/stable/3651152>. Accessed 27/06/2022.

⁵⁶ Rene Grotenhuis., *Nation –Building as Necessary effort in Fragile States*, Amsterdam University Press (2016), Page 96.

⁵⁷ Ujjwal Kumar Singh., "Human Rights and Peace.", *South Asian Peace Studies: Volume 4* (2008), Page, 6.

⁵⁸ Judita Krasniqi., "*Human Rights Violations in Post-Conflict Areas as a Threat to Peace and Security: UN Mission in Kosovo*", University of Warsaw, Poland. (2017), Page 69.

⁵⁹ See point 1.1 of the first section of the UNMIK Regulation No. 1999/1 on the authority of the Interim Administration. The regulation can be found here: https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999_01.htm accessed 27/06/2022.

⁶⁰ Bashkim Kajtazi., "Construction of the independent judicial system in Kosovo." Prishtine (2010), Page.39.

democratic principles.⁶¹ As Michele Bachelet, UN High Commissioner for Human Rights, in one of the meetings held, pointed out:

*“The principles of the rule of law and accountability are the foundations for all effective promotion and protection of the human right.”*⁶²

Thus, as long as there is no independent mechanism in place that would hold the state, or the United Nations Administration in Kosovo in this case, accountable, then there can be no assurance that there will be a successful transformation of society where democratic principles are respected and implemented; consequently, the impunity of human rights abusers and violators will become commonplace and part of everyday life.⁶³ This is seen as extremely dangerous for society and its overall development. As will be shown below, UNMIK in addition to failing to protect human rights in post-war Kosovo, especially during 1999-2000 due to the lack of capacities in building strong police, judiciary, and prosecutorial system, the latter quickly became inefficient in ensuring a human rights protection.⁶⁴ Kosovo under the United Nations interim administration began to apply the International Human Rights instruments in its domestic legislation, although its citizens did not have the right to access international mechanisms to seek redress for the violations of their rights committed by UNMIK. The absence of such access to international mechanisms has contributed to a large extent to the non-accountability of UNMIK for its human rights violations during its mission in Kosovo.⁶⁵

Seen in this light, the relationship between the state as duty-bearer and individuals as rights-holders lies in the ability of the latter to hold the state accountable for its failure in ensuring the highest standards of

⁶¹ Samuel Cooper W., “Considering ‘Power’ in separation of Powers.” Stanford Law Review, vol:46, no. 2 (1994), Page 363

⁶² Statement of the UN High Commissioner for Human Rights on “*The role of UN-created accountability mechanisms in the global flight against impunity: what’s next?*” in January (2021). See the whole statement here: <https://www.ohchr.org/en/statements/2021/01/role-un-created-accountability-mechanisms-global-flight-against-impunity-whats> accessed 27/06/2022.

⁶³ Navanethem Pillay., “Establishing Effective Accountability Mechanisms for Human Rights Violations”, Delivering Justice, no.4 Vol.XLIX, (December, 2017). See more: < <https://www.un.org/en/chronicle/article/establishing-effective-accountability-mechanisms-human-rights-violations#:~:text=At%20the%20core%20of%20any,an%20effective%20remedy%20and%20reparation.>> accessed 28/06/2022.

⁶⁴ European Commission for Democracy Through Law (Venice Commission), “Opinion on the Human Rights Situation in Kosovo”, (2004). The opinion is available here: < [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)033-e>](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)033-e>)

⁶⁵

full enjoyment of human rights⁶⁶, and by having the opportunity in addressing the violations whenever they occur in order to receive a remedy, initially through domestic courts and then through international mechanisms (For example, European Court of Human Rights). Furthermore, UNMIK headed by the Special Representative of the Secretary-General of the United Nations, and its staff has enjoyed full immunity from prosecution and criminal investigation in the performance of its duties in the territory of Kosovo.⁶⁷ In other words, neither the police, the prosecution nor the local domestic courts have been able to initiate criminal proceedings against UNMIK and its staff. As a result, Kosovars did not have a single address or international mechanism access for filing cases of human rights violations committed by UNMIK.⁶⁸ This constitutes a violation of the most fundamental right guaranteed by Article 6 (the right to court and public hearing) and the right to remedy, of the European Convention on Human Rights.⁶⁹ In addition to that, in March 2006, Human Rights Advisory Panel was created, the first human rights complaints mechanisms in charge of examining alleged violations of human rights by UNMIK, however, its main role was to issue recommendations and not judicial decisions.⁷⁰ The first attempt to establish an accountability mechanism at the national level was the Ombudsman Institution, which was created by UN regulation no. 2000/38,⁷¹ in June 2000. Its mandate was to receive complaints and investigate violations alleged by the local population against UNMIK and its staff in general, however, this remained an unsuccessful attempt, given the fact that it was not a judicial body, it did not issue binding decisions, but only recommendations.⁷²

⁶⁶ UNESDOC Digital Library., “*Paper commissioned for the 2017/8 Global Education Monitoring Report, Accountability in Education: Meeting our commitments*”. (2017), Page. 4. See more: < <https://unesdoc.unesco.org/ark:/48223/pf0000259560>> accessed 28/06/2022.

⁶⁷ UNMIK Regulation no. 2000/47, on the Status, Privileges and Immunities of KFOR and UNMIK and their personnel in Kosovo. Available here: < https://unmik.unmissions.org/sites/default/files/regulations/02english/E2000regs/RE2000_47.htm> accessed 28/06/2022.

⁶⁸ Judita Krasniqi., “*Human Rights Violations in Post-Conflict Areas as a Threat to Peace and Security: UN Mission in Kosovo*”, *Securitologia No 2*, s. 68-8, (2017): Page, 7. DOI: 10.4467/24497436SCU.17.008.9786. Available here: < <https://www.ejournals.eu/Securitologia/2017/No-2/art/13135/>> accessed 28/06/2022.

⁶⁹ See paragraph 1 of Article 6, of the European Convention on Human Rights. The document is available in this link: https://unmik.unmissions.org/sites/default/files/regulations/02english/E2000regs/RE2000_47.htm accessed 28/06/2022.

⁷⁰ UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel. Available here: < [ml99eng \(unmissions.org\)](https://unmik.unmissions.org)> accessed 21/07/2022.

⁷¹ UNMIK/REG/2000/38., 30 June, 2000 on the Establishment of the Ombudsperson Institution in Kosovo. Available here: < https://unmik.unmissions.org/sites/default/files/regulations/02english/E2000regs/RE2000_38.htm> accessed 28/06/2022.

⁷² Marek Nowicki, Christine Chinkin and Francoise Talkens., “*The Human Rights Advisory Panel History and Legacy 2007-2016*”. (2016), Prishtine. Page, 28.

3

HUMAN RIGHTS PROTECTION IN POST-INDEPENDENT KOSOVO

Now that we have identified the lack of accountability as a result of the non-existence of an international mechanism to address human rights violations in Kosovo during the administration of the United Nations, the purpose of this chapter is to evaluate the national mechanisms established by the institutions in post-independent Kosovo aiming to ensure greater protection of human rights, by expanding the inclusion of international instruments for the protection of human rights in the domestic law.

These mechanisms will be evaluated from the context of their effectiveness as well as identification of the challenges faced by the current system to address human rights violations in post-independent Kosovo.

The chapter is divided into two parts, in which case the first part will pay attention to the national legal framework for the protection of human rights, while the second part of this chapter will identify the main challenges faced by the post-war Kosovar society, and analyze their effect on the realization of human rights in Kosovo in the absence of access to international mechanisms, such as international courts.

3.1 HUMAN RIGHTS FRAMEWORK IN KOSOVO

“The vast majority of contemporary constitutions describe the basic principles of the state, the structures and processes of government, and the fundamental rights of citizens in a higher law that cannot be unilaterally changed by an ordinary legislative act. This higher law is usually referred to as a constitution.”⁷³

⁷³ Elliot Bulmer., “What is Constitution? Principles and Concepts”, International Institute for Democracy and Electoral Assistance (2017). ISBN: 978-91-7671-185-9. Available here: < <https://www.idea.int/sites/default/files/publications/what-is-a-constitution-primer.pdf>>

The constitution is the highest legal and political act of a country.⁷⁴ In the juridical aspect, it protects human rights by providing the necessary framework based on which all laws, institutions, and procedures must act.⁷⁵ Acting in accordance with the Constitution means acting fairly and equally in line with the basic human rights and freedoms.⁷⁶ State institutions must be held accountable for unconstitutional acts. This is a fundamental understanding of the Constitution as a standard of behavior or inaction of institutions and as the ultimate guarantee of fundamental rights and freedoms of individuals and groups.⁷⁷ In other words, the constitution is the highest legal guarantee for the well-being and interests of the people and is considered the basic tool for shaping social life and organizing a whole nation by setting legal norms.

In 2008, Kosovo declared its independence with the support of the international community, in which case the responsibilities exercised by UNMIK were transferred to the new institutions resulting from the declaration of independence.⁷⁸ This marked a big step in state building and moving forward the processes for the future of the country. The Constitution of the Republic of Kosovo, which entered into force in June 2008, is the highest legal and political act, which established the main foundations and principles on the basis of which the country will be governed, based on the principles of the separation of powers, and respecting human rights, regardless of ethnicity, gender, age, etc.⁷⁹ The country's constitution is considered a culminating achievement because in the legal aspect it marks a big step in its state building after the administration of Kosovo by the United Nations. The Constitution of Kosovo includes the main principles of equality and human rights which have been transferred to the national legislation and are immediately implementable in practice. The main parts of the Constitution are composed of the most important human rights conventions, directly placed on the national legislation,

⁷⁴ Nora Hedling., “*The fundamentals of a Constitution*”, International IDEA Institute for Democracy and electoral assistance. (April, 2017). See more: < <https://www.idea.int/sites/default/files/publications/the-fundamentals-of-a-constitution.pdf>> accessed 05/07/2022.

⁷⁵ Ibid.

⁷⁶ United Nations Human Rights. Office of the High Commissioner. “*Human Rights and Constitution making*” (New York and Geneva, 2018). Available here: https://www.ohchr.org/sites/default/files/Documents/Publications/ConstitutionMaking_EN.pdf

⁷⁷ Ibid.

⁷⁸ Matt Rosenberg, “A brief History of Kosovo’s Independence”, ThoughtCo. See more here: <<https://www.thoughtco.com/kosovo-independence-overview-1435550>> accessed 05/07/2022.

⁷⁹ See article 3 of the Constitution of Kosovo. Available here: < <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>> accessed 05/07/2022..

and applicable to all institutions, including the courts.⁸⁰ Based on the Declaration of Independence of 2008, Kosovo is determined to respect the European values based on which the Council of Europe was created, committed to respecting pluralistic parliamentary democracy as well as the promotion and protection of human rights as stipulated in the International Instruments.⁸¹

3.1.1 Inclusion of the European Convention into the domestic law

The European Convention on Human Rights was signed on November 4, 1950, entered into force in 1953, and is the first document that transformed declarative rules into contractual rules.⁸² Its importance lies in the fact that it covers a wide range of human rights such as the right to life, the right to a fair trial, the right to freedom of expression and thought, the right to freedom and security, and it offers great protection for vulnerable groups such as the issue of minorities and the protection of children's rights.⁸³ For many countries in the past that have emerged from non-democratic systems, it is also important for Kosovo to develop the maximum efforts of statehood to be in line with the values and standards proclaimed by the international community in the field of the development of democracy, the rule of law, and the protection of human rights.⁸⁴

According to Article 22 of the Constitution of Kosovo: *'Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions'*.⁸⁵

⁸⁰ Group for Legal and Political Studies., "A little used system: State of the Human Rights Framework in Kosovo", (Pristina, 2017), Page: 5. Available here: <http://www.legalpoliticalstudies.org/wp-content/uploads/2018/02/Nje-sistem-pak-i-shfrytezuar-Pakoja-ligjore-e-te-drejtave-te-njeriut-ne-Kosove.pdf> .

⁸¹ Kosovo Declaration of Independence (17.02.2008). The document is available here: < https://www.files.ethz.ch/isn/125409/8009_Kosovo_Independence.pdf> accessed 10/07/2022.

⁸² Zejnullah Gruda., *International Protection of Human Rights (Prishtina, 2010)*, Page:47

⁸³ Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950). Available here: < https://www.echr.coe.int/documents/convention_eng.pdf> accessed 10/07/2022.

⁸⁴ Remzije Istrefi and Ilirjana Islami., "Incorporation of International Human Rights Law into national legislation: The case of Kosovo", *SEER: Journal for Labour and Social Affairs in Eastern Europe* 20, no.1 (2017), Page 4. Available here: <http://www.jstor.org/stable/263911>

⁸⁵ See article 22, point (2), of the Constitution of the Republic of Kosovo. In addition to the Convention, the following protocols are also part of the Constitution: 1) International Covenant on Civil and Political Rights and its Protocols; 2) Council of Europe Framework Convention for the Protection of National Minorities; 3) Convention on the Elimination of All Forms

Kosovo, as the youngest country in the world, has accepted with its free and unilateral will to materialize the standards defined in the European Convention in country, regardless of the fact that it is not a signatory party to the document, on the other hand, not being a signatory party, it does not subject to the international system or any supervisory mechanism regarding its implementation or non-implementation in Kosovo.⁸⁶ However, within the framework of the European Convention, there are two accompanying protocols for which Kosovo is subject to the monitoring of the supervisory mechanism, such as a) Framework Convention of the Council of Europe for the Protection of National Minorities; which is monitored by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) as well as b) Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.⁸⁷

Through the inclusion of the European Convention into the domestic legislation, Kosovo has shown that it is a promoter of stability in the region and cooperative in the field of improving the human rights situation. At the same time, this is also seen as an attempt to further strengthen the international image with the hope that it will serve them when the time comes to apply for membership in the Council of Europe.⁸⁸

3.1.2 The application of the European Court of Human Rights Jurisprudence

To ensure the implementation of the provisions and standards set forth in the European Convention, in 1959 the European Court of Human Rights was founded. This judicial mechanism plays a key role in supervising the practical implementation of the Convention by its member states, and

of Racial Discrimination; 4)) Convention on the Elimination of All Forms of Discrimination Against Women; 5) Convention on the Rights of the Child; 6) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment; The Constitution is available here: < <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>> accessed 05/07/2022.

⁸⁶ Fisnik Korenica and Paul De Hert., “The New Kosovo Constitution and its relationship with the European Convention on Human Rights: Constitutionalization “without “ratification in post-conflict societies.” (*ZaöRV*, 2016): Page, 152-153. Available here :< https://www.zaoerv.de/76_2016/76_2016_1_a_143_166.pdf > accessed 10/07/2022.

⁸⁷ In August 2004, UNMIK and the Council of Europe signed the agreement for monitoring the implementation of the human rights standards set in the European Convention of Human Rights. According to the agreement, Kosovo will be subject to the monitoring mechanisms of CPT and FCNM. See more: <https://rm.coe.int/16806db90e> accessed 10/07/2022.

⁸⁸ Fisnik Korenica and Paul De Hert., “The New Kosovo Constitution and its relationship with the European Convention on Human Rights: Constitutionalization “without “ratification in post-conflict societies.” (*ZaöRV*, 2016): Page, 152-153. Available here :< https://www.zaoerv.de/76_2016/76_2016_1_a_143_166.pdf > accessed 10/07/2022.

through it, individuals can submit their complaints when the state violates their rights and fails to protect them.⁸⁹ Based on Article 46 of the European Convention on Human Rights, the decisions of the European Court are binding for member states and must be implemented at the national level of each respective member state of the Convention. It has been argued that the individual cases presented to the European Court are not so much about human rights as they are about the interpretation of the Convention, however, through the judicial decisions issued by the Court, member states have the opportunity to improve national legislation, issue and amend existing ones in order to be in full compliance with the provisions of the Convention.⁹⁰

Although Kosovo is not included under the jurisdiction of the European Court, the application of the judicial practices of the latter is mandatory for the institutions of justice, especially for the national courts, and the failure to apply the jurisprudence of the European Court represents a violation of the Constitution.⁹¹ However, we will elaborate on how the judicial practices of the European Court are being applied and taken into account in the judicial system in the next part of this chapter.

3.1.3 Constitutional Court

The Constitution of Kosovo foresees in its provisions the creation and granting of the mandate to the Constitutional Court as the last instance to interpret the constitutionality of the Laws with the latter as well as the main mechanism with a judicial character where the complaints of individuals can be filed when the violation of human rights is committed by the state and its institutions.⁹²

The role of the Constitutional Court, however, remains lacking as the latter, according to the Law on the Constitutional Court, does not issue judicial decisions for the compensation of the victims

⁸⁹ International Justice Resource Center., “European Court of Human Rights”. Available here: <https://ijrcenter.org/european-court-of-human-rights/#:~:text=The%20European%20Court%20of%20Human,European%20Convention%20on%20Human%20Rights.> Accessed 10/07/2022.

⁹⁰ C.A.GEARTY., The European Court of Human Rights and the Protection of Civil Liberties: An overview, *The Cambridge Law Journal* 52, no.1 (1993), Page: 7. Available here: < <https://www.jstor.org/stable/4507766>.> accessed 10/07/2022.

⁹¹ See Article 53, of the Constitution of the Republic of Kosovo. Available here: <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>> accessed 10/07/2022.

⁹² See Article 113 of the Constitution of the Republic of Kosovo. According to this provision, individuals can file a complaint before the Constitutional Court following the exhaustion of the all the legal remedies.(Page 46) Available here: <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>>

whose rights have been violated by public authorities, so it deals only with ascertaining violations of the human rights. This is seen as a big shortcoming since the parties cannot realize the right to compensation for the damage caused, which according to the European Convention constitutes a violation of human rights.

3.2 THE JUDICIARY SYSTEM IN KOSOVO

One of the biggest challenges that a post-war society faces is the re-establishment of state institutions and a judicial system in which the local population would have faith.⁹³ After independence, Kosovo inherited a non-functional judicial system with accumulated problems from the time of the administration of the United Nations, and a very confusing legal framework which consisted of the legislation of Yugoslavia, UNMIK regulations, and some laws of Kosovo.⁹⁴

One of the most important values of a democratic society is when human rights are respected to the extent that people are able to enjoy and exercise them according to the highest international standards, however, it would have no meaning and no value if there is no legal system in the country that is able to play the role of the protector of these rights.⁹⁵ The Constitution of Kosovo, which was approved on April 9, 2008, and entered into force on June 15, 2008, foresees in Article 102 the role that the country's courts are obliged to exercise. According to this provision, the domestic courts are called to respect human rights, be impartial, apolitical, and ensure equal access to all members of Kosovar society in the courts.⁹⁶ The Court System in Kosovo consists of the *Basic Courts*, the *Court of Appeal*, and the

⁹³ International Crisis Group, *The Rule of law in Independent Kosovo*, *International Crisis Group*, (2010), Available here: < <http://www.jstor.org/stable/resrep37031.6>.> accessed 11/07/2022.

⁹⁴ Simon Chisterman., *Justice under International Administration: Kosovo, East Timor and Afghanistan*. *International Peace Institute* (2002), Page: 3.

⁹⁵ Fahed Abul- Ethem., *The Role of Judiciary in the Protection of Human Rights and Development : A Middle Eastern Perspective*,(*Fordham International Law Journal*), Vol.26, Issue 3 (2002). See more: < <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1883&context=ilj#:~:text=The%20judicial%20process%20emanating%20therefrom,effective%20protection%20in%20the%20courts.>> accessed 11/07/2022.

⁹⁶ See Article 102, point (2), of the Constitution of Republic of Kosovo. Available here: < <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>> .

*Supreme Court*⁹⁷, which for their work and the execution of judicial processes are supervised by the Judicial Council of Kosovo, an independent body established by the *Law on the Judicial Council*. The competencies of the Judicial Council are also closely related to the imposition of disciplinary measures against judges who are suspected of having violated the rules and procedures for giving an impartial and legal judicial decision in accordance with European standards for human rights. Otherwise, it also has the right to recruit potential judges who possess professional skills, including high moral and human integrity elements.⁹⁸

According to the Law on Disciplinary Responsibility of Judges and Prosecutors as well as the Rules for Disciplinary Procedure, the parties have the right to submit complaints against judges when they consider that the latter have violated the rules of procedures, have not respected the principle of impartiality, and have acted with prejudices based on race, color, ethnic and racial affiliation, gender, etc.⁹⁹

Through this mechanism, an attempt has been made to hold the judicial system accountable, more specifically to express individual accountability for alleged violations against democratic principles and human rights, however, despite the installation of this mechanism, according to the Progress Report issued by the European Commission, for the year 2021, the procedure of complaints for judges and their evaluation is not satisfactory.¹⁰⁰ States have both, constitutional and legal obligations to protect the rights of citizens within their jurisdiction, however, in Kosovo, the judiciary system has failed in this direction, more specifically in the protection of the right to life.¹⁰¹ For example, the case of *Diana Kastrati* is a well-known case in Kosovo in which the state and its institutions failed to protect the right to life and prevent the loss of life. Diana Kastrati was killed by her husband in 2011. Previously, the latter had

⁹⁷ See article 8 of the *Law no. 06/L-054 on Courts* which was approved by the Assembly of the Republic of Kosovo. See here: < <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>> accessed 11/07/2022.

⁹⁸ See Article 7 and 20, of the *Law No. 06/L-055 on Kosovo judicial Council*. Available here: < <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18335>>accessed 11/07/2022.

⁹⁹ See Article % of the Law no. 06/L -057 on Disciplinary Responsibility of Judges and Prosecutors. Available here: https://www.gjyqesori-rks.org/wp-content/uploads/lgs/LIGJI_NR_06_L-057_P%C3%8BR_P%C3%8BRGJEGJ%C3%8BSIN%C3%8B_DISIPLINORE_T%C3%8B_GJYQATAR%C3%8BVE_DHE_PROKUROR%C3%8BVE.pdf.

¹⁰⁰ European Commission, *Kosovo Progress Report 2021*. The progress report is a document that the European Commission publishes every year on the progress achieved in each field of economic, political and social life in Kosovo. The report of 2021, can be found here: < [file:///C:/Users/miranda.kajtazi/Downloads/Kosovo%202021%20report%20\(2\).PDF](file:///C:/Users/miranda.kajtazi/Downloads/Kosovo%202021%20report%20(2).PDF)>

¹⁰¹ Sedat Ismajli and Shkumbin Leka., *Human Rights, (OM, Prishtine, 2020)*, Page: 281

requested a protection order three weeks before she was killed by her husband, in the Basic Court in Pristina because of the constant threats she received from her husband, however, the state did not take measures to protect the right to life of her, and as a consequence of negligence, her life was taken by her husband, due to the incapacities of the public authorities to prevent the violation of the right to life in this case.¹⁰²

As mentioned above, the application of the judicial practices of the European Court is a constitutional obligation and the courts are especially called upon to apply it during the proceedings and while making their decisions, however, this does not seem to be the case in practice according to a report published in 2020, by the *Kosovar Institute for Justice*. According to this institute, 209 judgments that were issued in the period 2016-2019, by the Courts throughout the territory of Kosovo, were randomly selected and analyzed if they were taken based on the jurisprudence of the European Court in resolving cases and giving these judgments. The findings of this institute are that only 20 out of the 209 judgments analyzed are based on the judicial practices of the European Court. If we convert them into percentages, it turns out that in only 9.56% of the examined cases, the judicial practices of the ECtHR were taken into consideration, while in 90.43% of the other cases the jurisprudence of the European Court was not applied as requested by the Constitution of Kosovo.¹⁰³

Thus, the judicial system in Kosovo does not apply in a strict way the two constitutional articles which determine the obligation to apply the jurisprudence of the Court and the European Convention during the examination of the cases presented to the court and the decisions issued by them. The need for the development of training in the field of application of human rights standards in local courts, according to the *Kosovar Institute for Justice*, seems to be necessary.¹⁰⁴

¹⁰² Robert Muharremi., “The Government of Kosovo is Failing Its Human Rights Obligations” KOSOVO 2.0 (Pristina, 2019). Available here: < <https://kosovotwopointzero.com/en/the-government-of-kosovo-is-failing-its-human-rights-obligations/>>

¹⁰³ See the report drafted by the *Kosovo Institute for Justice* “Vetting without alternatives”, (Prishtine, 2018), Page: 23. Available here: < <https://kli-ks.org/?s=VETINGU+PA+ALTERNATIVE>> ACCESSED 11/07/2022.

¹⁰⁴ Ibid.

3.2.1 The Rule of Law

The rule of law is one of the three main principles on which the Council of Europe and its mechanisms are built.¹⁰⁵ At the same time, the rule of law represents one of the conditions that Kosovo must prove that it possesses the willingness to fulfill in order to be considered as a potential candidate for becoming part of the Council of Europe in the future.¹⁰⁶ Kosovo, according to its Constitution, in particular Article 3, decisively determines that the exercise of public authority in the Republic of Kosovo is based on the principles of equality before the law, by full respect for the rule of law through its legislative, executive and judicial institutions.¹⁰⁷

The work of the judicial system must be based on the principle of the rule of law, which represents the cornerstone of the stability of a society and the basic condition for the development of a consolidated democracy¹⁰⁸, thus, it is necessary and crucial to promote and ensure its application, especially in the countries that have come out of the conflict and are in the transitional phase, as is the case of Kosovo.¹⁰⁹ Moreover, Kosovo has a sufficient legal framework based on which it has determined the obligation for the judicial system in exercising its responsibilities, and the issuing of judicial decisions, always by applying properly the Constitution and the laws in force, and they are called to subject to the Constitution and laws in case they do not act in accordance with the latter and European Convention.¹¹⁰

The realization of human rights and the rule of law are closely related to each other. They are two sides of the same principle, freedom and living with dignity, they complement each other and coexist

¹⁰⁵ Polakiewicz J. and Sandvig J., 'Conference Proceeding Open Access: Council of Europe and the Rule of Law'. *Journal of Civil and Legal Sciences* (October, 2015). Available here: <https://www.omicsonline.org/open-access/council-of-europe-and-the-rule-of-law-2169-0170-1000160.php?aid=63102#:~:text=The%20ten%20founding%20states%20of,and%20in%20numerous%20legal%20instruments>. Access 12/07/2022.

¹⁰⁶ Article 3 of the Council of Europe's Statute has foreseen the rule of law as a pre-condition that potential candidates are obliged to meet and show willingness to embrace it in their domestic law. Available here: <https://rm.coe.int/1680306052>

¹⁰⁷ See Article 3 of the Constitution of the Republic of Kosovo. Available here: https://biblioteka.sejm.gov.pl/wp-content/uploads/2017/05/Kosowo_alb_010117.pdf.

¹⁰⁸ Azem Hajdari and Albulena Hajdari., 'The Basics of the Justice System': (Prishtina: ILIRIA University, 2015), Page: 16.

¹⁰⁹ Christoph Bleiker and Marc Krupanski., *The Rule of Law and Security Sector Reform: Conceptualizing a Complex Relationship*, (Ubiquity Press: Geneva Centre for the Democratic Control of Armed Forces, 2012), Available here: <http://www.jstor.org/stable/j.ctv6zdbqh.5>. accessed 12/07/2022.

¹¹⁰ Ibid.

as one. In a society where there is no rule of law, there can be no protection of human rights, but on the other hand, human rights cannot be realized if the rule of law does not exist in practice.¹¹¹ In the context of the judicial system, the role of the rule of law is great and irreplaceable: The right to a fair trial by an independent and impartial court is a cornerstone for governance systems based on the rule of law.¹¹² When it comes to impartiality, different authors explain it as one of the basic elements in the issuing of judicial decisions to resolve the various cases that are presented before the court. For example, the handling of cases should be done based on the legislation in force, constitutional norms, and democratic principles and not based on elements such as sympathy, antipathy, prejudice, etc.¹¹³

Based on Article 31 of the Constitution of Kosovo, each individual enjoys the guaranteed right to a public, fair and impartial hearing regarding decisions on rights and obligations or any criminal charge brought against him/her within a reasonable time, by an independent and impartial court established by law¹¹⁴, however, in practice, according to some analyses, this does not seem to be the real situation. In the 2021 report, issued by the *Constitutional Court of Kosovo* (which serves as a mechanism where individuals file their complaints for alleged human rights violations), it appears that in the period (January-December 2021), 203 complaints were submitted from physical persons, which in percentage means 86.4%. An important element in this report turns out to be the fact that 199 complaints out of overall 203 (84.7%) submitted to the Constitutional Court in this period of time are related to the decisions issued by the courts in Kosovo. So, according to this report, the courts and the decisions they issue are supposed to be the main violators of human rights, while the rights that are most often violated, always according to this report, is the right to a fair and impartial trial.¹¹⁵ The right to a fair and impartial trial is guaranteed by the European Convention¹¹⁶ and its importance is great, along with the right to life

¹¹¹ United Nations and the Rule of Law., “Rule of Law and Human Rights”. Available here: <https://www.un.org/ruleoflaw/rule-of-law-and-human-rights/#:~:text=There%20is%20no%20rule%20of,a%20principle%20into%20a%20reality>. Accessed 12/07/2022.

¹¹² Organization for Security and Cooperation in Europe MISSION IN KOSOVO, “Judicial Independence in Kosovo: Institutional and Functional Dimensions” (January, 2012). The report is available here: <https://www.osce.org/files/f/documents/5/c/87139.pdf> accessed 11/07/2022.

¹¹³ Azem Hajdari and Albulena Hajdari., *The Basics of the Justice System*”: (Prishtina: ILIRIA University, 2015), Page: 19.

¹¹⁴ See Article 31, point (2), of the Constitution of the Republic of Kosovo. Available here: < https://biblioteka.sejm.gov.pl/wp-content/uploads/2017/05/Kosowo_alb_010117.pdf>.

¹¹⁵ Constitutional Court of Kosovo, “Annual Report 2021”, Page: 38-40. Available here: https://gjk-ks.org/wp-content/uploads/2022/06/Raporti-vjetor-2021_ang.pdf accessed 12/07/2022.

¹¹⁶ See Article 6 of the European Convention on Human Rights. Available here: https://www.echr.coe.int/documents/convention_eng.pdf

and the prevention of torture, however, as Christina Teleki explains in her book *Due Process and Fair Trial in EU Competition Law*:

'Fair trial is the transmission belt that ensures the smooth functioning of power, by presenting the problems that the individual encounters to the authority that has the competence, the tools and, hopefully, the will to solve it' ¹¹⁷

To put it in other words, when the judicial system guarantees a fair and impartial trial, as well as access to justice, then all other human rights guaranteed by the Constitution and international instruments become a reality. ¹¹⁸

3.2.2 Corruption

Corruption is one of the most negative phenomena that have great impact on reducing the balance between institutions, minimizes government supervision and the independence of the judicial system, and as such leads to the arbitrary application of the law in general. ¹¹⁹ The presence of corruption in today's society makes citizens feel unequal in their treatment by the law, causing uncertainty and non-implementation of human rights. ¹²⁰ Corruption affects the impunity of human rights violators and the weakening of the entire integrity of the judicial system, including judges, police officers, and investigators, reducing confidence in the abilities and independence of judges and the system established to guarantee and protect the rights of to the person provided by the Constitution of the country and the international instruments incorporated in the national legislation. ¹²¹ The main role of the judicial system

¹¹⁷ Christina Teleki., 'Due Process and Fair Trial in EU Competition Law', *Brill, Brill / Nijhoff*. (2021), Page:4. Available here: < <http://www.jstor.org/stable/10.1163/j.ctv1v7zbtr.10>>

¹¹⁸ Ibid.

¹¹⁹ Eliska Drapalova, Alina Mungiu-Pippidi, Bannie Jo Palifka and Jon Vrushi., 'Corruption and the crisis of democracy: The link between corruption and the weakening of democratic institutions', *Transparency International*, (2019). Page: 8, Available here: <http://www.jstor.org/stable/resrep20482>.

¹²⁰ Ibid.

¹²¹ Diego García-Sayán, *United Nations Special Rapporteur on the Independence of Judges and Lawyers*, United Nations, A/72/140. 35 July 2017. Available here: <https://www.unodc.org/dohadeclaration/en/news/2018/04/corruption--human-rights--and-judicial-independence.html>

in a democratic country based on the rule of law is providing the protection of human rights for all individuals, and when these rights are violated, the judicial system acts to identify them by issuing impartial and independent judicial decisions, however, this is achieved only if the judicial system performs its functions according to the Constitution and the European Convention, by being transparent, accountable, and free from corruption.¹²²

In the Constitution of Kosovo, it is decisively emphasized that the judicial system of Kosovo is independent, fair, apolitical, impartial and ensures equal access for all citizens, regardless of ethnicity, religion, etc.¹²³ In addition to that, in 2004, during the administration of the United Nations, Kosovo issued the Law against Corruption, based on which article 4 states that:

*‘The official person is obligated to carry out his/her function or duty conscientiously, expertly, without discrimination or privileges for anyone, with due respect for human freedoms and rights and human dignity.’*¹²⁴ However, according to international reports that examine the progress made in Kosovo and various indices for measuring corruption, corruption in Kosovo turns out to be one of the biggest challenges that the country is facing.¹²⁵ For example, according to the report published by the European Commission for 2021, Kosovo is still in the phase of the spread of corruption despite the efforts in drafting policies and laws to prevent it.¹²⁶ Furthermore, according to *Transparency International*, in 2021 Kosovo ranks 87 out of 180 for the level of corruption in the country.¹²⁷ Fourteen years have passed since the time when Kosovo declared its independence and it is still faced with a weak, inefficient and

¹²² UNODC-United Nations Office on Drugs and Crime, ‘Impact of corruption on specific human right ‘. Available here: <https://www.unodc.org/e4j/en/anti-corruption/module-7/key-issues/impact-of-corruption-on-specific-human-rights.html> accessed 13/07/2022.

¹²³ Article 3, point (2) of the Law on Courts. Available here: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302> accessed 13/07/2022.

¹²⁴ See Article 4, point (4.2) of the Law No.2004/34 Supression of Corruption Law. Available here: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2441>.

¹²⁵ Vlora Marmullakaj., ‘Digitizing Kosovo’s Justice System to Prevent Corruption: the case management information system.’ *U4 ANTI CORRUPTION CENTER* (25 January, 2022). Available here: <https://www.u4.no/blog/digitising-kosovos-justice-system-to-prevent-corruption>.

¹²⁶ European Commission, ‘Progress Report Kosovo’, (2021). See page 23. Available here: [file:///C:/Users/miranda.kajtazi/Downloads/Kosovo%202021%20report%20\(3\).PDF](file:///C:/Users/miranda.kajtazi/Downloads/Kosovo%202021%20report%20(3).PDF)

¹²⁷ Transparency International ‘Corruption Perception Index 2021’. Available here: <https://www.transparency.org/en/cpi/2021/index/ksv>

unaccountable judicial system, which has influenced the decline of trust that the citizens of this country have in the judiciary.¹²⁸

Corruption in most cases is used as a means to violate human rights in different forms. For example, giving bribes or when the judges accept bribes to do certain favors to someone puts into question the independence and impartiality of that judge, and thus the right to a fair and impartial trial is violated.¹²⁹ The report of the *Performance Index of the Rule of Law Institutions* published in 2018, presents in form of a percentage the results of the surveys conducted by the latter regarding the perception of the local population related to the work of the justice system. According to the results, it turns out that 70.7% of the citizens of Kosovo think that the judicial system is influenced by the executive power and that the people who have high positions in power are less likely to be subject to the law.¹³⁰ Furthermore, according to this report, bribery is present in the judicial system, in which case the results of surveys conducted in 2018 show that 55.1% of Kosovo citizens think that public officials of justice institutions demand and accept bribes in exchange for favors they perform.¹³¹

Therefore, a weak judicial system that feeds corruption within it, has no way to fight what exists outside of it although it is obliged based on the Constitution and laws in force to fight and punish it whenever it appears.

As noted above, according to the data of the Constitutional Court, the right to a fair and impartial trial is a human right that is most often violated in Kosovo, making us understand that in reality corruption greatly affects the non-realization of this right as defined firstly by the Constitution, the European Convention which is directly applicable in the domestic legislation, as well as the European Court of Human Rights, judicial practices of which are mandatory to be implemented by the judicial system in Kosovo.

¹²⁸ Balkans Policy Research Group., 'The mismanaged judiciary of Kosovo', (September, 2019). Page: 2. Available here: <https://balkansgroup.org/wp-content/uploads/2020/01/Gjyqesori-i-keq-administruar-i-kosoves.pdf>

¹²⁹ Julio Bacio-Terracino., 'Linking Corruption and Human Rights', (*American Society of International law*), Vol.104, (2010) pp.243-246. See here: < <https://doi.org/10.5305/procanmeetasil.104.0243>>

¹³⁰ Group for Legal and Political Studies '*Institutional Performance Index The rule of law in Kosovo*' is a monitoring mechanism to evaluate the work of justice institutions in Kosovo. (Prishtina, October 1018).See the latest report of 2019 here: < <http://www.legalpoliticalstudies.org/wp-content/uploads/2018/10/rolpik4-web.pdf>>

¹³¹ Ibid.

3.2.3 *The Ombudsman*

In a democratic society, the institution of the People's Advocate is a crucial mechanism and a system that protects human rights and fundamental freedoms. Its role is to ensure the protection of citizens' rights against public state authorities that violate them.¹³² Furthermore, as an institution, it is completely independent in its work to promote, protect and supervise the implementation of human rights, which originate from the country's Constitution and the European Convention.¹³³

The Ombudsman has been operating in Kosovo since 2000 when it was first established by the Provisional Administration of the United Nations, which was led by an international ombudsperson, and since 2009, one year after the declaration of independence, Kosovo has elected the national Ombudsman with 5-year mandates.¹³⁴ While in the past the institution of the People's Advocate functioned only on the basis of the complaints filed for the alleged violations¹³⁵, today this institution conducts investigations also according to the official duty when it considers that there is a violation of human rights by public authorities such as the courts the prosecutor's office. And other public governmental institutions.¹³⁶

The role and mandate of the Ombudsperson in Kosovo is defined by the Constitution of the country, specifically Article 132, based on which the Ombudsman supervises and protects the rights and freedoms of individuals from illegal and irregular actions or inactions of public authorities.¹³⁷ The need for the presence of the People's Advocate is great for a country like Kosovo which is in the process of state-building and its Euro-Atlantic aspirations, and along this path, the rule of law in the field of human rights is considered essential.¹³⁸ As part of the legal framework of the field of justice, the Law on the

¹³² Bernar Frank., 'The Ombudsman and Human Rights', *Administrative Law Review* 22, no.3 (1970): Page 467-492. Available here: <http://www.jstor.org/stable/40708708>. Accessed 14/07/2022.

¹³³ Ibid.

¹³⁴ Youth Initiative for Human Rights., 'An insight into the work of the Ombudsperson Institution'. (Prishtine, 2013). Available here: < <https://yih-r-ks.org/site/wp-content/uploads/2016/03/An-Insight-Into-The-Work-Of-The-Ombudsperson-Institution-2013.pdf>> accessed 15/07/2022.

¹³⁵ W.A. Bradley., 'The Role of the Ombudsman in Relation to the Protection of Citizen's Rights', *The Cambridge Law Journal* 39, no.2 (1980), Page:309. Available here: <http://www.jstor.org/stable/4506281>.

¹³⁶ Ibid.

¹³⁷ See Article 132, of the Constitution of the Republic of Kosovo. See more: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

¹³⁸ Agron Xhemajli., 'The role of the Ombudsman in the protection of Human Rights and Freedoms in Kosovo - Comparative approach with the countries of the region.' (AAB, 2020). Available here: <https://blog.aab-edu.net/agronxh/roli-i-avokatit-te-popullit-ne-mbrojtjen-e-te-drejtave-dhe-lirive-te-njeriut-ne-kosove-qasje-krahasuese-me-vendet-e-rajonit/> accessed 14/07/2022.

People's Advocate is part of it, which defines in detail the scope and powers of this institution. So, according to the law, the Ombudsman has the mandate to conduct investigations, whether based on the request of individuals or even according to the official duty, independently, and can give general recommendations for the better functioning of the judicial system in Kosovo.¹³⁹

According to the 2021 report of the People's Advocate, one of the challenges faced by the judicial system in Kosovo is the inapplicability of human rights standards as provided for in Article 53 of the Constitution, as well as the failure to take into account the judicial practices of the European Court during the process of issuing their decisions.¹⁴⁰ According to the legislation in force, this institution cooperates with other institutions, however, public officials do not take into account the requests of the People's Advocate to cooperate and provide evidences when requested by the latter, meaning that the legal obligation they have to cooperate with the Ombudsman for the development of investigations is constantly violated.¹⁴¹ The annual report of the European Commission, which has observed the progress noted in the field of Justice for 2021, evaluates the work of the institution of the People's Advocate, as well as its capabilities to investigate cases of human rights violations, thus contributing in raising the awareness of society for the protection and promotion of human rights.¹⁴²

If we compare the number of complaints submitted to the Ombudsman for the year 2020, which had a total of 1,419 complaints, with the year 2021, in which 1,612 were submitted, it appears that the number of individuals who claim that their rights have been violated by the public authorities has been increased in place. Complaints are mainly directed at alleged violations by the Courts related to the right to a fair and impartial trial, including other state institutions such as the Ministries, however, the recommendations and opinions issued by the Ombudsman are not always implemented by the public authorities.¹⁴³

¹³⁹ See Article 16 of the Law no. 05/L-019 on Ombudsperson. Available here: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10922>

¹⁴⁰ Ombudsperson Institution. Annual Report 2021 (Prishtina, 2022). See page 21 of the Report. Available here: https://oik-rks.org/wp-content/uploads/2022/03/Aip_RaportiVjetor_ENG_22.04.pdf

¹⁴¹ Civil Society for Human Rights., "A little used system: state of the human rights framework in Kosovo", (November, 2017), Page: 8. Available here: http://www.kipred.org/repository/docs/Albanian_Version_350593.pdf accessed 14/07/2022.

¹⁴² European Commission, "Progress Report 2021." Page: 29 .Available here: [file:///C:/Users/HP/Downloads/Kosovo%202021%20report%20\(8\).PDF](file:///C:/Users/HP/Downloads/Kosovo%202021%20report%20(8).PDF)

¹⁴³ Ibid.

Unlike the Constitutional Court, which, as we saw above, only finds violations of human rights by issuing judgments, the ombudsman, by giving opinions and recommendations, tries to improve the work of the judges and the justice system in general, however, 'naming and shaming' remains the only tool that the Ombudsperson has at his disposal to expose the unwillingness of other institutions to cooperate.¹⁴⁴

3.2.4 *The role of civil society in promoting Human Rights*

The end of the war and the installation of the United Nations administration in Kosovo marked a turning point in the establishment and development of civil society. The great international support to activate civil society has resulted in the establishment of many of them, even though access to these funds seems to be difficult due to the bureaucratic procedures they carry.¹⁴⁵ According to the European Convention¹⁴⁶, and the Constitution, the state of Kosovo is obliged to ensure the respect, fulfillment, promotion, and protection of human rights for all its citizens, regardless of ethnicity, gender, religion, or race.¹⁴⁷ In addition to the state, the role of civil society in the promotion of democracy, the rule of law, and the promotion of human rights is great and irreplaceable, especially in countries in transition.¹⁴⁸

The issue of civil society is based on the right of citizens to be free to establish non-governmental organizations and associations, regulated and protected by Article 44 of the Constitution of Kosovo¹⁴⁹, as well as with the Law on Freedom of Association in Non-Governmental Organizations,

¹⁴⁴ Civil Society for Human Rights., "A little used system: state of the human rights framework in Kosovo", (November,2017),Page:8. Available here: http://www.kipred.org/repository/docs/Albanian_Version_350593.pdf accessed 14/07/2022.

¹⁴⁵ Kosovar Civil Society Foundation, 'Civil Society in Kosovo'. Available here: < <https://www.kcsfoundation.org/en/information-capacities/resources/civil-society/civil-society-in-kosovo/>> accessed 16/07/2022.

¹⁴⁶ Article 1 of the European Convention on Human Rights. Available here: https://www.echr.coe.int/documents/convention_eng.pdf accessed 15/07/2022.

¹⁴⁷ See the Preamble of the Constitution of the Republic of Kosovo. Available here :< <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>> accessed 15/07/2022.

¹⁴⁸ Avni H. Alidemaj and Sadik Haxhiu., 'Civil Society in Kosovo and their inclusion in Decision-making process at the Municipal Level', *Balkan and Near Eastern Journal of Social Sciences* (October, 2021). Available here: file:///C:/Users/miranda.kajtazi/Downloads/BNEJSS_Alidemaj_and_Haxhiu.pdf

¹⁴⁹ Article 44 of the Constitution of the Republic of Kosovo. Based on this article freedom of association is guaranteed and everyone has the right to establish an organization without having to secure permission as well as to participate in activities of an organization. Available here: < <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>> accessed 16/07/2022.

according to which non-governmental organizations are free to exercise their activity while respecting the law, the protection and implementation of fundamental human rights as defined in the Constitution and international treaties.¹⁵⁰

In Kosovo, the number of non-governmental organizations is constantly increasing¹⁵¹, which promote human rights through various training, and non-formal education in order to raise awareness of human rights, and the role of democracy, especially the promotion of gender equality which remains one of the challenges faced by Kosovar society nowadays.¹⁵² For example, the non-governmental organization "Women's Network of Kosovo" is committed to promoting women's participation in decision-making in political-economic, and social life even though legal mechanisms exist, however, their implementation in practice remains a challenge. Through her monitoring and commitment, she managed to improve such a thing to some extent based on the measurements made according to the latter.¹⁵³

Other forms based on which civil society in Kosovo promotes human rights are through the organization of various popular protests as well as through participation in the process of drafting several Laws in the field of human rights, actively dedicated, as well as in ensuring accountability of public institutions when violations of civil and political rights of citizens are found. For example, the creation of legal mechanisms such as the Law on Gender Equality and the Law on Protection against Domestic Violence were created as a result of the identification of challenges and difficulties through conducting various researches in the field and cooperation with the various institutions of Kosovo.¹⁵⁴

¹⁵⁰ See Article 5 of the *Law no. 06/L-043 on Freedom of Association in Non-Governmental Organizations*. Available here: < <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=19055>> accessed 16/07/2022.

¹⁵¹ See the list of NGOs registered in Kosovo. Available here: < <https://www.kuvendikosoves.org/eng/for-the-public/participation-of-civic-society/list-of-ngo>> accessed 16/07/2022

¹⁵² Luxembourg Development Agency "Gender Equality in Kosovo". Available here: < [https://luxdev.lu/files/documents/Genre_KSV_vF_\(1\).pdf](https://luxdev.lu/files/documents/Genre_KSV_vF_(1).pdf)> accessed 16/07/2022.

¹⁵³ Kosovo Women's Network. "Women in Politics and Decision –making." See here: < <https://womensnetwork.org/programs/women-in-politics-and-decision-making/>> accessed 16/07/2022.

¹⁵⁴ Dafina Halili., The renewal of Civil Society in Kosovo", *Kosovo 2.0* (Prishtine, 2018). Available here: < <https://kosovotwopointzero.com/en/regenerating-kosovos-civil-society/>> accessed 16/07/2022.

Kosovo has drafted the *Governmental Strategy for Cooperation with Civil Society (2019-2023)*¹⁵⁵, based on which the further development of cooperation between the Government and NGOs as well as the method of sustainable financing for the latter, however, the implementation of it in practice is seen as lacking, according to the *2021 Progress Report*, published by the European Commission.¹⁵⁶

Overall, civil society in Kosovo remains one of the main mechanisms for the promotion of human rights in Kosovo by bringing the important issues related to them in the public, however, regular and sustainable funding is the main obstacle that NGOs in Kosovo are facing with. Therefore, the regular funding and removal of bureaucratic procedures would have a positive effect on the further development of civil society in the field of addressing human rights violations as well as their willingness to promote human rights standards in every part of the territory of Kosovo by increasing the awareness of the population on human rights issues.

¹⁵⁵ Office of the Prime Minister “Government Strategy for Cooperation with Civil Society 2019-2023. Available here: <<https://zqm.rks-gov.net/assets/cms/uploads/files/Strategjia%20ne%20tri%20gjuhe.pdf>> accessed 16/07/2022.

¹⁵⁶ See 11 of the Progress report 2021, issued by the European Commission. Available here: <[file:///C:/Users/miranda.kajtazi/Downloads/Kosovo%202021%20report%20\(6\).PDF](file:///C:/Users/miranda.kajtazi/Downloads/Kosovo%202021%20report%20(6).PDF)> accessed 16/07/2022.

THE ENLARGEMENT OF THE COUNCIL OF EUROPE

Taking into consideration the fact that the practice of international instruments for human rights is lacking if it is not accompanied by the right of individuals to enjoy access to international mechanisms for the protection of their rights, the need to have a right to this is of great importance for Kosovo and its citizens, considering that the established national mechanisms are not proving to be successful in the protection of human rights. Kosovo is still not a member of the Council of Europe, however, with the exclusion of Russia from the latter, the chances of being admitted to the CoE have increased. For this purpose, this chapter focuses on analyzing the possibility of Kosovo's membership in the Council of Europe, and through illustrative examples, we will show that Kosovo is willing to meet the membership criteria set in the Statute of the CoE. The first part of this chapter will be dedicated to looking at the expansion of the Council of Europe towards Kosovo and through the illustrative examples, it will be showed that the Council of Europe is using double standards regarding Kosovo's potential membership in the CoE. The second part will mainly focus on the elaboration of the benefits that Kosovo's potential membership in the Council of Europe can bring to its citizens and how, through its mechanisms, the human rights standards can be improved.

4.1. COUNCIL OF EUROPE TOWARDS KOSOVO

The Council of Europe is the largest international human rights organization, established to promote democratic values, the rule of law, and the protection of human rights, moreover, it represents the greatest achievement since the end of the Second World War.¹⁵⁷ An initiative and major project with a very important mission in front of itself by making the pledge of not allowing the repetition of the events that had happened against humanity during the most difficult period that Europe has ever faced has already taken place.¹⁵⁸

In 1949, the protagonists of the European idea took the first step toward the European Union. After long discussions, which were kept secret in the final stages, the ten Western countries (United Kingdom, France, Denmark, Ireland, Italy, Norway, Sweden, and the Benelux countries)¹⁵⁹, solemnly founded in London the Council of Europe on May 5, 1949, as the first intergovernmental political organization in Europe.¹⁶⁰

The other objectives of the Council of Europe (CoE) are very broad and contain very few precise provisions. Although according to article 1 the Council of Europe undertakes the task of creating closer liaison between its members to promote ideals, principles, economic and social progress. The same article defines another task of the Council of Europe which by the transition of the time became its main activity, namely the protection and further development of fundamental human rights and freedoms, and with this, the CoE set itself the task of acting as a guardian of democracy and civil liberties to contribute to a safe Europe with civil means.¹⁶¹

Since its foundation in 1949, it has adopted over 200 conventions that represent binding norms under international law for the Council of Europe member states.¹⁶² Most of them are related to human rights, ethnic minorities, environmental protection, media policies, etc.

¹⁵⁷ Stefanie Schmal and Marten Breuer., *The Council of Europe: Its Laws and Policies* (United Kingdom: Oxford,2017): Page 5

¹⁵⁸ Ibid.

¹⁵⁹ Council of Europe, “About the Council of Europe-Overview-History”. More information on the history of the Council of Europe can be found here: < [About the Council of Europe - Overview \(coe.int\)](https://www.coe.int/en/web/about-the-council-of-europe)> accessed 30/06/2022.

¹⁶⁰ Ibid.

¹⁶¹ Article 1, (a) and (b), of the Statute of the Council of Europe. The statute is a treaty which created the Council of Europe. It was adopted in London, 1949. See here: <https://rm.coe.int/1680306052> accessed 07/07/2022.

¹⁶² Council of Europe, Treaty Office. See the whole completed list of the Council of Europe’s treaties here: <https://www.coe.int/en/web/conventions/full-list> accessed 07/07/2022.

In this regard, the Convention for the Protection of Human Rights or the European Convention on Human Rights (ECHR), signed in Rome on November 4, 1950, became the greatest significant instrument for the protection of human rights and fundamental freedoms in member states.¹⁶³

The European Court of Human Rights plays a major role in the realization of the human rights guaranteed in the ECHR along with the opportunity it gives to individuals to present their complaints in cases where the state fails to protect human rights.¹⁶⁴ Over the years, the Council of Europe has expanded by including several countries of the Western Balkans. The last country to join this organization is Montenegro in 2007.¹⁶⁵ Kosovo and its citizens are the only ones that have remained outside this institution's scope and the only ones that cannot file a complaint before the European Court of Human Rights. If the role of the Council of Europe aims to extend throughout the territory of the European continent to ensure the promotion of democratic values, to achieve deeper cooperation among the member states to promote and protect human rights, the rule of law, and democracy, then it cannot be called successful if it does not include Kosovo and its citizens.¹⁶⁶ The non-inclusion of Kosovo under the umbrella of this organization makes the latter unsuccessful in terms of the objectives based on which it has worked and has sworn to do, i.e. its extension to every corner of the continent.¹⁶⁷ As we will see below, in some cases the Council of Europe has accepted countries that did not meet the criteria at first but were accepted in the hope that they would improve by being within the organization rather than remaining outside of its scope and isolated.¹⁶⁸

¹⁶³ Equality and Human Rights Commission., “*What is the European Convention on Human Rights?*”. More information can be found here: <https://www.equalityhumanrights.com/> accessed 07/07/2022.

¹⁶⁴ Ibid.

¹⁶⁵ Government of Montenegro,” Membership in International Organizations”. Available: < <https://www.gov.me/en/article/membership-in-international-organizations>> accessed 03/07/2022.

¹⁶⁶ Prishtina Institute for Political Studies, “*Kosovo’s Ability to fulfill the membership criteria: A comparative perspective*”. (Pristina, June 2014), Page 6. Available here:<< <https://pips-ks.org/en/Detail/ArtMID/1446/ArticleID/3148/Kosovos-ability-to-fulfill-the-Council-of-Europe-membership-criteria-A-comparative-perspective>>> accessed 07/07/2022.

¹⁶⁷ Ibid.

¹⁶⁸ Rapporteur: Mr. BINDIG, Germany, Socialist Group. Doc 7463, “*Russia’s application for membership of the Council of Europe*”, (January, 1996). The document is available here: <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=7397&lang=enL> accessed 07/07/2022.

4.1.1 Membership Criteria

The Statute of the Council of Europe, approved on May 5, 1949, is the main document in which the goals of the organization are defined as well as the determination of the formal conditions for the membership of new states in the organization.¹⁶⁹ Articles 3 and 4 of the statute decisively define the conditions and criteria that must be met by countries willing to join the Council of Europe and apply its values.

Article (3) determines that: *“each state that claims to become a full member of the Council of Europe must accept the principles of the rule of law first of all as the main basis on which citizens have the opportunity to exercise their fundamental rights enshrined in national legislation and international treaties as well as cooperate for the realization of the goals of the organization as defined in chapter 1 of the statute, which is the achievement of a greater unity among the member states to play the role of the gradient and the realization of common ideals and principles”*¹⁷⁰

Further, article (4) of the Statute of the Council of Europe stipulates that:

*“Any European state which is deemed to be able to and willing to fulfill 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 State”*¹⁷¹

According to this article, membership in the Council of Europe remains open to European countries that geographically belong to the European continent, to those that are ready and willing to fulfill the criteria and requirements defined in the statute of the Council of Europe. In this case, potential states that aspire to join the CoE, in addition to expressing their readiness, must also be able to ensure and guarantee the respect and protection of human rights, the rule of law for all citizens who live under the jurisdiction of that state, regardless of nationality, gender, color, religious affiliation, etc.

¹⁶⁹ Icelandic Human Rights Centre., “The Council of Europe”. Available here:< <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-fora/the-council-of-europe>> accessed 09/07/2022.

¹⁷⁰ See Article 3, of the Council of Europe’s Statute, London, 1949. Available here:< <https://rm.coe.int/1680306052>> accessed 09/07/2022.

¹⁷¹ Ibid.

4.1.2 “Non-application” of membership criteria in the past

The political criteria defined by the statute of the Council of Europe constitute the main substance on the basis of which the states that aspire to become full members of the Council of Europe are required to be able to fulfill.¹⁷² States must first and foremost be democratic, they must have a system where rule of law and respect for human rights are guaranteed and applied in practice according to the highest international standards.¹⁷³ From 1949 when it was founded as an Organization, until today, there has not always been a strict application of the criteria for membership in the Council of Europe by the latter towards potential candidate states in the past.¹⁷⁴

If viewed from this perspective, throughout the history of the existence of the Council of Europe, there has been an evolution of the criteria, in the sense that the political criteria for new memberships have not always been taken into account precisely. As we saw above, the expansion of the Council of Europe took place even more after the breakup of the Soviet Union, in which case a large number of countries that had come out of its breakup were accepted, such as Russia, which now is not a member, Latvia, Lithuania, Georgia, Armenia, Moldova, Azerbaijan, etc. Back in the time when they became members of the CoE, they were not the most developed democracies that the world has ever seen, nor did they apply even the minimum of the highest standards for ensuring freedom and human rights in their respective countries.¹⁷⁵ However, the Council of Europe has accepted them in its bosom with the intention that these former communist states will better democratize and develop in the field of human rights by being part of it rather than by being isolated and outside the umbrella of the Council of Europe and its institutions.¹⁷⁶ Beyond that, the issue of human rights in these countries would be held controlled and monitored properly through mechanisms in disposal rather than if they remained outside.¹⁷⁷

¹⁷² See Article 3 of Council of Europe’s Statute. Available here :< <https://rm.coe.int/1680306052>> accessed 01/07/2022.

¹⁷³ Ibid.

¹⁷⁴ Tatiana Antsupova., ‘Membership in the Council of Europe: Evolution of criteria’ (*EPLO Publications*, 2013), Page: 1. Available here: <https://eplopublications.eu/publication/digital-edition/membership-council-europe-evolution-criteria> accessed 18/07/2022.

¹⁷⁵ Cenap Cakmak., Pitfalls of the Enlargement: ‘Withering Human Rights Protection in the Council of Europe’? *Insight Turkey* 8, no. 3 (2006). Page: 102. Available here: <http://www.jstor.org/stable/26328543>.

¹⁷⁶ Ibid.

¹⁷⁷ Pamela A. Jordan., ‘Does Membership Have Its Privileges? Entrance into the Council of Europe and Compliance with Human Rights Norms’, *Human Rights Quarterly Vol. 25, No. 3* (Aug., 2003), Page: 662. Available here:< <https://www.jstor.org/stable/20069682>>

For example, in 1996, when Russia became a member of the Council of Europe, there was no marked progress in the field of democracy, rule of law, respect and promotion of human rights in place. In contrary, it has been a closed, totalitarian state, with a fragile system and not in line with European values, however, regardless of this, it became part of the Council of Europe.¹⁷⁸

On January 25, 1996, when the Parliamentary Assembly in one of its meetings was discussing the issue of Russia's application to the Council of Europe, the Hungarian representative emphasized that *"I am convinced that an isolated Russia would be more oppressive in their home and would again become a clear risk to European security"*,¹⁷⁹ however, today we are witnessing that Russia is violating the main principles and values in which the Council of Europe was founded and pledged to promote. In this regard, Russia, today has turned itself into a real threat to the entire European continent and the biggest offender of human rights, peace, stability, and European values.¹⁸⁰

The death penalty is a flagrant violation of the European Convention on Human Rights, the framework of which Article 1 states that *"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."*¹⁸¹

When Lithuania was accepted as a member state of the Council of Europe in 1993, it has been applying the death penalty¹⁸², in other words, the Council of Europe accepted a state that has not ensured full compliance with the values and provisions foreseen in the European convention¹⁸³, however, it entered by violating the most important document that guarantees the right to be followed by other rights that people enjoy since the adoption of the Convention. Lithuania later abolished the application of the

¹⁷⁸ Ibid.

¹⁷⁹ Council of Europe - Parliamentary Assembly. Official Report. 1996 ordinary session (22-26 January 1996.) Volume I. Sittings 1 to 8. Pages 1 to 320. 1996. Strasbourg: Council of Europe. "Russia's request for membership of the Council of Europe (25 January 1996)", page: 5. Available here: < https://www.cvce.eu/content/publication/2004/4/29/2fab4bc2-2783-4d3b-b33f-17541e532adc/publishable_en.pdf> accessed 18/07/2022.

¹⁸⁰ North Atlantic treaty Organization. "Statement by NATO Heads of State and Government" (Brussels, March 2022). The statement can be found here: < https://www.nato.int/cps/en/natohq/official_texts_193719.htm>

¹⁸¹ See article 1 of the European Convention on Human Rights. The convention is available here: < https://www.echr.coe.int/documents/convention_eng.pdf> accessed 01/07/2022.

¹⁸² Council of Europe, Factsheet on Death penalty. The document can be found here: < <https://rm.coe.int/168008b914#:~:text=In%201982%2C%20the%20Council%20of,the%20death%20penalty%20in%20peace,time.>> accessed 01/07/2022.

¹⁸³ Amnesty International., "The death penalty in the Baltic States, Estonia, Latvia, Lithuania". March (1993). The report is available here: < <https://www.amnesty.org/en/wp-content/uploads/2021/06/eur060031993en.pdf>> accessed 01/07/2022.

death sentence, in 1998¹⁸⁴, however, this was considered as a diminution of the credibility of the Council of Europe and its mission in the promotion and protection of human rights.

4.2 KOSOVO'S APPLICATION FOR MEMBERSHIP IN THE COUNCIL OF EUROPE

The invasion of Ukraine by Russia created a new momentum in the European integration processes for Kosovo.¹⁸⁵ Russia, in March 2021, was excluded from the Council of Europe, part of which it has been since 1996, however, the country now has been excluded due to non-respect for the democratic values and principles of the Council of Europe.¹⁸⁶

Russia has been one of the countries that have not recognized Kosovo's independence, and whenever Kosovo would apply earlier for such membership in this organization, it would not receive the green light, considering that Russia and the influence it had there would prevent it from getting the membership in the CoE.¹⁸⁷ Now, without Russia in the Council of Europe, the chances for Kosovo's membership increased. Since the declaration of independence, Kosovo has become part of several international organizations such as the International Monetary Fund¹⁸⁸, The World Bank, and the International Olympic Committee. In 2014, Kosovo became the 60th member of the Venice Commission of the Council of Europe, a fruitful institution for giving its contributing a lot to the opinions issued by it

¹⁸⁴ Roger Hood and Carolyn Hoyle., “Abolishing the Death Penalty Worldwide: The Impact of a “New Dynamic”, *Crime and Justice*, Vol.38, No.1 (2009), Page: 11. Available here: <https://www.jstor.org/stable/10.1086/599200>

¹⁸⁵ Ensar Suma., “*The implications of Kosovo’s potential membership in the Council of Europe* “, S’bunker, (May, 2022). See more: < <https://sbunker.net/op-ed/91385/implikimet-nga-anetaresimi-potencial-i-kosoves-ne-keshillin-e-europes/>> accessed 03/07/2022.

¹⁸⁶ Zohna Siddiqui and Kelebogile Zvobgo., “*The Council of Europe expelled Russia. That hurts people, not Putin*”. The Washington Post, (April, 2022). Available here: < <https://www.washingtonpost.com/politics/2022/04/12/russia-human-rights-ukraine-council-of-europe/>> accessed 03/07/2022.

¹⁸⁷ See Resolution CM/ Res (2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe. (*Adopted by the Committee of Ministers on 16 March 2022 at the 1428th meeting of the Ministers’ Deputies*). Available here: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5da51

¹⁸⁸ Press Release No. 09/240 of the International Monetary Fund on Kosovo’s membership, (June, 2009). See here: < <https://www.imf.org/en/News/>> accessed 03/07/2022.

on matters of judicial and prosecutorial system reform in the country.¹⁸⁹ Another important step in the field of integration was the membership of Kosovo in the Development Bank of the Council of Europe, a part of which has been since 2013.¹⁹⁰ However, in the field of Human Rights, Kosovo remains outside the scope of international organizations such as the United Nations, and the Council of Europe. In the last two decades, its citizens have not had the right to submit their complaints in cases where their rights have been violated and they have not been protected by the state. The State of Kosovo aims to increase international cooperation through membership in international organizations for the promotion and protection of peace, security, and human rights¹⁹¹, therefore, on May 12, 2022, Kosovo officially applied to become a member of the Council of Europe.¹⁹² This is considered a very bold step considering that Kosovo is not yet internationally recognized by all member states of the Council of Europe, however, with the absence of Russia and its influence on this institution, the chances of making Kosovo a part of the Council of Europe and its institutions are more than real.¹⁹³

The Council of Europe officially maintains a neutral position towards the status of Kosovo, although its component states, some of the most important today, recognize Kosovo as a sovereign and independent state.¹⁹⁴ More than 2/3 of the member states of the Council of Europe recognize it, which means that 34 states out of the total 46 that this organization has today recognize the sovereignty of Kosovo.¹⁹⁵

¹⁸⁹ The Venice Commission is an advisory body of the Council of Europe in constitutional matters. In its competence is the provision of legal advice and opinions to its members in a way that they are in line with European standards and human rights. See more about the Venice Commission of the Council of Europeans and its members here:

< <https://www.venice.coe.int/webforms/events/?country=243>> accessed 03/07/2022.

¹⁹⁰ The European Council Development Bank was established in 1956, with the aim of contributing to strengthening social cohesion, in creating a free, democratic, and inclusive European society.

See more: < <https://coebank.org/en/about/mission/>> accessed 03/07/2022.

¹⁹¹ Article 17 of the Constitution of the Republic of Kosovo. See more: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

¹⁹² AlJazeera., “Kosovo to apply for Council of Europe membership” (May, 2022). Available here: < <https://www.aljazeera.com/news/2022/5/12/kosovo-to-apply-for-council-of-europe-membership>>

¹⁹³ Milica Stojanovic., Russian Ambassador to Serbia Denies change in Putin’s Kosovo Policy., *Balkan Insight* (Belgrade, 2022). Available here: < <https://balkaninsight.com/2022/04/29/russian-ambassador-to-serbia-denies-change-in-putins-kosovo-policy/>>

¹⁹⁴ Exit Staff., Kosovo applies for Council of Europe Membership, *Exit News*, (May, 2022). Available here: < <https://exit.al/en/2022/05/12/kosovo-to-apply-for-council-of-europe-membership/>>

¹⁹⁵ Schengen visa news., “Kosovo officially submits application for membership in the Council of Europe” (May, 2022), Available here: < <https://www.schengenvisa.info.com/news/kosovo-officially-submits-application-for-membership-in-the-council-of-europe/>>

As emphasized in the previous chapter, even though it is not a member state of the Council of Europe, Kosovo has incorporated the European Convention on Human Rights into its Constitution and legislation, on the basis of which it has obliged all its institutions, including the judicial system, to apply the judicial practice of the European Court of Human Rights, although as we have seen, it is not that these practices are being implemented properly by the judges in Kosovo.¹⁹⁶ These constitutional obligations would constitute an international obligation with international consequences in case Kosovo becomes a member of the CoE, and after becoming a state party to the Convention. Kosovo, geographically, is part of the European continent and shares the same values with those of other European countries.¹⁹⁷ The political criteria and their fulfillment are inevitable, even though, as we saw above, it is not always the case that they have been followed in the process of the accession of the states that emerged from the former Soviet bloc. As we will see in the following part of this chapter, Kosovo stands much better than many states that, when they joined, did not even meet the minimum standards in the field of Democracy, Rule of Law, and protection of human rights.

4.2.1 “Kosovo is not a state” –as an excuse?

The declaration of Kosovo's independence, as we saw in the chapter above, opened a new stage for Kosovar society.¹⁹⁸ The Council of Europe has played a major role in its democratization and development in terms of advancing democratic standards, the rule of law, as well as raising society's awareness of human rights.¹⁹⁹

One of the challenges that Kosovo is expected to face during the membership process in the Council of Europe is the issue of its contested territorial integrity, since Serbia, a member state of the Council of Europe since 2003, still considers Kosovo as part of its territory, as defined in the preamble

¹⁹⁶ Kosovo Law Institute, “European Convention and Strasbourg practice obligations on paper, judges do not implement obligations in practice”, (September,2020). Available here: < https://kli-ks-org.translate.google.com/ikd-konventa-evropiane-dhe-praktika-e-strasburgut-obligime-ne-leter-gjykatesit-nuk-i-zbatojne-obligimet-ne-praktike/?x_tr_sl=sq&x_tr_tl=en&x_tr_hl=en&x_tr_pto=sc >

¹⁹⁷ Ibid.

¹⁹⁸ Colin Warbrick., “Kosovo: The Declaration of Independence “, The International and Comparative Law Quarterly 57, no.3, (2008).Page: 4. See more at: < <http://www.jstor.org/stable/20488236> >.

¹⁹⁹ See all the projects of the Council of Europe in relation to Kosovo and its democratic development. Available here: < <https://www.coe.int/en/web/programmes/kosovo> > accessed 09/07/2022.

of its Constitution.²⁰⁰ Council of Europe's member states that have not yet recognized the independence of Kosovo, do not see the latter as a state, for example, in 2009, the British BBC television produced a documentary on the Council of Europe. In the framework of this documentary, the ambassador of Serbia to the Council of Europe, Sladjana Prica, was interviewed. In response to the journalist's question, on what are the possibilities that Kosovo, the youngest country in Europe, to become part of this organization, she answers by saying that: *"those who wish to be part of the most important organization for the protection of human rights must first be states, internationally recognized states, and in such case, Kosovo is not a state and cannot be as such full member of the CoE"*²⁰¹ Despite all the objections within the organization, however, there are those who actually think that Kosovo is a reality and that its membership in the latter two institutions, such as the Venice Commission²⁰² and the Development Bank²⁰³, the status of Kosovo has not presented any obstacle in the process of these two important institutions of the Council of Europe.

On the other side, if viewed from the context of the Council of Europe, the potential membership of Kosovo would not constitute a violation of the territorial integrity of Serbia, since according to the European Court of Human Rights, Serbia does not exercise its jurisdiction in the territory of Kosovo since 2008, when the latter declared independence and all powers exercised by UNMIK were transferred to the institutions established by the new Constitution and the laws issued based on it.

Following the declaration of independence of Kosovo in 2008, according to the jurisprudence of the European Court of Human Rights in the case of *Azemi v. Serbia*²⁰⁴, this court has recognized the sovereignty of Kosovo by denying Serbia's territorial jurisdiction over Kosovo.²⁰⁵ This Court acted

²⁰⁰ Kosovo appears in the preamble of the Constitution of Serbia as its territorial part. See the document here: < <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/74694/119555/F838981147/SRB74694%20Eng.pdf>> accessed 09/07/2022.

²⁰¹ See the whole documentary here: < <https://www.youtube.com/watch?v=h3lUR8L1niY&t=236s>> accessed 09/07/2022.

²⁰² Council of Europe, Venice Commission, Member states. See more : <https://www.venice.coe.int/> accessed 02/07/2022.

²⁰³ Council of Europe Development Bank, Member states. Available here: <<https://coebank.org/en/about/member-countries/>> accessed 02/07/2022.

²⁰⁴ European Court of Human Rights, case law "*Azemi v. Serbia*", (December) -11209/09. Decision 5.11.2013. The decision is available here: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-9116%22%5D%7D> accessed 02/07/2022.

²⁰⁵ Kushtrim Istrefi., "Azemi v. Serbia in the European Court of Human Rights: (Dis) continuity of Serbia's De Jure Jurisdiction over Kosovo" Blog of the European Journal of International Law: EJIL: Talk! (March 13, 2014). The article can be found here: < <https://www.ejiltalk.org/azemi-v-serbia-in-the-european-court-of-human-rights-discontinuity-of-serbias-de-jure-jurisdiction-over-kosovo/>> accessed 02/07/2022.

differently in 2007, a year before the declaration of independence, in the case of *Behrami and Behrami v France and Saramati v. France, Germany and Norway*, in which case it recognized the exercise of territorial jurisdiction over Kosovo to UNMIK under resolution 1244, and not to Kosovo.²⁰⁶ This makes us understand that the circumstances have changed, and this is confirmed by the European Court through its jurisprudence.

Moreover, even if it were considered that Kosovo and Serbia have territorial disagreements, then it would not be the first time that countries with such challenges become members of the Council of Europe. For example, Armenia and Azerbaijan are two countries that became member states of the Council of Europe in 2001 by having territorial disputes and this has not presented any problem during the membership process, however, by being part of the European Court of Human Rights' jurisdiction the human rights issues in these territories can be more observed and it is easier to hold the violators of human rights accountable by being part of the Council of Europe rather than by being outside of its jurisdiction.²⁰⁷

4.2.2 Willingness to meet the membership criteria

In order to become part of the largest organization for human rights, the state of Kosovo must accept the principles that the Council of Europe proclaims and defends, such as first of all, to be a democratic state in which the law rules and guarantees fundamental human rights and freedoms.²⁰⁸

²⁰⁶ European Court of Human Rights., Case law No. 97. May 2007. *Behrami and Behrami v France and Saramati v. France, Germany and Norway* (Dec), 71412/01. The case law can be found here: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-2745%22%5D%7D> accessed 04/07/2022.

²⁰⁷ Isabella Risini., 'Armenia v Azerbaijan before the European Court of Human Rights' *Blog of the European Journal of International Law*, (October, 2020). Available here: < <https://www.ejiltalk.org/armenia-v-azerbaijan-before-the-european-court-of-human-rights/>>

²⁰⁸ See article 2 of the Statute of the Council of Europe, London, 5. V.1949. Available here: < <https://rm.coe.int/1680306052>> accessed 03/07/2022.

According to the Constitution of Kosovo, "*Kosovo is a democratic state based on the separation of powers and respect for internationally recognized and protected human rights*"²⁰⁹

The 2010 progress report for Kosovo, issued by the European Commission, highlighted the concern for the level of democracy in Kosovo, pointing out that the elections in Kosovo were not held in compliance with international standards, further the report emphasizes the inability of the legislative body to control the executive body as well as the influence that politics is exerting on the judicial system.²¹⁰ However, it should be noted that from 2010 until today there has been marked progress in Kosovo. In the last elections held in 2021, Kosovo was evaluated positively by the delegation of the European Parliament to observe the electoral process, characterizing the process as transparent and incident-free.²¹¹

According to the 2022 report by *Freedom House*, which measures the level of democracy, Kosovo is ranked in a better position compared to the previous years. Based on these data, over the years there has been only solid growth in the direction of consolidated democracy, but no regression has been marked.²¹² If we analyze it from a comparative perspective, Kosovo stands better at the level of democratic development than some member states of the Council of Europe. In this report, countries are ranked according to the degree of development of democracy, where 0 means the least democracy to 100% which is the highest degree of democracy ranking in percentages. Kosovo scored 38% out of 100%, while Turkey 32%, Armenia 34%, and Azerbaijan 1%.²¹³ Some other data published by Polity IV Data in the year 2013, which measures regime changes and state of democracy every year²¹⁴, shows that these

²⁰⁹ See article 1,2 and 3 of the Constitution of the Republic of Kosovo. The document can be found here: < https://kryeministri.rks-gov.net/wp-content/uploads/2018/03/Kushtetuta.e.Republikes.se_.Kosoves-2.pdf> accessed 03/07/2022.

²¹⁰ European Commission, "Kosovo 2010 Progress Report", {COM (2010)660}, (Brussels, (November 2010). Page: 7-8. Available here: https://ec.europa.eu/neighbourhood-enlargement/kosovo-progress-report-2010_en accessed 06/2022.

²¹¹ European Union Election Observation Mission's report on electoral elections in Kosovo during 2021. The document is available here: < https://www.eeas.europa.eu/sites/default/files/eng_kosovo_preliminary_statement_16_nov_final.pdf> accessed 08/07/2022.

²¹² Freedom House. "*Kosovo: Nations in Transit 2022 Country Report.*" Available here: < <https://freedomhouse.org/country/kosovo/nations-transit/2022>> accessed 07/07/2022.

²¹³ Overall marked scores of Turkey, Armenia and Azerbaijan can be found here: < <https://freedomhouse.org/>> accessed 08/07/2022.

²¹⁴ Marshall, Monty G., Keith Jagers, and Ted Robert Gurr. "Polity IV Project: Political regime Characteristics and Transitions, 1800-2013-Dataset Users' Manual" p.1. Available here: < <http://www.systemicpeace.org/polity/polity4.htm>> accessed 07/07/2022.

countries at the time when they became members of the Council of Europe were far worse than Kosovo today in terms of ability and commitment to meet democratic standards, therefore the argument for membership in the Council of Europe becomes even stronger.²¹⁵

As emphasized in Article 3 of the Statute of the Council of Europe, the acceptance of the principles of the rule of law by the countries aiming for membership in the CoE²¹⁶, represents another precondition that is closely related to democracy and human rights.²¹⁷ The purpose of the rule of law is in fact to ensure the implementation of human rights as they are defined and protected in the Constitutions and the national law of each country²¹⁸, the implementation of which guarantees equality before the law of all citizens without discrimination, where the right for a fair trial is guaranteed for everyone, where the judicial system operates based on constitutional and legal norms and whose decisions are also based on the correct application of the laws in force.²¹⁹

The report of the Parliamentary Assembly of the Council of Europe, which was presented in 2016, expressed concern about the state of the rule of law in Kosovo, in which case it was emphasized that corruption and political influence exerted in the judicial system prolonged the further development of Kosovan society²²⁰, however, the state of Kosovo has made progress in improving the rule of law according to data published by the *World Justice Project Rule of Law Index*, in 2020. According to this independent data on the rule of law, Kosovo is listed as 54th out of 128 countries around the world. Compared to other countries of the Western Balkans, which are also member states of the Council of Europe, guided by the rule of law, such as Albania and Serbia, which are listed in 50th place, Bosnia and Herzegovina 52nd and North Macedonia are ranked 53rd. Kosovo stands better even compared to Hungary, which has marked 53.²²¹

²¹⁵ Prishtina Institute for Political Studies., “Kosovo’s ability to fulfill the Council of Europe membership criteria: A comparative perspective.” Page 10. Available here: < <https://pips-ks.org/en/Detail/ArtMID/1446/ArticleID/3148/Kosovos-ability-to-fulfill-the-Council-of-Europe-membership-criteria-A-comparative-perspective>>accessed 07/07/2022.

²¹⁶ Article 3, Statute of the Council of Europe. See more:< <https://rm.coe.int/1680306052>>

²¹⁷ Ibid.

²¹⁸ Joris Voorhoeve, Wetenschappelijke Raad voor het Regeringsbeleid and Scientific Council for Government Policy., “From War to the Rule of Law”,(Amsterdam University Press, 2007), Page:92. Available here: < <http://www.jstor.org/stable/j.ctt46mzht.8>>

²¹⁹ Ibid.

²²⁰ Parliamentary Assembly of the Council of Europe. Report|Doc. 13939: “The situation in Kosovo and the role of the Council of Europe”.

²²¹ *World Justice Project Rule of Law Index*, is a system of original data sources on the rule of law, the jurisdiction of which extends to 128 countries around the world. In the collection of this data, other elements are taken into account which lead us

Respect, promotion, and protection of human rights are essential for the functioning of a democratic society that aims to join the largest organization in the field of human rights such as the Council of Europe.²²² The states are called upon within this framework to prove that they are committed to fulfilling the standards defined in the European Convention, which constitute international obligations at the moment they become members.²²³

Kosovo presents a unique case regarding its commitment to ensuring the rights guaranteed by the European Convention and its related protocols. This is best demonstrated by the place the European Convention occupies in its constitutional order. Its direct application and its hierarchical position make it the most important instrument in the field of human rights in Kosovo. Thus, this shows that Kosovo has shown readiness to fulfill this criterion defined by the Statute of the Council of Europe.²²⁴

4.2.3 Improving human rights protection in Kosovo through membership in the Council of Europe

The Council of Europe is considered to be an exporter of democracy, the rule of law, and human rights.²²⁵ It is believed that the citizens of Kosovo would benefit from its fruitful mechanisms only by being part of it and not by remaining outside its jurisdiction. The level of democracy, rule of law, and human rights would increase and improve through membership in the Council of Europe, including citizen's access to its most important mechanism, which is the European Court of Human Rights.²²⁶

to the general result, such as: security, human rights, civil and criminal justice. This data platform has included Kosovo for the first time in 2020. The ranking of Kosovo and other countries according to this index for year 2020 can be found here: < <https://worldjusticeproject.org/rule-of-law-index/country/2020/Kosovo/>> accessed 07/07/2022.

²²² V. Madhusoodhanan., "European System for Protection of Human Rights: Recent Development", *Journal of the Indian Law Institute* 38, no.2, (1996), Page:99. Available here: <http://www.jstor.org/stable/43927469>.

²²³ Ibid.

²²⁴ Kush trim Istrefi., "Kosovo's Quest for Council of Europe Membership", *Brill Nijhoff*, Vol. 43 (2018).

DOI 10.1163/15730352-04303002. Available here: < [file:///C:/Users/HP/Downloads/\[15730352%20-%20Review%20of%20Central%20and%20East%20European%20Law\]%20Kosovo%E2%80%99s%20Quest%20for%20Council%20of%20Europe%20Membership%20\(3\).pdf](file:///C:/Users/HP/Downloads/[15730352%20-%20Review%20of%20Central%20and%20East%20European%20Law]%20Kosovo%E2%80%99s%20Quest%20for%20Council%20of%20Europe%20Membership%20(3).pdf)> accessed 07/07/2022.

²²⁵ Klaus Brummer., "The Council of Europe as an exporter of democracy, human rights and the rule of law", (*international Politics* (2014)) Doi:10.1057/ip.2013.27; In this article the author outlines the way and methods based on which the Council of Europe gives its contribution in the non-member states of the Council of Europe. Available here: < [CoE as a exporter of Democracy, human rights and rule of law.pdf](#)> accessed 08/07/2022.

²²⁶ Aleksander Ivkovic., "Kosovo's membership in the Council of Europe and the comeback of the Washington Agreement", *European Western Balkans*, (May, 2022): Page 7. The article can be found here: <

The duty to protect human rights falls first under the national competence of each state. One can argue that the European Court is under a heavy load of cases that are presented to it, remaining pending, however, this load with the cases presented from individuals is an indication that something is not working well in the national systems of the states to protect human rights, prevent violations and correct them.²²⁷ Many cases and judgments issued by the European Court are not implemented by the member states²²⁸, however, the states that implement them have benefited from better identifying the problems and improving them by raising the standards in the field of human rights in their respective countries.²²⁹ The right of citizens to file cases of human rights violations before the European Court would in many ways affect the improvement of the human rights situation in Kosovo. Through these complaints and judgments issued by the European Court, human rights standards would increase in Kosovo, as is happening in other current member states of the Council of Europe.²³⁰ For example, the case of *Dybeku v. Albania*²³¹ is a very known example in which the European Court of Human Rights, in 2007, decided that the inadequate conditions of the complainant in the prison where he was serving his sentence and the lack of access to medical treatment for the mental illness the applicant was suffering were qualified

<https://europeanwesternbalkans.com/2022/05/12/kosovos-membership-in-the-council-of-europe-and-the-comeback-of-the-washington-agreement/>> accessed 08/07/2022.

²²⁷ Antonio Bultrini., The Future of the European Convention on Human Rights after the Brighton Conference, *Instituto Affari Internazionali* (IAI) (2012), Page: 2. Available here: < <http://www.jstor.org/stable/resrep09748>.>

²²⁸ See more about European Court of Human Rights Annual Report 2021.Can be found here: < https://www.echr.coe.int/Documents/Annual_report_2021_ENG.pdf>

²²⁹ Ibid.

²³⁰ Excerpted from the speech of Robert Ragnar Spano, President of the European court of human rights at the Solemn Hearing of the European Court of Human Rights on 25 June 2022. Available here: < <https://www.coe.int/en/web/commissioner/-/at-the-crossroads-democracy-human-rights-and-the-rule-of-law>>

²³¹ Ilir Dybeku, a citizen of Albania diagnosed with mental problems since 1996, committed a murder in 2003, for which he was sentenced to life imprisonment by the domestic courts of Albania. Since 2003, he has been held in three different prisons, being treated like other prisoners, regardless of his mental state, in which case he did not receive the proper medical treatment for such cases. The family member on his behalf had filed a complaint at the domestic court against the medical unit within the prison for not providing medical services for people with mental illness and had requested that he be transferred to another prison where the conditions for such categories are adequate and their lives are not put in danger. The compliant was dismissed by the national courts. The case was brought before the European Court and the latter found violation of the European Convention. The judgment on this case can be found here: < <file:///C:/Users/HP/Downloads/CASE%20OF%20DYBEKU%20v.%20ALBANIA.pdf>> accessed 08/07/2022.

by the court as inhumane and degrading treatment, which constituted a violation of Article 3 of the European Convention.²³²

In 2014, the state of Albania takes legal measures to guarantee equal, non-discriminatory treatment respecting the human dignity of convicts with mental disorders, through the adoption of the *Law on the Rights and Treatment of Prisoners and Detainees*. Consequently, this has influenced the revision of the general rules of prisons and the provision of training for medical staff operating inside the prisons.²³³

It has been argued that much implementation can be achieved within the national legal system of member states, however, if the internal system fails to protect human rights, then external pressure is needed to assist in providing protection for those rights that are threatened.²³⁴

In order to ensure the implementation of the European Convention on Human Rights and its protocols, several monitoring mechanisms have been established which are carried out by numerous independent professional bodies.²³⁵ Kosovo is among the countries that are subject to such monitoring mechanism for the following protocols which are open to countries that are not member states of the Council of Europe, such as:

- 1) The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; and,

²³² Filip Lynch., “Inadequate Access to Health Care for Prisoners with Mental Illness a Violation of the Prohibition against Torture and Ill-Treatment” *Human Rights Law Center* (December, 2007). The article can be found here: < <https://www.hrlc.org.au/human-rights-case-summaries/dyebeku-v-albania-2007-echr-4115306-18-december-2007>> accessed 08/07/2022.

²³³ Parliamentary Assembly of the Council of Europe., “Impact of the European Convention on Human Rights in States Parties: Selected examples” (January,2016). Available here: < <http://website-pace.net/documents/19838/2008330/AS-JUR-INF-2016-04-EN.pdf/12d802b0-5f09-463f-8145-b084a095e895>> accessed 08/07/2022.

232 Global Citizenship Commission. “Implementation of Human Rights.” In *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World*, edited by Gordon Brown, (Publishers, 2016). Page: 100. Available here: < <http://www.jstor.org/stable/j.ctt1bpmb7v.14>> .

²³⁵ Council of Europe, “*Council of Europe Independent human rights mechanisms and institutions*”. Available here: < <https://www.un.org/esa/socdev/enable/rights/ahc7docs/ahc7council.eu1.pdf>> accessed 09/07/2022.

2) The Framework Convention for the Protection of National Minorities.²³⁶

Through the monitoring of the implementation of these conventions in Kosovo, there has been progress towards improving the particular human rights situation in place. For example, in 2015, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), visited Kosovo to monitor closely the implementation of the Anti-Torture Convention, which is directly applicable in the country. One of the findings that constituted a violation of the convention was the regular carelessness of prisons and detention centers with medications, including essential medications such as insulin, which patients often had to provide themselves. In addition, the lack of access to psychiatric services within medical centers within prisons for prisoners with mental problems has been seen as a concern. For this point, the CPT commission has made recommendations to the Kosovar authorities to improve the existing situation and improve and guarantee prisoners' access to medical care.²³⁷

In the 2021 report, the delegation of the CPT highlighted the improvements that have been made since that year in the concerns it raised and for which it made recommendations. According to the 2021 report, the interruption of the supply of medicines has been avoided and the prisoners are now supplied with them, and they have raised the quality of providing adequate medical services to patients inside the prison and detention centers according to the human rights standards set in the Convention.²³⁸

Thus, granting Kosovo membership in the Council of Europe would be a big step in improving the human rights system through its mechanisms, more specifically, through the European Court and monitoring mechanisms. On the other hand, the membership of Kosovo would mean success for the Council of Europe, the purpose of which is to ensure the protection of human rights in the European continent, of which Kosovo is also a part.

²³⁶ Article 22, of the Constitution of the Republic of Kosovo. Available here: < <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>> accessed 09/07/2022.

²³⁷ See page 3 of the year 2015 report, issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), on ad hoc visit to Kosovo. The report can be found here: < <https://rm.coe.int/16806a1efc>> accessed 09/07/2022.

²³⁸ See the report on CPT visit to Kosovo in 2021. Available here: < <https://rm.coe.int/1680a3ea32>> accessed 09/07/2022.

CONCLUSION

The goal of this paper was to answer the following questions: (1) *Has the United Nations Interim Administration violated human rights in Kosovo?* (2) *To what extent are protected human rights in Kosovo?* and, (3) *Does Kosovo meet the criteria for membership in the Council of Europe, and can the latter improve the human rights situation?* To answer these questions, this paper has identified the lack of accountability of the United Nations Interim Administration for human rights violations, has analyzed the installation of national mechanisms as an attempt for ensuring the protection of human rights in absence of an international mechanism, in post-independent Kosovo, and through illustrations and comparative methods has shown that Kosovo possesses a willingness to fulfill the criteria of membership in the Council of Europe.

The second chapter first showed through concrete examples on how the violation of human rights triggered the conflict back in 1998, then it identified the incapacities of the United Nation Administration for providing human rights protection, especially in the first year following the end of war. The lack of accountability took place despite the incorporation of international instruments in the field of protection of human rights into national applicable law during the international administration of Kosovo, which led to the impunity of human rights violators as a result of the absence of an international mechanism for protection of human rights such as International Courts.

Having identified the unaccountability in relation to the human rights violations during UNMIK administration, the attempt of establishing national mechanisms in post-independent Kosovo as analyzed throughout chapter 3 showed that current mechanisms are insufficient in ensuring full human rights protection for the citizens of Kosovo in general due to the following elements:

- Limitation on the competence of the Constitutional Court, set as a national mechanism, for imposing compensation for human rights violations.
- Failure to apply the judicial practices of the European Court of Human Rights by the judges and the judicial system in Kosovo as requested and stipulated in the Constitution of Kosovo.

- Lack of accountability among judges for violating the right to a fair and impartial trial remains the biggest challenge identified in this paper.
- Corruption and its presence in the judicial seem to have a direct impact in not ensuring the right to a fair trial in Kosovo.
- Citizen's non –access to the international mechanisms for the protection of Human Rights is seen as one of many other factors that contribute to the lack efficiency in providing full protection of human rights in Kosovo.

The potential membership of Kosovo in the Council of Europe and its mechanisms would be the main factor contributing in improving the system of human rights protection in Kosovo. Before coming to this point, the ability and willingness of Kosovo to cope with the criteria of membership has been explored by using the comparative approach of analyzing the level of development in the field of the rule of law, democratic and human rights standards with some other current member states of the Council of Europe which lead to the conclusion that Kosovo possesses the willingness to embrace the standards set by the Council of Europe towards its potential members. At first sight, the issue of Kosovo's ability to exercise its jurisdiction over the whole territory might present an obstacle during the process of accession in the CoE, however, it has been shown in the chapter 4 that the European Court of Human Rights through its case laws recognizes Kosovo as the main authority in charge of exercising jurisdiction over its whole territory following its declaration of independence in 2008.

On one hand, Kosovo's inclusion in the Council of Europe remains the main objective to be reached by the Kosovan authorities in order to ensure better protection for human rights and on the other hand this would mark a huge success for the Council of Europe itself for ensuring human rights protection for this part of Europe that was left outside its jurisdiction the last two decades. Moreover, the Council of Europe should play a more active role in mediating when two countries have "territorial disputes" by assisting in overcoming the obstacles that might appear during the accession process and find a solution which would lead to the avoiding of any challenges and bring into focus the issue of human being and their rights to get protected internationally.

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