

PERISKOPI

A large graphic on a blue background consisting of a thick, light green spiral that winds inward. In the center of the spiral is a circle of twelve yellow stars, similar to the flag of the European Union.

Kosovo's membership into the Council of Europe

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Table of Contents

Contents	2
Summary	3
The Road to the Council of Europe	4
What is the Council of Europe	4
The Structure of the CE	6
CE and Kosovo	7
Kosovo's Membership to the CE	8
Procedure for Membership to the CE	10
Gains and Loses of Kosovo stemming from its membership to the CE	11
Recommendations	12

Summary

Apart from recognition from other countries in the world, it is of great importance for Kosovo to attain membership in international institutions. In this regard, Kosovo should prioritize its application process to the Council of Europe, as membership in the latter would indicate state commitment and open the way to membership in other important European organizations.

Prishtina authorities seem to be aware of the importance of CE membership and have explored Kosovo's possibilities to attain membership. The assistance of some CE members has been vital for such efforts. So far, more than two thirds of the CE member states have recognized Kosovo, thus constituting sufficient votes to accept Kosovo into the CE. However, a number of requirements and conditions need to be met, which pertain to the area of human rights and rule of law.

The CE, albeit being divided as far as the status of Kosovo is concerned, remains interested in the developments in Kosovo and follows up regularly. The Human Rights Commissioner visits Kosovo frequently and reports on the situation of human rights in Kosovo. The Parliamentary Assembly of the CE has reviewed and approved reports,

the main focus of which is on the issue of the rule of law in Kosovo. The CE has an office in Prishtina that supports a variety of projects, although always ensuring to maintain its neutral position regarding the status of Kosovo.

Recently, Kosovo's public opinion has become acquainted more with the CE due to the 2011 January-approved report, drafted by the special rapporteur and senator from Switzerland, Dick Marty. The report accuses Kosovo's senior political leadership for involvement in organized crime and crimes perpetrated during the war, including trafficking of victims' organs. The report's claims are still under investigation.

The present report from the Foreign Policy Club attempts to demonstrate the role of the CE and the importance for Kosovo to attain membership. It tackles the responsibilities and performance of Prishtina authorities in fulfilling CE requirements, and it will give assessments of the importance of the process. The report reveals that despite the obstacles that Prishtina is facing, important steps have been taken in this regard. However, the work is not yet complete and will be ended only when Kosovo becomes a member of the CE.

Finally, the report draws attention to the fact that for Prishtina, international recognition and its membership to international organizations should remain a priority and not become hostage to internal political developments.

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The road towards the Council of Europe

Besides recognition from world countries, attaining membership to important institutions remains of vital importance for Kosovo. Kosovo authorities seem to be aware of the latter and continuously affirm their dedication to such processes. However, specific results are still lacking. The Council of Europe is one of the most important European organizations where Kosovo should seek membership, as it would indicate the commitment of the state and

enable Kosovo to apply for membership in other important organizations of Europe.

The CE is an international organization of European states established after World War II, which aims to establish greater cooperation among European states and increase the level of confidence between states and its people, protect human rights, promote parliamentary democracy and rule of law, promote high standards for social and legal policies and promote consciousness for a common European identity. The Council of Europe is different from other European Union organizations of the EU, such as the European Council, Council of the EU Ministers etc.

What is the Council of Europe

The Council of Europe is the oldest political organizations in Europe, which was established in 1949. In the years following World War II, when



Europe was recovering from sufferings and devastation unheard of before in the history of mankind, reconciliation between the peoples of the continent and avoidance of other wars was more than ever necessary. At a speech at the University of Zurich, Switzerland in September 1946, Sir Winston Churchill called for the establishment of the United States of Europe and the establishment of the Council of Europe. The idea was debated at a congress attended by hundreds of leaders of politics and civil society that was held in the Hague, the Netherlands, in 1948. The Council of Europe was established on May 5, 1949 by the Treaty of London, which included 10 countries: Belgium, Denmark, France, the Netherlands, Ireland, Italy, Luxembourg, United Kingdom, Norway and Sweden. The other great wave of memberships occurred in the beginning of '90s, following the fall of the 'Iron Curtain.' Nowadays, all Euro-

pean countries with the exception of Belarus, Kazakhstan, Vatican and Kosovo, are members of the Council of Europe.

Current political objectives of the CE, with its seat in Strasbourg in France, have been articulated in three later summits¹ and can be summarized through the following items: promotion of common values of human rights, rule of law and democracy; increase security for European citizens by fighting organized crime and trafficking of human beings; increase of cooperation with other international and European organizations.

It is important to note that although the Council of Europe has no direct link to the EU and EU membership is not formally related to CE membership, to date no country has attained EU membership wi-

¹ Warsaw, Poland, 1993, Strasbourg, France, 1997 and again Warsaw, 2005.



PHOTO COUNCIL OF EUROPE

Photos, from left:
Thorbjørn Jagland
Mevlüt Çavuşoğlu
Jean-Paul Costa
Thomas Hammarberg

Next page:
Bjorn Von Sydow
Dick Marty

thout firstly becoming a CE member. Membership to the CE confirms to the rest of Europe that a country is mature and responsible, meets obligations stemming from the CE conventions, and what is more important, that it shares the same values and standards with other European countries.

The structure of the CE²

The CE is chaired by the General Secretary elected by the Parliamentary Assembly for a five-year term, who chairs the Secretariat of the Council of Europe. Currently, the General Secretary is the former Prime Minister of Norway, Thorbjørn Jagland, who took the office on October 1, 2009.

The main decision-making institution of the organization is the Council of Ministers, composed of the foreign affairs ministers of 47 member countries. The Council of Ministers convenes

twice a year: before and after the regular session of the Parliamentary Assembly. The Council of Ministers holds other meetings attended by the deputies of the Ministers of Foreign Affairs (permanent ambassadors at the CE).

The Parliamentary Assembly (PACE) is composed of parliamentarians of all member countries and every year elects a new president. In January 2010, Mevlüt Çavuşoğlu from Turkey was elected the President of the Parliamentary Assembly. The delegations of each country should reflect the political spectrum of their national parliaments, for example, it should be composed of members of the party(ies) in power and of the opposition. The Parliamentary Assembly is a deliberation authority and holds its regular sessions once a year. It communicates its decisions as opinions or recommendations. PACE appoints its members as rapporteurs with a mandate to draft parliamentary reports on specific issues.

The European Court on Human Rights, established based on the European Convention on Human Rights of 1950, is composed of judges from each member country appointed for a six-year term

² In this report we will only mention the institutions that are more important for this report. Therefore, we will not list all institutions of the Council of Europe. For more information on the entire structure of the CE, see the CE webpage: <http://www.coe.int/>



CE and Kosovo

KOSOVA SA MË SHPEJTË NË
KËSHILLIN E EVROPËS

with the possibility of re-election, by the Parliamentary Assembly and is presided over by the President of the Court, who is also determined by vote. Since 2007, the President of the Court is Jean-Paul Costa from France. According to the new provisions determined by Protocol 14 of the European Convention on Human Rights, judges can hold this position for nine years without the possibility of re-election.

Human Rights Commissioner is voted by the Parliamentary Assembly for a six-year term without the possibility of re-election. This position was established in 1999. Since 2006, this position is held by Thomas Hammarberg from Sweden.

Among other important institutions are the European Directorate on Medicine Quality, the Conference of International NGOs, the Congress of Local and Regional Authorities and a number of semi-autonomous structures known as “partial agreements” some of which are open to non-member countries too.

The Council of Europe has been present in Kosovo since 1999. The CE has an office in Prishtina that implements a series of projects funded and supported by the CE. These projects are mainly focused on education and protection of cultural heritage. The CE has organized the monitoring of elections held in Kosovo, with the exception of the recent 2010 elections that were organized by the institutions of the state of Kosovo.³

The CE is represented also formally in terms of inclusion of its conventions in the legal system of Kosovo. The former Constitutional Framework of Kosovo and now the Constitution of Kosovo imposes norms on the application of CE important documents, such as the European Convention on Basic Human Rights and Freedoms and its protocols, the Framework of the Convention of the Council of Europe on the Protection of National Minorities and the European Charter of Regional and Minority Languages.

The CE, although divided on the status of Kosovo, remains interested in the developments in Kosovo and follows up on them on regular basis. The Human Rights Commissioner, Mr. Thomas Hammarberg, visits and reports on Kosovo regularly.

On June 22, 2010 the Parliamentary Assembly of the CE has reviewed and approved the report drafted by the CE rapporteur from the Commission on Political Affairs Bjorn Von Sydow, which places its emphasis on the issue of the rule of law in Kosovo. According to Sydow, the CE in Kosovo should focus on achieving standards and not on the status of Kosovo. Speaking on the standards in Kosovo, Sydow said to PACE that “the standards in Kosovo are not only low, but extremely low, and this may be improved even without dealing with the stats.” It is impor-

³ The CE does not recognize Kosovo as an independent state, and therefore did not agree to monitor the elections announced by the institutions of the state of Kosovo.



tant that PACE calls for greater engagement of the CE in Kosovo “to increase the standards in the area of democracy, human rights and the rule of law” and to enable the population of Kosovo to enjoy rights as required by the CE. Furthermore, PACE requires that “the dialogue with the political representatives elected in the Assembly of Kosovo commence on issues of common interest, taking into consideration the legitimate interests and concerns of Serbia.” The requirement for CE greater engagement and cooperation with the political representatives of Kosovo brings a new quality to the relations between Kosovo and the CE.

However, the shortcomings reported to PACE cannot be considered a good starting point of relations between Kosovo and the CE, since PACE notes great shortcomings in almost all areas of social life in Kosovo. Furthermore, the CE Council of Ministers, as the highest decision making authority of this organization, brings decisions based on the recommendations of PACE. To date, PACE has not seen positive developments in order to recommend Kosovo’s membership into this organization.

Relations aggravated in January 2011 when the CE approved the report of the Swiss senator Dick Marty accusing senior political leadership of Kosovo for

involvement in organized crime and war crimes. The report, submitted in December 2010, has drawn the attention of the public opinion all over the globe. The image of Kosovo has been deeply impaired by this report. The CE called to the investigating authorities to investigate the accusations in the report.

Kosovo’s membership to the CE

The issue of Kosovo’s membership to the CE firstly raises the issue of whether Kosovo should attempt to attain membership in this organization. Some have mentioned the issue of budget implications for Kosovo should Kosovo become member of this organization, while others have raised the issue of whether Kosovo would benefit from the access to the European Court on Human Rights. If Kosovo’s membership to the EU is truly the goal of Prishtina official, then membership to the CE is one of the informal conditions to such a process. Membership to the CE indicates achieved standards in democratic, economic and rule of law development. Without achieving such standards, EU membership will not be discussed any further. Moreover, budget implications and issues related to Kosovo courts are insignificant with regard to the benefits that Kosovo would have by becoming CE member.

Access to CE institutions is above all in the interest of citizens and not of the government, according to Agon Vrenezi, human rights expert and advisor at the High Commissioner for Human Rights Office. The citizens of Kosovo would benefit mostly by Kosovo's membership to the CE and its institutions, such as the European Court on Human Rights, commission against Torture and Trafficking or the Venice Commission, which are above local courts of Kosovo or other CE countries where Kosovo citizens live. Citizens may seek support from these institutions when their rights are violated by the local courts. The CE may play an important role in the procedure of drafting of the laws that are adopted by the Assembly of Kosovo, and also an important role in the implementation of these laws by monitoring the work of the judiciary.

CE membership would positively promote Kosovo's overall image in the international community, as Kosovo would share criteria of respect for values and principles that are common for all European countries. Furthermore, the participation of Kosovo representatives in the CE authorities would enable Kosovo to become an equal partner will also offering it possibilities to contribute in the debate at the General Assembly and the Council of Ministers and would influence on the decisions taken there concerning Kosovo.

Regarding financial cost to CE membership, it would not be unaffordable for Kosovo. The amount that member countries pay to the joint budget of the CE is calculated based on Resolution 94(31) of the Council of Ministers and the calculation formula is based on the general number of the population and the country's GDP within the last three years. However, the latter applies to larger and richer European countries. For smaller countries with lower economic development, the minimum amount of the financial contribution is calculated to 0,12 per cent of the total budget of the CE. This amount is asked from the majority of Kosovo's neighboring countries, and it is envisaged that the amount to be asked from Kosovo would round up to around €300.000 annually.

Interviews with officials of the Government of Ko-

sovo and Assembly of Kosovo reveal that Kosovo's institutions are aware of the need for membership to the CE, and that several steps have been taken in this regard. However, the process will be completed only when Kosovo becomes member of the CE. Kosovo has encountered great support from various CE countries, in particular Albania, which has informed Prishtina with the membership procedures, notified Prishtina about the developments of the CE and recommended the steps that Prishtina should undertake.

Zylfije Hundozi, former chair of the Parliamentary Commission for European Integration said that the commission she chaired had raised the issue of the membership to the CE since spring 2008. "The CE was one of the first issues that the Commission dealt with, and has recommended that the Assembly of Kosovo debate about membership to the CE," said Hundozi during an interview with the FPC.⁴

In September 2009, a parliamentary delegation from Kosovo was invited to visit the CE General Assembly and two members of this delegation, Hundozi and Bujar Bukoshi presented to the PACE the situation in Kosovo. A part of the delegation were members of the Assembly of Kosovo, Edita Tahiri and Branislav Gërbiq. The CE also invited Rada Trajković and Oliver Ivanović, but as a separate delegation.

Agron Demi, Executive Director of Instituti GAP in Prishtina, said that GAP had prepared a detailed report for the CE and the procedure of membership organization at the request of the Parliamentary Commission for European Integration, which was submitted in March 2008. Demi said that the procedure for application and membership was not simple and that several standards need to be met before Kosovo is admitted in this organization.⁵

The work of the courts, human rights and rule of law are decisive for the membership, as it is obvious in the case of Montenegro that has had pro-

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⁴ Interview of FPC with Ms. Zylfije Hundozi, Prishtina, 16.08.2010.

⁵ Interview of FPC with Mr. Agron Demi, Prishtina, 29.06.2010.

blems with the membership precisely due to the rule of law.

Sources from the Ministry of Foreign Affairs confirm that the Ministry of Foreign Affairs included CE membership in its 2010 program. Several documents that the FPC has obtained confirm that the MFA has worked toward finding ways to apply for CE membership. The MFA documents indicate that the procedures for application and membership to the CE have as well as membership procedures of some countries been studied in detail in cooperation with officials from Albania, so that Kosovo prepares well for its membership to the CE. What is most important, the authorities of Kosovo have performed this in coordination with CE member countries that support Kosovo and its membership to the CE, which inform Kosovo of the most appropriate time to apply for membership to this organization.

The procedure of membership to the CE

Any European country that meets the principles of Article 3 of the CE Statute, which specifically requires that human rights and the principles of the state of law be observed, may become member of the CE. The Council of Ministers, which convenes once a year, decides on the membership. A CE member country proposes to include in the following year's agenda of the Council of Ministers the request for the membership of the country that has requested to become a member. Before the decision is taken to admit the new member, the Council of Ministers asks for the opinion or recommendation of the General Assembly (Avis). Before giving an opinion, the Parliamentary Assembly establishes a commission to closely oversee the local legislation consistency with the legal principles of the CE. According to Article 29 of the Statute of the CE and Rule 40 of the Work Regulation of the Parliamentary Assembly, the Commission appointed by the Assembly submits a report to the Assembly, based on which the Assembly with 2/3 of member votes brings a decision pro or against the recommendation of accepting a country. The recommendation or the opinion of the

Parliamentary Assembly is of decisive importance when accepting or rejecting a new state in the CE. Article 20 says that if the recommendation of the Parliamentary Assembly is positive, then the Council of Ministers with 2/3 of votes decides to send the invitation to the state applying for membership. Through the Secretary General, the Council of Ministers sends the invitation for membership to the new state, and the invitation determines the number of delegates to represent the new country at the Parliamentary Assembly, as well as the determined annual financial contribution amount.

To date, Kosovo has been recognized by 33 out of 47 member states of the CE, thus constituting more than two thirds of the votes of the Council of Ministers and PACE. Technically, Kosovo's application for membership may require 2/3 of votes in both authorities. However, the issue of Kosovo may become complicated if left to be reviewed at one of the meetings of the deputy Ministers of Foreign Affairs under the auspices of the Council of Ministers. At the level of deputy ministers/permanent ambassadors of the CE, decisions on most important matters, such as the admission of new members, are taken by consensus⁶. At the CE, there are some active opponents of Kosovo's independence, who would vote against Kosovo's membership to the CE. Therefore, it is essential for Kosovo's request for membership to be reviewed during one of the meetings of the Council of Ministers at the level of Ministers of Foreign Affairs, and not at the level of their deputies.

⁶ According to the CE Statute and the Working Rules of the Council of Ministers (Article 14), each member of the Council of Ministers should appoint a permanent representative who will replace the Minister of Foreign Affairs in the meetings of the Council of Ministers that are not held on regular basis. Deputy Ministers of Foreign Affairs have similar decision making competences with the Foreign Affairs Ministers and may debate on all issues that are under the competence of the Council of Ministers at the level of the Ministers of Foreign Affairs. The Working Rules of the deputies at the Council of Ministers foresee decision making on consensus on some issues of importance, among which the admission or not of new states in the CE.

70.2%

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Following CE membership, Kosovo would be represented at the Council of Ministers by the Minister of Foreign Affairs and the ambassador to be appointed as the Permanent Representative at the CE. Taking into consideration the current representation of various countries at the CE Parliamentary Assembly, we may assume that Kosovo would be represented by two or three deputies. One of them should be a female because the rule requires that the composition of the delegation represent the gender composition in the framework of the national assembly. The deputies are usually selected for one regular session, which means for a full year, and they should be selected from the composition of the Assembly of Kosovo or to be selected by the Assembly of Kosovo, implying that they can be non-members of the Assembly of Kosovo. The list with the selected representatives should be submitted to the Assembly before the regular annual session starts. One of the representatives should be appointed as the chairperson of the group of deputies from Kosovo.

Benefits and losses of Kosovo's membership to the EU

Citizens of Kosovo would mostly benefit from Kosovo's membership to the CE. The CE oversees the judicial system of their country, and at the CE they can ask for support every time the judicial system of Kosovo fails to intercede. The judicial system itself, knowing about the oversight by a higher authority, will have an additional incentive for competence, responsibility and accountability. However, the benefits transcend the judicial system. Through its conventions, the CE would also monitor the Assembly of Kosovo and its adopted laws, and it would also monitor the entire system to ensure that no human rights of Kosovo citizens are violated. As emphasized by Vrenezi, the membership to the CE "would be a good thing for us, there will be punishment when laws are violated."

From the economic point of view, as noted in the research by the European Integration Commission, through Kosovo's membership to the CE, costs will

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be incurred in the budget of Kosovo and the country will not have any financial benefits stemming from its membership to the CE. However, these expenses are almost symbolic for Kosovo, especially compared to the benefits in the judicial system and the political benefits that membership would bring.

From the legal aspect, the Kosovo judiciary would benefit from the membership to the European Court of Human Rights, and so will the citizens of the Republic of Kosovo. Kosovo's representation to the Congress of the Local and Regional Authorities would increase the efficiency of the municipal governance, which will benefit from professional support through training programs offered by this congress. Kosovo's participation in the Parliamentary Assembly of the CE would enable the integration of the Assembly of Kosovo for the first time in an international parliamentary institution and this would be a good experience for the integration of the Assembly of Kosovo in the future in other parliamentary institutions, such as the Inter-Parliamentary Union and the European Parliament (EP).

However, Kosovo would benefit from EC membership on the international arena. This membership is a positive mark received for the achievements in respecting human rights and rule of law that would reflect positively on other global international organizations. What is important is that this is a big step in achieving standards to become one day member of the EU, which is the ultimate goal of Prishtina.

Recommendations

The authorities of Prishtina seem to be aware of the importance of CE membership. They have found important partners in the CE, especially Tirana authorities. In coordination with these partners, Prishtina seems to be preparing for its membership to the CE. However, the institutions of Kosovo should increase their commitment and lobbying efforts in Strasbourg. The procedures for the admission of new state are complex and lengthy. Depending on the obligations that Kosovo would

need to fulfill, at least a year might past until an invitation for membership would be submitted. Prishtina should also be ready to apply for membership to the CE in the next ministerial.

Prishtina should keep being active and remind partners its determination to become CE member. Although a large number of countries support Kosovo's membership to the CE, this does not mean that Kosovo's membership to this organization is a priority for these countries. The authorities of

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Prishtina should remind them of the need to become member of the CE and insist that supportive countries remain active in this process.

The improvement of the performance of the judiciary is one of the main conditions for Kosovo to be accepted as a member of the Council of Europe. The judicial system of Kosovo has marked some successes recently, thus increasing the efficiency of the judiciary. However, this is not so much reflected on the news on the judicial system of Kosovo. Many more challenges remain that need to be dealt with and this confrontation shall be essential for Kosovo's admittance to the most important European organizations, in particular the confrontation with the political pressure and with the involvement of politics in crime that will set the speed of Kosovo's membership to the CE. Dick Marty's report has severely impaired the image of Kosovo, and therefore the local institutions should insist that investigations into the allegations of this report be completed as soon as possible in order to open up the way to apply for the CE.

Improvement of human rights, rule of law and democracy open up the way for Kosovo's membership to the CE, and also help Kosovo to achieve these standards.



Current political objectives of the CE, with its seat in Strasbourg in France, have been articulated in three later summits and can be summarized through the following items: promotion of common values of human rights, rule of law and democracy; increase security for European citizens by fighting organized crime and trafficking of human beings; increase of cooperation with other international and European organizations.





KOSOVO'S MEMBERSHIP INTO THE COUNCIL OF EUROPE

The Foreign Policy Club is a non-governmental organization which brings together intellectuals, politicians and prominent civil society activists that show affinity in foreign policy. The Club aims to contribute through intellectual debates and recommendations with regard to generating Kosovo's foreign policy in the function of peace in Kosovo, the region and the world. The Club generates debate, examines developments and gives recommendations for Kosovo's foreign policy; focuses in examining global trends that affect Kosovo's daily political-economics, and also researches Kosovo's opportunities for integrating in the world. The Club strives to draw attention to world debates and the necessary steps for Kosovo's politics in relation to such developments.

Through its activities and intensive debate, the Club produces recommendations and programs regarding regional, European and global integration processes, particularly in the process of EU and NATO integration, which fall upon the institutions of Kosovo. The organization's special focus is to develop a debate regarding immediate actions that Kosovo Institutions need to undertake in the diplomatic sphere, such as Kosovo's recognition from UN members states and Kosovo's acceptance in international organizations, as the UN, EC, OSCE, World Bank, IMF, Organization of Islamic Conferences, Olympic Committee etc.

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