

BEYOND RATIFICATION: KOSOVO'S UNIQUE PATH TO SAFEGUARDING HUMAN DIGNITY AND FUNDAMENTAL RIGHTS

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Abstract: *Amidst the ongoing efforts to become a full member of the international community, the Republic of Kosovo applies a temporary yet effective approach for safeguarding human dignity and fundamental rights: providing, via its Constitution, direct applicability to nine notable international human rights instruments, the latest being the Istanbul Convention in 2020. In this paper, we analyze the feasibility of this model and its application in practice. By essentially mirroring UN and CoE human rights standards, the Republic of Kosovo offers a unique case on protecting human rights, while still being a member of neither organization. This fact alone should qualify the state for membership in both.*

Key words: human dignity, human rights instruments, constitutionalization, Republic of Kosovo, unique

1. Introduction

A state undoubtedly has moral and positive obligations to safeguard the human dignity and fundamental rights of its citizens. This holds true even (or especially) when the very statehood of the entity is contested. To this end, bypassing obstacles in formally joining human rights instruments and international organizations requires a certain degree of legal ingenuity.

In the heart of Europe, such is the case of the Republic of Kosovo, which has uniquely constitutionalized several international human rights agreements and instruments from the UN and the Council of Europe, notably the European Convention on Human Rights (ECHR), providing for their direct applicability and primacy over laws, all the while being unable to sign or ratify them pending membership to both organizations.

This innovative model was first introduced during the international presence of the

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United Nations Interim Administration Mission in Kosovo (UNMIK) through its Regulation No. 1999/24 on the law applicable in Kosovo. The direct effect model was then preserved with the adoption of the 2001 Constitutional Framework for Provisional Self-Government (Regulation No. 2001/9), and notably with the post-independence Constitution of the Republic of Kosovo in June 2008, whose preamble enshrines those positive obligations.

The constitutionalized human rights instruments have guided Kosovar institutions in shaping extensive national reforms, both through law and policy. For years, the implementation of conventions has also been subject to monitoring and reporting.

As a testament to the model's success, the "catalogue" of human rights instruments was expanded for the first time through Constitutional Amendment No. 26 of 2020, taking up the obligations of the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210), commonly known as the Istanbul Convention.

Despite formal disadvantages, through its ambitious approach, the Republic of Kosovo has made comparable progress to many well-established counterparts.

2. Constitutionalization Model

The foundation of the model is enshrined in Articles 22 and 53 of the Kosovar Constitution. Article 22 [Direct Applicability of International Agreements and Instruments] provides an enumerated list of human rights instruments that has remained fairly constant throughout the transitional frameworks. The amended article states as follows:

"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:

- (1) Universal Declaration of Human Rights;*
- (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;*
- (3) International Covenant on Civil and Political Rights and its Protocols;*
- (4) Council of Europe Framework Convention for the Protection of National Minorities;*
- (5) Convention on the Elimination of All Forms of Racial Discrimination;*
- (6) Convention on the Elimination of All Forms of Discrimination Against Women;*
- (7) Convention on the Rights of the Child;*
- (8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment;*
- (9) Council of Europe Convention for preventing and combating violence against women and domestic violence."*

These nine and counting international instruments are automatically applicable by Kosovar courts and public bodies and have been incorporated into the legal order of the Republic of Kosovo, irrespective of the latter's status as signatory. They neither exclude nor limit each other, nor do they diminish the fundamental rights and freedoms set

forth in other constitutional provisions; rather, in fact, they serve to advance and evolve them (Constitutional Court of the Republic of Kosovo, 2019, pp. 6, 8).

Moreover, it should be noted that, while expanding the constitutionalized catalogue requires significant political consensus and commitment, this has not prevented Kosovo from unilaterally aligning and harmonizing national legislation with other international conventions, particularly as regards criminal law (Kullaj, 2024, p. 274).

Interestingly, a human rights instrument found in UNMIK Regulation No. 1999/24 was seemingly left out later in the 2001 Constitutional Framework and the Constitution of the Republic of Kosovo. This instrument is the International Covenant on Economic, Social and Cultural Rights, and while the reasoning behind the omission is unclear, Kosovo has expressed interest in “reconstitutionalizing” it as it would complement the catalogue well (Government of the Republic of Kosovo, 2021, pp. 9-10).

Worth mentioning in this juncture is Article 23 of the Constitution, placing Kosovo among the few states that enshrine the values of human dignity under a specific article of their constitutions. Titled [Human Dignity], Article 23 succinctly states that *“Human dignity is inviolable and is the basis of all human rights and fundamental freedoms.”*

The constitutionalized human rights standards are referenced extensively in Kosovan case law. Utilizing the empirical data from Loevinsohn and Larik’s article (2024, pp. 300-301, 309), we observe that within the database of the Constitutional Court of Kosovo (CCK), predictably, the most referenced are the ECHR and the ECtHR with over 6.000-7.000 mentions, followed by the Universal Declaration of Human Rights with over 200, and so on. Moreover, performing a similar selective keyword search, we find that until now, the Istanbul Convention has been referenced in three CCK cases, two of which with findings of infringement.

2.1. The ECtHR Question

While Article 22 incorporates the ECHR and its protocols, Article 53 makes reference to ECtHR case law. The latter is titled [Interpretation of Human Rights Provisions] and states that *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”*

Under this provision, public bodies of Kosovo, and the judiciary in particular, are obligated to act consistently with ECtHR case law (Hert and Korenica, 2016, p. 166). However, unlike the ECHR under Article 22 of the Constitution, ECtHR case law does not necessarily have a direct effect in Kosovo. The general consensus is that the ECtHR’s effect merely serves an interpretative function (Loevinsohn and Larik, 2024, p. 298; Garcia and Cucchi, 2017, p. 6; Hert and Korenica, 2016, pp. 165-166).

As senior expert Bardh Bokshi points out in his recent overview of ECHR references and standards in CCK case law (2025, p. 4), what on one side has been called a “Strasbourgization” of CCK case law, on the other side has also left room for divergent interpretation – a “Kosovarization” of the ECHR, as he puts it – due to the ECtHR being unable to review Kosovan public decision making.

3. Implementation Monitoring

Undertaking the implementation of international human rights instruments also makes the Republic of Kosovo subject to reporting and monitoring from the respective mechanisms. The relationship with the European Union, especially the obligation to approximate legislation to the EU *acquis*, has been established with the EU-Kosovo Stabilization and Association Agreement, in force since April 2016.

In the European Commission's Kosovo 2025 report, which accompanied the Commission's communication on the state of play of enlargement, the latter has found Kosovo's cooperation with international human rights monitoring bodies satisfactory. The report notably highlights the constitutionalization method, and the Commission even urges further expansion when it notes that the incorporation of the UN Convention on the Rights of Persons with Disabilities (CRPD) is still pending (European Commission, 2025, p. 32). In truth, a constitutional amendment was proposed in October 2023 to include the CRPD in Article 22 of the Constitution, along with the CCK's approval, but it did not go through in the Assembly due to procedural reasons. However, as of yet, no other attempts have been made to renew the proposal either, hence the Commission's observation.

As for the Council of Europe, after PACE's positive recommendation for Kosovo's membership, the final decision now rests with the Committee of Ministers. As civil society organizations point out, "*Accession to this organisation will help to close the monitoring gap that currently exists with several Council of Europe conventions which are directly applicable in Kosovo in line with Article 22 of the Constitution.*" (YIHR, 2025, pp. 3-4). When accession inevitably comes, the experience gained under this model will not have been in vain. Indeed, Kosovo "*can hit the ground running and fully integrate more easily [...]*" (Loevinsohn and Larik, 2024, p. 308) and will undoubtedly have much to contribute as a full member of the international community.

Despite the accession and recognition efforts, on 25 September 2020, the Assembly of Kosovo took a major step by amending Article 22 of the Constitution to integrate the revered 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention. Following this development, a delegation led by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), as the Istanbul Convention's monitoring mechanism, conducted an assessment in 2022 of Kosovo's alignment with the Convention's standards.

The GREVIO report highlights numerous initiatives taken by the Republic of Kosovo, both before and after the constitutionalization of the Istanbul Convention. Indeed, GREVIO has commended Kosovo on its efforts over the last ten years "[on devising] *comprehensive laws and policies to tackle violence against women and domestic violence.*" (GREVIO, 2022, pp. 7, 87).

Just a year before the amendment, Kosovo adopted the new Penal Code, and with it also introduced the criminal offenses of sexual harassment and female genital mutilation, as well as further refinements in November 2023. Drawing from the Istanbul Convention standard, in September 2023, the Republic of Kosovo adopted the new Law

on Prevention and Protection from Domestic Violence, Violence against Women and Gender-Based Violence.

The report also welcomes the policy measures contained in the National Strategy on the Protection against Domestic Violence and Violence against Women (2022-2026), which is now nearing its term and should be renewed. Similarly, Kosovo adopts a unique policy document titled “Program for the Protection and Promotion of Human Rights and Fundamental Freedoms”. The current 2021-2025 Program is also nearing its term, and so an important step for Kosovo has been the drafting of the 2026-2031 Program and the corresponding Action Plan (2026-2028).

Ambition notwithstanding, the scale of implementation of the international obligations is invariably influenced by multiple factors. In Kosovo's case, the most commonly referenced is adequate funding. Presently, the internal political instability has seemingly shifted the focus from human rights to party rights. While challenges remain, Kosovo is undeniably more closely integrated regionally and human rights more consolidated domestically (Loevinsohn and Larik, 2024, 308).

4. Conclusions and Discussion

Choosing to constitutionally ensure the direct applicability of nine and counting international human rights instruments as a workaround to pending recognition not only presents the Republic of Kosovo as a unique model in the region and beyond, but also as quite a feasible one. Kosovo's determination to safeguard human dignity and fundamental rights is reflected in the implementation of the constitutionalized instruments through far-reaching national reforms, a progress noted even by monitoring mechanisms. One would think that such invaluable experience and achievement would make the country automatically eligible for membership in both the UN and the CoE.

As the Kosovan state continues to expand and implement its constitutionalized catalogue irrespective of accession hurdles, other direct challenges must also be addressed. As UNMIK ceases its functions, Kosovo institutions should report directly on the implementation of the catalogue and must maintain direct communication with international monitoring mechanisms. In the same vein, domestic human rights mechanisms, such as the Office for Good Governance and Human Rights, Human Rights Units in ministries and municipalities, and the Ombudsperson, must be strengthened.

Finally, it is paramount to allocate an adequate budget for human rights protection that will positively influence the implementation of human rights conventions and laws.

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