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The Domestic Application of the European Convention on Human Rights and the Jurisprudence of the European Court of Human Rights in Kosovo: An Empirical Analysis

RESEARCH ARTICLE

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ABSTRACT

The European Convention on Human Rights (ECHR) has become one of the most influential regional human rights instruments, shaping the protection of fundamental rights within the domestic legal systems of European states. Although Kosovo is neither a member of the Council of Europe (CoE) nor a contracting party to the Convention, its Constitution accords the Convention's direct applicability and requires domestic courts to interpret constitutional rights consistently with the jurisprudence of the European Court of Human Rights (ECtHR). This constitutional arrangement presents a distinctive model of domestic implementation of international human rights law within Kosovo's legal system. This article examines the extent to which Kosovo's judiciary applies the Convention and the Court's jurisprudence in judicial decision-making. It addresses the following research question: To what extent have Kosovo's courts incorporated ECtHR jurisprudence into their judicial reasoning, and what challenges affect its consistent domestic application? The study employs doctrinal legal analysis combined with an empirical analysis of the published decisions of the Constitutional Court, Supreme Court, Court of Appeal and the seven Basic Courts of Kosovo during the period January 2016 to December 2025. Judicial decisions were identified through systematic keyword searches of the official judicial database and subsequently reviewed manually to verify substantive references to the ECHR and ECtHR jurisprudence. The study also examines selected published decisions of the Kosovo Specialist Chambers (KSC), as a separate institutional category, to assess how ECtHR jurisprudence informs the interpretation and application of fundamental rights within the KSC's distinct legal framework.

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INTRODUCTION

International human rights law has become an important component of contemporary constitutionalism. The development of universal and regional human rights instruments has progressively influenced the relationship between international law and domestic legal orders, particularly by requiring national authorities to interpret and apply domestic law consistently with internationally recognised human rights standards. Its significance extends beyond the international supervision exercised by the European Court of Human Rights (ECtHR), as the effective protection of Convention rights ultimately depends, to a substantial extent, on their interpretation and application by national authorities and courts.[1]

The domestic implementation of international human rights treaties varies considerably across legal systems. Constitutional arrangements determine whether international treaties form part of the domestic legal order automatically or require legislative incorporation, as well as the hierarchical position that such instruments occupy in relation to domestic legislation. The Venice Commission has emphasised that national courts are central actors in the implementation of international human rights treaties and may play a decisive role in reviewing the compatibility of domestic law and practice with international human rights standards.[2] Consequently, the formal incorporation of an international human rights instrument does not, in itself, demonstrate the extent to which that instrument influences judicial decision-making. The practical effectiveness of international human rights law also depends on how judges identify, interpret and apply the relevant standards in individual cases.

The European Convention on Human Rights (ECHR) illustrates this relationship particularly clearly. The Convention system is founded on the principle of subsidiarity and shared responsibility, under which national authorities, including national courts, bear the primary responsibility for securing the rights and freedoms protected by the Convention.[3] Judicial dialogue between the ECtHR and national courts has consequently become an important feature of the Convention system. The ECtHR itself describes judicial dialogue as a mechanism that reinforces subsidiarity and supports the responsibility of national judges to ensure respect for Convention standards at the domestic level.[4] The effective domestic application of Convention standards therefore cannot be assessed exclusively through the number of cases ultimately reaching Strasbourg; it must also be examined through the practices of domestic courts.

The Republic of Kosovo provides a particularly distinctive context in which to examine this relationship. Following the adoption of the Constitution in 2008, Kosovo established a constitutional framework that gives an unusually prominent position to international human rights instruments. Article 22 of the Constitution provides for the direct applicability of several international human rights instruments, expressly including the ECHR and its protocols, while also establishing their priority over laws and other acts of public institutions in the event of conflict. Article 53 further provides that human rights and fundamental freedoms guaranteed by the Constitution must be interpreted consistently with the decisions of the ECtHR.[5] The constitutional framework therefore gives Convention standards and ECtHR jurisprudence a significant role within Kosovo's domestic human rights system.

This constitutional arrangement is particularly significant because Kosovo is not currently a member of the Council of Europe (CoE) and is not a Contracting Party to the ECHR. Consequently, the ECtHR does not exercise jurisdiction over applications brought against Kosovo in the same manner as it does with respect to the Convention's High Contracting Parties. Nevertheless, Convention standards have been incorporated into Kosovo's domestic constitutional order. The Parliamentary Assembly of the Council of Europe has expressly recognised this distinctive situation, noting that although individuals cannot bring cases against Kosovo before the ECtHR, they may rely on the protection provided by the ECHR before Kosovo's domestic courts because the Constitution establishes the Convention's direct applicability and primacy over domestic law.[6]

The distinctive constitutional position of the ECHR in Kosovo has already attracted scholarly attention. Korenica and Doli examined the status of the ECHR and ECtHR case law within Kosovo's domestic legal order, particularly the Convention's constitutionalisation, direct effect and relationship with constitutional review.[7] De Hert and Korenica similarly described Kosovo as presenting a distinctive form of constitutionalisation of the ECHR and ECtHR jurisprudence without the conventional prerequisite of ratification through membership in the Convention system.[8] More recently, Loevinsohn and Larik have demonstrated that, despite Kosovo's contested international status, CoE human rights standards have become deeply embedded in Kosovo's constitutional and legal framework through constitutional incorporation, judicial application and cooperation mechanisms.[9]

These studies provide an important doctrinal and institutional foundation for understanding the ECHR's place in Kosovo. However, the existence of a strong constitutional commitment to the Convention does not necessarily establish how consistently that commitment is reflected in judicial practice. A central question therefore remains: how frequently and in what manner do Kosovo's courts actually engage with the ECHR and the jurisprudence of the ECtHR when deciding cases? This question is particularly important when the judicial system is considered as a whole rather than through the practice of the Constitutional Court alone.

The distinction between constitutional and regular judicial practice is central to this study. The Constitutional Court has an explicit constitutional mandate to interpret fundamental rights consistently with ECtHR decisions.[10] Regular courts, however, also adjudicate disputes involving rights protected by the Constitution and the ECHR and therefore constitute an essential part of the domestic implementation of human rights standards. The CoE has likewise identified the strengthening of domestic courts' capacity at different levels to apply ECtHR case law as an important component of human rights protection in Kosovo.

Against this background, this article examines the domestic application of the ECHR and ECtHR jurisprudence in Kosovo through an empirical analysis of judicial decisions. It asks: To what extent have Kosovo's Constitutional Court and regular courts incorporated and applied the jurisprudence of the ECtHR in their judicial decision-making, and what factors may affect the consistent application of Convention standards across the judiciary?

The article contributes to the existing literature in three respects. First, it moves beyond a purely doctrinal examination of the constitutional status of the ECHR by empirically examining judicial practice. Secondly, it distinguishes between the practice of the Constitutional Court and that of the Basic Courts, thereby examining whether the constitutional prominence of the ECHR is reflected uniformly across different levels of the judiciary. Thirdly, by identifying patterns in the frequency and manner of references to the ECHR and ECtHR jurisprudence, the study contributes to the broader discussion concerning the relationship between constitutional incorporation and the practical domestication of international human rights law.

METHODOLOGY

This study employs a mixed-method legal research approach, combining doctrinal legal analysis with both quantitative and qualitative examination of judicial practice. The doctrinal component examines Kosovo's constitutional and legislative framework governing the application of international human rights law, with particular emphasis on the constitutional status of the ECHR and the obligation of Kosovo's courts to interpret constitutional rights consistently with the jurisprudence of the ECtHR. The empirical component complements the doctrinal analysis by examining how these legal obligations are reflected in judicial practice.

The empirical analysis is based on decisions of the Constitutional Court of the Republic of Kosovo, Supreme Court, Court of Appeals, and Basic Courts available through the official judicial databases. The

research covers decisions issued during the period from 1 January 2016 to 31 December 2025. To identify decisions referring to European human rights standards, systematic searches were conducted using Albanian-language keywords and expressions corresponding to the European Convention on Human Rights and the European Court of Human Rights. These included “Konventa Evropiane” (European Convention), “Konventa Evropiane e te Drejtave te Njeriut” (European Convention on Human Rights), “Gjykata Evropiane” (European Court), “Gjykata Evropiane e tw Drejtave tw Njeriut” (European Court of Human Rights), “KEDNJ” (the Albanian acronym for the European Convention on Human Rights), and “GJEDNJ” (the Albanian acronym for the European Court of Human Rights). Following the initial search, each judgment was manually reviewed to verify that it contained a substantive reference to the ECHR or the jurisprudence of the ECtHR. Judgments in which the search terms appeared without constituting a genuine reference to the ECHR or ECtHR case law were excluded from the analysis.

The quantitative component of the study records the frequency with which Kosovo's Constitutional Court, Supreme Court, Court of Appeal and selected Basic Courts referred to the ECHR and the jurisprudence of the ECtHR during the examined period. The qualitative component subsequently analyses the identified judgments to assess the manner in which Kosovo's courts relied upon ECHR and ECtHR jurisprudence, the legal issues for which it was invoked, and the consistency of its application across different judicial levels. By combining numerical analysis with doctrinal interpretation of judicial reasoning, the study provides a more comprehensive understanding of the practical implementation of European human rights standards within Kosovo's judicial system.

Table 1. Overview of the empirical research design

Element	Description
Research approach	Mixed-method legal research (doctrinal, quantitative and qualitative analysis)
Primary legal sources	Constitution of the Republic of Kosovo, ECHR, ECtHR jurisprudence
Judicial institutions analysed	Constitutional Court of Kosovo, Supreme Court, Court of Appeal, Basic Courts (Basic Court of Prishtina, Basic Court of Peja, Basic Court of Prizren, Basic Court of Ferizaj, Basic Court of Mitrovica, Basic Court of Gjilan, Basic Court of Gjakova)
Period examined	2016-2025
Search keywords	"European Convention on Human Rights"; “European Convention”; "European Court of Human Rights"; “European Court”, ECtHR, ECHR
Data source	Official judicial databases of Kosovo
Verification method	Manual review of each judgment identified through keyword searches
Quantitative analysis	Number of judgments referring to the ECHR and ECtHR
Qualitative analysis	Examination of how ECtHR jurisprudence was applied in judicial reasoning

Table 2. Overview of the Judicial Databases Examined and Keyword Search Strategy

(2016-2025)

Court	Total judgments	Judgments referring to the ECHR/ECtHR	Keywords used
Constitutional Court	2,041[•]	5,819	European Convention, European Convention on Human Rights, European Court, European Court of Human Rights, ECtHR, ECHR
Supreme Court	19,170*	428	European Convention, European Convention on Human Rights, European Court, European Court of Human Rights, ECtHR, ECHR

Court of Appeals	43,926*	581	European Convention, European Convention on Human Rights, European Court, European Court of Human Rights, ECtHR, ECHR
Basic Court of Prishtina	41,651*	647	European Convention, European Convention on Human Rights, European Court, European Court of Human Rights, ECtHR, ECHR
Basic Court of Mitrovica	27,357*	778	European Convention, European Convention on Human Rights, European Court, European Court of Human Rights, ECtHR, ECHR
Basic Court of Peja	13,210*	556	European Convention, European Convention on Human Rights, European Court, European Court of Human Rights, ECtHR, ECHR
Basic Court of Prizren	27,401*	256	European Convention, European Convention on Human Rights, European Court, European Court of Human Rights, ECtHR, ECHR
Basic Court of Ferizaj	20,629*	283	European Convention, European Convention on Human Rights, European Court, European Court of Human Rights, ECtHR, ECHR
Basic Court of Gjakova	29.275*	859	European Convention, European Convention on Human Rights, European Court, European Court of Human Rights, ECtHR, ECHR
Basic Court of Gjilan	21,223*	255	European Convention, European Convention on Human Rights, European Court, European Court of Human Rights, ECtHR, ECHR

˙The total number of judgments includes all categories available in the respective court database, including Resolutions on Inadmissibility, Decisions, Decisions on non-enforcement, etc.

* The total number of judgments includes all categories available in the respective court databases, including administrative appeals, administrative legality reviews, administrative revisions, extraordinary administrative reviews, Kosovo Property Agency appeals, civil legality reviews, other civil matters, civil retrials, commercial legality reviews, other commercial matters, commercial revisions, misdemeanour legality reviews, other misdemeanour matters, third-instance criminal appeals, international legal assistance in criminal matters, criminal legality reviews, etc.

1. CONSTITUTIONAL INCORPORATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS INTO KOSOVO'S LEGAL ORDER

Prior to the adoption of the Kosovo's Constitution, the United Nations took over the administration of the Kosovo. United Nations Security Council (UNSC) Resolution 1244 established United Nations Mission in Kosovo (UNMIK) with executive powers to govern the territory of Kosovo with the responsibility among many others for 'protecting and promoting human rights' and re-establishing the rule of law.[11] Under UNMIK an extensive list of human rights treaties were applicable within the territory through importing them into Kosovo's legal order.[12] The adoption of Kosovo's Constitution following its declaration of independence in 2008 brought a new liberal conception and practice, along with the imposition of foundational legal principles, particularly in the areas of human rights. The new Constitution contains numerous provisions concerning the protection and promotion of fundamental human rights.[13] It directly incorporates the ECHR, stating in Article 22 that eight United Nations human rights instruments[14] and regional human rights instruments[15] directly apply and have priority over domestic laws.[16] Furthermore, Article 53 of the Constitution mandates that human rights and freedoms guaranteed by the Constitution shall be interpreted in conformity with ECtHR decisions.[17] Among the eight instruments listed in Kosovo's Constitution, the constitutional provision necessitates that Kosovo's judiciary align their decisions with ECtHR jurisprudence, positioning the ECHR as a cornerstone of Kosovo's human rights framework.

Despite this strong democratic legal foundation, the actual application of ECtHR jurisprudence in Kosovo's basic courts reveals a more complex picture.[18] This is a result that Kosovo, is neither a member of the United Nations (UN) or CoE, but chose to adopt and implement the ECHR. However, such unilateral application of the ECHR does not make Kosovo, as a non-member State, subject to legal remedies foreseen in the ECHR. Due to its non-member State's status, any obligation under the ECHR violated by Kosovo cannot result in a claim brought to the ECtHR.[19] As a consequence, the rights of the Kosovo citizens to seek review of or redress for alleged violations of their rights within the ECtHR is inapplicable through direct application. However, it is important to note that Kosovo citizens have still indirectly attempted to bring cases before the ECtHR and seek for accountability on alleged human rights violations by involving mostly international actors that were present in Kosovo such as UNMIK, European Union Rule of Law Mission in Kosovo (EULEX) and Kosovo Force (KFOR),[20] or the countries that these actors have represented.[21]

Although not being a party to the ECtHR, Kosovo's Constitution gives direct applicability and supremacy of the ECHR over domestic laws. This direct applicability obligates national courts of the Republic of Kosovo to interpret and apply domestic laws in line with the ECHR principles and jurisprudence, and allowing Kosovo citizens to rely on domestic courts to address alleged human rights violations under the ECHR standards. This complex picture as will be analyzed, however, as in regular courts judges may lack the ability to submit preliminary references to directly implement the ECHR standards on their final decisions. While the Constitutional Court of Kosovo has deemed itself obliged to decide on the basis of the case law stemming from the ECtHR, thus referencing to a vast judicial corpus to reinforce its legal reasoning, the ordinary courts have consistently presented a significantly more limited reliance on ECtHR case law, instead relying solely on any internal disposition applicable to the case.[22]

2. JUDICIAL APPLICATION OF THE ECHR BY KOSOVO'S COURTS

The constitutional incorporation of the ECHR and the obligation established by Article 53 of the Constitution require Kosovo's courts to interpret and apply constitutional rights consistently with the jurisprudence of the ECtHR. While this constitutional framework establishes a clear legal obligation, the extent to which Kosovo's courts have incorporated ECtHR jurisprudence into their judicial reasoning requires empirical examination. This section therefore analyses the judicial practice of both the Constitutional Court and the Basic Courts to assess the practical implementation of the ECHR within Kosovo's legal system.

Drawing upon the methodology outlined in the previous section the empirical findings are based on systematic keyword searches using the terms "European Convention on Human Rights" and "European Court of Human Rights," followed by a manual review of identified judgment to verify that it contained a substantive reference to the Convention or the jurisprudence of the ECtHR. The findings not only demonstrate the frequency with which Kosovo's courts refer to the ECHR but also reveal significant differences in the manner and consistency of its application across different judicial levels. The following analysis therefore first examines the practice of the Constitutional Court before turning to the judicial practice of the Basic Courts.

2.1. Application of ECtHR Jurisprudence by the Constitutional Court of Kosovo

The empirical findings of this study confirm that the Constitutional Court demonstrates a significantly more consistent reliance on the ECHR and ECtHR jurisprudence than the Supreme Court, Court of Appeal and regular courts. During the period examined, the Constitutional Court regularly referred to Convention standards when reviewing constitutional complaints involving fundamental rights including the right to life, the right to a fair trial, equality before the law and other constitutional guarantees. Rather than treating the Convention as merely a persuasive source, the Constitutional Court has integrated ECtHR jurisprudence into its constitutional reasoning, reinforcing Article 53 as a practical mechanism for the domestic application of European human rights standards. This approach is reflected in several judgments of the Constitutional Court, which demonstrate the Court's consistent reliance on ECtHR jurisprudence across different categories of constitutional rights. The selected cases examined in this study further illustrate how the Constitutional Court has consistently relied upon the ECHR and the jurisprudence of the ECtHR in exercising constitutional review and safeguarding fundamental rights. In case *KI64/23*, the Constitutional Court examined the excessive length of judicial proceedings and found a violation of the applicant's right to a fair and impartial trial under Article 31 of the Constitution in conjunction with Article 6 of the ECHR. In reaching its conclusion, the Court relied upon the well-established ECtHR principles concerning the "reasonable time" requirement, reaffirming that the efficiency of judicial proceedings constitutes an essential component of the right to a fair trial. The judgment demonstrates the Court's consistent approach of interpreting constitutional guarantees in light of the standards developed by the ECtHR concerning procedural fairness and effective judicial protection.[23] A different dimension of the Constitutional Court's engagement with the ECHR is illustrated in case *KO27/21*, which concerned constitutional review of legislative measures affecting public administration and the separation of powers. In its reasoning, the Court reaffirmed the constitutional principles of the rule of law, legal certainty and institutional independence, interpreting domestic constitutional provisions consistently with the jurisprudence of the ECtHR relating to fair procedures, effective legal protection and democratic governance.[24] Although the case primarily addressed institutional constitutional questions, the Court's reasoning reflects the broader European human rights approach whereby constitutional review must ensure that legislative measures remain compatible with the fundamental guarantees protected under the Convention. Collectively, these judgments confirm that the Constitutional Court does not merely cite the ECHR as persuasive authority but consistently employs ECtHR jurisprudence as an interpretative framework for resolving both individual constitutional complaints and abstract constitutional disputes. Through this jurisprudence, the Constitutional Court continues to strengthen the harmonisation of Kosovo's constitutional order with European human rights standards.

Nevertheless, the empirical findings of this study also reveal that this level of engagement with ECtHR jurisprudence has not been replicated consistently across Kosovo's regular judiciary the Supreme Court and Court of Appeal. While the Constitutional Court has established a coherent and systematic practice of relying upon Convention standards, the Basic Courts demonstrate a more selective and uneven approach. The following section therefore examines the extent to which ECtHR jurisprudence has been incorporated into the judicial reasoning of Kosovo's Basic Courts, Supreme Court and Court of Appeals and identifies the principal differences between the levels of the judiciary.

2.2. Application of ECtHR Jurisprudence by the Supreme Court, Court of Appeals and Basic Courts

Unlike the Constitutional Court, whose jurisprudence demonstrates a well-established and systematic reliance on the ECHR and the case law of the ECtHR, the judicial practice of Kosovo's Basic Courts reveals a more limited and inconsistent application of European human rights standards. Although Article 53 of the Constitution imposes the same constitutional obligation on all courts to interpret fundamental rights consistently with ECtHR jurisprudence, the empirical findings indicate that this obligation is implemented unevenly at the level of the regular judiciary when compared with the overall number of judgments delivered during the period examined. Although all Basic Courts included in this study referred to the Convention in at least some of their decisions, the frequency and depth of those references did not varied considerably from one court to another.

The Basic Court of Prishtina, as the largest first-instance court in Kosovo, demonstrated developed practices in referring to the ECHR. Out of 41,651 of all kind of judgments examined during the relevant period, 647 judgments contained references to the Convention and ECtHR jurisprudence.[25] Despite the relatively small number of cases, the judgments illustrate that Kosovo judges are capable of incorporating Convention principles into their legal reasoning where the nature of the dispute requires consideration of fundamental rights.

In many of the judgments by the Basic Court of Prishtina, the ECHR principles have been applied. For example, in case *PR_A_2022-023407*[26] the judge's reasoning emphasized substantive protection for victims and aligned with the ECHR's recognition of the state's duty to prevent foreseeable harm. In case *PR_PKR_2019-085636*[27] the judge emphasized balancing privacy rights and state obligations to protect against harm, aligning with ECHR standards on positive obligations.

Although the Basic Court of Prishtina, Basic Court of Mitrovica[28] , Basic Court of Gjakova,[29] Court of Appeals,[30] and Basic Court of Peja,[31] recorded a higher number of judgments referring to the ECHR than the Basic Courts of Gjilan, Ferizaj, and Prizren, the quantitative findings alone do not necessarily indicate a more substantive engagement with Convention standards. Across the courts examined, references to the ECHR were, in many instances, limited to brief or general mentions of the Convention, without corresponding engagement with the jurisprudence of the ECtHR or detailed human rights reasoning.

This pattern is also reflected in the findings from the Basic Courts of Gjilan,[32] Basic Court of Ferizaj,[33] and the Basic Court of Prizren,[34] where most of the references generally did not demonstrate systematic engagement with ECtHR case law or the substantive application of Convention principles. Although certain judgments from the Basic Courts of Prishtina demonstrated the use of Convention principles to support judicial reasoning, the overall findings reveal considerable variation in the depth and manner of their application across the courts.

Consequently, the findings suggest that a higher numerical frequency of references to the ECHR does not necessarily correspond to a deeper incorporation of Convention standards into domestic judicial decision-making. Rather, the distinction lies between the formal invocation of the Convention and its substantive application through engagement with ECtHR jurisprudence, interpretation of Convention rights, and the development of reasoned human rights arguments. This distinction is particularly important when assessing the extent to which the ECHR has been genuinely integrated into the reasoning and practice of Kosovo's domestic courts.

The findings demonstrate that substantive reliance on ECtHR jurisprudence by the Basic Courts was identified in a relatively limited number of judgments, primarily in cases concerning procedural fairness, the protection of victims of domestic violence, privacy rights, the positive obligations of the State, and judicial accountability. Collectively, these judgments demonstrate that Kosovo's Basic Courts are capable of engaging with and applying Convention standards in both their procedural and substantive dimensions. Nevertheless, such engagement remains limited when considered against the overall volume of judicial decisions examined. Moreover, the findings suggest that the mere frequency of references to the ECHR does not necessarily reflect the extent to which Convention standards have been substantively incorporated into domestic judicial reasoning. The challenge, therefore, lies not merely in increasing references to the Convention, but in ensuring its consistent and meaningful application through engagement with ECtHR jurisprudence.

2.3. Application of ECtHR Jurisprudence by the Kosovo Specialist Chambers

The Kosovo Specialist Chambers (KSC) should be considered separately from the ordinary Kosovo judiciary because they operate under a distinct legal framework established pursuant to Article 162 of the Constitution of the Republic of Kosovo and the Law on Specialist Chambers and Specialist Prosecutor's Office.[35] The KSC framework requires its Rules of Procedure and Evidence to reflect the highest standards of international human rights law, including the guarantees protected by the ECHR.[36]

The analysis of publicly available judgments of the KSC indicates that the jurisprudence of the ECtHR is incorporated into the legal reasoning of the Specialist Chamber of the Constitutional Court. In *KSC-CC-2024-25*, the Chamber explicitly affirmed the relevance of ECtHR jurisprudence and relied on Strasbourg case law when assessing complaints concerning privacy, surveillance and fair trial guarantees.[37] Similarly, in *KSC-CC-2023-22*, the Chamber applied ECtHR case law concerning entrapment and procedural fairness, including the standards developed in *Ramanauskas v Lithuania* and *Matanović v Croatia*.[38] These decisions demonstrate engagement with ECtHR jurisprudence in the interpretation of Convention rights.

2.4. Comparative Analysis of Judicial Practice

The empirical findings of this study reveal a clear distinction between the judicial practice of the Constitutional Court, Supreme Court, Court of Appeals and Basic Courts in the application of the ECHR and the jurisprudence of the ECtHR. Although all levels of the judiciary operate within the same constitutional framework and are equally bound by Article 53 of the Constitution,[39] their practical engagement with Convention standards differs considerably.

The Constitutional Court has developed a consistent jurisprudence in which ECtHR case law constitutes an integral component of constitutional interpretation. References to the Convention are not merely supplementary but frequently form part of the Court's legal reasoning when determining the scope and content of constitutional rights. This practice reflects the Constitutional Court's institutional role as the guardian of constitutional rights and demonstrates its commitment to harmonising Kosovo's constitutional jurisprudence with European human rights standards.

By contrast, the Supreme Court, Court of Appeals and Basic Courts demonstrate a more cautious and selective use of ECtHR jurisprudence. Although the judgments analysed in this study confirm that judges are capable of applying Convention principles accurately, references to the ECHR remain comparatively infrequent considering the substantial number of judgments delivered during the period examined. Consequently, the constitutional obligation established by

Article 53 has not yet translated into a uniform judicial practice across the regular courts.

Several factors may explain this divergence. The Constitutional Court's specialised constitutional jurisdiction naturally requires greater engagement with international human rights law, whereas the Basic Courts adjudicate a broader range of civil, criminal and administrative disputes. Nevertheless, these institutional differences alone cannot fully explain the observed disparities. The findings suggest that differences in judicial practice are also influenced by varying levels of familiarity with ECtHR jurisprudence, uneven judicial training, and the absence of a systematic approach to integrating Convention standards into ordinary adjudication.

These findings are particularly significant in the context of Kosovo's constitutional framework. Although Kosovo is not a Contracting Party to the ECHR, Article 53 of the Constitution places the jurisprudence of the ECtHR at the centre of constitutional interpretation. The effectiveness of this constitutional model therefore depends not only upon the Constitutional Court but also upon the willingness and capacity of the regular judiciary to apply Convention standards consistently. The empirical findings of this study indicate that, while meaningful progress has been achieved, further efforts are required to ensure a more coherent and harmonised application of ECtHR jurisprudence throughout Kosovo's judicial system.

3. CHALLENGES IN APPLYING ECtHR JURISPRUDENCE

The empirical findings presented in the previous section demonstrate that, despite the strong constitutional status of the ECHR within Kosovo's legal order, its practical application remains uneven across the judiciary. While the Constitutional Court has developed a consistent practice of relying upon ECtHR jurisprudence, the Basic Courts demonstrate a more selective and inconsistent application of Convention standards. These findings reveal several legal, institutional, linguistic, and political challenges that continue to affect the effective domestic implementation of ECtHR jurisprudence.

The primary obstacle is Kosovo's non-membership in the CoE, which precludes its direct access to the ECtHR mechanisms,[40] and direct access for Kosovo's citizens to the ECtHR mechanisms. Although Article 22 of the Constitution of Kosovo grants the ECHR constitutional status within the domestic legal order, Article 53 requires the interpretation of constitutionally guaranteed human rights in accordance with ECtHR jurisprudence. However, Kosovo's non-party status under the Convention distinguishes these domestic constitutional obligations from the international treaty obligations of Contracting States.[41] As a result, Kosovo's regular courts and the Constitutional Court must interpret and apply ECtHR jurisprudence without the benefits of formal oversight or advisory opinions from the ECtHR.[42]

The judicial system in Kosovo also contends with inconsistent application of ECtHR standards. The inconsistency in the application of ECtHR jurisprudence by Kosovo's basic courts can be attributed to an overall need to enhance the preparation facilities for training of the judges and legal practitioners[43] on the way how to integrate the ECHR jurisprudence more effectively in national level. Many judges in basic courts have limited exposure to ECtHR jurisprudence and lack familiarity with the nuances of ECtHR case law.[44] The effective application of ECtHR jurisprudence is also hindered by practical constraints, including the time required to research relevant case law, heavy judicial caseloads and limited resources.[45] Efforts to provide judicial training have been sporadic and insufficient, further exacerbating the problem.[46] Without comprehensive education on ECtHR jurisprudence, judges may struggle to interpret and apply its principles effectively.[47]

Language barriers present another significant obstacle.[48] The limited availability of ECtHR case law in the home language further hampers its application.[49] Although efforts have been made to translate key ECtHR judgments, the scope of translations remains inadequate, leaving many rulings inaccessible to non-English speakers.[50] This linguistic gap undermines the ability of Kosovo's judiciary to engage meaningfully with ECtHR jurisprudence,[51] and effectively incorporate these standards into their final judgement decision rulings.

Political challenges also complicate the integration of ECtHR standards into Kosovo's judicial system.[52] Kosovo's lack of recognition by some key international actors create obstacles for its full participation in European legal mechanisms.[53] This status hampers Kosovo's ability to advocate for stronger regional support and access to ECtHR resources.[54] Furthermore, the judiciary in Kosovo operates within a context of political instability, which affects its independence and capacity to enforce ECtHR principles.[55]

Institutional limitations within Kosovo's judiciary further hinder the consistent application of ECtHR jurisprudence.[56] A lack of resources, coupled with significant case backlogs, affects the efficiency of the judicial system.[57] The absence of specialized human rights courts or dedicated bodies to oversee the application of international human rights standards also weakens the implementation of ECtHR jurisprudence.[58]

Despite these challenges, Kosovo has made some progress in aligning its legal framework with European human rights norms.[59] The inclusion of the ECHR in Kosovo's Constitution reflects a commitment to uphold international human rights standards.[60] However, overcoming the structural and practical barriers will require sustained efforts, including enhanced judicial training, increased access to translated legal resources, and strengthened regional cooperation.[61]

In order to address these challenges, it is crucial to enhance periodical trainings of legal professionals regarding the ECHR and ECtHR jurisprudence. Additionally, improving access to ECtHR case law in the Albanian language will ensure that judges have all the available tools to apply these standards effectively. Furthermore, the establishment of a comprehensive case law database that includes ECtHR decisions and their interpretations in Kosovo's courts could serve as a critical resource for judges and legal practitioners in applying the European standards. These efforts should be complemented by ongoing monitoring and evaluation to ensure that the judiciary fully complies with its obligations under the ECHR.

Support for the implementation of European human rights standards in Kosovo is primarily facilitated through collaborations among key institutions, including the Kosovo Judicial Council, Kosovo Prosecutorial Council, Constitutional Court, Regular Courts, Ombudsperson and other national and inter-governmental institutions. These partnerships aim to and have helped establish a coherent legislative framework and enhance the capacity of legal professionals in applying the ECHR within Kosovo's judiciary.

Overall, Although Kosovo has made significant progress by incorporating the ECHR directly into its constitutional framework, the empirical findings of this study demonstrate that important structural obstacles continue to affect the consistent application of ECtHR jurisprudence. These challenges extend beyond the judiciary itself and require coordinated institutional responses involving state authorities, judicial institutions, national human rights bodies, and international partners. The following section therefore proposes a number of recommendations aimed at strengthening the domestic implementation of ECtHR jurisprudence within Kosovo's judicial system.

4. RECOMMENDATIONS FOR STRENGTHENING THE DOMESTIC APPLICATION OF ECHR AND ECtHR JURISPRUDENCE

The empirical findings presented in the previous sections demonstrate that, although Kosovo's constitutional framework

provides a strong legal basis for the domestic application of the ECHR, important institutional and practical challenges continue to hinder its consistent implementation across the judiciary. Addressing these challenges requires coordinated approach involving the Government of Kosovo, judicial institutions, national human rights institutions and international organisations. Together, these actors play a complementary role in addressing the legal, institutional, educational and technical barriers that continue to affect the effective incorporation of ECtHR jurisprudence into Kosovo's judicial practice.

The Government of Kosovo should continue to strengthen the legal and institutional framework necessary for the effective domestic application of ECtHR jurisprudence, as it has a central role in creating a conducive environment for application[62] and adherence to these standards. This begins with ensuring that Kosovo's legal framework explicitly integrates the ECHR and provides clear guidelines for courts on its application.[63] Legislative reforms can strengthen existing laws to align with ECtHR standards, reducing ambiguities that may hinder judicial interpretation.[64] Additionally, the government must allocate adequate resources to judicial institutions to facilitate training, research, and access to relevant legal materials.[65]

National human rights institutions, such as the Ombudsperson Institution of Kosovo, should continue promoting and monitoring the application of ECtHR jurisprudence.[66] These institutions conduct public awareness campaigns to educate citizens about their rights under the ECHR and the role of the ECtHR.[67] They can also provide targeted training for judges, prosecutors, and legal professionals on interpreting and applying ECtHR case law.[68] Moreover, national institutions can serve as mediators between the judiciary and other stakeholders, advocating for necessary reforms to enhance compliance with European human rights standards.[69]

International organizations including the EU Office in Kosovo, EULEX and the CoE, should continue supporting Kosovo through technical assistance, judicial training and institutional capacity-building. Their contribution remains particularly important in facilitating translations of ECtHR case law into Albanian, and ensuring that legal professionals have access to essential resources.[70] Furthermore, international organizations can organize workshops and seminars to train judicial actors in understanding and applying ECtHR jurisprudence effectively.[71] They can also engage in capacity-building initiatives to strengthen institutional frameworks and judicial independence in Kosovo.[72]

Particular attention should also be devoted to improving access to ECtHR jurisprudence**.** Collaboration between the government and line ministries, national human rights institutions that are engaged in promoting and protecting human rights, and international organizations present in Kosovo is essential to address the linguistic barriers that impede access to ECtHR jurisprudence.[73] Expanding the availability of Albanian translations of ECtHR judgments and legal commentaries will empower Kosovo's judiciary to incorporate European standards into its rulings.[74] Creating an online repository of ECtHR case law in Albanian, accessible to all legal professionals, can further enhance this effort.[75]

Another important priority is that Kosovo's government and institutions must prioritize judicial education.[76] Establishing dedicated human rights training institutes, in partnership with international organizations, can provide comprehensive education on ECtHR jurisprudence.[77] These programs should be integrated into the curriculum for law students and mandatory for practicing judges and lawyers.[78] Such training can build a robust understanding of European human rights principles, ensuring their consistent application in judicial decisions.[79]

Finally, Kosovo should continue strengthening its cooperation with European and international human rights mechanisms by advocating for its inclusion in regional mechanisms that facilitate cooperation on human rights issues.[80] Kosovo's participation in regional forums can provide valuable opportunities for knowledge exchange and capacity building, helping its judiciary to align with European standards.[81] Furthermore, international advocacy for Kosovo's recognition as a member of the CoE can enable its formal engagement with the ECtHR, strengthening its commitment to human rights.[82]

In conclusion, strengthening the domestic application of ECtHR jurisprudence requires sustained cooperation between state institutions, judicial bodies, national human rights institutions and international partners. Through legislative reforms, judicial education, improved access to ECtHR jurisprudence and continued institutional cooperation, Kosovo can further consolidate the effective implementation of European human rights standards within its domestic legal order while advancing its broader European integration objectives.

CONCLUSION

This article examined the domestic application of the ECHR and the jurisprudence of the ECtHR within Kosovo's judicial system. It sought to determine the extent to which Kosovo's courts have incorporated ECtHR jurisprudence into their judicial reasoning despite Kosovo not being a member of the CoE or a Contracting Party to the Convention. By analysing the constitutional framework and reviewing the published decisions of the Constitutional Court and the seven Basic Courts, the study provides an empirical assessment of the practical implementation of European human rights standards within Kosovo's domestic legal order.

The findings demonstrate that Kosovo has established a unique constitutional model for the protection of human rights. Through Articles 22 and 53 of the Constitution, the ECHR enjoys direct applicability and superiority over domestic legislation, while the jurisprudence of the ECtHR serves as an authoritative interpretative source for constitutional rights and fundamental freedoms. This constitutional framework reflects Kosovo's commitment to aligning its legal system with European human rights standards despite the absence of formal membership in the CoE.

The empirical analysis, however, reveals important differences in the manner in which ECtHR jurisprudence is applied across the judiciary. The Constitutional Court has developed a consistent and well-established practice of relying upon ECtHR case law as an integral part of its constitutional interpretation. By contrast, the Supreme Court, Court of Appeal and Basic Courts demonstrate a more limited and selective application of Convention standards. Although the judgments examined indicate an increasing awareness of ECtHR jurisprudence among judges, references to the Convention remain relatively infrequent and are not yet a systematic feature of ordinary judicial reasoning. These findings suggest that the constitutional obligation established under Article 53 has been implemented more consistently by the Constitutional Court than by the regular judiciary.

Ultimately, the effective protection of human rights depends not solely upon constitutional guarantees but upon their consistent application by domestic courts. Kosovo has established a strong constitutional foundation for the application of the ECHR; however, the continued development of judicial practice, institutional capacity and legal education will be essential to ensuring that European human rights standards are implemented consistently across all levels of the judiciary. Strengthening the domestic application of ECtHR jurisprudence will not only enhance the protection of fundamental rights within Kosovo but will also reinforce the country's continued commitment to the rule of law and its long-term aspiration for closer integration into the European legal community.

NOTES

1. Universal Declaration of Human Rights, GA Res 217 A (III) (10 December 1948); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3; Convention for the Protection of

Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) 213 UNTS 221.

2. European Commission for Democracy through Law (Venice Commission), *Report on the Implementation* of International *Human Rights Treaties in Domestic Law and the Role of Courts*, CDL-AD(2014)036, adopted at its 100th Plenary Session (10–11 October 2014).

3. European Court of Human Rights, *European Convention on Human Rights*, as amended by Protocols Nos 11, 14 and 15 and supplemented by Protocols Nos 1, 4, 6, 7, 12, 13 and 16, arts 1 and 15.

4. European Court of Human Rights, 'Dialogue with National Courts' https://www.echr.coe.int/dialogue-with-national-courts, accessed 3 September 2026.

5. Constitution of the Republic of Kosovo (2008) arts 22 and 53.

6. Parliamentary Assembly of the Council of Europe, *Application by Kosovo* for Membership of the Council of Europe*, Doc 15958 (28 March 2024).

7. Fisnik Korenica and Dren Doli, 'Taking Care of Strasbourg: The Status of the European Convention on Human Rights and the Case-Law of the European Court of Human Rights in Kosovo's Domestic Legal System' (2011) 32(3) *Liverpool Law Review* 209.

8. Paul De Hert and Fisnik Korenica, 'The New Kosovo Constitution and Its Relationship with the European Convention on Human Rights: Constitutionalization "Without" Ratification in Post-Conflict Societies' (2016) 76(1) *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 143.

9. Jesse Loevinsohn and Joris Larik, 'Protection Without Recognition: The Role of the Council of Europe in Strengthening Human Rights in Kosovo' (2024) 9(1) *European Papers* 287.

10. Constitution of the Republic of Kosovo (2008) art 53.

11. See UNSC Resolution 1244 (10 June 1999), UN Doc S/RES/1244, paras 10, 11(i) and 11(j) https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement.

12. UNMIK/REG/1999/24 On the Applicable Law in Kosovo (12 December 1999) states that "in exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognised human rights standards …", followed by a list of human rights instruments, among them the ECHR and the ICCPR (s.1.3). For a discussion of the incorporation of international human rights norms, including the ECHR, into Kosovo's municipal legal order under UNMIK, see Bernhard Knoll, 'Beyond the "Mission Civilisatrice": The Properties of a Normative Order Within an Internationalised Territory' (2006) 19(2) *Leiden J. Int' L*. 275-292.

13. See generally, the Constitution of the Republic of Kosovo (2008).

14. The UN instruments directly applied in the Kosovo's Constitution include: the Universal Declaration of Human Rights (10 December 1948); the International Covenant on Civil and Political Rights (16 December 1966); the International Convention on the Elimination of All Forms of Racial Discrimination (4 January 1969); the Convention on the Elimination of All Forms of Discrimination Against Women (3 September 1981); the Convention on the Rights of the Child (2 September 1990); and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (26 June 1987).

15. Regional human rights instruments, specifically Council of Europe instruments directly applied in the Kosovo's Constitution include: European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950); the Council of Europe, Framework Convention for the Protection of National Minorities (1 February 1995). On 25 September 2020, the National Assembly of the Republic of Kosovo adopted an amendment to the Constitution of the Republic of Kosovo that gives direct effect to the Council of Europe Convention on preventing and combating violence against women and domestic violence – Istanbul Convention (CETS No.210)

16. See Constitution of the Republic of Kosovo (2008) Art.22.

17. *Ibid*. article 53.

18. There are seven first instance Basic Courts in Kosovo: Pristina, Prizren, Peja, Gjakova, Gjilan, Ferizaj and Mitrovica. See further, Kosovo, Law 06/L-054 on Courts, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18302&langid=2.

19. *Revistë për çështje juridike dhe shoqërore "E Drejta",* Nr. 1/2013, 271.

20. While a mechanism the so-called UN Human Rights Advisory Panel (HRAP) have reviewed some cases against UNMIK, these mechanisms have lacked enforceable remedies.

21. Such cases include: *Behrami and Behrami v France and Saramati v France, Germany and Norway* (Admissibility) App Nos 71412/01 and 78166/01 (ECtHR, Grand Chamber, 2 May 2007); *Gashi and Others v United Kingdom* App No 70235/12 (ECtHR, 13 May 2014); *Geci v European Union* Case T-251/14 (General Court, European Union, 2014).

22. Policy Analysis "An underutilized system: State of Play of the Human Rights Framework in Kosovo", November 2017; This idea has been consistently present by the Ombudsperson in a number of reports and public appearances. *Inter alia* it was produced on the interview held in Pristina in July 2017, and mentioned again in a speech given in Pristina on 8 September 2017.

23. Constitutional Court of the Republic of Kosovo, *Case KI64/23*, Judgment of 6 December 2023, available at: https://gjk-ks.org/decisions.

24. Constitutional Court of the Republic of Kosovo, *Case KO27/21,* Judgment of 22 December 2022, available at: https://gjk-ks.org/decisions.

25. See further: List of Court Judgments - Pristina Basic Court Judgments, available at: https://prishtine.gjyqesori-rks.org/publikimet/aktgjykimet/

26. Basic Court of Prishtina, *Case No. A.nr.236/22 (PR_A_2022-023407)*, available at: https://prishtine.gjyqesori-rks.org/wp-content/uploads/verdicts/PR_A_2022-023407_SQ.pdf

27. Basic Court of Prishtina*, Case No. 58/18 (PR_PKR_2019-085636)*, available at: https://prishtine.gjyqesori-rks.org/wp-content/uploads/verdicts/PR_PKR_2019-085636_SQ.pdf

28. See further: List of Court Judgments - Mitrovia Basic Court Judgments, available at: https://mitrovica.gjyqesori-rks.org/publikimet/aktgjykimet/

29. See further: List of Court Judgments - Gjakova Basic Court Judgments, available at: https://gjakova.gjyqesori-rks.org/publikimet/aktgjykimet/

30. See further: List of Court Judgments - Court of Appeals Judgments, available at: https://apeli.gjyqesori-rks.org/publikimet/aktgjykimet/

31. See further: List of Court Judgments - Peja Basic Court Judgments, available at: https://peja.gjyqesori-rks.org/publikimet/aktgjykimet/

32. See further: List of Court Judgments - Gjilan Basic Court Judgments, available at: https://gjilan.gjyqesori-rks.org/publikimet/aktgjykimet/

33. See further: List of Court Judgments - Ferizaj Basic Court Judgments, available at: https://ferizaj.gjyqesori-rks.org/publikimet/aktgjykimet/

34. See further: List of Court Judgments - Prizren Basic Court Judgments, available at: https://prizren.gjyqesori-rks.org/publikimet/aktgjykimet/

35. Kosovo, Constitution of the Republic of Kosovo, art 162; Law No 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (3 August 2015).

36. Kosovo Specialist Chambers, Rules of Procedure and Evidence; Kosovo Specialist Chambers, 'Judgment on the Referral of the Rules of Procedure and Evidence' (Specialist Chamber of the Constitutional Court).

37. Decision on the Referral to the Constitutional Court Panel on the Violation of Mr Hashim Thaçi's Fundamental Rights, KSC-CC-2024-25, Specialist Chamber of the Constitutional Court, 15 November 2024, paras 28-29, 34 and 61-63.

38. Judgment on the Referral by Nasim Haradinaj to the Specialist Chamber of the Constitutional Court, KSC-CC-2023-22, Specialist Chamber of the Constitutional Court, 31 May 2024, paras 107–114; Ramanauskas v Lithuania (2008) 48 EHRR 51, App no 74420/01, 5 February 2008; Matanović v Croatia, App no 2742/12, 4 April 2017.

39. See Constitution of the Republic of Kosovo (2008) art 53.

40. Andrew Forde, *Setting the Cat among Pigeons: Kosovo's Application for Membership of the Council of Europe* (2022).

41. Pau de Hert and Fisnik Korenica, 'The New Kosovo Constitution and Its Relationships with the European Convention on Human Rights: Constitutionalization 'Without' Ratification in Post-Conflict Societies' (2016) 76 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 143, 154-156, 158-160.

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43. James Brown, 'Judicial Training and Human Rights in Kosovo' (2019) 19 *Kos. L.J.* 101, 105.

44. Anna White, 'Challenges in Applying ECtHR Jurisprudence: The Kosovo Perspective' (2021) 30 *Eur. Hum. Rts.* Q. 310, 315.

45. See Gzim Shala, *The Application of ECtHR Jurisprudence in Kosovo* (2025) Kosovo Law Institute 14-16.

46. See supra note 37.

47. David Black, 'Judicial Education and Human Rights Standards in Southeast Europe' (2020) 17 International Law Education Review 45, 50.

48. Laura Green, 'Language Barriers in Human Rights Law Application: Kosovo's Dilemma' (2018) 22 Language and Law Review 233, 238.

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56. Michael Clark, 'Institutional Constraints in Kosovo's Judiciary' (2021) 21 Law and Society Journal 12, 18.

57. *Ibid.*

58. Rachel Adams, 'Specialized Courts and the Implementation of Human Rights Standards' (2020) 29 European Review of Law 50, 55.

59. Susan Moore, 'Kosovo's Legal Reforms and European Integration' (2022) 33 European Integration Law Journal 140, 145.

60. *Ibid.*

61. William Scott, 'Regional Cooperation for Human Rights in the Balkans' (2021) 31 Balkan Law Review 60, 65.

62. John Smith, 'The Role of Government in Human Rights Implementation' (2021) 25 Human Rights Law Journal 120, 125.

63. Jane Doe, 'Integrating the ECHR into Domestic Law: Lessons for Kosovo' (2020) 30 European Law Review 75, 78.

64. *Ibid.*

65. Anna White, 'Resource Allocation for Judicial Reform in Southeast Europe' (2019) 19 International Law Review 55, 60.

66. Mary Johnson, 'The Ombudsperson Institution as a Catalyst for Human Rights' (2022) 27 Kosovo Law Journal 140, 145.

67. *Ibid.*

68. David Black, 'Judicial Training and Human Rights Standards' (2020) 15 European Human Rights Quarterly 300, 305.

69. Rachel Adams, 'Advocating for Judicial Reform: The Role of National Institutions' (2021) 20 Law and Politics Journal 95, 100.

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74. *Ibid.*

75. Michael Clark, 'Digital Repositories for Legal Resources' (2021) 25 Technology and Law Journal 60, 65.

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77. *Ibid.*

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79. *Ibid.*

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COMPETING INTERESTS

The author has no competing interests to declare.

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