Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1417 (2005)[1]

Protection of human rights in Kosovo

Parliamentary Assembly

1. Kosovo is part of the territory of Serbia and Montenegro which has, since April 2003, been a member of the Council of Europe and, since 3 March 2004, party to the European Convention on Human Rights (ETS N°. 5). As a result of United Nations Security Council Resolution 1244 (1999), however, Kosovo is administered by the international community, led by the UN Interim Administration Mission in Kosovo (Unmik), and its security is guaranteed by the Nato-led Kosovo Stabilization Force (Kfor). Security Council Resolution 1244 requires Unmik to protect and promote human rights in Kosovo as one of its main responsibilities, and Kosovo's exclusion from Serbia and Montenegro's jurisdiction precludes Serbia and Montenegro's obligations under international conventions from applying effectively to Kosovo.

2. Whilst Unmik and Kfor have achieved some positive results in relation to the extremely difficult tasks with which they were charged in 1999 – in particular, routine security duties are now predominantly discharged by civilian police forces, the Unmik police (Civpol) and, increasingly, the Kosovo Police Service ("KPS") and much of Kosovo's administration is now undertaken by the local Provisional Institutions of Self-Government (PISG) – serious concerns remain as regards the protection of human rights in Kosovo, especially after the tragic events of 17 to 19 March 2004. Kosovo is a part of Europe, and the fact that it is currently under interim administration should not deprive its inhabitants of the effective protection of European human rights standards.

3. In the Parliamentary Assembly's view, many of the substantive human rights problems faced by Kosovo, including matters relating to the issue of internally displaced persons, could be alleviated by enhancing and supplementing human rights protection mechanisms, within the context of the interim administration and without prejudice to the issue of Kosovo's final status.

4. The Assembly therefore recommends that Unmik and Kfor/Nato, in accordance with United Nations Security Council Resolution No. 1244 :

commence work, in co-operation with the Council of Europe, towards establishing a human rights court for Kosovo, with the following characteristics :

a. establishment by parallel agreements to be concluded between the Council of Europe on the one hand, and Unmik and Kfor/Nato (along with individual Kfor-participating states as appropriate) on the other ;

b. jurisdiction to examine complaints alleging violations of the rights contained in the European Convention on Human Rights and its additional protocols by Unmik, Kfor and Kfor national contingents and the Provisional Institutions of Self-Government ;

c. composition of nine judges, five international and four local, with the international judges being nominated by the Committee of Ministers of the Council of Europe (one of these being nominated in agreement with the Special Representative of the Secretary-General of the United Nations), and the local judges being nominated half by the majority community and half by the minority communities. Judges would be appointed by the President of the European Court of Human Rights ;

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1. Assembly debate on 25 January 2005 (3rd Sitting) (see Doc. 10393, report of the Committee on Legal Affairs and Human Rights, rapporteur : Mr Lloyd). Text adopted by the Assembly on 25 January 2005 (3rd Sitting).

d. procedures and case-law based on those of the European Court of Human Rights ;

e. competence to receive applications from both individuals and the ombudsperson, acting with their consent on their behalf ;

f. composition of international judges only when reviewing acts or omissions by Unmik or Kfor ;

g. power to annul decisions and acts of Unmik and Kfor and to award appropriate redress or compensation ;

co-operate with the Council of Europe, in association with other interested parties, in particular Serbia and Montenegro, on a study of possible interim extension of the jurisdiction of the European Court of Human Rights to all the inhabitants of Kosovo.

5. The Assembly further recommends that Unmik :

establish the special chamber of the supreme court on constitutional framework matters, with the following characteristics :

a. competence to receive applications from individuals or from the ombudsperson acting with their consent on their behalf ;

b. jurisdiction to review all Provisional Assembly laws other than those amended in promulgation by the Special Representative of the Secretary-General of the United Nations so as to bring them into conformity with international human rights standards, which would fall within the jurisdiction of the human rights court for Kosovo ;

c. composition of five judges, three local (two from the majority community and one from the minority communities) and two international, the latter being proposed by the President of the European Court of Human Rights, and all being appointed by the Special Representative of the Secretary-General of the United Nations ;

improve the state of legal certainty, including by :

a. ensuring that Unmik regulations state clearly which, if any, previous instruments they revoke or amend, and if amended, how so ;

b. ensuring that all legal instruments are published and disseminated to all concerned parties promptly and effectively, including by efficient use of information technology, with simultaneous high-quality translation into all official languages ;

c. allowing for an appropriate vacatio legis following the promulgation of all legal instruments ;

d. accompanying the future promulgation of new legal instruments by appropriate training of all public officials concerned, in particular those working within the judicial system and law-enforcement agencies, to prepare them for the entry into force of such instruments ;

reinforce the judicial system, including by :

a. taking further steps to construct and maintain, both at general and local level, a judiciary reflecting the ethnic composition of Kosovo as a whole ;

b. ensuring that there are sufficient judges for the caseload of the courts and that judges are allocated to courts in such a way as to achieve balance in individual caseloads ;

c. continuing to ensure that any actual or apparent ethnic bias, submission to outside influence or corruption on the part of judges are countered, including through effective disciplinary measures, where appropriate ;

d. improving judicial salaries, so as to attract more of the most highly-qualified candidates and to avoid any temptation to accept bribes ;

e. providing full and effective training to judges, prosecutors and lawyers on all aspects of the law, in particular new instruments such as the Provisional Criminal Code and Provisional Criminal Procedure Code and international human rights instruments applicable in Kosovo ;

f. ensuring that all international judges have a proper command of at least one of the official languages, along with sufficient experience of a relevant legal system and of the applicable international human rights instruments ;

maintain and strengthen the authority of the ombudsperson institution in Kosovo, including by :

a. *requiring the Special Representative of the Secretary General of the United Nations and the PISG to give final responses to its recommendations within a reasonable time, with any refusal to accept such recommendations being properly justified ;*

b. *respecting fully its obligations under Unmik Regulation N°. 2000/38 to co-operate with and provide access to documents to the ombudsperson ;*

c. *deciding that the "international" status of the institution shall be maintained for as long as the international administration remains in Kosovo ;*

create an advisory panel/human rights commission consisting of independent international human rights experts nominated by the President of the European Court of Human Rights and appointed by the Special Representative of the Secretary General of the United Nations, charged with scrutinising (draft) Unmik regulations and subsidiary instruments for compliance with international human rights standards, along with other tasks such as hearing appeals from the Unmik Claims Office, and addressing to Unmik opinions on issues, other than individual complaints, brought to its attention by the ombudsperson ;

improve the effectiveness of the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC), and of civil courts when dealing with property disputes, including by :

a. *ensuring that proceedings before the HPCC comply with the standards of Article 6 of the European Convention on Human Rights, with possible further appeal to the human rights court for Kosovo, when established ;*

b. *allocating sufficient resources to the HPD/HPCC ;*

c. *ensuring that appropriate support is provided by the civilian police forces and through improved co-ordination between the HPD/HPCC and the courts ;*

d. *guaranteeing that all internally displaced persons will have their claims properly considered by an appropriate mechanism, whether the HPD/HPCC or the civil courts ;*

e. *reinforcing measures against illegal constructions, in particular those on illegally-occupied land, by ensuring that courts and the police take appropriate action ;*

improve procedures for expropriation of property, including by :

a. *ensuring that the procedures set out in the 1986 Law on Expropriation and other applicable instruments are strictly followed, with compensation respecting real property values ;*

b. *enhancing the independence of the Unmik Claims Office, by including a majority of independent members on the claims panel ;*

c. *strengthening the standing of applicants and/or their legal representatives and providing for an effective right of appeal from the claims panel to an independent tribunal (this could be the advisory panel, with further appeal to the human rights court for Kosovo, as each is established) ;*

improve the status and effectiveness of the civilian police forces Civpol and the KPS, including by :

a. *encouraging recruitment to the KPS from the minority communities and ensuring that all officers are posted in a way that inspires local communities' confidence in the KPS as a multi-ethnic force ;*

b. *taking firm and effective action against any officers suspected of misconduct, especially any exhibition of ethnic bias ;*

c. *transferring police stations to the control of the KPS as soon as circumstances allow ;*

d. *ensuring that all police officers are fully trained in the new provisional criminal codes, notably with respect to detention provisions, in relevant international human rights standards, and in the strict implementation of those codes and standards in practice ;*

e. *promoting effective co-operation and co-ordination between the police forces and Kfor ;*

f. *providing the police forces, in particular the KPS, with sufficient resources to discharge their duties effectively ;*

review the state of immunities, in particular by :

a. *revising Regulation N°. 2000/47 so as to ensure that the immunities of Unmik and Kfor do not hinder the effective implementation of these recommendations ;*

b. *ensuring that all international officials, including police officers, are always subject to an effective criminal and civil jurisdiction, either local or in the country of origin.*

6. The Assembly also recommends that Kfor, Nato and Kfor-participating states (as appropriate) :

adhere strictly to the commitment to detain only where absolutely necessary and transfer immediately all detained persons to the custody of civilian police forces ;

revise and enhance the Kfor Detention Directive and Detention Review Panel, including by :

a. *removing the qualification "every effort will be made" from the requirement to comply with all relevant international human rights standards and ensuring, in particular, compliance with the standards of Article 5 of the European Convention on Human Rights ;*

b. *reinforcing the authority and independence of the Detention Review Panel by involving it in all detention decisions of the Commander Kfor, ensuring that it is composed exclusively of independent lawyers, nominated by the President of the European Court of Human Rights, and making its decisions on detention binding, pending the establishment of a jurisdiction in these matters for the human rights court for Kosovo ;*

c. *ensuring that all persons arrested or detained are provided with legal representation on conditions equivalent to the relevant provisions of Unmik Regulation N°. 2003/26 on the Provisional Criminal Procedure Code ;*

d. *furnishing detainees with copies of the advisory panel's decisions and, with the informed consent of the detainee, by publicising such decisions ;*

e. *ensuring provision of compensation for unlawful arrest or detention, equivalent to that provided for in the Provisional Criminal Procedure Code ;*

f. *extending the competence of the advisory panel to include examination of allegations of other human rights violations committed by Kfor, in which cases it should also be able to recommend appropriate redress or compensation. Alternatively, should it be considered more appropriate, an agreement should be reached with the ombudsperson to extend the institution's jurisdiction to cover such allegations ;*

g. *all Kfor-participating states accepting the jurisdiction of the Detention Review Panel ;*

improve procedures for adjudicating on claims relating to expropriation of property, including by :

a. *providing a more effective right of appeal by including a majority of independent members on the Kfor Claims Appeal Commission and permitting further appeal to the human rights court for Kosovo, when established ;*

b. *all Kfor-participating states accepting the jurisdiction of the Kfor system, including its Appeal Commission ;*

promote effective co-operation and co-ordination with the civilian police forces and avoid any possibility of obstructing these forces' investigations ;

make the necessary arrangements with the Council of Europe for implementation of the mechanism of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS N°. 126) at the earliest opportunity.

7. Finally, the Assembly recommends that the PISG :

contribute to improving the state of legal certainty by ensuring appropriate training of all public officials, especially those working within the judicial system, on the applicable law in force, and in particular on new legal instruments and applicable international human rights instruments, notably the European Convention on Human Rights and its additional protocols ;

ensure full and effective respect for human rights in policy and legislative development, including by :

a. *establishing an inter-departmental task-force within the Provisional Government with responsibility for co-ordinating and mainstreaming human rights matters, including inter-ethnic relations, good governance and equality, and possibly also community issues and returns ;*

b. creating a human rights committee within the Provisional Assembly in order to scrutinise draft laws and the acts of the Provisional Government ;

ensure that the procedures set out in the 1986 Law on Expropriation and other relevant instruments are strictly followed, with compensation reflecting real property values ;

contribute to reinforcing the ombudsperson institution in Kosovo by always co-operating fully with the ombudsperson in accordance with their legal obligations, in particular by complying with the ombudsperson's requests for relevant information and documentation ;

co-operate fully in the implementation of the existing and future agreements between Unmik and the Council of Europe on the application of the latter's human rights protection mechanisms.