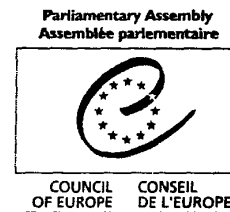


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Protection of human rights in Kosovo

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Tony Lloyd, United Kingdom, Socialist Group

Summary

Kosovo is part of the territory of Serbia and Montenegro, a member state of the Council of Europe. As a result of United Nations Security Council Resolution 1244 (1999), however, for over five years Kosovo has been administered by the United Nations Interim Administration Mission in Kosovo (UNMIK) and its security guaranteed by KFOR. Whilst both bodies have made extensive commitments to protect human rights in Kosovo and achieved positive results in their extremely difficult roles, serious deficiencies remain. In particular, inhabitants of Kosovo do not have recourse to judicial remedies against these bodies and do not enjoy the right of individual petition to the European Court of Human Rights.

The report therefore proposes a series of essential reforms to the human rights protection system in Kosovo. In particular, it recommends the creation of a Human Rights Court for Kosovo, with jurisdiction over UNMIK and KFOR, and of a human rights Advisory Panel within UNMIK; establishment of the foreseen Special Chamber of the Supreme Court on Constitutional Matters, with jurisdiction over the Provisional Institutions of Self-Government; and the commencement of work towards extension of the jurisdiction of the European Court of Human Rights to Kosovo.

I. Draft resolution

1. Kosovo is part of the territory of Serbia and Montenegro which has, since April 2003, been a member of the Council of Europe. As a result of United Nations Security Council ("UNSC") 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 KFOR. UNSC Resolution 1244 requires UNMIK to protect and promote human rights in Kosovo as one of its main responsibilities and its exclusion of Serbia and Montenegro's jurisdiction precludes that state's obligations under international conventions from extending to Kosovo.

2. Whilst UNMIK and KFOR have achieved 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. 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 ("IDPs"), could be alleviated by enhancing and supplementing human rights protection mechanisms.

3. The Assembly therefore recommends that UNMIK and KFOR/NATO:

i. 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 over complaints alleging violations of the rights contained in the European Convention on Human Rights (the "ECHR") and its additional Protocols by UNMIK, KFOR and KFOR national contingents and the PISG;

c. composition of nine judges, five international and four local, the international judges being nominated by the Committee of Ministers of the Council of Europe, with one of these nominated in agreement with the Special Representative of the Secretary-General of the United Nations (the "SRSG"), 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;

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. when reviewing acts or omissions by UNMIK or KFOR, the Court would have international-only composition;

g. power to annul decisions and acts of UNMIK and KFOR and to award appropriate redress or compensation;

ii. 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.

4. The Assembly further recommends that UNMIK:

i. establish the Special Chamber of the Supreme Court on Constitutional Framework Matters, with the following characteristics:

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

- b. jurisdiction to review all Provisional Assembly laws other than those which had been amended in promulgation by the SRSG so as to bring them into conformity with international human rights standards (which would be 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 SRSG;
- ii. 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 concerned public officials, in particular those working within the judicial system and law enforcement agencies, to prepare them for the entry into force of such instruments;
 - iii. reinforce the judicial system, including by:
 - a. taking further steps to construct and maintain a judiciary reflecting the ethnic composition of Kosovo as a whole;
 - b. ensuring that there are sufficient judges for the case-load of the courts and that judges are allocated to courts in such a way as to achieve balance in individual case-loads;
 - 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;
 - iv. maintain and strengthen the authority of the Ombudsperson Institution in Kosovo, including by:
 - a. requiring the SRSG and 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 No. 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;
 - v. 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 SRSG, 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;

- vi. 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 ECHR, with possible further appeal to the Human Rights Court for Kosovo, when established;
 - b. allocating sufficient resources to the HPD/CC;
 - c. ensuring that appropriate support is provided by the civilian police forces and through improved co-ordination between the HPD/CC and the courts;
 - d. guaranteeing that all IDPs will have their claims properly considered by an appropriate mechanism, whether the HPD/CC 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;
- vii. 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;
 - b. enhancing the independence of the 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);
- viii. 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;
 - 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, and in relevant international human rights standards;
 - 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;
- ix. review the state of immunities, in particular by:
 - a. revising Regulation No. 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 international officials, including police officers, are always subject to an effective criminal and civil jurisdiction, either local or in the country of origin.
5. The Assembly also recommends that KFOR, NATO and KFOR-participating states (as appropriate):
 - i. adhere strictly to the commitment to detain only where absolutely necessary and transferring immediately all detained persons to the custody of civilian police forces;
 - ii. 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 ECHR;
 - b. reinforcing the authority and independence of the Panel by involving it in all detention decisions of the Commander of KFOR, composing it 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 No. 2003/26 on the Provisional Criminal Procedure Code;
 - d. furnishing detainees with copies of the Panel's decisions and, given 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 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 Panel;
- iii. 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;
 - iv. promote effective co-operation and co-ordination with the civilian police forces and avoid any possibility of obstructing these forces' investigations;
 - v. make the necessary arrangements with the Council of Europe for implementation of the mechanism of the European Convention for the Prevention of Torture at the earliest opportunity.
6. Finally, the Assembly recommends that the PISG:
- i. contribute to improving 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, in particular the ECHR and its Additional Protocols;
 - ii. 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 good-governance and equality and possibly also community issues and returns;
 - b. creating a human rights committee within the Provisional Assembly to scrutinise draft laws and the acts of the Provisional Government;
 - iii. ensure that the procedures set out in the 1986 Law on Expropriation and other relevant instruments are strictly followed;

iv. contribute to reinforcement of the Ombudsperson Institution in Kosovo by always co-operating fully with the Ombudsperson in accordance with their legal obligations, in particular that to comply with the Ombudsperson's requests for relevant information and documentation;

v. 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.

II. Draft recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2005) on the protection of human rights in Kosovo.
2. The Assembly accordingly recommends that the Committee of Ministers:
 - i. make speedily the necessary arrangements for implementation of the mechanism of the Convention for the prevention of torture by KFOR/NATO in Kosovo;
 - ii. commence work, in co-operation with UNMIK and KFOR/ NATO, towards establishing a Human Rights Court for Kosovo, in accordance with the relevant paragraph of the above-mentioned resolution and associate Serbia and Montenegro with this work;
 - iii. adopt a resolution, inspired *mutatis mutandis* by Committee of Ministers' Resolution (93) 6 on control of respect for human rights in European States not yet members of the Council of Europe, containing rules on the nomination of judges for the Human Rights Court for Kosovo and their appointment by the President of the European Court of Human Rights;
 - iv. adopt a resolution authorising the President of the European Court of Human Rights to:
 - a. nominate independent international human rights experts to the UNMIK Advisory Panel/ Human Rights Commission, once created;
 - b. nominate independent international human rights experts to the KFOR Claims Appeal Commission/Advisory Board, once reformed;
 - c. nominate international human rights experts, of high moral character and preferably though not necessarily with judicial experience, to be international judges in the Special Chamber of the Supreme Court on Constitutional Framework Matters, once established;
 - v. undertake a study on possible interim extension of the jurisdiction of the European Court of Human Rights to all the inhabitants of Kosovo.

III. Explanatory memorandum
by Mr Tony Lloyd, Rapporteur

A. Introduction

1. This report arises from reference number 2874 of 29 September 2003 of document 9896, a motion for recommendation entitled "the human rights situation in Kosovo".¹ The motion, tabled by Serbian-Montenegrin parliamentarian Radoje Prica, proposed that the Assembly call on the Committee of Ministers to:

- i. enter into agreements with the United Nations Interim Administration Mission in Kosovo ("UNMIK") for immediate implementation of the Council of Europe's Framework Convention for the Protection of National Minorities (the "Framework Convention") and Convention for the Prevention of Torture (the "CPT");
- ii. enhance application of the European Convention on Human Rights and Fundamental Freedoms (the "ECHR"), including consideration of the potential for individual petition from Kosovo;
- iii. facilitate rapid and safe return of internally displaced persons ("IDPs").

2. The Rapporteur has, consistent with the tenor of the motion and with the agreement of the Committee, chosen not to undertake a detailed investigative study of factual human rights problems in Kosovo (the report's title having been amended so as to reflect this). This is not to say that the situation in general does not continue to give grounds for concern, as was acutely evident in mid-March 2004 when a serious outbreak of ethnic violence occurred whose consequences remain unresolved to this day.² Amongst the gravest human rights issues currently faced by Kosovo are:³

- i. the inability of IDPs – predominantly Serbs and members of other minority communities – to return to their homes in safety. Some of these persons have been displaced since 1999; others, numbered in the thousands, since the violence of March 2004;
- ii. a general lack of security in the province, particularly for members of minority communities;
- iii. a consequential lack of freedom of movement;
- iv. infringements of property rights, caused mainly by illegal occupation of abandoned property but also by expropriation of property by the international authorities without adequate remedies;
- v. inadequacy of investigations into disappearances and other serious crimes, notably those committed prior to and during the NATO bombing of 1999, and a consequent climate of impunity;
- vi. inadequacy of judicial proceedings, mainly in relation to length of proceedings, procedural fairness and access to courts, which in turn permits perpetuation of the climate of impunity, along with the continuing existence of a "parallel" court system operating in the northern part of Kosovo and controlled from Serbia proper;
- vii. lack of adequate safeguards to ensure lawfulness of detentions, in particular those by KFOR, for which there is no independent review mechanism;
- viii. corruption of public officials, including the judiciary;
- ix. trafficking in human beings and prostitution;⁴ and
- x. lack of legal certainty, concerning inaccessibility of legal texts, lack of judicial review and absence of an effective remedy for human rights violations.

¹ On 7 October 2004 the Committee agreed to change the title of the report to its current form.

² See Assembly Resolution 1375 (2004) and Recommendation 1660 (2004).

³ Further details of all of these matters can be found in reports such as those of the Council of Europe Commissioner for Human Rights, the US State Department, the OSCE Mission in Kosovo ("OMIK"), the Ombudsperson Institution in Kosovo and Amnesty International.

⁴ See also "Trafficking in people in Serbia", Victimology Society of Serbia/ OSCE, 2004

3. The Rapporteur has, with the support and agreement of the Committee, concentrated throughout his preparation of this report on a broad interpretation of the second point raised in the motion, on the basis that the most effective way of addressing problems of this gravity is to improve the mechanisms or institutions for human rights protection in Kosovo, in particular accessible and effective remedies.⁵ This report, therefore, will focus on:⁶

- i. application of the ECHR;
- ii. the possibility of individual petition to the European Court of Human Rights (the "European Court"); and
- iii. in less detail, application of the Framework Convention and the CPT.

Much of the legal analysis contained herein is based on the Opinion of the European Commission for Democracy through Law (the "Venice Commission") on human rights in Kosovo: possible establishment of review mechanisms.⁷ The Rapporteur has also drawn on information obtained in the course of his visit to Pristina from 19-21 January 2004 and the hearing held by the Committee on Legal Affairs and Human Rights in Paris on 16 March 2004,⁸ as well as on a range of public documents,⁹ notably the report, requested by the Assembly in Recommendation 1569 (2002), of the Council of Europe Commissioner for Human Rights entitled "Kosovo: the human rights situation and the fate of persons displaced from their homes".¹⁰

B. Overview of the current legal framework

i. The origins, legal/constitutional structure and powers of UNMIK and the PISG

4. Kosovo is a part of the national territory of Serbia and Montenegro. That said, Kosovo no longer falls within the jurisdiction of Serbia and Montenegro but is instead administered by UNMIK. This is a result of United Nations Security Council ("UNSC") Resolution 1244 of 10 June 1999, which brought an end to the NATO bombing campaign and which also established the presence in Kosovo of the NATO-led security force, KFOR. Other international organisations, notably the OSCE, European Union and UNHCR, perform various functions within the overall administrative mandate of UNMIK.

5. UNSC Resolution 1244 is, in fact, the only text which binds UNMIK, and it sets out the latter's role in very broad terms which concentrate on political and administrative responsibilities. Human rights are mentioned only once in this document, where one of the "main responsibilities" of UNMIK is stated to be "protecting and promoting human rights".

6. Since UNSC Resolution 1244 is the only applicable text emanating from a body with direct superior authority to UNMIK, it is the only text akin to a basic law or "constitution" governing UNMIK's actions. To establish a more precise legal basis for the exercise of its mandate, therefore, UNMIK Regulation No. 2000/54 (amending Regulation No. 1999/1) on the authority of the interim administration in Kosovo vests all legislative and executive authority in UNMIK, to be exercised by the Special Representative of the Secretary General of the United Nations (the "SRSG"), and allows the SRSG to appoint or remove any civic official, including members of the judiciary. Regulation No. 2000/59 (amending Regulation No. 1999/24) on the law applicable in Kosovo states that this shall, in order of precedence, be (i) regulations promulgated by the SRSG and subsidiary instruments, (ii) the law in force prior to 22 March 1989¹¹ and, (iii) in case of lacuna and so long as it is not discriminatory and respects internationally recognised human rights standards, the law in force after 22 March 1989.

⁵ The corollary of this approach is that not all issues relating to enhancement of existing institutions will be considered in this report.

⁶ For practical reasons, the possible application of the European Social Charter will not be discussed in this report. It should be noted that Serbia and Montenegro has not yet signed or ratified this treaty. Application of the ESC in Kosovo is an issue which deserves further study.

⁷ CDL-AD (2004) 033; adopted by the Commission during its 60th Plenary Session, 8-9 October 2004, in response to a request from the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly dated 13 May 2004.

⁸ See appendices for further details. The Rapporteur wishes to thank all those whom he met in Pristina, along with those who participated in the hearing, for their invaluable contributions and assistance.

⁹ In particular also those of UNMIK, OMIK, the Ombudsperson Institution in Kosovo and Amnesty International.

¹⁰ Doc. CommDH (2002) 11

¹¹ The date on which Kosovo's previous autonomy was curtailed.

7. Successive SRSGs have thus been free to adopt regulations amending or replacing other laws or filling any lacunae. All legal texts directly applicable in Kosovo, with the sole exception of UNSC Resolution 1244, may equally be revised or revoked by an SRSG without the need for consultation with any local body or the possibility of any parliamentary or judicial review. So long as the SRSG complies with the provisions of UNSC Resolution 1244, therefore, he or she is free to act in any manner or take any decision whatsoever.

8. The supreme legislative and administrative authority of UNMIK is reinforced by the extensive immunity granted to its property, funds, assets and personnel by Regulation No. 2000/47. High ranking UNMIK personnel are immune from local jurisdiction with respect to any civil or criminal act committed on the territory of Kosovo; and all UNMIK personnel (including locally-recruited staff) are immune from legal process in respect of words and deeds occurring in the course of their duties, as well as from arrest or detention: if erroneously arrested or detained, they must be immediately handed over to UNMIK authorities. Similar provisions apply also to KFOR; but whilst the UN Secretary General is under a "duty to waive the immunity of any UNMIK personnel in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interest of UNMIK", waiver of the immunity of KFOR personnel is left to the discretion of the commander of the relevant national contingent.¹² Furthermore, KFOR international personnel are said to be subject only to the exclusive jurisdiction of their respective sending State.¹³

9. Although UNMIK was at first responsible for all aspects of civil administration in Kosovo, since implementation of the Constitutional Framework for Provisional Self-Government in Kosovo, many of these have been transferred to local bodies, the Provisional Institutions of Self-Government ("PISG").¹⁴ These bodies include an Assembly, President, Government and judicial system, whilst the Constitutional Framework also deals with the Ombudsperson for Kosovo and other independent bodies and offices such as the Central Electoral Commission and the Kosovo Judicial and Prosecutorial Council.

10. Competences which have so far been transferred to the PISG include economic and financial policy; fiscal and budgetary issues; customs, trade, industry and investment; education, science and technology, youth, sport and culture; health, environmental protection and labour and social welfare; family, gender and minors issues; transport, post, telecommunications and information technology; agriculture, forestry and rural development; statistics, spatial planning and tourism; and good governance, human rights and equal opportunities.

11. Whilst the PISG operate under varying degrees of UNMIK oversight, ultimately they all depend for their authority on UNMIK. Provisional Assembly legislation must be promulgated by the SRSG, who may refuse to promulgate or amend before promulgation. Similarly, judicial decisions depend on the SRSG's authority for their enforcement.¹⁵

ii. The status of human rights protection and the ECHR under UNMIK

12. The sole directly applicable exogenous legal text in Kosovo, UNSC Resolution 1244, makes only general reference to human rights, as noted in paragraph 5 above. More detailed references are to be found, however, in various UNMIK Regulations.

- i. Regulation No. 2000/54 requires that all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards and shall not discriminate against any person on any ground.
- ii. Regulation No. 2000/59 repeats the prohibition on discrimination, abolishes capital punishment and sets out a list of texts reflecting internationally recognised human rights standards; this list includes the ECHR, the International Covenant on Civil and Political Rights (the "ICCPR"), the International Covenant on Economic and Social Rights (the "ICESR"), the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the UN Convention Against Torture and the International Convention on the Rights of the Child.

¹² This individual immunity is not merely a hypothetical problem: in October 2004, the Ombudsperson wrote to the SRSG about investigations into deaths occurring as a result of UNMIK and KFOR operations during the March violence; the Institution's subsequent press release observed that "one of the factors complicating these investigations is the immunity of the international presence".

¹³ The Ombudsperson and the Council of Europe Commissioner for Human Rights have been strongly critical of the justification for and extent of these immunities.

¹⁴ See UNMIK Regulation No. 2001/9

¹⁵ See further CommDH (2002) 11, para. 81

- iii. The Constitutional Framework states that the PISG shall "observe and ensure internationally recognised human rights and fundamental freedoms", including those set out in Regulation No. 2000/59 (with the exception of the ICESR), along with the European Charter for Regional or Minority Languages and the Framework Convention.

13. Whilst the Constitutional Framework establishes a judicial system, including a Supreme Court,¹⁶ this system does not have jurisdiction over UNMIK or KFOR (which have, as has been noted, extensive immunities). The only mechanism with any jurisdiction over UNMIK is the Ombudsperson for Kosovo, whose mission is to promote and protect the rights and freedoms of individuals and legal entities and ensure that all persons in Kosovo are able to exercise effectively the human rights and fundamental freedoms safeguarded by international human rights standards, whilst providing accessible and timely mechanisms for the review and redress of actions constituting an abuse of authority by the interim civil administration or any emerging central or local institution.¹⁷ The Ombudsperson has jurisdiction to receive and investigate complaints, monitor, take preventive steps, make recommendations and advise in relation to human rights violations or actions constituting abuse of authority by any public authority in Kosovo.¹⁸

14. Despite the reference in Regulation No. 2000/38 to a "timely mechanism for the review and redress of actions", the Ombudsperson has no binding powers either over the PISG or UNMIK. In this sense, therefore, whilst the Ombudsperson is a valuable human rights mechanism in its own right, it is able (and indeed intended) to discharge only a limited, non-judicial part of the range of functions normally associated with a comprehensive human rights protection system.¹⁹ The fact that UNMIK is subject only to the Ombudsperson's jurisdiction, therefore, represents a serious lacuna in the human rights protection system in Kosovo. Nevertheless, for as long as the international administration remains in Kosovo, the Ombudsperson should retain international status.

15. In addition to this jurisdictional deficiency, there is the further problem that successive SRSGs' responses to the Ombudsperson's recommendations have often been tardy and inadequate. In this respect it is highly relevant that the Ombudsperson Institution in Kosovo, whilst in most other respects a model example of the type, suffers from a lack of parliamentary support to add weight to recommendations made to the executive (i.e. UNMIK).²⁰ The Ombudsperson has thus been obliged to develop a media profile which is unusually elevated for an institution of this type. Whilst none of this should detract from the essential value of the Institution, the probity of its incumbent or the exceptionally high quality of his work, it does reflect the problem of a general insufficiency of legal remedies against UNMIK in the peculiar and unique legal and political context of Kosovo.

iii. Ratification of the ECHR by Serbia and Montenegro

16. In fulfilment of the obligation undertaken on accession to the Council of Europe, Serbia and Montenegro ratified the ECHR on 3 March 2004. Despite the provisions of UNSC Resolution 1244, however, Serbia and Montenegro did not make any territorial declaration concerning Kosovo, with a view to excluding responsibility for human rights violations occurring there.

17. Nevertheless, given that the Article 1 of the ECHR on the obligations of States party refers only to "jurisdiction" and not (unlike the ICCPR) to territory, exclusion by UNSC Resolution 1244 of Serbian-Montenegrin effective jurisdiction over Kosovo also excludes, as a general rule, that State's obligation to protect human rights in this province.

18. In certain circumstances, however, Serbia and Montenegro may be held responsible for human rights violations in Kosovo. This arises from the fact that although Kosovo is "extra-jurisdictional territory" of Serbia and Montenegro, nevertheless responsibility may arise as a result of actions which establish some

¹⁶ The Constitutional Framework foresees a Special Chamber of the Supreme Court on Constitutional Framework Matters, including the compatibility of Provisional Assembly legislation with the specified international human rights instruments, but this Chamber has yet to be established; there is thus no court with superior jurisdiction to ensure consistently either identification and interpretation of the applicable laws or conformity with human rights standards.

¹⁷ See UNMIK Regulation No. 2000/38. KFOR are thus outside the Ombudsperson's jurisdiction, although section 3.4 provides that "In order to deal with cases involving the international security presence, the Ombudsperson may enter into an agreement with the Commander of the Kosovo Forces [i.e. KFOR]". To date there has been no agreement so as to extend the Ombudsperson's jurisdiction to include KFOR, although there has been continuing cooperation between the two.

¹⁸ Constitutional Framework, Chapter 10

¹⁹ See Committee of Ministers Recommendation No. R (85) 13 on the institution of the Ombudsman, which promote the value of the institution in supplementing judicial mechanisms.

²⁰ See Assembly Recommendation 1615 (2003) on the institution of Ombudsman.

form of effective control over certain activities within Kosovo. In particular, the continuing presence of "parallel structures" in the northern part of Kosovo – including the maintenance of a separate judicial system, administered from within Serbia proper, applicable in practice only to Serbs and applying laws different to those applicable generally in Kosovo – establishes potential responsibility, insofar as the activities of these structures may violate individual rights.

iv. Human rights issues relating to KFOR

19. The principal human rights issue relating to KFOR is exercise of its power of detention. This power is said to arise from UNSC Resolution 1244's reference to establishing an international security presence "with all necessary means to fulfil its responsibilities", which include deterring renewed hostilities, demilitarising the KLA and other armed groups, establishing a secure environment and ensuring public safety and order until UNMIK is capable of taking over.²¹ Despite the fact that UNMIK has now been operational for five years, the Rapporteur believes that the human rights situation in general and the March violence in particular show a continuing need for KFOR to retain the power to detain in exceptional circumstances.

20. The Rapporteur therefore welcomes in part the terms of the latest KFOR Detention Directive,²² which states that KFOR will only detain "in cases where it is absolutely necessary", "as a last resort when civil authorities are unable or unwilling to take action addressing the threat". This Directive is also significant in that it:

- i. sets out clear guidance on the circumstances in which the power to detain should be exercised;
- ii. stipulates humane treatment and that every effort will be made to comply with all relevant international human rights standards;²³
- iii. limits detention under the authority of a Brigade Commander to 72 hours;
- iv. requires the authority of the Commander KFOR ("COMKFOR") for subsequent detention;
- v. obliges COMKFOR to review all such cases, on the basis of recommendations from a Detention Review Panel receiving advice from the KFOR Legal Adviser;
- vi. limits subsequent detention under COMKFOR authority to 30 days, following which further review and decision are required for extension.

21. In the Rapporteur's view, however, this Directive could be further improved by:

- i. 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 ECHR;
- ii. reinforcing the authority and independence of the Panel by involving it in all detention decisions of the Commander of KFOR, composing it 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;²⁴

²¹ For a critique of this position, see the Council of Europe Commissioner for Human Rights, *op. cit.*, para. 98, and Amnesty International, "The apparent lack of accountability of international peace-keeping forces in Kosovo and Bosnia-Herzegovina", EUR 05/002/2004.

²² COMKFOR Detention Directive, 12 July 2004

²³ *Inter alia* by prohibiting arbitrary detention, requiring that detainees be informed of the reason for their detention in writing in their own language, prohibiting discriminatory treatment, obliging humane treatment and prohibits physical or mental abuse, permitting detainees to make submissions on their detention for the consideration of the decision-maker, permitting access to a legal adviser or representative, allowing notification of family members and family visits, extending access to international humanitarian organisations, requiring that detainees be informed of their rights in their own language, and requiring that interrogations be conducted in accordance with established procedures compliant with international law whilst absolutely prohibiting inhumane [sic] or degrading treatment or punishment.

²⁴ It must be stressed that the Panel should be only a temporary arrangement. It is essential that its jurisdiction be rapidly replaced by that of the Human Rights Court for Kosovo, so as to ensure review of detentions by a body fully compliant with the standards of Article 5(4) ECHR.

- iii. ensuring that all persons arrested or detained are provided with legal representation on conditions equivalent to the relevant provisions of UNMIK Regulation No. 2003/26 on the Provisional Criminal Procedure Code;
- iv. furnishing detainees with copies of the Panel's decisions and, given the informed consent of the detainee, by publicising such decisions;
- v. ensuring provision of compensation for unlawful arrest or detention, equivalent to that provided for in the Provisional Criminal Procedure Code;
- vi. all KFOR-participating states accepting the jurisdiction of the Panel;
- vii. concluding at the earliest opportunity an agreement with the Council of Europe on a role for the CPT control mechanism, the Committee for the Prevention of Torture.²⁵

22. The Rapporteur also supports the Venice Commission's suggestion that the competence of the Detention Review Panel could be extended to include allegations of other forms of human rights violation, in particular those occurring during house searches or involving serious mistreatment of persons. (If so transformed, the Panel could be renamed "Advisory and Review Board", reflecting the similarity of its status within KFOR to that of the proposed Advisory Panel within UNMIK.) In such cases, the Panel/ Board should be competent 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.

v. Protection of property rights

23. Under the discriminatory Milosevic regime, many Kosovo Albanians lost the apartments provided by their employers, and many property transfers were informal or unregistered. Almost one half of Kosovo's housing stock was destroyed during the conflicts of the late 1990s. Furthermore, records were destroyed during the conflict or removed by the withdrawing Yugoslav administration. In addition, UNMIK and KFOR have appropriated and/ or damaged private property since their arrival. Peaceful enjoyment of property thus remains one of the least effectively protected rights in Kosovo and a major contributor to the difficulties in returning IDPs and restoring multi-ethnic communities. Various issues are involved:

- i. In November 1999, UNMIK established a Housing and Property Directorate ("HPD") and Claims Commission (the "HPCC") with exclusive jurisdiction to resolve property disputes arising from discriminatory laws, informal transactions and illegal occupation.²⁶ The effectiveness of these bodies has been hampered by an absence of procedural rules, resource shortages, limited access, lack of public awareness, poor management and inter-institutional difficulties. Ongoing problems relate mainly to length of proceedings, delay in the delivery of decisions and ineffective execution of decisions.
- ii. Enforcement of HPD/CC decisions is often impeded by security concerns, such as evicted illegal occupiers threatening bailiffs or returning owners or destroying the property being vacated.²⁷ Furthermore, there has been insufficient support given to the HPD/CC by the civilian police forces and insufficient coordination with the courts.
- iii. Security concerns and the lack of freedom of movement prevent the many IDPs (mainly Kosovo Serbs) whose land has been illegally occupied by Kosovo Albanians from even discovering what has happened to their property, let alone accessing the relevant mechanism for obtaining its recovery.

²⁵ In this respect, paragraphs 3.f. and 7.z. of the Detention Directive state that KFOR detention "will be as open to the appropriate bodies of the International Community as possible" and that "detention facilities will establish and publish an independent inspection mechanism".

²⁶ UNMIK Regulation No. 1999/23. As of 1 July 2003 (the deadline for submitting applications), almost 29,000 claims had been filed: 93.5% of these related to illegal occupation since 1999; of claims filed up to March 2003, two-thirds were filed outside Kosovo, mainly in Serbia proper, and all but 8 of these concerned illegal occupation. One year after the deadline, 46% of the claims were still awaiting decisions.

²⁷ OMIK reports the HPD as stating that one-half of vacated apartments are illegally reoccupied and one-third are subject to criminal damage - "Property rights in Kosovo", June 2003.

- iv. The inability to obtain information on abandoned property or to access remedial mechanisms has created a risk that many IDP property owners will be unable to instigate proceedings for compensation or recovery before expiration of the limitation period.²⁸ There has also been confusion as to whether municipal courts may receive claims that could have been submitted to the HPCC, following the transfer of competence.²⁹
- v. Disrespect for the rule of law has also led to extensive illegal development of land, often that which is illegally occupied, with courts reluctant to order that construction be halted or buildings demolished.
- vi. UNMIK and the PISG have the power to expropriate property using primarily the 1986 Law on Expropriation.³⁰ Both central and municipal public authorities have, however, failed to follow these procedures, resulting in failure to protect and violation of the right to peaceful enjoyment of property.
- vii. Furthermore, the UNMIK Claims Office, responsible for dealing with civil-law related complaints including those relating to expropriation, has been criticised for procedural inadequacies and lack of independence, and furthermore for lacking any appeals process. The UNMIK process provides no opportunity for individuals to be heard or represented and decisions are taken by a panel of UNMIK staff members. The only appeal is by sending a "memorandum" to the UNMIK Director of Administration. This procedure is clearly inferior even to that of KFOR (see below).
- viii. KFOR has also been obliged to expropriate private property. Claims against KFOR are initially submitted to a Claims Office at HQ KFOR; if the claimant rejects the Claims Office's offer to settle the dispute, s/he can appeal to KFOR's Kosovo Claims Appeal Commission ("KCAC").³¹ The appeal process lacks definition of permissible grounds or procedure, and requires a unanimous decision to allow an appeal: such decisions are not binding but merely persuasive; and should the appeal be unanimously dismissed, the Claims Office's offer is revoked. This system, however, relates only to claims against HQ KFOR; each national contingent is responsible for adjudicating claims against itself, but may choose to participate in the appeals system.³² The system has been criticised for procedural inadequacies and for the KCAC's lack of independence.

vi. Application of the Framework Convention and CPT control mechanisms

24. The most important step in meeting the first demand made in the motion for a recommendation has already been made. Agreements on implementation of the control mechanisms for the Framework Convention and the CPT were signed between the Secretary General of the Council of Europe and UNMIK in Pristina on 23 August 2004. The Rapporteur warmly welcomes this development.

25. As a next step, it is now essential that the necessary implementation measures are put in place, not only at the level of UNMIK and the central PISG authorities, but also by local authorities throughout Kosovo, so as to ensure that all levels of government are fully involved and contributing to the process.

26. Agreement with KFOR/ NATO on the CPT, however, remains outstanding. The Rapporteur therefore encourages the Committee of Ministers and KFOR/ NATO to reach such agreement at the very earliest opportunity, allowing full access by the CPT Committee to all KFOR-controlled places of deprivation of liberty throughout Kosovo.

vii. Other issues relating to the effectiveness of human rights protection mechanisms

27. Apart from the issues mentioned above, there are various other matters relating to the effectiveness of human rights protection mechanisms in Kosovo.

28. Effective human rights protection is not possible without effective rule of law, which in turn requires legal certainty. In Kosovo, however, there are several serious problems in this respect.³³

²⁸ The Ombudsperson reports that between 30-50,000 lawsuits could eventually be filed before Kosovo courts – see Fourth Annual Report for 2003-04.

²⁹ OMIK, *ibid.*

³⁰ Which OMIK considers to satisfy Article 1 of Protocol No. 1 to the ECHR (OMIK, *ibid.*)

³¹ See Standard Operating Procedure 3023 for Claims in Kosovo, 22/3/03.

³² As of June 2003, the US, French, Swedish and Russian contingents did not accept KCAC jurisdiction.

³³ The situation in Kosovo is described by the Ombudsperson as "legal chaos" – see e.g. Fourth Annual Report for 2003-04

- i. Whilst the terms of Regulation No. 2000/59 on the law applicable in Kosovo appear clear, their application in practice is problematic. There is confusion as to which of several possible legal texts applies to a particular factual situation, especially when there is no UNMIK Regulation which is obviously relevant. Furthermore the courts are ill-equipped to determine whether or not post-1989 legal texts comply with the requirements of Regulation No. 2000/59, and in the absence of a chamber of the Supreme Court intended for resolving such questions, lower courts are left to issue conflicting judgments on the question of applicable law.
- ii. Although Kosovo under UNMIK has three official languages – English, Albanian and Serbian – many legal instruments issued by UNMIK are promulgated initially only in English, and the quality of eventual translations is often very poor.
- iii. Two further problems relate to promulgation of legal texts. The first concerns the *vacatio legis*, that is, the period between the promulgation and coming into force of a legal instrument. Many UNMIK instruments come into force at the time of promulgation, so that the inevitable delay between promulgation and effective knowledge of an instrument amounts to a period in which even courts may be failing to apply the law in force.
- iv. The second such problem, which compounds the first, involves legal instruments being disseminated in a way which is inefficient or fails to reach all concerned parties (although increased use of information technology is improving this situation) or which is not accompanied by appropriate training: the Ombudsperson even singles out the recent new provisional criminal codes for criticism in this respect.

29. Whilst the PISG are indeed subject to the jurisdiction of a judicial system, the effectiveness of the Kosovo judiciary is open to improvement in many areas; and this criticism relates not only to local but also to international judges.

- i. The central problem is that, between 1989 and 1999, Kosovo Albanians were effectively excluded from the legal profession, in particular the judiciary, but most Serbian judges left with the Serbian administration in 1999. Attempts to reconstruct a multi-ethnic judiciary reflecting the composition of the population at large have been hampered not only by problems of insecurity in Kosovo – since the March violence, two newly-appointed Kosovo Serb prosecutors have declined to take up their appointments, and one Kosovo Serb prosecutor and two judges have left the province³⁴ – but also by the equivocal position of the Serbian-Montenegrin authorities, whose maintenance of parallel courts in northern Kosovo discourages Kosovo Serb judges from working for the UNMIK courts.³⁵
- ii. Insecurity has also led the court liaison offices in the Pristina, Gnjilane and Pec regions to work at very limited capacity, and most municipal courts in Kosovo remain inaccessible to minority communities.³⁶
- iii. There is also a perception of ethnic bias on the part of judges, notably by Kosovo Serbs of Kosovo Albanian judges. This is particularly acute with respect to cases arising from the March violence; there are insufficient international judges or prosecutors to deal with all such cases. In July 2004, 52 cases of serious crime arising from the March violence were being prosecuted by international prosecutors, and 260 cases were being handled by the local judiciary.³⁷ Given that there have been allegations of serious professional misconduct against around 100 members of the Kosovo Police Service (“KPS”), it is vitally important that these cases are dealt with by independent and impartial tribunals.³⁸
- iv. Quite apart from the ethnic composition of the judiciary, there would appear to be simply not enough judges: in 1989, Kosovo had 185 judges with 24 additional posts vacant; in 2003, there were 128 judges and 37 vacancies. Furthermore, the allocation of judges to particular courts has led to enormous variety in the case-loads of individual judges, from 62.8 to 424.3 per judge.³⁹ These factors have contributed to excessive length of proceedings.

³⁴ See Report of the UN Secretary-General on UNMIK, S/2004/613, 30/7/04

³⁵ OMIK, “Parallel structures in Kosovo”, October 2003

³⁶ Report of the UN Secretary-General, *supra*

³⁷ *ibid.*

³⁸ *ibid.*; see also Amnesty International, “The March violence: KFOR and UNMIK’s failure to protect the rights of the minority communities”, EUR 70/016/2004, July 2004 and OMIK, “Human rights challenges following the March riots”

³⁹ OMIK, “The administration of justice in the municipal courts”, March 2004

- v. The low salaries paid to judges are also a source of professional difficulty, and have been identified as a contributing factor in the susceptibility of some judges to external influences, including bribery and corruption. The Kosovo Judicial and Prosecutorial Council has so far completed over 20 disciplinary proceedings, leading to sanctions ranging from reprimand to dismissal; a further 70 or so investigations are pending.
- vi. In addition to the problem of "legal chaos" in identifying, interpreting and applying the proper law, Kosovo police, prosecution and judges, already inexperienced, have been faced with introduction of a legal system quite different from that in which they were trained and previously practiced. In April 2004 – only three weeks after the March violence, which had disrupted the operation of many courts – a new Provisional Criminal Code and Provisional Criminal Procedure Code were introduced.⁴⁰ OMIK considered that, as a result of the March violence, judges and prosecutors would have had more difficulty adapting to the new regime.⁴¹ Similarly, despite their being applicable law in Kosovo as a result of the Constitutional Framework, international human rights instruments are still not readily available in Albanian or Serbian and are an object of ignorance even to Kosovo judges, prosecutors and lawyers.
- vii. As for international judges, whilst in general well appreciated for their experience and ability to deal with politically or ethnically sensitive cases, not all have had the training necessary for the job.⁴² The Rapporteur has received anecdotal evidence of judges with insufficient command of any of the official languages of Kosovo, of judges applying their own national laws instead of the law applicable in Kosovo and of judges lacking familiarity with European human rights principles.

30. "Institutionalisation" or "mainstreaming" of human rights could and should be further developed within both UNMIK and the PISG. Whilst in its early days UNMIK had a dedicated human rights office advising the SRSG directly, the functions of this unit were subsequently dispersed through the interim international administration, coordinated through an Inter-Pillar Working Group on Human Rights.⁴³ Similarly, there is no human rights department within the PISG, despite the fact that the Constitutional Framework requires the PISG to "observe and secure" human rights (implying both negative and positive obligations) whereas the Special Chamber of the Supreme Court, which would have jurisdiction to pronounce in concrete cases on the compatibility of PISG laws with international human rights standards, has not yet been established (see above). Creating a department or ministry within the Provisional Government with responsibility for human rights (possibly along with community matters and returns) and an analogue committee within the Provisional Assembly would also be valuable steps.

31. There have also been various problems reported with respect to the police force in Kosovo, which is comprised of the international UNMIK police, CIVPOL, and a local force, the Kosovo Police Service ("KPS"). As noted above, allegations of misconduct relating to the March violence have been brought against around 100 KPS officers; a Kosovo human rights group, the Council for the Defence of Human Rights and Freedoms, claimed that CIVPOL (along with KFOR) was responsible for most of the killings in Mitrovica.⁴⁴ Amnesty reports that KPS officers rarely took effective measures to apprehend the perpetrators of violent attacks against Serbs, and has also accused CIVPOL of failing to take sufficient action in relation to attacks on Serbs, whether immediately following the arrival of KFOR or in subsequent years, or investigations into cases of missing persons.⁴⁵ OMIK also reports that, during the March violence, Kosovo Serb KPS members were not protected by their Kosovo Albanian or CIVPOL colleagues or by KFOR, adversely affecting their trust and confidence and leading to temporary refusals to return to work. The riots also caused delay in the transition of police stations to KPS control, and disrupted final training and preparation for police implementation of the new provisional criminal codes, which could in turn lead to failures to respect

⁴⁰ UNMIK Regulations No. 2003/25 and 2003/26

⁴¹ OMIK, "Human rights challenges following the March riots"

⁴² See also CommDH (2002) 11, para. 65.

⁴³ This Working Group is related to the "Human Rights Oversight Committee", established in June 2002 and composed of senior international officials, which performs functions of review, scrutiny and advice (see paragraphs 97-100 of the Venice Commission). The Rapporteur notes this Committee's lack of independence and the secrecy of its proceedings and findings, and feels that its value as a mechanism to mainstream human rights could be enhanced by allowing some, even if limited, public knowledge of its work. (It should also be noted that the Committee has only ever met three times and not at all in the last two years.)

⁴⁴ See Amnesty International, EUR 70/016/2004.

⁴⁵ Amnesty International, "The legacy of past human rights abuses", EUR 70/009/2004, April 2004. These alleged failures are despite the existence of UNMIK Regulation No. 2000/4 on the prohibition against inciting to national, racist, religious or ethnic hatred, discord or intolerance, which specifically criminalises such acts. The Ombudsperson has described such failures on the part of CIVPOL as a violation of Article 2 ECHR, which obliges authorities to conduct an effective investigation into deaths resulting from violent force.

detainees' rights.⁴⁶ Such circumstances impair these forces' ability to maintain the trust and cooperation of all elements of society, in particular those of minority communities. CIVPOL has itself accused certain KFOR contingents of obstructing its investigations into ethnically-motivated crimes. Common themes in reports on CIVPOL and the KPS is that they are not effectively coordinated either between themselves or, as the March violence illustrated, with KFOR, and that they, the KPS especially, lack sufficient resources.

C. The need for stronger mechanisms to protect ECHR rights

32. Given the continuing human rights problems faced by Kosovo, the current status and constitution of UNMIK and the PISG have led to an unsatisfactory situation from the point of view of effective human rights protection mechanisms. Within Kosovo, UNMIK is acting as a "domestic" administration, not as an international organisation or diplomatic representation; hence the particular need for it to be subject to effective human rights obligations (and thus the doubtfulness of the need for such extensive immunities). Whilst one might accept that the situation faced by UNMIK in 1999 was special – and indeed provisional derogations from obligations in conditions of public emergency are permitted under international human rights instruments, including the ECHR – it is now well over five years since UNMIK took charge; such justifications no longer carry the same weight, particularly given that KFOR's day-to-day role in ensuring public order has been greatly reduced. Furthermore, for such executive, legislative and judicial authority to be centred on a single individual, the SRSG, and be free from immediate oversight, coupled with the continuing relationship of tutelage between UNMIK and the PISG, risk setting a bad example not only to the future government of Kosovo (whatever form that government might take) but also further afield.

i. Legal situation of UNMIK/UN and KFOR/NATO and its member States with respect to the ECHR⁴⁷

33. Firstly, clarification should be made concerning the legal personality and status of the interim international authorities in Kosovo.

- i. UNMIK is a UN-mandated mission under the control of the SRSG. Having exclusive jurisdiction in Kosovo, it bears both the negative and positive obligations of human rights protection. This exclusive jurisdiction also implies that ratification of conventions, including the ECHR, by Serbia and Montenegro is not relevant to the legal obligations of UNMIK.⁴⁸ Whatever its precise status as a subject of international law, UNMIK has been able to engage in relations and sign agreements with various actors, including the Council of Europe. For the purposes of this report, therefore, the Rapporteur concludes that it is sufficient to talk of "UNMIK" without also mentioning either its pillars or the UN as a whole.
- ii. KFOR is of a different nature, being a military operation conducted by NATO. Analysis of KFOR is further complicated by the division of operational control between the KFOR Commander and the commanders of the various national contingents. Depending on particular circumstances, therefore, human rights violations in certain cases might be attributable to NATO, whilst in others (and probably more often) to a particular NATO member State (or States); in some cases, attribution may be shared or difficult to determine. Since, however, it is KFOR which has the UN mandate and thus bears overall responsibility for the international security presence in Kosovo, most proposals on enhancing human rights protection mechanisms would best be addressed also to NATO.

34. It is also important to distinguish between the various measures on the basis of their application. Those which would result from regulations or subsidiary instruments promulgated by UNMIK could not be applicable to KFOR and would not be fully binding on UNMIK itself, even with respect to the ECHR or other international human rights instruments, as they would always be susceptible to revocation or amendment. A key added value of human rights agreements with outside bodies such as the Council of Europe is that they would have a more binding status, whether on UNMIK or KFOR/ NATO.

⁴⁶ OMIK, "Human rights challenges following the March riots".

⁴⁷ For further discussion of these highly technical issues, the Rapporteur refers also to the background analysis to be found in the Venice Commission opinion.

⁴⁸ As regards the ICCPR, it should be noted that the UN Committee for Human Rights has requested UNMIK to submit a report on Kosovo.

35. Neither UNMIK nor KFOR/ NATO are states or therefore could ratify the ECHR without its having first been amended. Whilst amendment of the ECHR has been foreseen so as to permit future ratification by the European Union (the "EU"), for such work to be undertaken as a priority in respect of Kosovo would, given the interim nature of the international authorities there, seem to be a disproportionate response, especially since (as will be seen) alternative measures are available.

36. It should also be borne in mind that the "extra-territorial" jurisdiction of the ECHR does not extend to non-European States participating in KFOR.⁴⁹ Whilst the European Court of Human Rights may rule that European NATO-member States have responsibilities under the ECHR extending also to the activities of their KFOR contingents, the obligations which thus arise, and the potential legal remedies consequently available from national courts and ultimately the European Court of Human Rights, are not relevant to non-European contingents.

37. Furthermore, the ECHR's control mechanism is of a different nature to those of the CPT or the Framework Convention, neither of which shares the European Court of Human Rights' adversarial proceedings based on individual complaint against a respondent party, or culminates in binding judgments. These characteristics represent further complications in subjecting either UNMIK or KFOR/ NATO to the jurisdiction of the Court.

38. Whilst the Rapporteur remains of the view that extension of the jurisdiction of the Court to include acts and omissions of UNMIK and KFOR/NATO remains an important eventual aim, subject to the duration of the international authorities' presence in Kosovo, therefore, immediate attention should be given instead to mechanisms which can be established in the shorter term.

ii. Possible new mechanisms which could be established in the short to medium term

a. The Advisory Panel

39. In addition to the questions posed by the Committee, namely concerning extension of the jurisdiction of the Court and establishment of a human rights chamber, the Venice Commission also considered the possibility of a new non-judicial mechanism within UNMIK, which it describes as a provisional system of independent review or "Advisory Panel" (see paragraphs 114 – 124 of the Opinion).

40. The mechanism considered by the Venice Commission would consist of a panel of independent international human rights experts reviewing the compatibility of UNMIK acts or omission with human rights standards. The panel would be established under UNMIK Regulation and be composed of an adequate, odd number of experts appointed on the recommendation of the President of the European Court of Human Rights, to be available in Pristina. It would be assisted by a secretariat, sufficient in number, and receive adequate resources in other respects.

41. The Advisory Panel would be competent to examine any complaint lodged by any person claiming that his fundamental rights and freedoms have been violated by acts (including laws, regulations subsidiary instruments and other decisions) or failures to act by UNMIK, and whose previous complaint to the Ombudsperson, whilst upheld, did not lead to UNMIK recognising its responsibility. The Ombudsperson itself would also, with the agreement of the individual concerned, be able to refer cases to the Panel. In addition, the PISG courts, if called upon to examine the compatibility of an UNMIK normative act with international standards, would be able to refer the matter to the Panel. Court proceedings would then be adjourned pending determination of the matter by the Panel.

42. The Panel would determine complaints by majority vote. Its decisions would be promptly and effectively publicised in all the official languages of Kosovo. Being an advisory body, its decisions would be non-binding. Its effectiveness would be enhanced, however, by the establishing regulation prescribing that the SRSG would be bound to accept its findings, unless exceptional reasons made this impossible. The Venice Commission, whilst "conscious that this Advisory Panel would not offer the same guarantees as an independent judicial body such as the Human Rights Court for Kosovo", "considers that it would constitute a significant improvement as it would provide the public with a visible sign that UNMIK does not shield its acts from scrutiny" by an body of independent human rights experts (paragraph 124).

⁴⁹ Non-European states contributing to KFOR include NATO-members Canada and the USA and non-NATO members Argentina, Morocco and the United Arab Emirates.

43. The Rapporteur welcomes any proposal that would improve human rights protection in Kosovo, and agrees that the Advisory Panel could make a contribution, but fears that the Panel as proposed may have certain disadvantages which are not fully explored in the Venice Commission's opinion, and which it would be important to avoid.

44. In particular, the Rapporteur is concerned that the Panel could undermine the status and influence of the Ombudsperson, whose work, in difficult circumstances, has to date been uniformly excellent, notably in terms of its clear, succinct and persuasive legal analyses of various human rights issues. The current Ombudsperson has great human rights expertise and his work is of the highest juridical quality; such attributes do not require to be supplemented by an additional mechanism. Whilst the jurisdiction of the Panel would be somewhat wider than that of the Ombudsperson, a significant and important part of its work would overlap; indeed, it would in many cases act on exactly the same cases. Furthermore, there may be a risk that UNMIK – whose record of accepting and acting upon the Ombudsperson's recommendations has been disappointing – would allow cases to be referred to the Panel in the hope of a more advantageous outcome, or merely in order to defer their conclusion. Since there is no reason to question the probity of the Ombudsperson, the Rapporteur wonders why UNMIK would be willing to commit itself to accepting the Panel's findings but has appeared unwilling to do so for the Ombudsperson.

45. The Rapporteur entirely agrees with the Venice Commission that "the role of the Ombudsperson should not be undermined or duplicated" (paragraph 115), but fears that establishment of a Panel whose decisions would have greater authority could have such an effect. The Assembly has, in the past, expressed its unqualified enthusiasm for the institution of Ombudsman, and thus the Rapporteur considers that the effectiveness of the Kosovo Ombudsperson in scrutinising the activities of UNMIK as a civil administration should rather be enhanced. This could be done by requiring the SRSG to give final responses to recommendations within a reasonable time, with any refusal to comply requiring proper justification, and by giving practical reinforcement to the provisions requiring public authorities to cooperate with the Ombudsperson, in particular by providing relevant information and documentation.

46. Finally, as a matter of general principle, the Rapporteur considers that caution must be taken to avoid creating a system of multiple and overlapping human rights protection mechanisms, particularly when the most important gaps in the existing machinery would remain outstanding. The Rapporteur also wonders whether the Panel would merely allow UNMIK to experiment with the consequences of independent oversight, whilst excusing an immediate decision on the essential step of creating the proposed Human Rights Court for Kosovo (see below).

47. Nevertheless, the Rapporteur supports in principle the creation of an Advisory Panel, but would prefer that it take a slightly different form, with a rational division of labour between the Ombudsperson and the Panel and parallel powers for the two. Several European countries have both Ombudsmen and Human Rights Commissions which discharge complementary but distinct functions. An essential distinction is that Ombudsmen's work is based on individual complaints of maladministration, including non-respect for human rights in administrative actions (i.e. it is "bottom-up"), whereas Human Rights Commissions' work normally focuses on scrutinising legislative or policy proposals and recommending legislative or policy changes or initiatives ("top-down"). In practice, of course, these distinctions may become blurred (for example, an Ombudsman could properly propose legislative changes as a result of perceiving a pattern of related individual complaints), but in most situations the separation of responsibilities would be clear. Such a Commission could be well placed to bring cases relating to policy or legislation before the Human Rights Court for Kosovo (see further below), as indeed would be the Ombudsperson with respect to individual cases. To establish an Advisory Panel along such lines would avoid duplication, ensure complementarity and reduce the necessity for the Ombudsperson to address general policy and legislative matters. This approach would provide an even greater range of flexibility alongside eventual judicial mechanisms.

b. The Special Chamber of the Supreme Court on Constitutional Framework Matters

48. Whilst this mechanism would have jurisdiction only over the PISG (and so be relatively uncomplicated to establish), it would nevertheless be an important addition to human rights protection, competent both to review legislation and other legal instruments and to adjudicate on individual cases.

49. As noted above, one of the problems relating to the rule of law in Kosovo is legal uncertainty, in part generated by laws deriving from separate and potentially conflicting sources. At present it is left to lower courts to identify and apply the appropriate law, leaving the possibility of inconsistent judgments. The Special Chamber would correct this omission. Should a judgment prove problematic by defeating the aims of UNMIK

when elaborating a particular regulation of subsidiary instrument, this could, if necessary, be corrected by the promulgation of a further UNMIK instrument (since UNMIK instruments have precedence) – on condition, of course, that international human rights standards are respected.

50. The Rapporteur agrees with the Venice Commission's proposals for the Special Chamber, namely:

- i. the fact that Provisional Assembly laws are in fact promulgated by the SRSG would not exclude them from the Special Chamber's jurisdiction, unless the SRSG had amended them prior to promulgation in order to ensure compliance with human rights standards (in which case they would fall within the jurisdiction of the Human Rights Court for Kosovo);
- ii. the Special Chamber would also have jurisdiction over individual cases alleging human rights violations by acts or omissions of the PISG;
- iii. the Special Chamber would be composed of five judges, three local (two from the majority community and one from the minority communities) and two international, proposed by the President of the European Court of Human Rights and nominated by the SRSG.

c. A Human Rights Court for Kosovo

51. The Venice Commission Opinion gives a full description and analysis of this question (paragraphs 101-111), with which the Rapporteur agrees, noting in particular the following:

- i. the Court would be established by parallel agreements between both UNMIK and KFOR/ NATO (along with non-NATO participating states) on the one side and the Council of Europe on the other;
- ii. it would have jurisdiction over complaints alleging violations of the rights contained in the ECHR and its additional Protocols by UNMIK, KFOR/ NATO and the PISG;
- iii. to allow the Court to consider cases against UNMIK or KFOR would require revision of the institutional immunities of these organisations;
- iv. the Court would be composed of nine judges, five international and four local, the international judges being nominated by the Committee of Ministers of the Council of Europe, with one of these nominated in agreement with the SRSG, 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;
- v. the Court would base its procedures and case-law on those of the European Court of Human Rights;
- vi. the Court would be competent to receive applications from both individuals and the Ombudsperson, acting with their agreement on their behalf;
- vii. when reviewing acts or omissions by UNMIK or KFOR, the Court would have international-only composition;
- viii. the Court would have power to annul decisions and acts of UNMIK and KFOR, and to award appropriate redress or compensation.

52. The creation of a Human Rights Court is, to the Rapporteur, an essential step in completing the human rights protection machinery in Kosovo and thus a necessary stage in the process of normalisation of the province, to whatever conclusion that process might eventually lead. The Rapporteur therefore supports the Venice Commission's preference for the Human Rights Court to have power to annul decisions and acts by UNMIK or KFOR, in contrast to the European Court of Human Rights, on the basis that such a power is normally found within domestic legal systems, both the Human Rights Court for Kosovo and UNMIK acting on a "domestic" level.

53. The Council of Europe would thus play a three-part role in helping to establish this Court: directly, through the agreements with UNMIK and with KFOR/ NATO and non-NATO participating states by which the Court would be created, and through a resolution of the Committee of Ministers containing rules on the

nomination and appointment of judges;⁵⁰ and indirectly, by the Court's procedures and caselaw being based on those of the European Court of Human Rights.

d. Creating a jurisdiction for the European Court of Human Rights

54. As noted above, neither UNMIK nor KFOR/NATO are party to the ECHR, and for them to become so would require its amendment; nor does ratification by Serbia and Montenegro create obligations for UNMIK or KFOR/NATO. Nevertheless, Kosovo is a European territory and those who reside there are Europeans, and so it is important that efforts be made to provide the province and its inhabitants with the benefits of all European human rights protection mechanisms.

55. The technical and political problems involved in this measure, however, are considerable, and are well described in paragraphs 76-90 of the Venice Commission opinion.

56. In the Rapporteur's view, however, the Venice Commission perhaps overstates the problem discussed in paragraph 81 of its Opinion. It would not be the UN as a world-wide organisation which would be subject to the jurisdiction of the Court but UNMIK, a UN-mandated operation which undertakes administrative functions within a limited geographical area of Europe, over which it has exclusive jurisdiction but which is part of Council of Europe territory. On this basis, subjection to Council of Europe supervisory mechanisms would appear appropriate. Furthermore, it must be recalled that UNMIK has already accepted the jurisdiction of regional mechanisms with respect to the ECPT and the Framework Convention.

57. That said, the Rapporteur agrees with the Venice Commission's conclusion that, whilst necessary and important, in the particular circumstances of Kosovo it would be of greater practical value to pursue as priorities measures which can be realised in the more immediate term. Whatever the future status of Kosovo, it seems clear that ultimately, the people of Kosovo should be able to bring individual applications to the European Court of Human Rights against the State party within whose jurisdiction Kosovo will fall.

D. Conclusions and recommendations

58. The Rapporteur accordingly would make the following recommendations for enhancing the protection of human rights in Kosovo:

i. Measures relating to existing institutions and mechanisms

59. The Rapporteur proposes the following measures which relate to institutions or mechanisms already existing in Kosovo:

- i. the state of legal certainty should be improved, 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 concerned public officials, in particular those working within the judicial system and law enforcement agencies, to prepare them for the entry into force of such instruments;
- ii. the judicial system should be reinforced, including by:
 - a. taking further steps to construct and maintain 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 ensure balance in individual case-loads;

⁵⁰ The Committee of Ministers resolution could be inspired by Resolution (93) 6 on control of respect for human rights in European States not yet members of the Council of Europe, taking account of the fact that Kosovo itself is not a state.

- c. continuing to ensure that any actual or perceived 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;
- iii. the Ombudsperson Institution in Kosovo should be reinforced, including by:
- a. requiring the SRSB and PISB 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 No. 2000/38 to cooperate 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;
- iv. the KFOR Detention Directive and Detention Review Panel should be enhanced, 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 ECHR;
 - b. reinforcing the authority and independence of the Panel by involving it in all detention decisions of the Commander of KFOR, composing it 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 No. 2003/26 on the Provisional Criminal Procedure Code;
 - d. furnishing detainees with copies of the Panel's decisions and, given 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 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 Panel;
- v. the status and effectiveness of the civilian police forces, CIVPOL and the KPS, should be enhanced, including by:
- a. encouraging recruitment to the KPS from the minority communities;

- 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, and in relevant international human rights standards;
 - e. promoting effective cooperation and coordination between the civilian police forces and KFOR and ensuring that KFOR avoids any possibility of obstructing these forces' investigations;
 - f. providing the police forces, in particular the KPS, with sufficient resources to discharge their duties effectively;
- vi. the effectiveness of the HPD/CC and of civil courts when acting in property disputes should be improved, including by:
- a. ensuring that proceedings before the HPCC comply with the standards of Article 6 ECHR, with possible further appeal to the Human Rights Court for Kosovo, when established;
 - b. allocating sufficient resources to the HPD/CC;
 - c. ensuring that appropriate support is provided by the civilian police forces and through improved coordination between the HPD/CC and the courts;
 - d. guaranteeing that all IDPs will have their claims considered by an effective mechanism, whether the HPD/CC 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;
- vii. procedures for expropriation of property should be improved, including by:
- a. ensuring that both UNMIK and the PISG strictly follow the procedures set out in the 1986 Law on Expropriation and other applicable instruments;
 - b. enhancing the independence of the UNMIK Claims Office, by including a majority of independent members on the panel;
 - c. strengthening the standing of applicants and/ or their legal representatives and providing for an effective right of appeal from the UNMIK claims panel to an independent tribunal (this could be the Advisory Panel, with further appeal to the Human Rights Court for Kosovo, when both are established);
 - d. 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;
 - e. all KFOR-participating states accepting the jurisdiction of the KFOR system, including its Appeal Commission;
- viii. the PISG should cooperate fully in the implementation of the existing and future agreements between UNMIK and the Council of Europe on the applicability of the latter's human rights protection mechanisms.

ii. Measures relating to new institutions and mechanisms

60. The Rapporteur proposes the following measures which relate to institutions or mechanisms whose existence in or application to Kosovo would be new:

- i. KFOR/ NATO and the Council of Europe should make the necessary arrangements for implementation of the mechanism of the CPT by KFOR/ NATO at the earliest opportunity;

- ii. human rights should be more effectively mainstreamed in both UNMIK and PISG policy and legislative development, including by:
 - a. creating an Advisory Panel/ Human Rights Commission within UNMIK, consisting of independent international human rights experts nominated by the President of the European Court of Human Rights and appointed by the SRSG, 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;
 - b. establishing an inter-departmental task-force within the Provisional Government with responsibility for coordinating and mainstreaming human rights matters, including good-governance and equality and possibly also community issues and returns;
 - c. creating a human rights committee within the Provisional Assembly to scrutinise draft laws and the acts of the Provisional Government;
- iii. the Special Chamber of the Supreme Court on Constitutional Framework Matters should be established, with the following characteristics:
 - a. competence to receive applications from individuals or the Ombudsperson acting with their consent on their behalf;
 - b. jurisdiction to review all Provisional Assembly laws other than those which had been amended in promulgation by the SRSG so as to bring them into conformity with international human rights standards (which would instead be 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 SRSG;
- iv. a Human Rights Court for Kosovo should be established, with the following characteristics:
 - a. establishment by parallel agreements 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 over complaints alleging violations of the rights contained in the ECHR and its additional Protocols by UNMIK, KFOR/ NATO and KFOR national contingents and the PISG;
 - c. composition of nine judges, five international and four local, the international judges being nominated by the Committee of Ministers of the Council of Europe, with one of these nominated in agreement with the SRSG, 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;
 - 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. when reviewing acts or omissions by UNMIK or KFOR, the Court would have international-only composition;
 - g. power to annul decisions and acts of UNMIK and KFOR, and to award appropriate redress or compensation;
- v. a study should be undertaken by the Council of Europe, in cooperation with UNMIK and KFOR/ NATO and in association with other interested parties, in particular Serbia and Montenegro, on possible interim extension of the jurisdiction of the European Court of Human Rights to include Kosovo.

61. Finally, as a general measure necessary to all of the above, UNMIK should review the state of immunities, in particular by:

- i. revising Regulation No. 2000/47 so as to ensure that the immunities of UNMIK and KFOR do not hinder the effective implementation of these recommendations;
- ii. ensuring that international officials, including police officers, are always subject to an effective criminal and civil jurisdiction, either local or in the country of origin.
- iii. **Possible future reform of the international presence in Kosovo**

61. In the latter part of 2004, it was reported that the international presence in Kosovo could be reformed, with the lead role being transferred from UNMIK to the EU. The Rapporteur does not feel competent to analyse or recommend on such proposals. Nevertheless, it should be pointed out that the general principles underlying the above discussion would remain applicable whatever organisation was primarily responsible for the administration of Kosovo. Furthermore, such a change would not affect the validity of the above proposals as regards either KFOR or the PISG, and those proposals currently directed at UNMIK would be equally applicable, *mutatis mutandis*, to the EU or an EU-led mission. In addition, the Rapporteur notes that one of the more complicated issues, namely extension of the jurisdiction of the European Court of Human Rights to cover the territory of Kosovo, could be resolved by the foreseen accession of the EU to the ECHR.

APPENDIX I

***Programme of the visit of Mr Tony Lloyd,
Rapporteur of the Parliamentary Assembly of the Council of Europe
accompanied by Mr David Milner (Assembly Secretariat)***

Pristina, 20-21 January 2004

Tuesday, 20 January 2004

- 10:00 **Petr Ivantsov**, Director of Political Affairs, UNMIK & **Alexander Borg-Olivier**, Legal Adviser, UNMIK
- 11:30 **Bajram Rexhepi**, Prime Minister of the PISG
- 13:30 **Carsten Weber**, Director of Human Rights and Rule of Law, OMIK
- 15:00 **Peggy Hicks**, Director of the Office of Returns and Communities, UNMIK
- 16:30 **Colonel Jorgen Stricker**, Chief Legal Advisor, KFOR (Kosovo Film)
- 18:00 Working dinner with **Marek Nowicki**, Ombudsperson ("Tiffany" Restaurant)

Wednesday, 21 January 2004

- 09:00 **Rexhep Haxhimusa**, President of Supreme Court
- 10:00 **Milorad Todorevic**, Inter-ministerial coordinator for returns of internally-displaced persons in the PISG

APPENDIX II

**Programme of the hearing held by the Committee on Legal Affairs and Human Rights
in Paris on 16 March 2004**

- 9 h 00 Opening of the Hearing by Mr Dick Marty, 1st Vice-Chairperson of the Committee on Legal Affairs and Human Rights
- 9 h 05 Introduction by the Rapporteur, Mr Tony Lloyd
- 9 h 15 **Theme I: Political authority and current institutional structures**
- Mr Alexander Borg-Olivier, Legal Adviser, United Nations Mission in Kosovo (UNMIK)
- Mr Milorad Todorovic, Inter-ministerial coordinator for returns of internally-displaced persons in the Provisional Institutions of Self-Government of Kosovo
- Mr Bekim Collaku, Political Adviser to the Prime Minister of the Provisional Institutions of Self-Government of Kosovo
- 10 h 15 Discussion
- [11 h 00 Coffee break]
- 11 h 15 **Theme II: Human rights protection mechanisms**
- Mr Marek Antoni Nowicki, Ombudsperson of Kosovo
- Mr Carsten Weber, Director of Human Rights and Rule of Law, OSCE Mission in Kosovo (OMIK)
- 11 h 45 Discussion
- [12 h 30 Lunch break]
- 14 h 00 **Theme III: The implementation of Council of Europe standards**
- Mr Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights
- Mr Guy de Vel, Director-General of Legal Affairs, Council of Europe
- Mr Marc Scheuer, Director of Political Advice and Co-operation, Council of Europe
- 14 h 45 Questions and discussion
- 16 h 30 Closing of the hearing by the Rapporteur, Mr Tony Lloyd

Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Doc 9896, reference No 2874 of 29 September 2003

Draft resolution and draft recommendation adopted unanimously by the Committee on 16 December 2004

Members of the Committee: Mr Eduard Lintner (*Chairperson*), Mr Dick Marty, Mr Jerzy Jaskiernia, Mr Erik Jurgens (*Vice-Chairpersons*), Mrs Birgitta Ahlqvist, Mr Zekeriya Akçam, Mr Athanasios **Aletras**, Mr Gulamhuseyn Alibeyli, Mr Aklexander **Arabadjiev**, Mr Miguel Arias, Mrs Teuta Arifi, Mr Abdülkadir **Ateş**, Mrs Maria Eduarda **Azevedo**, Mr Jaume **Bartumeu Cassany**, Mrs Meritxell Batet, Mrs Soledad Becerril, Mrs Marie-Louise Bemelmans-Videc, Mr Sali **Berisha**, Mr Rudolf Bindig, Mr Giorgi Bokeria, Mr Malcolm **Bruce**, Mrs Pia Christmas-Møller, Mr Boriss **Cilevics**, Mr Viorel Coifan, Mr Marcello Dell'Utri, Mr Martin Engeset, Mrs Lydie **Err**, Mr Václav Exner, Mr Valeriy Fedorov, Mr Robert **Fico**, Mr György **Frunđa**, Mr József Gedei, Mr Stef Goris, Mr Valery Grebennikov, Mr Süleyman **Gündüz**, Mrs Gultakin **Hajiyeva**, Mrs Karin Hakl, Mr Serhiy **Holovaty**, Mr Michel **Hunault**, Mr Sergei **Ivanov**, Mr Roman Jakič, Mr Neven Jurica, Mr Antti Kaikkonen, Mr Hans Kaufmann, Mr Ulrich Kelber, Mr András Kelemen, Mr Nikolay Kovalev (alternate: Mr Yuri **Sharandin**), Mr Henryk **Kroll**, Mr František Kroupa, Mr Jean-Pierre Kucheida, Mrs Sabine Leutheusser-Schnarrenberger, Mr Andrea **Manzella**, Mr Alberto Martins, Mr Tito Masi, Mr Kevin **McNamara**, Mr Philippe Monfils, Mr Philippe Nachbar, Mr Tomislav Nikolić (alternate: Mr Ljubiša **Jovašević**), Mr Ionel Olteanu, Mrs Ann Ormonde (alternate: Mr Paschal **Mooney**), Mrs Agnieszka **Pasternak**, Mr Ivan Pavlov, Mr Johan Pehrson, Mr Piero Pellicini, Mrs Sólveig Pétursdóttir, Mr Rino **Piscitello**, Mr Petro Poroshenko, Mrs Maria Postoica, Mr Christos **Pourgourides**, Mr Jeffrey Pullicino Orlando, Mr Martin Raguz, Mr François Rochebloine, Mr Armen Rustamyan, Mr Michael Spindelegger, Mr Václav Stankevic, Mr Petro Symonenko, Mr Miltiadis Varvitsiotis (alternate: Mr Nikolaos **Dendias**), Mr John Wilkinson (alternate: Mr Tony **Lloyd**), Mrs Renate Wohlwend, Mr Vladimir Zhirinovskiy, Mr Zoran **Žižic**

N.B. The names of those members who were present at the meeting are printed in bold.

Secretariat of the Committee: Mr Schokkenbroek, Mr Schirmer, Mrs Clamer, Mr Milner