



TOWARDS A PAX LINGUISTICA IN KOSOVO?

Editorial



This is a special edition of the regular ASI newsletter. As persons from different communities and speaking with different languages seek access to public institutions, the development of a culture and practice of multi-linguality is of utmost importance. The year 2005 is crucial for the future of Kosovo. Implementing the priority Standards have become a joint effort, where Kosovo can count on the assistance and expert input of many people. This ASI Newsletter is a reflection of this expert advice offered to the leaders of Kosovo's institutions, civil servants, community representatives, civil society and media.

On 14 and 15 September 2004, the OSCE Mission in Kosovo in co-operation with the Provisional Institutions for Self-Government (PISG) organised a conference entitled "Towards a Pax Linguistica in Kosovo? Language rights of Kosovo Communities" on the implementation of language rights in Kosovo. A central theme of the presentations was the importance of promoting language diversity as a tool to advance mutual understanding, tolerance and integration within society. Moreover, ensuring the language rights of Kosovo's communities is required by the Kosovo Standards Implementation Plan (KSIP). The purpose of this ASI Newsletter edition is to continue the debate on the need to improve language policy implementation in Kosovo and "show the way forward" – identify possible solutions, give recommendations.

The conference featured leading minority rights and minority languages experts among who Dr. Fernand de Varennes, Senior Lecturer of Human Rights and International Law from Murdoch University, Australia (see his article "Striking a Balance between Minority Rights Claims and Government Resources"), is known worldwide for his work on this topic.

The majority of the reported problems faced by Kosovo's communities in the exercise of their language rights concerned access to written information from and communication with Kosovo institutions at the central and municipal levels. Shortage of translation/interpretation services and insufficient commitment of PISG officials were the most frequently reported causes. In addition, the lack, and even non-existence in some areas of Kosovo of street, road, and public signs in minority languages (Serbian and others in areas where applicable) was mentioned as frustrating for minority communities, and interpreted both as a technical problem and as a policy concern.

At the conference, the conclusion was made that language-related frustration of minority communities lies in the still inadequate implementation of the applicable legal framework, due—to a significant extent—to the lack of clear and uniform understanding of the applicable law.

The first three articles in this newsletter examine in greater depth recurrent issues of language policy implementation, highlighted at the conference – the translation imbroglio in the law-drafting process (see article "'Lost in Translation' or How to Make Three Languages Speak One Legislative Voice"), the urgent need to improve language policy implementation by municipalities (see "Language Policy Implementation in Municipal Practices"), and the need for a comprehensive governmental approach to ensure the right to education in one's language (see "Multiethnic Education").

Each of the above articles gives recommendations on how to address the identified problems directly. In turn these recommendations are complemented by three articles, which take a holistic approach and explain how to construct and implement a Kosovo-wide comprehensive language policy. One discusses the positive example of the Anti-discrimination law, and what follow-up is needed with respect to ascertaining language rights (see "The Anti-discrimination Law – Bringing in the Private Sector"). In the next article Dr De Varennes, explains the rationale behind governmental language policies, which have proven successful in other countries, offering a "formula" of four guiding principles (see "Striking a Balance between Minority Rights Claims and Government Resources"). The last article argues in favour of a comprehensive Law on language use in Kosovo (see "Elements for a Law on Language Use").

We hope you find the analysis, the proposal for a draft law on language use and the other policy suggestions useful. As always, we look forward to your feed-back.

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‘Lost in Translation’ or how to make three languages speak one legislative voice

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Major translation-related problems thwart the legislative process. Significant discrepancies between the mandatory versions of legal texts - English, Albanian and Serbian - detract attention from the substance of the laws, spread confusion and preclude successful implementation. The main reasons for this are the lack of qualified interpreters (English), insufficient political commitment (with regard to the Serbian version), inefficient translation procedures, and ‘legislative haste’. Short-term solutions recommended could be improving the management of the translation cells, outsourcing English language translation, and standardising legal terms in use. In the mid-term, the authors suggest that the PISG should consider language classes in the official languages for all civil servants, while also minimising the necessity for English-language translation. In the long run, an institute for translation and interpretation should be created.

The translation of legal texts in the legislative processes urgently needs improvement. Multilingualism is one of the cornerstones for the functioning of the Provisional Institutions of Self-Government (PISG). Multilingualism means that Kosovo has three official languages: Albanian, Serbian, and English. Yet there are legal provisions, albeit unclear, for the official usage of the other languages in municipalities with substantial presence of representatives from other language communities. Multilingualism in turn translates into the legally-bound requirement that these languages are to be used in all aspects of governance and administration.¹

One aspect of the legal provisions on official language usage has, however, been especially difficult to implement. Indeed, the translation of draft laws, amendments, and other legal texts produced by the Assembly of Kosovo (AoK) during its first mandate from 2001 to 2004 has experienced many shortcomings. *It is estimated that 60-80% of the amendments to draft laws proposed in the Assembly are not addressing*

substantial points of the laws because of language-related inadequacies. It is obviously a waste of resources if the Members of the Assembly have to deal with editing the legal texts rather than considering more substantial aspects of proposed draft laws.

Despite the still relatively heated political situation in Kosovo when it comes to inter-ethnic relations, which is naturally reflected in the AoK and other institutions of governance, problems with the translation of legal texts derive not so much from political differences, but apparently from shortcomings that we can generally label ‘technical’.

The following text will therefore try to provide a short summary of the major problems that have been noticed in the legal translation process, as well as to identify possible short-, mid-, and long-term solutions to these problems.

What are the language-related problems in the legislative process?

One of the central shortcomings is that there is a lack of qualified translators and inter-



Assembly of Kosovo session (first mandate)

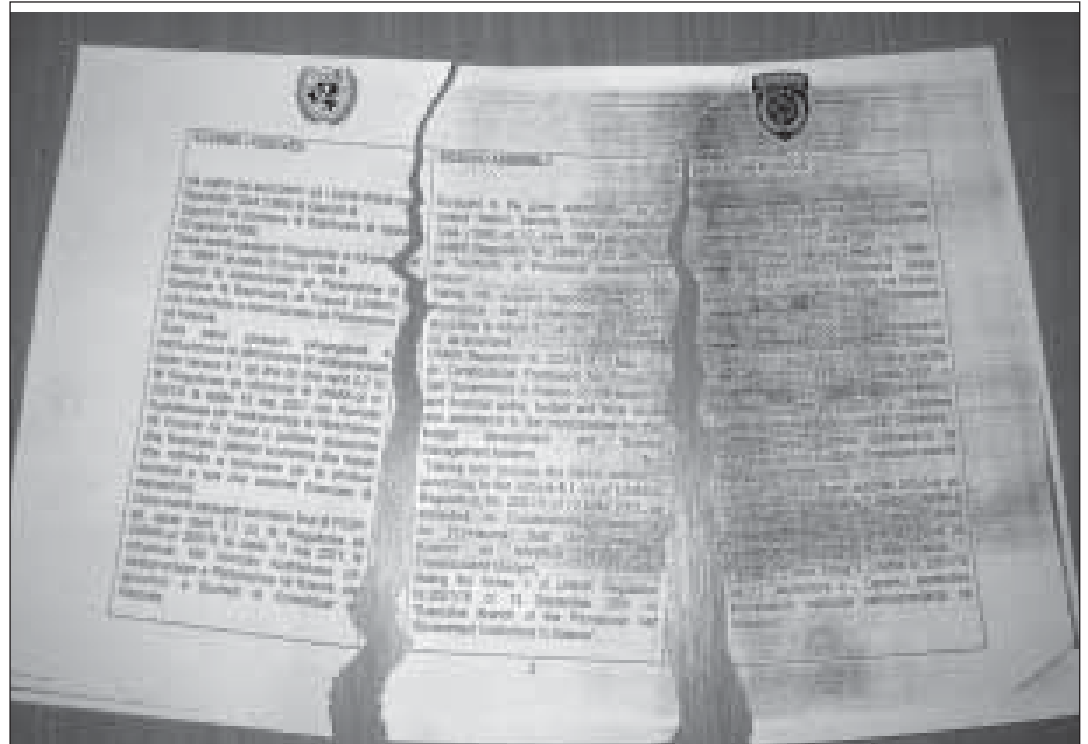
preters within the PISG. This particular problem, which obviously is of technical, rather than political nature, relates especially to English language translation capacities, but also to translation into the Serbian language. Indeed, good translation is a service that comes in scarce amounts in Kosovo.

¹ For the purpose of this article the focus will be on difficulties relating to the legal translation in Albanian, Serbian and English. It shall nevertheless be noted that it is surprising that not even core documents of the PISG, e.g. the Rules of Procedure of the Assembly, are being translated to other languages, e.g. Turkish.

Qualified and professional English-language interpreters, with a background in and knowledge of legal matters come in very small numbers. In addition, the salaries offered for PISG interpreters under the conditions of the Kosovo Consolidated Budget (KCB) are unlikely to attract anybody from the small number of legal translators.

Most of the qualified English-language interpreters are working for international organizations and not for the PISG/AoK. Ironically, many draft laws are either being written in English or are strongly influenced by English speakers (international experts on the draft law working groups, for example), and they need to be translated into Albanian and Serbian by the translation service of the PISG. As a result, the translation of original texts in English is often of insufficient quality and involves linguistic mistakes. Some mistakes are even projected onto translation in the second official language, which occurs, for example, when an inaccurate piece of translation from the Albanian version is transferred to the Serbian version by translators who use the Albanian text as the original.²

As for the Serbian translation, there does not exist a clear account as to why there are so many problems within the PISG since a great number of Kosovans above the age of 25 supposedly speak Serbian fairly well. In this context, problems related to translation increasingly become political, rather than technical. Namely, there is a lack of political commitment inherent since the conflict, which is very much needed for



Poor translation sets "identical" versions of the same law apart. The meaning gets "lost in translation".

Serbian communication within the legislative process. In fact much too often Serbian versions of draft laws are of poor quality, as happened for example with the Anti-Discrimination Law, which was rejected by the Serbian Assembly Members not due to its content but to its distorted Serbian translation. Nevertheless there should be enough capable Serbian translators with legal background who could provide professional Albanian-Serbian translations even under the conditions of the Kosovo Consolidated Budget, providing that the political commitment is significantly improved.

On top of the lack of capacity and in some cases insufficient political will, there is the problem of the lack of efficient translation procedures for the existing translation cells. As

an example, if amendments to draft laws are approved in the Assembly Committees or the draft law working groups they are integrated in the language version of the draft law that the amendment was proposed. But apparently much too often these amendments are not translated and integrated in the other language versions of the same draft law. Consequently, after a draft law has passed through the legislative process there is not one draft law, but three partially completely different draft laws, because the three language versions differ quite substantially. This is obviously a problem that can be overcome by improving the management of the translation cells and enacting better procedures within the drafting process. It is encouraging that there has recently been some

progress in this direction.

Finally, what could be called 'the legislative haste' - the speed with which draft laws are being drafted and processed by the Government and the Assembly - is not only the reason for sometimes improvable content of laws, but also for the poor translation. As mentioned before, many amendments to draft laws in the Assembly address linguistic problems rather than the substance of draft laws. If there would be more time in the whole legislative process, it can safely be argued that we would witness draft laws of higher quality being passed, because besides an improved quality of translation, the AoK would also have time to concentrate on the more substantial issues of draft laws under consideration.

²⁾ In this regard, it should be noted that the international community requires the PISG to submit the draft laws in English translation to the SRSG for promulgation. Having no real 'local' need for legal texts in English language, it could be argued that this burden should not necessarily be put on the shoulders of the PISG for every draft law. But this is a different issue.

What are the possible solutions?

Reflecting on the shortcomings, a number of short-, mid-, and long-term policy goals are proposed to address these problems.

In the short term, it is absolutely necessary that the management of the Translation Cell at the AoK and other PISG is improved. One step in this direction is the introduction of quality check mechanisms (e.g. proof-reading) and applying standardized procedures (e.g. on how to track changes in different language drafts).

As to the English-language translation, the PISG could also start contracting external services. Why should translation services not be out-sourced to private companies – as it is done, for example, in Belgium? Private companies can often provide translation services cheaper and more professionally, especially since they are also able to pay for professional English translation, which is not possible under the constraints of the KCB.

Translation could also be improved by using legal dictionaries and glossaries in order to standardize the legal terms in use. It is very confusing if the English term for Assembly Member is sometimes translated as member, sometimes as deputy, and so on. Currently, the OSCE Mission in Kosovo (Central Governance Support Team) is working on such a legal glossary that could be used to standardize legal terms for English, Albanian and Serbian.

In the mid-term, the PISG could plan to encourage all their civil servants to attend

language classes provided by the employer: not only Serbian classes and English classes for Albanian civil servants, but naturally also Albanian classes for Serbian civil servants. Another goal would be to minimize the need to provide English translation, since it puts unnecessary strain upon the PISG as long as there are not enough English translators available.

This brings us to the **long-term strategy** that should aim at creating the capacities of professional legal translation cells for English, Albanian and Serbian within the PISG. How to train translators on legal translation according to European standards? There has so far not been a certifying authority in Kosovo that would test and approve the skills of translators/interpreters. Even in societies which overwhelmingly function monolingually, such as Germany, there are schools and university faculties which teach translation as a profession. They award students degrees if they pass extensive tests. It is obvious that Kosovo could benefit from such an institution. The establishment of an institute – an Institute for Translation and Interpretation – tasked with providing classes for professional interpreters and for civil servants, is only logical given the circumstances and undeniably necessary. Only one of the reasons is that the need for professional legal translation will become increasingly important when the PISG become officially obliged to adopt the European *aquis communautaire*.³ Such an institute could also serve as the certifying authority for translators and interpreters in accordance with international standards – not only for public institutions

but also for the private sector and foreign investors.

Aside from a core function of training and certifying professional translators and interpreters, such an institute could have other highly useful purposes: it could provide high quality translation for the PISG directly, as well as expertise in cases of differences in the applicable law between two language versions.

The idea of a language institute appeared during 2004, and donors would be ready to support the PISG if this idea would be approved. Indeed, if a translation and interpretation institute is to come into being, preparations need to start as soon as possible. This is because it takes a lot of time to train one generation of professional translators/interpreters,

time which is counted in years, especially when it comes to legal translation.

In conclusion, these observations on the ongoing deficiencies in the quality of translation have been made alongside various support activities and consultations with the AoK, but that they don't aspire to fully reflect the overall reality in the PISG. Nevertheless the problem seems to be acute as one final example may illustrate: apparently the draft law on labour inspectorate referred in the Albanian version to labour insects rather than to labour inspectors. It may be that this lapse was corrected by another linguistic amendment in the Assembly or that it was again lost in translation and therefore still challenges the institutions charged with its implementation.



OMiK's Translation Cell at work

³ In Germany, it is estimated that around 50-70% of legislation is no longer drafted in Berlin, but in Brussels.

Assessment of language policy implementation in municipal practices

While there has been some progress in municipal practices with respect to compliance with official language standards, Kosovo's communities are not able to exercise fully their legally granted language rights. The major reasons for the existing problems are a non-uniform understanding of the applicable law by municipal authorities, understaffed translation cells, the shortage of qualified interpreters, inadequate technical capabilities, and insufficient political will of municipal officials. Several steps, taken simultaneously by the municipal authorities, the affected linguistic communities and the international community, can directly tackle the problem.

As a start, municipal governments should start applying in full the already existing law as well as plan ahead to ensure long-term compliance with language standards. The communities should be more proactive and use available legal and institutional means to assert their language rights. Moreover, the international community should use its political leverage to review and insist on improving the application of language standards, which are part of the KSIP.

Prepared by Anna Stoyanova, Analysis and Reporting Cell, OSCE Department of Democratization

There has been a recent improving trend in implementing the applicable law on languages by municipal governments. However a great deal remains before adequate language policy implementation by local authorities can be reported, according to the results from a survey carried out in August 2004 by OSCE Mission in Kosovo, through its Department of Democratization at the municipal level. The survey studied the implementation of Section 9 on Languages of UNMIK Regulation 2000/45 on Self-government of Municipalities in Kosovo to evaluate the current status of language policy implementation in municipal practices.

To a great extent, the results of the survey support the largely critical findings and conclusions of the Task Force on Language Standards Compliance from January - February 2004¹. At the same time, a reported positive development has been the relative increase in the commitment of municipal authorities to implement the requirements under Section 9. The majority of

the identified shortcomings concern problems and delays with the simultaneous issuance of official documents in all the relevant languages, and the politically sensitive issue of spelling official signs in all the required languages. The reasons for the existing problems include a combination of technical and political challenges. Difficulties resulting from inadequate technical facilities to handle translation, understaffed translation cells, lack of qualified interpreters and scarce financial resources are endemic. In addition, this shortage of resources is coupled with the local officials' lack of proper understanding of the applicable law and insufficient political will to prioritise the issue of language rights.

I. Overview of the current situation

The overall results of the survey reveal an increased degree of municipal compliance with the requirements of Section 9 on languages of UNMIK Regulation 2000/45. OSCE Mission Democ-



Official municipal sign in Kamenicë/Kamenica in 3 languages, all correctly spelled.

ratization Officers' evaluation of the level of language requirements implementation varies from "very good" to "(partly) satisfactory" and "unsatisfactory". Optimistically, close to two-thirds of the municipalities reported existing commitment on behalf of the municipal authorities to implement the language requirements. However, often the authorities' source of motivation appears to be the urgency to

meet the requirements under the Kosovo Standards Implementation Plan (KSIP), thus making it difficult to assess the degree of the officials' understanding of the rationale behind the language policy. On a number of occasions technical difficulties and insufficiency of financial and human resources have posed significant obstacles to successful compliance, despite the officials' good will. In other instances,

¹) The Task Force on Language Standards Compliance was established on 15 January 2004 and included representatives from OSCE, UNMIK Office of Community Affairs, UNMIK Office of Returns and Communities, Office of the Prime Minister, and the Ministry of Public Services. The Task Force reviewed the issue of non-compliance of Kosovo administrative authorities with the implementation of language standards. The Task Force concluded that "the free use and respect of the legal requirements of languages continue to be at best lukewarm and at worst ignored". Technical difficulties and lack of sufficient human and financial were recognised as a chronic drawback. However, the critical blocking point was found to be the lack of commitment of officials to a true language policy.

while the local authorities do not object to the requirements per se, sufficient action has not been taken. Finally, in the currently mono-ethnic municipalities or in those where one or two ethnic communities constitute an overwhelming majority municipal authorities reportedly perceive the language requirements as artificially imposed or/ and unnecessary, on the grounds that demand for such language services does not exist, and refuse to implement them.

A closer look at the implementation of the individual subsections of Section 9 reveals several patterns. While almost all municipal statutes contain some provisions for language use in accordance with section 9.5 of UNMIK Regulation 2000/45², few of them are “detailed provisions” as is required by the same section. In effect, devoid of clear detailed directions, most provisions do not address the issue of language use adequately

Verbal communication with municipal officials has not been reported as being a problem largely because most municipal officials speak both Albanian and Serbian and are willing to achieve effective communication.

At the same time it needs to be acknowledged that members of other linguistic communities ought to communicate in languages that are not native to them. Municipal Assembly



Road sign in the multiethnic Prizren municipality in Albanian, Serbian and Turkish

(MA) meetings are mostly conducted in both Albanian and Serbian as required by the Regulation. It is generally ensured that all MA members fully understand the proceedings of the sessions. However, the audience, if present, appears to be disadvantaged when, in most cases, simultaneous translation is missing. Committee meetings are conducted on the same principle of “effective communication” again in some cases deviating from the legal requirement.³ Compliance with the requirement for simultaneous translation and printing of official documents in Albanian and Serbian, and another language “when necessary” varies (Section 9.3.). More often than not there are big delays, incomplete translations or reliance on self-initiative of the needy community to approach the translation

cell. “When necessary” equates in practice “upon request”, especially with respect to non-Albanian and non-Serbian Kosovo communities, and sometimes even when it concerns translation in one of the mandatory languages.

Individually, the issue of language rights implementation with regard to the non-Albanian and non-Serbian smaller communities requires special attention. Regulation 2000/45 is very vague on the requirements for municipal language services to those communities thus leaving room for arbitrary decisions⁴. As a result, rarely do these communities receive services under Sections 9.2 and 9.3, except in Prizren/Prizren and occasionally Prishtinë/Priština. The often stated reasons are that the affected linguistic communities

are small in number, that there is not a strong demand or that they can easily adapt to one of the two official languages, that municipal statutes do not identify language communities for which these provisions can be used and that there is shortage of technical and human resources.

Another outstanding and politically sensitive issue under Section 9.4 of Regulation 2000/45 concerns the requirement that official signs indicating or including the names of cities, towns, villages, roads, streets and other public places should give those names in both the Albanian and Serbian languages, and in municipalities where a community lives whose language is neither Albanian nor Serbian, those names should also be given in the language of that community.

As it currently stands, only rarely or inconsistently do road, town, village and street signs give the names in more than one language, bearing in mind that villages and streets seldom have any signs at all. In addition, on the existing town signs the second version is not always in its correct spelling, thus defeating the purpose of having two versions in two languages. Vandalism is also frequent, and in many cases one of the two language versions is scratched or crossed out. As a whole, compliance with the Regulation requirements on official signs is the lowest at the micro level, especially with regard to street signs.⁵

² Exceptions: Kaçanik/Kaçanik, Malishevë/Mališevo, Gjilan/Gnjilane.

³ With few exceptions Communities Committee (CC) and Mediation Committee (MC) sessions are always provided some translation. Policy and Finance Committee (PFC) and Board of Directors (BoD) have or don't have translation, depending on their ethnic composition, but sometimes to the disadvantage of minority community members who are not able to understand fully the matters discussed and the proceedings.

⁴ The Regulation does not specify how large in numbers those communities should be, nor does it name the communities that the provisions apply to. It has been of concern that regarding those communities the translation into Albanian of Section 9.4 on official signs and road and public signs specifies a threshold of a minimum of 10% inhabitants (relatively high number), while no numbers whatsoever are mentioned in the English and Serbian versions. http://www.unmikonline.org/albanian/regulations/2000/ra2000_45.htm

⁵ Great confusion is generated by rampant irregularities and inconsistencies in naming streets. Very often street names appear in only one language or three versions – two from after 1999 and one from 1991 are simultaneously in use in the absence of a clear administrative instruction. On the other hand, in Prishtinë/Priština street names appear in Albanian and English. As a result, the provision of postal and public utility services is greatly complicated, with an utmost negative effect on the daily life of the Kosovo people.

The situation is further complicated by the ongoing trend towards “Albanisation” of the official names informally and in some administrative practices. The tendency to rename towns, villages and settlements is increasingly becoming apparent. Examples include: Dardanë (Kamenicë/ Kamenica), Besianë (Podujevë/ Podujevo), Drenas (Gllgovc/ Glogovac), Albanik (Leposavić/ Leposaviq), Kastriot (Obiliq/ Obilić), Theranda (Suharekë / Suva Reka), Sharr (Dragash/Dragaš), Artanë (Novobërdë/Novo Brdo) and Burim (Istog/Istok). While the official names are unambiguously defined—most recently in UNMIK Administrative Direction No.2004/23⁶--those alternative names are gaining legitimacy, being widely used in the media, in public transportation, and other spheres of daily life. Apart from being illegal, such practices generate confusion and entrench polarisation.

II. Causes

While the underlying causes for the current state of affairs apply to all municipalities, inevitably a very influential factor to be taken into account is the differing municipal ethnic composition. Two sets of issues stand out based on the municipal ethnic profiles: (a) whether the municipality is mono-ethnic, or multi-ethnic and specifically how this affects the need/demand for translation services,⁷ and (b) whether the affected communities are the two largest Kosovo Albanian and Kosovo Serb communities, to whom unambiguous legal requirements apply, or other smaller communi-

ties, which are addressed only through very vague legal provisions.

Logically, the degree of language policy implementation by municipalities varies greatly depending on how large in number are the residing linguistic communities. In municipalities heavily dominated by one linguistic community such as Malishevë/ Mališevo, Deçan/Dečani, Gjilan/ Gnjilane, Leposavić/Leposaviq, or Zvečan/Zvečan the municipal authorities reportedly do not see a need to implement the language requirements at all. In contrast, in Novobërdë/ Novo Brdo, whose ethnic composition is almost 50/50 balanced between Kosovo Albanian and Kosovo Serbs, implementation has been evaluated the highest. Finally, in the multiethnic municipality of Prizren where Turkish, Albanian, Serbian, Bosniak and Roma linguistic communities co-exist, municipal compliance is judged in the survey as “satisfactory but only to some extent”.

That said, the causes for the existing problems with implementing the language policy can be grouped in three main categories.

A non-uniform understanding of the applicable law by municipal authorities in its implementation

The applicable law and particularly Section 9 of the UNMIK regulation 2000/45 is interpreted and applied differently by the various municipalities. Part of the reason is the vague wording of this section with regard to the non-Albanian and non-Serbian communities, as no reference is made to the size or language of the respective community. As

a result, implementation currently requires discretion and solid judgement on behalf of the municipal authorities. Above all, it requires understanding of the rationale behind the legal provisions. However, in practice, not all municipalities have demonstrated such an understanding. Some municipalities have openly stated that they consider the language policy unnecessary. The overwhelming majority have not included detailed provisions in their municipal statutes, which would have testified to both understanding of the law and political will to implement it. Finally, as pointed out earlier – a few have shown dedication only in the context of accomplishing the municipal KSIP, while admittedly disbelieving the necessity of having in place the required by law language services.

Understaffed translation cells, lack of qualified personnel and inadequate technical capabilities

The great majority of municipalities are not in a condition to provide translation services due to reported inadequate technical and human capacities.⁸ Where in place, the municipal translation cells are understaffed or lack the qualified personnel. One of the often stated reasons is that the salaries are too low to attract educated job applicants, but also that professional interpreters are not hired on the grounds that municipal civil servants are bilingual. In addition, the overwhelming majority of municipalities are lacking the technical equipment to provide simultaneous translation; however, sometimes the equipment is in place but is not being used.

Need for strong political will and demonstrated genuine commitment

While the reported increase in the officials’ good will to implement the language policy is encouraging, it is evident that a



Example of using publicly unofficial town names. The correct sign should read: Obiliq/Obilić instead of Kastriot/Obilić.

⁶ Administrative Direction No.2003/23 Implementing UNMIK Regulation No.2000/43, as amended, on the number, names and boundaries of municipalities, UNMIK/DIR/2004/23 8 September 2004

⁷ Since most municipalities require that the needy community takes the initiative to request translation services, a crucial issue becomes whether the non-majority community members realise their right to request services in their own language, codified in Section 9.

⁸ To a varying degree such problems have been reported in at least 20 out of 30 municipalities.

great deal of the current problems could be solved if sufficient political will existed. The issue is the most apparent with regard to the spelling of official signs in all the languages required by law. With the current unambiguous legal requirements in place, it is entirely up to the municipal authorities to implement them. In addition, those MA's which have not done so could improve the provisions on language use in their municipal statutes. Further, municipalities could dedicate efforts to enhancing their translation capacities by hiring qualified interpreters, procuring technical equipment or making efficient use of reportedly neglected available equipment. Municipal authorities could at no great expense enhance the performance of the municipal translation cells by forwarding to them the necessary documentation on time and maintaining quality control in order to overcome the currently existing delays, also ensuring the often lacking complete translation. In conclusion, there is still a need to see genuine commitment demonstrated by municipal authorities through constructive dedicated action.

III. Looking into the Future: Sustainability and Improvement of LPI? Conclusions.

The current status of the official language policy implementation in Kosovo brings forward several concerning issues. While some progress in implementation has been achieved, its sustainability is not ensured. One issue is the phasing out of the old generation of municipal civil servants most of who are bilingual, thus facilitating the provision of language services without any special



Kamenicë/Kamenica town Health Centre

effort on behalf of the municipal or central Kosovo authorities. In addition, there is the problem in some municipalities of dependence on withdrawing UNMIK resources to provide the needed translation. Besides, there is a danger that the momentum of increased municipal compliance with the official language standards will be short-lived, compliance being seen exclusively in the context of fulfilling the municipal KSIP. Moreover, as illustrated, there are still many standing problems of language standards implementation that could be, but have not been resolved, and which the municipal authorities should address as a matter of priority.

First and foremost, all municipalities should start applying in full the already existing law. While the Regulation is vaguely phrased with regard to the smaller Kosovo communities, its text is unambiguous in reference to the two largest communities. With respect to the smaller communities, where Section 9 requires discretion on behalf of

the local authorities, a two-fold approach is needed. At the local level it needs to be ensured that municipal officials understand the rationale behind the applicable law, so that they can detail provisions in their municipal statutes following the more general requirements of Section 9. At the same time, at the central level drafting a law on language use in Kosovo should be considered, which will unify and clarify the currently complex applicable legal framework⁹.

Secondly, municipalities should procure resources and plan ahead to ensure long-term compliance with language standards. Local authorities should obtain additional financial support to strengthen their translation capacities - purchase translation equipment and recruit extra-staff, if needed. For incoming young civil servants, who do not speak more than one language, the municipalities should consider organising language courses.

Municipal compliance with the

official language policy is the prerequisite to the fulfilment of community language rights in Kosovo. At the same time, all ethnic/linguistic communities in Kosovo and the international community could and should take constructive part in this process.

These communities should be more proactive and use available legal and institutional means to assert their language rights. Above all, community members can approach the Communities and Mediation anti-discrimination committees, should they feel that their language rights have been violated. Alternatively, they could pursue their legal rights under the new Anti-discrimination Law.¹⁰ However, to be able to make effective use of these mechanisms, community members should first be aware of their language rights. International organisations could help develop and boost awareness-raising campaigns for community members as well as devise activities to improve municipal officials' understanding of the rationale behind the relevant applicable law. Moreover, the international community should use its political leverage to review and insist on improvement of the application of language standards, which are part of the KSIP.

In conclusion, while there has been some progress in municipal practices with respect to compliance with official language standards, Kosovo communities are not able to exercise fully their legally granted language rights. Therefore, the current constructive momentum should not be lost but multisided efforts should increase to resolve the existing problems as soon as possible.

⁹) The Government has included a Law on language use in their legislative strategy for 2005

¹⁰) Promulgated by the SRSG on 20 Aug 2004, UNMIK Regulation 2004/32.

Multiethnic Education¹

Education in one's language is of crucial importance to a peaceful prosperous multiethnic society. An advanced legal framework, which guarantees every child's access to education, is directly applicable in Kosovo. Unfortunately, its implementation has been inadequate and so far there has been a lack of comprehensive approach on behalf of PISG towards the education of minority communities. While positive examples of including minority children in education exist, they are rather sporadic and rare. The most negatively affected communities have been the smaller ethnic minorities, and especially those with disabilities. The right to be taught in one's own language is universal and the PISG are responsible for ensuring that members of minority communities can effectively exercise this right

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The key to a wealthy, tolerant, peaceful and happy society is educating its youngest generation. Consequently, we can keep reasoning, the key to a wealthy, tolerant, peaceful and happy multiethnic society is multiethnic education. In turn, we should answer the question "what does the multiethnic education mean in the light of international standards and daily practice in Kosovo?"

The International Covenant on Civil and Political Rights², the Convention of the Right of the Child³ and the Kosovo Law on Education⁴ state explicitly that no child shall be denied the right to education. There is no need to argue that only education in one's own language, respecting one's own culture, can effectively create an environment for a child to enjoy her or his basic human right. The situation where a child attends a school where they are taught in a language which is not understandable and about an alien culture and history seems nightmarish.

Fortunately, such a case is legally prohibited by the Kosovo and international law. The legal framework which guaran-



School sign in Gjiilan/Gnjilane municipality, only in Albanian

tees the access to education for every child in Kosovo is in place. Unfortunately, the implementation of these advanced legal provisions has been inadequate, thus often turning a child's life in Kosovo into a nightmare.

The Reality in Kosovo

A lot has been done to ensure Kosovo children access to education but still a great deal remains to be accomplished to guarantee effective education for all. There are many positive examples of including minority children into

the existing education system. For instance, Kosovo Turkish children can learn in Turkish language in Prishtinë/Priština, Gjiilan/Gnjilane and Prizren. Kosovo Bosniak pupils are enrolled in primary education in Prishtinë/Priština and Roma children have classes in Romani language in pre-primary and primary education facilities in Gjiilan/Gnjilane. These are commendable and needed initiatives, which prove that the multiethnic education in Kosovo is feasible.

Unfortunately, those positive examples are sporadic and rare. On the opposite end, the Ministry of Education, Science and Technology (MEST) and Dragash/Dragaš municipality still have not solved the complex situation of Gorani children education, who for two years have been waiting for a compromise on whether they should follow the nine-grade Albanian curriculum or the eight-grade Serbian one. The delay in properly addressing the matter has created additional stress for students and has affected their access to secondary education.

Roma children from Gjiilan/Gnjilane face similar difficulties as they still have problems accessing secondary education due to a lack of secure and reliable transportation to the schools located in Kosovo Serbian enclaves in the vicinity of Gjiilan/Gnjilane town. The OSCE Mission in Kosovo still receives information on harassment of Ashkali pupils at schools due to their ethnic origin which contradicts governmental officials' stated perception that Ashkali children are fully integrated into the Kosovo educational system,

¹ For the need of this article by minority languages the author understands languages spoken by the communities living on the territory of Kosovo, different from the officially recognised languages in Kosovo i.e. Albanian, Serbian and English. Therefore, the minority communities referred to in the article are: Kosovo-Turks, Ashkali, Kosovo-Bosniaks, Kosovo-Croats, Egyptians, Gorani, and Roma.

² <http://www.ohchr.org/english/law/ccpr-one.htm>

³ <http://www.ohchr.org/english/law/>

⁴ http://www.unmikonline.org/regulations/index_reg_2002.htm

their mother tongue being Albanian. Integration does not only mean that children understand the language they are taught in at school, but it implies that feeling safe and comfortable during the course of obtaining the knowledge.

In addition, there are vast deficiencies regarding the access to education of minority children with disabilities. It is very hard to identify any educational institution, which can provide education to children with disabilities from minority communities, in the children's respective languages. Those children, deprived of their right to education, end up staying at home knowing that for them the future equals fear of the unknown. The MEST and the Municipalities not only fail to address this problem, but don't even have available reliable information on the number of these children, nor their actual needs.

These are just a few examples of the lack of a comprehensive approach on behalf of Kosovo's PISG towards the education of minority communities. Neither MEST, nor the municipal educational authorities have a system in place to respond promptly to these specific needs. In order to show that these communities are equally important to public institutions, MEST and the Municipalities should work out a way to address the educational problems of minority communities in an effective and prompt manner. "Effective manner" means that the communities themselves should be proactive

and take steps to find the best solutions to the persisting problems.

It is important to realise that most members of the minority communities are at the same time the most vulnerable persons. For that reason, the government must pay special attention, undertaking series of positive measures to create appropriate conditions, which will allow them to develop and at the same time peacefully co-exist with the other communities. The affirmative measures of a general character, aimed at the minorities, should include those specifically addressed to minority women and persons with disabilities, who face the risk of so called "double-discrimination": being both a minority member and a woman or a person with disabilities at the same time.

Basic Standards, Applicable Law and Recommendations

Last fall, UNMIK, on behalf of itself and the PISG, signed an agreement with the Council of Europe (CoE) on technical arrangements related to the implementation of the Framework Convention for the Protection of National Minorities (FCNM)⁵. It implies that the CoE will monitor the implementation of FCNM in Kosovo and that the UNMIK should submit a report on the FCNM's implementation. As the report is public, it will draw international attention to the difficulties of minority education in Kosovo. As a result, the educational problems will become a greater issue of con-

cern. Taking into consideration that the FCNM devotes many of its articles to protect the right to use minority languages and pays particular attention to the right to learn and be taught in one's language, the results of this exercise should be closely observed. Furthermore, the development of the culture, identity, language and cultural heritage of minority communities is guaranteed under the FCNM. Parties that are legally obliged to observe the FCNM, i.e. UNMIK and PISG, are the ones responsible for undertaking relevant steps to fulfil the FCNM's provisions and report on its implementation.

Similarly, the European Charter for Regional or Minority Languages⁶, another significant document of the CoE applicable in Kosovo, stipulates that authorities in respect of minority languages shall base their policies, legislation and practices on a principle of the recognition of minority languages as an expression of cultural wealth. Other principles of the Charter are: the need for resolute action to promote minority languages in order to safeguard them, and the facilitation and/or encouragement of the use of minority languages, in speech and writing, in public and private life. The Charter further includes an article on the creation of appropriate forms and means for the teaching and studying of minority languages at all stages and contains a provision for creating facilities enabling non-speakers of a minority language living in the area where the language is

used to learn it if desired. Finally, the Charter stresses a substantial part of pre-school, primary, secondary, technical, vocational and even higher education in the relevant minority languages should be made available.

In addition, there are many other international and domestic legal instruments explicitly requesting the need for protecting the right of minority communities to learn and be taught in their own language. Two of great importance are in the relevant provisions of the Constitutional Framework⁷ and the Kosovo Law on Education.

There are also two OSCE documents addressing this particular issue, minority education being considered of high importance for the OSCE.

First, the Document of the Copenhagen Meeting⁸ of the Conference on the Human Dimension of the CSCE⁹ clearly confirmed that authorities shall protect the ethnic, cultural, linguistic and religious identity of national minorities and create conditions for the promotion of that identity. Second, the Hague Recommendations¹⁰ Regarding the Education Rights of National Minorities attempted to clarify the content of minority education rights. These Recommendations, written under the auspices of the OSCE High Commissioner on National Minorities, states that "the right of persons belonging to national minorities to maintain their identity can only be fully realised if they acquire proper knowledge of their mother tongue during the

⁵ http://www.coe.int/T/E/human_rights/minorities/

⁶ <http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>

⁷ <http://www.unmikonline.org/regulations/2001/reg09-01.htm>

⁸ <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>

⁹ The official name of the OSCE before 1995 was Conference for Security and Co-operation in Europe (CSCE).

¹⁰ <http://www.osce.org/hcnm/documents/recommendations/>

educational process." This is a basic obligation addressed to the authorities. However, persons belonging to national minorities have a responsibility to integrate into the wider national society by having proper knowledge of the majority language. It means that members of minority communities have the right to education in their own language but they also have the responsibility to learn the language of the majority community what is *conditio sine qua non* of integration within the majority community. For that reason, the guidelines for minority pupils on learning Albanian language, which were supposed to be developed in December 2003, as stipulated in the Kosovo Law on Education, must be created as soon as possible.

In addition, encouraging Kosovo Albanian students to learn the languages of minorities living within Kosovo would significantly contribute to promoting tolerance and fostering multiculturalism. The recent initiative of Kosovo Albanian and Kosovo Serbian pupils from Bablak/Babljak to learn each-other's languages demonstrated that what had seemed to be impossible is real and feasible. [text box] The villagers simply agreed that Kosovo Serbian pupils will once a week have an additional class of Albanian, while the Kosovo Albanian pupils a class of Serbian. Why not extend this good practice beyond the two official languages, to the languages of minorities living in Kosovo?

At the same time, it is important to keep in mind that educational authorities are responsible for creating appropriate conditions

to allow minority students to learn the language and culture of the majority in an efficient, non-discriminatory and safe way. This would mean, for example, including a provision that the majority language should be taught preferably by bilingual teachers who have good understanding of the children's cultural and linguistic background. This returns the argument to the issue of the lack and the urgent need for a unified curriculum in Kosovo, which includes classes on the histories, cultures and traditions of minorities. [text box] It is very important that the content of the curriculum related to minorities be developed with the active participation of competent representatives of the minorities.

Universality of Educational Minority Rights

The right to learn and be taught in one's own language is not only a European concept, but universal. The UNESCO Convention against Discrimination in Education enhances the need for recognition of the right of members of national minorities to use or teach their own language. Furthermore, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requests that governments take measures in order to create favourable conditions, enabling persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs. In addition, it provides for persons belonging to minorities to have adequate opportunities to learn their mother tongue or to

have instruction in their mother tongue. Authorities should take appropriate measures in order to promote knowledge of the history, traditions, language and culture of the minorities existing within territory they govern.

All of the above confirms that the necessity for the protection and effective implementation of the right to learn (in) minority languages is equally a universal, a European and, at the same time, a Kosovan responsibility.

Moving Ahead

Education in one's own language is not a privilege but a right of the members of minority communities. Moreover, governments are responsible for ensuring that this right can be effectively exercised by people living on the territory under their authority. This is not in any way to be interpreted as an attempt to segregate different communities. On the contrary, it is way to bring different communities together by creating equal opportunities for everybody. It helps create a place where all cultures are equally respected and protected. It helps establish a situation in which all people are fully respected and, consequently, there is full integration of all ethnicities.

Implementation of basic rights can make Kosovo a better place to live for each and every inhabitant. The diversity of communities living in Kosovo - of various cultures, speaking various languages - makes this place very challenging to govern, but at the same time it makes Kosovo rich and unique in comparison to other places in Europe.

Progress is possible but changes must commence without further

delay. In the first place, the overall approach to multiethnic education should be modified. The principal obstacle to multiethnic education in Kosovo seems to be posed by the lack of a comprehensive approach. Most of the positive examples mentioned at the beginning of this article were ad hoc initiatives rather than systematic and well-planned endeavours.

Educational authorities often use the argument that the lack of will for co-operation from minority communities is the biggest deterrent to the inclusion of minority communities into a common educational system. But did the educational authorities do enough to show minority communities that they are truly important to the government? Where are the guidelines on learning Albanian language for minority pupils, which were supposed to be developed in December 2003? Parents are still waiting for the unified and non-discriminatory curriculum for all pupils in Kosovo, which will respect the cultures and traditions of all communities. Kosovo smaller communities are still waiting for standardised textbooks in their languages.

Parents do not want to wait any longer; there has been enough of waiting. The often presented political will to make progress in establishing multiethnic education is important, but no longer sufficient. This good will and verbal promises must be transformed into real achievement for the better future of all Kosovo's children, regardless of ethnic origin. The common future has to be built together and now.

⁵⁾ <http://www.ohchr.org/english/law/education.htm>

⁶⁾ <http://www.ohchr.org/english/law/minorities.htm>

The Anti-discrimination Law – bringing in the private sector

The Anti-discrimination Law clearly establishes that the responsibility to respect the rights of others lies not just with the Government, but with all persons. Discrimination on the basis of language is prohibited by the law. Yet in practice there is a need for sustained follow-up in promoting and recognizing language rights. The author suggests a number of steps to advance language rights in Kosovo and build on the initial achievements of the Anti-discrimination law: [1] Implementation of the law as a priority for the PISG; [2] Develop clarifying legislation and ponnlicy to ensure the language rights of everyone in Kosovo; [3] Spell out the duties of the private sector and the minimum standards which it must respect; and [4] Develop a strong partnership between government, civil society and the business sector, which supports the process of respect and tolerance and aims to emphasize the advantages for all.

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One of the most important attributes of any human right is that it should be justiciable. This means that a judicial body can examine and decide whether the rights of an individual or group of people have been violated and, if violations are found, order sanctions and remedial actions which are enforceable in law.

When the Assembly of Kosovo adopted the Anti-discrimination Law¹ in July 2004, an important step forward was taken. The law defines, inter alia, how the right to

freedom from discrimination on the basis of ethnicity, gender, age and many other bases, including language, could be justiciable. It complements the Constitutional Framework and other regulations and laws, which state that the specific international human rights instruments (including those prohibiting discrimination) are to be observed by holders of public office, but otherwise offer no clear framework as to how the instruments can be applied in practice.² It must be recognized that the adoption of this law was a vital step and has wide implications. There is now a need for sustained follow-up which relates to language rights as well as many other areas – a process which has begun within the PISG but needs continued support.

The adoption of the Anti-discrimination law was a vital step; now, there is a need for sustained follow-up, which also relates to language rights.

In summary, the entry into force of the Anti-discrimination Law (ADL) in September 2004

brought enforcement mechanisms, the definition of penalties (fines of up to €2,000) and the possibility of other remedial or preventive actions which can be ordered by courts or administrative bodies. This includes not just Kosovo's government authorities, but also private companies (whether large or small) and private citizens. The law thus clearly established that *the responsibility to respect the rights of others lies not just with government, but with all persons who are both "rights holders" and "duty bearers"*.

In the field of language, which is so fundamental to everyday life and business, the implications are huge. As other articles on the language issue emphasize,³ new laws or regulations on the use of languages in Kosovo are needed urgently, albeit with adequate processes of consultation between government, civil society and the public, to ensure their effectiveness. The development of these new laws will be a vital contribution towards making language rights fully jus-

ticiable, through the definition of the minimum requirements for the provision of services or access to services in Kosovo's languages and the provision of increased clarity and certainty in the law.

The "carrot and stick"

To complement this justiciability and the possibility of sanctions, what might be referred to as a "stick" -- using the English-language metaphor which in which a boy makes his donkey work by alternately beating it with a stick or dangling a carrot in front of its nose -- it could be argued that language policy also needs a "carrot".

"Rights holders" and "duty bearers"

In human rights terminology everyone is a "rights holder", acquiring a set of basic, universal and inalienable rights by virtue of their membership in the human race. In the context of languages this might mean the sub-set of rights relating to

¹) Law No. 2004/3, promulgated by UNMIK Regulation 2004/32 of 20 August 2004. The law entered into force on 19 September 2004.

²) See, for example, UNMIK Regulation 1999/24 on the Applicable Law in Kosovo and the amending UNMIK Regulation 2000/59, Chapters 2 and 3 of UNMIK Regulation 2001/19 on the Constitutional Framework for Provisional Self-Government.

³) see "Elements for a Law on Language Use" and "Striking a balance between Minority Rights Claims and Government Resources"

freedom of expression, freedom from discrimination and equality before courts and tribunals. When different languages are in use within a given territory, human rights standards on minorities can add to various degrees additional rights to education and access to public services in certain languages, additional cultural rights as well as additional rights to freedom of expression and information specific to their language.⁴

Here the concept of “duty bearer” is also interesting. Most frequently the “duty bearers” are understood to be the public authorities. But one might learn from Africa where, going further than international or European standards, the African Charter on Human and People’s Rights contains a specific chapter on duties including wording such as “[e]very individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting mutual respect and tolerance.”⁵

The language context provides a good example where it can be demonstrated that we are all “duty bearers”. Article 4 of the Anti-discrimination Law (“Implementation Scope”) clearly shows that everyone is a “duty bearer” as well as “rights holder”. The Article states that the law applies “to all natural and legal persons as regards both the public and private sectors, including public bodies, in relation to any action or inaction which violates the right or rights of any natural or legal person or persons.” The list of spheres specifically listed in Article 4 includes many actions com-

monly belonging to the private sector such as access to housing, goods or services, and to public places (all of which can be related to language issues).

The role of the private sector

The private sector – frequently businesses, but sometimes individuals – also have a role to play. The government needs to assist the private sector by providing clarity in legislation and the obligations relating to languages and other aspects of non-discrimination which affect the private sector, such as making clear when anyone risks the “stick” of sanctions. Without the involvement of public money, through public contracts, these obligations might be more limited than in the public sector. However, there will clearly be minimum requirements such as the requirement for equal treatment in employment and the language capabilities of applicants or employees. For example, an imperfect knowledge of the working language of an employer might not be reason to reject an otherwise equal job applicant if the duties of the post were relatively simple and safety issues not involved.

In the supply of goods, discrimination on the basis of language is clearly prohibited under the ADL, therefore a shopkeeper refusing to serve a customer because of his or her language, would clearly violate the law and risk sanctions. However, how far does a shopkeeper need to go? How much information does a shopkeeper need to provide about this or her goods in Kosovo’s languages? There might be a need for new require-

ments for the multi-lingual labelling of medicines or dangerous goods for reasons of health and safety as well as equal treatment. Here the right to health overlaps with the rights to freedom from discrimination. In these cases it might not be the ADL which is most relevant - other legislation may also apply. It is these uncertainties which need to be reduced through additional and sustained policy, information and legislative initiatives led by the PISG.

There is also a further challenge to both government and business to provide a “carrot” as well as a “stick”. The ideal would be to fulfil the principle in Article 2 of the ADL which refers to “good understanding ... and interethnic tolerance of persons in Kosovo” [sic] to the extent that businesses see that it is in their interest to sell, provide information and services and hire employees using all of Kosovo’s languages maximising trade and other human exchanges to the full. Indeed, it may be noted here that the wording of Article 2 is very like that of the African Charter mentioned above while again underlining how rights and duties are linked with the benefit of gain for all. Moreover, understanding and interethnic tolerance are inseparably linked to the language issues in Kosovo.

Creating “carrots” as well as helping the private sector avoid getting the “stick” implies coordinated efforts across PISG offices and ministries and engagement between government and the private sector in the field of equal treatment. One can hope that this partnership will come in the not too distant

future, either as a result of a PISG initiative or perhaps through the private sector wanting to understand the risk of the “stick” or more optimistically seeing the opportunities presented to it through breaking down the barriers between communities and the free use of languages. Prizes or awards for businesses which show initiatives in promoting such exchanges, might not be an original idea, but could be a start. Perhaps businesses which demonstrate success in practice through maximising their markets on the basis of reaching out to all in Kosovo will be the best beacon rather than businesses which are being sanctioned for discriminatory practices.

In conclusion, the following steps might be necessary to advance language rights in Kosovo and build on the achievement of the adoption of the ADL:

- Maintaining implementation of the Law as a priority for the PISG with the support of the international actors;
- The development of legislation and policy which promotes and makes clear the language rights of everyone in Kosovo, helping to make them justiciable and assisting the private sector, as well as the public sector identify, to meet their responsibilities; and
- The development of a strong partnership between government, civil society and the business sector which supports the process of respect and tolerance and aims ultimately to normalize exchanges.

⁴ See, for example, the Council of Europe Framework Convention Framework Convention on the Protection of National Minorities and European Charter for Regional or Minority Languages.

⁵ African Union African Charter on Human and People’s Rights, article 28.

Striking a Balance between Minority Rights Claims and Government Resources

Four guiding principles present a formula towards a comprehensive governmental language policy - clarity in legislation; proportionality in application; efficacy in institutions, and remedies to force compliance by authorities. These principles come from the positive experience of European and other countries with multiple linguistic communities. The article expands on the rationale behind each principle and explores specific examples of how these principles were put into practice in the countries where "things work well", thus presenting possible alternatives for Kosovo.

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When talking about possible solutions and best practices, and how governments can reconcile or balance language demands and practical considerations such as the available resources, there are a number of lessons that can be found in various countries in Europe.

It is however necessary to keep in mind a very basic principle: best practices has to be measured against what are considered the applicable standards. These are the language rights which governments in Europe must comply with by having ratified various treaties such as the European Convention on Human Rights and the Framework Convention on the Protection of National Minorities. Best practices mean nothing unless you have a measuring stick.

This means that not every language policy is good or appropriate or effective. What works must be what seems to comply most clearly with the various language rights standards that are applicable under international and European treaties.

To try to summarise what are positive and effective models from countries which are generally seen to have good, but not perfect, practices such as Canada, Finland, Italy, Switzerland, Spain and Hungary, one can describe the following common elements:

1. Clarity in legislation
2. Proportionality in application
3. Efficacy in institutions
4. Remedies to force compliance

Clarity in legislation means that in order to have clarity and certainty, the language rights to which all are entitled must be clearly set out in legislation. Lack of clarity or contradictions in the rights that individuals or communities are entitled too can lead to frustration, anger and even worse. Countries which have laws that spell out in great detail or very clearly what languages can be used and in what conditions are those that tend to work best by most measures. This is definitely the case in countries like Canada, Finland, Spain, and Switzerland.

When you have lack of clar-

ity, things tend not to happen, because authorities including municipalities don't know exactly what they must be doing, so they can always legitimately claim that they are not in breach of any obligation.

There may be some confusion and even serious contradictions in respect to language rights in Kosovo. For example, the Kosovo Standards Implementation Plan describes most of the language rights in the section of free use of language, namely, that for municipalities all official documents and interpretation for all official meetings is the principle applicable in a municipality, apparently, where a community is in a significant number.

This is actually unclear, as what constitutes a substantial number needs to be specifically identified, but the more serious problem is that this contradicts UNMIK Regulation 2000/45 on Self-government of Municipalities in Kosovo which reads in section 9.3 that where necessary in municipalities where a community lives whose language is neither Albanian nor Serbian, all official documents of the municipality shall also be made available in the language of that community. There is, according to this Regulation, no need for substantial numbers at all, but rather where it is "necessary". But the Standards Implementation Plan

says municipalities only need to do this if there are substantial numbers. What is necessary is undefined, and is not identical to a situation involving substantial numbers, the latter also being undefined. The two are contradicting each other, and that can only lead to confusion, disagreements and fighting on who exactly needs to do what, not the path of good practice.

If you contrast this to good practices such as Canada or Finland, both leave no place for doubt or confusion. Canada, for example, has regulations for a sliding-scale approach involving either the total number or percentage of speakers of the French and English languages and the type of service provided by public authorities. Other than in a few key areas, where minimal services are to be available in both French and English everywhere, most federal government services are only available in both languages when the population in a census subdivision includes at least 5 percent of speakers, or at least 5,000 individuals in major cities having a population of more than 100,000. In some of the lesser populated census subdivisions, a few services can be obtained in both languages, even if there are as few as 500 speakers of the official minority language.

Within the public administration of the Basque Autonomous

Community in Spain, Euskara and Castilian are to be used by administrative units in areas where the percentage of Euskara-speakers reaches 20 percent of the population. In Finland, a municipality is considered unilingual – Finnish or Swedish – when the entire population speaks the same language or when the number of inhabitants who speak the minority language is less than eight percent. If the minority exceeds eight percent or numbers 3000 persons, the municipality is bilingual. A bilingual commune is not declared unilingual until the minority falls below six percent.

What is noteworthy is that these approaches in different parts of the world tend to have a comprehensive language law to ensure language rights are treated comprehensively, and with consistency and clarity.

However, having clarity in legislation and regulations is not enough: the countries which demonstrate the best practices are those where you have proportionality in the language rights that are to be in place. None of the countries usually seen as being the most effective and well organised use all of the languages used by everyone everywhere all of the time in official documents and administrative offices. It would be impossible and quite impractical to do so, because in many countries such as Canada and even Spain there are dozens of languages spoken on their territories. It would also cost a fortune, and no country is rich enough or capable of doing this in practical terms.

What governments where the language policy works well do is essentially apply a sliding-scale: provide for the degree of use of a language by administrative authorities, including municipalities, that is proportionate to their relative importance in numerical terms.

Canada is usually presented as having only two official languages, the two languages spoken by most people in that country. However, other languages are used by public authorities such as the languages of Native People, which is also an official language for the territorial government of Nunavut, and other indigenous languages are used according to laws and regulations by local governments where they are spoken by a sufficient number of people. *The important principle here is that not all languages are treated identically: languages spoken by more people must be treated proportionally to their importance, and this must be enshrined in clear legislation in order to avoid disagreements, confusion or conflicts.*

Countries which are usually seen as successful not only have clarity in legislation and proportionality in application, they also tend to have efficacy in institutions. They have in place mechanisms and institutions to make sure that the language laws are effectively understood, applied and enforced.

Because language rights require investments in structures and expenditures for governments, countries like Canada, Switzerland and others have a variety of institutions or mechanisms in place. In Switzerland, language rights is basically guaranteed through the institutions of the canton governments, a situation largely followed in Bosnia and Hercegovina. By having many, if not most, administrative tasks delegated at the cantonal level that are cut up in a way that they are essentially monolingual, the language rights of most people are in practice respected.

In the absence of a highly decentralised structure, then there need to be institutions and mechanisms in place to ensure that the language rights guaranteed in law are actually applied. Coun-

tries like Canada and Finland may have a specific government department which has overall responsibility for overseeing the application of the law for the use of languages. The Minister for that Department may have responsibility for the implementation of existing legislation and the distribution of funds, as well as to submit a report to Parliament once a year to indicate where there have been improvements or problems in putting into practice the language legislation. In Canada the Treasury Board is responsible for the development and coordination of policies and programs relating to communication with and service to the public. This obviously includes the language in which the public receives this service, including from administrative authorities. It therefore has a fundamental responsibility to have into place mechanisms to oversee how the language policy will be put into place – and paid for.

An even stronger institutional approach may be to have an independent “Language Commissioner” who acts as a watchdog between the public and government authorities to ensure a greater degree of neutrality and to help individuals if they have complaints. A Commissioner can have legal powers to act preventively by intervening at the stage where laws, regulations, and policies are developed, in order to ensure that language rights are a primary concern of leaders. Such a commissioner usually receives guaranteed funding from the national budget, has staff and offices, has legal authority to investigate how language rights are implemented, and can report to parliament once a year on compliance. In some countries a “Linguistic Ombudsman” can also play a similar role. There is usually also some kind of educational programme in place through the department responsible to inform people on their language rights.

Lastly, most countries where “things work well” are those where you have remedies in the case of non-compliance by authorities. In other words, where the institutions of government fail, what can individuals do? There are usually a series of levels where remedies can be provided for:

- There may be an administrative complaint mechanism which is possible with a liaison officer in each government department, with information provided for people to explain what their rights are. Each department has the responsibility to investigate and respond to the complaint.
- Usually, there is a more centralised and formal administrative complaint mechanism which may involve the central government department with overall responsibility for language policy. You have therefore a central complaint and investigation, but usually only with a power to make recommendations.
- An ombudsman or a language commissioner may have the power to investigate complaints, make recommendations and submit reports of these violations of language rights directly to parliament.
- The law (or in some cases the Constitution) may give to individual victims the possibility to bring a case to court for a violation of their rights, and provide what they can obtain in terms of remedy or compensation.

It is usually when you have states that have these four practices: clarity in legislation, proportionality in application; efficacy in institutions; and remedies to force compliance that it can be said that they have good practices which comply with the standards that generally apply in Europe in the area of language rights.

Elements for a Law on Language Use

The inadequate implementation of linguistic rights in Kosovo has long pointed to the need to address the issue in a constructive manner. While the lack of political willingness, financial and structural constraints, as well as socio-psychological barriers, remain practical stumbling blocks, the current legal framework - particularly in the field of "administrative linguistic rights" - is less part of the solution and more of the problem. The article argues that a comprehensive law on language, drafted in a participatory way and in line with international human rights instruments, can ensure that provisions related to linguistic rights are understandable, applicable and known to both citizens and institutions. In addition, an additional benefit in the negotiated process between Governmental resources and minority claims is the sustainability of legal guarantees.

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Relations between the rights of linguistic communities¹ and public administration in Kosovo are governed by an intricate legal architecture. The Constitutional Framework makes the principles enshrined in international human rights documents² directly applicable while the scope and the modalities of their implementation are regulated by a complicated legal framework comprising relevant sections of SFRY legislation,³ UNMIK Regulations⁴ and Administrative Directions⁵ and Laws passed by the Assembly of Kosovo. The legal texts, mainly because of its fragmentation, becomes of little guidance for those that are called to enforce it.⁶ As a result, decision-making of judges, prosecutors, attorneys, police, and civil administrators on linguistic matters remains, in essence, arbitrary. Removing arbitrariness and ensuring predictability of

decision making when it comes to linguistic rights is, therefore, a pressing challenge for the Provisional Institutions of Self-Government (PISG).

In April 2004, the Task Force on Language Standards Compliance⁷ recommended the adoption of an Administrative Direction (AD) that would serve as an "interim instrument until such time a special Law on Language Use, based on the AD, would be drafted and approved by the Kosovo Assembly." The enactment of an AD would obviously be an encouraging step towards simplifying the existing legal framework. However, it must be considered a locally owned product to guarantee sustainability. Any proposed language policy should be thoroughly debated among institutions and communities of speakers. The more the dialogue is open,

participated and based upon an informed choice among the various alternatives, the more sustainable the final outcome – a negotiated balance between the claims of linguistic communities and the duties, authority and disposable means of the PISG – will be understood, respected and enforced in the future.

An inclusive process leading to the adoption of a Law on Language Use - clarifying what languages can be used in Kosovo, under what conditions, what degree of legal protection the affected individuals should be afforded, in which spheres of life, and what the envisaged sanctions for non-compliance should be - is an opportunity that the newly formed Government should seize.

The Law should first clarify the legal status of the Albanian and Serbian languages. In the current

legal framework⁸ the 1977 "Law on Implementation of the Equality of the Languages and Alphabets in the Socialist Autonomous Province of Kosovo"⁹ established the complete equality of Albanian and Serbo-Croatian and of Turkish language in areas "where members of Turkish nationality live." Thus, Albanian and Serbo-Croatian were theoretically equal in the territory of Kosovo while Turkish was protected as "minority language" in the areas where Turkish speakers resided. The law was superseded in 1991 by the "Law on the Official Use of Languages and Alphabets"¹⁰ that, due to its discriminatory character, is no longer applicable. In all legislation passed since 1999, the principle of equality between Albanian and Serbian, although fully acknowledged, is nowhere spelled out.

¹) Linguistic rights include the right to use one's own language in the private and public sphere and, to some extent, in contacts with administrative and judicial bodies; the right to use one's own name in the minority language and the right to official recognition thereof, and the right to display, in a minority language, signs of a private nature and, under specific conditions, to display topographical signs in a minority language.

²) Chapter 3 of UNMIK/REG/2001/9.

³) Laws passed until March 1989 and laws passed after 1999, if they are not discriminatory and do not contravene international human rights instruments applicable in Kosovo and do not overlap with other laws in force

⁴) See, among others, Ch. 4.4, 9.3.1.7, 9.1.50–52 of UNMIK/REG/2001/9, Sect.9 of UNMIK/REG/2000/45, Art.2.3 of UNMIK/REG/2001/36, UNMIK/REG/2004/36, etc.

⁵) See, among others, Art.4.1 of UNMIK/AD 2003/2, etc.

⁶) It is worth noting that sanctions for cases of discrimination on – inter alia - language grounds have been only introduced by the Anti-Discrimination Law, promulgated by the Assembly of Kosovo on 19/2/2004.

⁷) The Task Force comprised representatives of UNMIK Office of Community Affairs and Office of Returns and Communities, OSCE Mission in Kosovo, Office of the Prime Minister and Ministry of Public Services.

⁸) UNMIK Regulation 1999/1 "On the Authority of the Interim Administration in Kosovo", 25/7/1999, as amended by UNMIK Regulation 2000/54, 2/9/2000.

⁹) Socialist Autonomous Province of Kosovo Official Gazette n. 48/1977, as amended by the "Law on Amendments to the Law on Realisation of the Languages and Alphabets in the Socialistic Autonomous Province of Kosovo (Socialist Autonomous Province of Kosovo Official Gazette n. 11/85).

¹⁰) Serbia Official Gazette n. 45/1991.

The Constitutional Framework provides that meetings of the Assembly of Kosovo (plenary and committees) and of the Government (including ministries) is to be conducted in both Albanian and Serbian, while official documents are to be printed in both languages.¹¹ Moreover, promulgated laws are to be published in Albanian, Serbian, Bosnian, Turkish, and English.

Many participants to the Pax Linguistica conference pointed out that identified shortcomings in the law-making process are a direct result of an insufficient understanding of the concept of equality between Kosovo's two official languages. The practice of translating legislative and administrative acts from Albanian into Serbian or vice versa, for example, should be prohibited because if the two languages are on equal footing, neither one can prevail over the other in any administrative practice. Official acts at both the central and at municipal level should be drafted and released in both languages at the same time. Likewise, any administrative act issued in either Albanian or Serbian would have full legal validity with no limitations throughout the territory of Kosovo. A corollary of this principle is that each Kosovo resident should be entitled to make use of one or

the other language in any facet of public life, regardless of the reasons behind this choice and without impediments whatsoever. As a consequence, municipal civil servants, medical staff, education officials, police, and judges, should be able to fulfil their functions in either one of the two languages.

Once the status of Albanian and Serbian is defined, the Law should unambiguously define the status of the other languages spoken in Kosovo - Bosnian, Croatian, Gorani, Rromani and Turkish. It should also set out in detail the provisions regulating the use of each of these languages in education, judiciary, administrative authorities, media, cultural activities, economic and social life and trans-frontier exchanges.

The European Charter for Regional or Minority Languages¹² offers particular guidance. It includes a core component of binding principles (Part II) and a set of provisions (Part III), thirty-five of which have to be chosen by the Kosovan authorities to translate the principles asserted in Part II¹³ into policy, legislation and practices. The scope of applicability of the Charter's provisions includes regional or minority languages that are: (i) traditionally used within a given

territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and (ii) different from the official language(s) of that State¹⁴ and excludes dialects of the official language(s) and the languages of migrants.

In the case of Kosovo, the definition leaves many questions unanswered. It does not clarify, for example, if Gorani should be considered as a separate language or if the local variant of Rromani shares the attributes of the so-called "non-territorial languages."¹⁵ Nor can the definition help in deciding whether separate provisions are needed for Croatian and Bosnian, due to the relative mutual intelligibility of these two languages. The only rule of thumb available to policy-makers in deciding what languages the Charter applies to is good faith, flexibility and pragmatism. Kosovan institutions should engage in a dialogue with the various communities of speakers and jointly assess their claims against a variety of criteria, including the particular context of each language, whether speakers are concentrated territorially, whether the languages have been spoken over a long period, the level of use of the language, and the linkages with other regional lan-

guages. A number of important documents and guidelines¹⁶ can provide additional guidance.

A subsequent - and crucial - step is for the Law to determine which paragraphs of Part III of the Charter should be applied to each of the previously defined regional or minority languages of Kosovo. By providing for "à la carte" commitments, the Charter leaves the law drafters ample flexibility in establishing the type and level of protection minority languages should be granted in the different situations. For example, in the case of primary education, the Charter provides for the following options:

- i) *To make available primary education in the relevant regional or minority languages; or*
- ii) *To make available a substantial part of primary education in the relevant regional or minority languages, or*
- iii) *To provide, within primary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum, or*
- iv) *To apply one of those measures provided for under i) to iii) above at least to those pupils whose families so request and whose number is considered sufficient.*¹⁷

¹¹ See Section 9.1.49 and 9.3.17 of UNMIK/REG/2001/9.

¹² The Council of Europe's European Charter on Regional and Minority Languages of 5 November 1992, entered into force on 1 March 1998. As of 15 July 2004, the Charter has been ratified by 17 States, including Armenia, Austria, Croatia, Cyprus, Denmark, Finland, Germany, Hungary, Liechtenstein, the Netherlands, Norway, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

¹³ Eight fundamental principles are enshrined in Art 7 of the Council of Europe's European Charter for Regional or Minority Languages. These are: 1) Recognition of regional or minority languages as an expression of cultural wealth; 2) Respect for the geographical area of each regional or minority language; 3) The need for resolute action to promote such languages; 4) The facilitation and/or the encouragement of the use of such languages, in speech and writing, in public and private life; 5) The provision of appropriate forms and means for the teaching and study of such languages at all appropriate stages; 6) The promotion of relevant transnational exchanges; 7) The prohibition of all forms of unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger its maintenance or development; 8) The promotion by states of mutual understanding between all the country's linguistic groups.

¹⁴ *Ibidem*, Art.1 (a).

¹⁵ "Non-territorial languages" means languages used by nationals of the State which differ from the language or languages used by the rest of the State's population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof", *ibidem*, Art 1 (c).

¹⁶ See, among others, the Hague Recommendations Regarding the Education Rights of National Minorities with Explanatory Note (1996), the Oslo Recommendations regarding the linguistic rights of national minorities with Explanatory Note (1998), the Guidelines on the Use of Minority Languages in the Broadcast Media (2003) available at: <http://www.osce.org/hcnm/documents/recommendations/index.php>.



Christmas sign put up by the Prishtinë/Priština municipality, in Albanian and English only.

Each and every option is available to be openly discussed by the PISG and the communities of speakers.

In establishing the minimum number or percentage of speakers belonging to a linguistic minority to which certain services will have to be provided, it is the strength of the demand to offer a primary and objective reference for policy-makers. In other words, where institutions face a sufficiently large number of individuals who use a particular language, the authorities must provide for an appropriate level of service in this language. Dr. De Varennes explained this principle through what he calls a “sliding-scale model”:

Beginning at lower end [...] public officials should at the very least have official documents and forms available in appropriate areas where there is a low, though sufficient number of speakers of a minority language. As the number progressively get higher, in addition to bilingual or minority language documents, public officials would have to accept and respond to applications in a minority language. At the top of the scale, there would

*have to be some kind of bilingual administration in districts where a minority language is used by a very high percentage of the population. This means that there would have to be a sufficient number of public officials who are in contact with the public in place to respond to the use of the non-official or minority language, and even that in these areas the minority language be used as an internal and daily language of work within public authorities.*¹⁸

Importantly, the Law on Language Use should clearly define the sanctions against cases of non-compliance. Article 44 of the SFRY 1977 law prescribed fines of up to 20,000 Dinars for public officials found to be in violation of different provisions while carrying out their duties. A more recent reference is the newly adopted Anti-Discrimination Law, that provides for various ranges of fines and establishes a compensation for both pecuniary and non-pecuniary damages suffered by victims of violations.¹⁹ In assessing the severity of sanctions, the general rule of thumb for drafters is that sanctions have to be dissuasive,

effective and proportionate to the violation committed. Offences should be sanctioned according to the nature and the scope of the violations, while heavier penalties have to be considered in cases where perpetrators act with criminal intent, such as ethnic hatred.

A final issue the Law should address is the evaluation of the established policy. A regular system of monitoring the implementation of the Law is an extremely useful tool both for the Government to assess the compliance to the language policy, as well as for the citizenry as public scrutiny is a fundamental tenet for a democratic society. A periodic assessment should be mandated, regulating the frequency and the modality of reporting on the implementation of the various provisions. An independent or a semi-governmental body can be established and tasked to organize and implement regular assessments and evaluations of the adopted policies. The body would produce reports, including recommendations to the Government, the findings of which could be made available to other bodies and to the wider public.

In the initial period of implementation it may be useful to establish a tight reporting cycle, but also by harmonising reporting with the existing reporting requirements on the implementation of linguistic rights.²⁰ It is also worth remembering that a reporting mechanism is also foreseen by the Charter for obligations on the compliance to its provisions, where reports are examined by a Committee of

Experts²¹ that issue non-binding conclusions. Harmonising these reporting cycles would guarantee quality evaluation mechanisms and an efficient use of the existing resources. In addition, it would build the capacity of PISG to keep up with other forthcoming reporting obligations, namely those under the UN Human Rights Committee on Civil and Political Rights or the UN Committee on Economic, Social and Cultural Rights.

Kosovo’s civil society can greatly contribute to the process of promoting language diversity through the drafting of the Law. In particular, NGOs can play a pivotal role in assisting the Government in the selection of languages and of the provisions of part III of the Charter that can be applied. Likewise, NGOs can provide advice to the Council of Europe’s committee of independent experts on challenges that may arise during the process of implementation of the Law. The International Community (IC) as a whole has also a crucial role to play, not only in advising the PISG throughout the Law-drafting and the implementation processes, but also in complying with the established policy. Finally, the necessary financial means should be secured, to allow for a consistent implementation of the Law at all levels and in all sectors.

A genuine debate over language policy for Kosovo may take longer than expected. There is no “quick fix” and, as in many other fundamental debates in any given democratic society, the process is equally important as the outcome.

¹⁷⁾ Ibidem, Art. 8 (b).

¹⁸⁾ Language Rights as an Integral Part of Human Rights, Fernand De Varennes, MOST Journal on Multicultural Societies, Vol. 3, N.1, 2.12, 2.13, UNESCO (2001).

¹⁹⁾ See Sect.9 of the Anti Discrimination Law.

²⁰⁾ These include the Kosovo Standards Implementation Plan or the Framework Convention on National Minorities.

²¹⁾ The committee of experts prepares and forwards to the Committee of Ministers of the Council of Europe a report on its own, including proposals to be made to States. Once it has considered the committee of experts’ report, the Committee of Ministers may decide to make it public. It may also decide to make recommendations to states with a view to their taking the necessary action to bring their policies, legislation and practice into line with their obligations under the Charter.

ASI Mission Statement

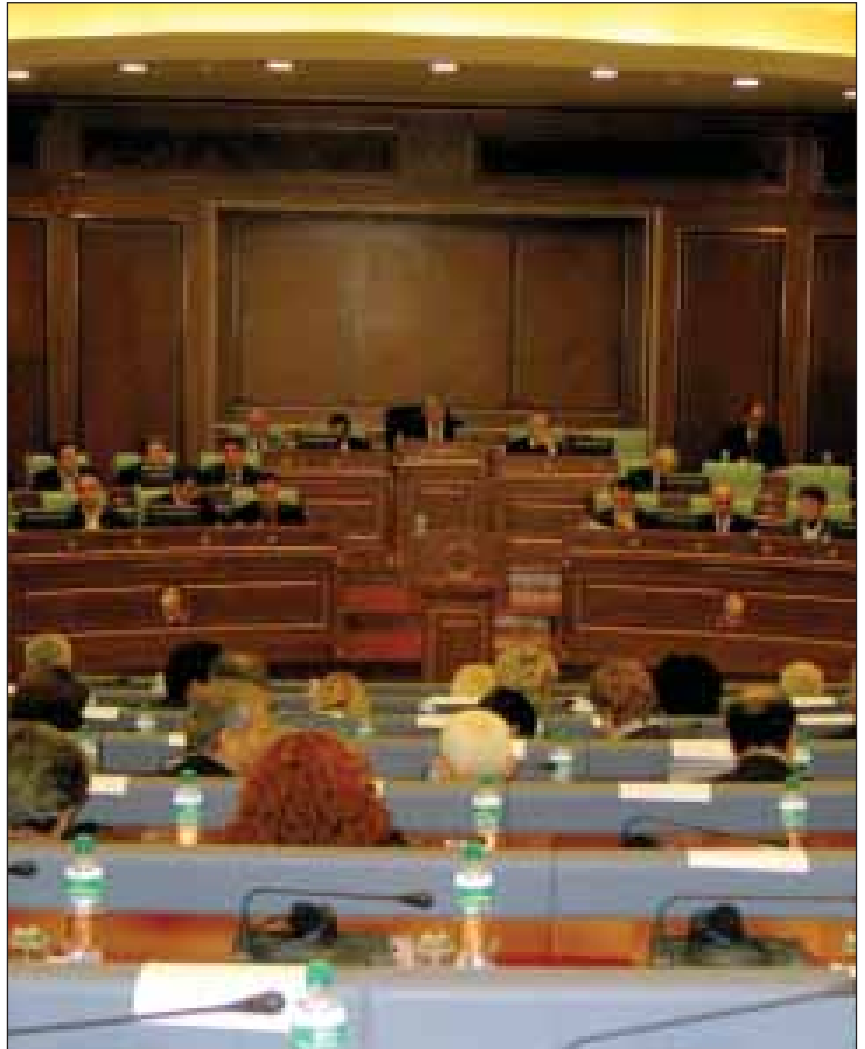
As the inter-agency coordinator of democratization programs to support the Assembly of Kosovo, the Assembly Support Initiative (ASI) seeks to strengthen and professionalise the Assembly of Kosovo in developing skills so that it may become a stable, functional and productive legislative assembly, operating in accordance with the rule of law and on behalf of all communities and citizens equally.

Members of ASI will work to bring resources together in a common pool in the furtherance of this goal. The work of ASI will focus on a democratic political culture based upon knowledge of and respect for democratic rules of procedure, transparency and accountability to the public, developing and implementing a legislative agenda, oversight over the Executive and respect for multi-linguality of the Assembly.

As the inter-agency coordinator of support to the Assembly of Kosovo, ASI supports the Assembly via conferences and training, workshops with the Committees, technical assistance on the legislative process, advise to the Presidency, Committees chairpersons and individual Assembly Members, working visits to other parliaments, training for the legislative staff and interpreters of the Assembly. The work of advisers and consultants to the Assembly and its Committees is also part of the ASI-coordination.

Currently participating in ASI:

Friedrich Ebert Stiftung (FES), Friedrich Naumann Stiftung (FNS), Konrad Adenauer Stiftung, East-West Parliamentary Practice Project (The Netherlands) in cooperation with the Kosovo Institute for Policy Research and Development (KIPRED), European Agency of Reconstruction (EAR), United States Agency for International Development (USAID) in co-operation with National Democratic Institute (NDI), United Nations Development Program (UNDP) in co-operation with the Inter-Parliamentary Union (IPU), Consortium of French, German and Belgian parliament, OSCE Democratization Department and the Assembly Secretariat with the active support of the Office of the Prime Minister, UNMIK's Pillar IV (EU) and the country offices in Pristina of Austria, Belgium, Germany, Italy, The Netherlands, Switzerland, United Kingdom and United States.



<http://www.kuvendikosoves.org>
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ASI
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The views expressed by the contributors to this Newsletter are their own and do not necessarily represent the views of the Assembly, OSCE Mission in Kosovo or the ASI partner organisations.