

## HUMAN RIGHTS PROMOTION

Much has changed since the CSCE Participating States agreed 30 years ago in Helsinki that they “will respect human rights and fundamental freedoms”. However, it took another 15 years to open the Iron Curtain.

When the OSCE Mission in Kosovo was set up 24 years after Helsinki, it was crystal clear that violations of human rights need to be addressed in a substantial way. The first problem the Mission encountered was the total lack of functioning judicial, police and administrative systems. Many of those individuals who would soon be placed in these positions had to learn new skills demanded by a democratic society.

As newly established institutions progressively began to function, the OSCE was faced with court trials where fundamental human rights were disregarded and with police officers often being overwhelmed by situations and not reacting appropriately, thus infringing upon people’s human rights.

There were people knocking on the Mission’s doors complaining that strangers were now living in their flats, as well as those who testified that their properties had been completely burned down. Kosovo’s minority communities informed the Mission that they could not move freely, which also hampered their access to basic public services such as schools or healthcare facilities. Victims of crime, especially of sexual or domestic violence, often did not get the appropriate response compliant with international human rights standards.

To address these deficiencies, the OSCE monitored and reported on the justice system, built capacity within the local government - in both the executive and legislative branches - so that officials understand and apply human rights; and trained civil servants, judges, prosecutors, lawyers and youth to understand and apply human rights standards. It also helped in drafting a number of laws addressing human rights issues, many together with local counterparts.

In the field of victim advocacy support for example, the Mission has played a key role in drafting new laws (“Regulations”) on the prohibition of trafficking and on protection against domestic violence, and supported their implementation. During the drafting process for new criminal laws, the Mission has successfully lobbied for an institutionalised role of victim advocates in the new criminal procedure code whose function is to assist injured parties in safeguarding their rights.



*Civil registration is crucial in establishing a system whereby people can exercise their individual rights. The OSCE helped the process and has assisted many individuals whose identification documentation was destroyed in an attempt to deny them right to return to Kosovo.*

More recently, the OSCE Mission has increasingly devoted its attention to the local authorities, a change necessary in view of the increased transfer of powers from the United Nations Interim Administrative Mission in Kosovo (UNMIK) to the Provisional Institutions of Self-Government (PISG) and their subsequent responsibility for the protection of human rights. Mission experts and advisers have been placed within different central and local governmental offices. The Mission envisages deploying human rights officers throughout the region in 2006 to monitor the local authorities’ performance as they assume more and more responsibilities.

Having initiated and actively accompanied legal and policy reforms as well as institutional changes and - through monitoring, reporting, advising and training - built sustainable capacities among the local public officials, it can be hoped that the goal of creating and leaving behind a functioning system which ensures that human rights and fundamental freedoms of all are respected will soon be achieved.

### Ensuring a right to a fair trial in Kosovo – monitoring the legal system

In the aftermath of the conflict, UNMIK was faced with a collapsed justice system and with the difficult task of creating a completely new one. As part of its institution-building role within UNMIK, the OSCE Mission took part in this process from the very first day. The Mission created the Legal System Monitoring Section (LSMS) to monitor the Kosovo justice system and assess its compliance with international human rights standards and domestic legislation. Its findings were used as a basis for improvements in court practises.

The Mission has followed the establishment and development of the Kosovo justice system since its re-introduction. It monitored the first trial held after the conflict in October 1999, a murder case handled by the District Court in Prizren. “From that moment on, as the judicial system developed so did the work of the Mission. Each year we focused on different topics and have issued reviews on those matters noting the main concerns and giving recommendations on how to overcome them,” says Henry McGowen, Director of the Mission’s Human Rights and Rule of Law Department.

At the outset of 2000, several categories of sensitive cases were identified as monitoring priority areas. These included war crimes cases, cases involving ethnically motivated crimes, and trafficking in human beings.

The Mission’s first Review on the Criminal Justice System was made public in October 2000, covering the first half of that year. The report displayed the major areas of concern, such as the violation of the right to counsel, a lack of impartiality within the judiciary and problems in regard to detention issues. Since then, regular public reports have been produced focussing on different issues affecting the criminal justice system in Kosovo, such as illegal detention, witness intimidation, the quality of sentences and the administration of

justice in the municipal courts. All these issues were approached in light of the standards set by international human rights treaties regarding the content of the right to a fair trial and the right to personal liberty.

After five years of monitoring criminal cases, in September 2004 an agreement was signed between UNMIK's Department of Justice and the OSCE Mission granting the OSCE monitors access to all court proceedings in civil and administrative courts. Following this agreement, in January 2005, LSMS began to monitor both civil and criminal cases. Among the civil proceedings a number of priority areas were identified, such as property disputes between members of different ethnic communities, family and labour law cases as well as executive proceedings. Monitoring in these areas will result in an annual review addressing the main problems and will affect future handling of those cases by the courts in Kosovo.

"Without intervening in the proceedings, the OSCE Mission follows a strategy of pro-active monitoring and has a corrective function within the justice system," adds McGowen. The implementation of concrete recommendations put forward in the reports is followed up through meetings between the Mission and the members of the judiciary as well as UNMIK counterparts.

Close co-operation between the Mission and the Kosovo Judicial Institute allows for a better dissemination of the concerns found during the monitoring activities through training of judges and prosecutors on areas which need improvement.

While the Mission acknowledges that much has been achieved since the re-establishment of the Kosovo justice system in 1999, the work is far from over. Soon, a number of competencies within the administration of justice will be transferred to the local authorities. The Mission will monitor this process and continue to ensure that the administration of justice in Kosovo is in full compliance with the applicable international human rights standards.



*As a follow up to trial monitoring, the OSCE Mission issues recommendations and advises the judiciary on how to improve their functioning and provide for greater protection of human rights.*

## Human Rights Experts within the Police

In 1999, UNMIK deployed an international police force (UNMIK Police) and, in parallel, began building a new Kosovo Police Service (KPS). The OSCE Mission, on the other hand, began training the new police force at the KPS School as well as closely following developments related to policing and human rights.

From the outset, the Mission monitored law enforcement agencies and addressed individual cases from a human rights perspective. Later on, it took a more thematic approach, wherein reports on various human rights issues were produced and presented to police authorities to draw their attention to issues of concern.

In 2005, to create and foster a culture of human rights within the police, the Mission initiated the implementation of the Human Rights Expert (HRE) programme and an agreement on the Terms of Reference for HREs was concluded with the UNMIK Police leadership.

The HRE teams were placed within the main police headquarters in Prishtinë/Priština and six regional police offices. They advise KPS and UNMIK Police on the development of human rights compliant policies and actions. At the same time they build the capacities of police officers to perform their duties in a human rights compliant manner. D. Christopher Decker, the Mission's Senior Human Rights Advisor on Security Issues said that this approach allows the Mission to influence the decision-making of the police at an early stage, and makes the changes sustainable in the long run.

"The HREs work closely with senior and junior police officers. In the interest of good co-operation they are attached to the offices of police commanders and conduct their work from police premises," he added.

The HREs focus their activities on areas such as: arrests and custody; the rights of vulnerable arrested persons (such as juveniles, the mentally ill, and those in need of medical

treatment); the rights of victims, especially victims of domestic violence and trafficking; and transparency and public confidence in the police, including internal complaints and oversight. They also identify capacity-building needs and assist the police in organizing trainings.

The successful implementation of the programme largely depends on mutual trust between police officers and the HREs. It is also subject to the commitment of all parties involved to embrace human rights protection as a foundation of and as a reason for their work.



*A police force plays a very important role in securing the rule of law and protection of human rights. Their education and compliance with human rights practices are therefore one of the OSCE Mission priorities.*



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### Strengthening the right to property in Kosovo

The respect for property rights largely depends on public adherence to the letter of the law and the effectiveness of authorities in implementing property legislation.

In Kosovo, the protection of the right to property is at an extremely low level. The root causes of such a situation lay in the legacy and abuse of a system based on social ownership, a decade of discrimination against Kosovo Albanians by the previous regime, an armed conflict and removal of property records, as well as the post-conflict destruction of properties owned by both ethnic minority and majority groups.

In addition to all of this, weak attempts to reform legislation and creation of insufficient *ad hoc* mechanisms to resolve property disputes, as well as the overall climate of instability and irregularity



*The right to property is a basic human right. In most cases, illegal construction or illegal occupation hampers someone's ability to exercise his/her property rights. The OSCE Mission is, therefore, assisting local institutions implement property legislation.*

prompted the OSCE Mission to make the protection of the right to property into one of its core priorities.

Mentioning a few figures will be enough to describe the size of the problem. In addition to thousands of other cases, close to 20,000 conflict-related property claims remain unresolved in the regular courts. Furthermore, it is estimated that some 11,000 thousands of potential claims to agricultural and commercial property are still to be lodged. The Housing and Property Directorate, in charge of conflict related residential property claims, has thus far implemented only 52.3 percent (15,864) of its 28,431 decisions. 6,950 of the implemented decisions relate to destroyed properties.

“To address these issues the OSCE works with both central and local level institutions and provides advice on how to remedy existing and prevent future violation of the right to property,” said Jose Maria Arraiza, Senior Human Rights Advisor on Property Issues. The Mission also advises the government on related rights, such as due process of law, the right to an effective remedy, and the right to return for all displaced persons.

Providing advice, however, is not sufficient. Governmental bodies must develop their own capacities to deal with these issues. The Mission is helping in this respect too by providing training and assisting with drafting of the laws and raising public awareness about negative effects of illegal occupation. It also supports the development of a property related legal reform action plan based on successful regional models, like Slovenia.

In addition, the Mission has helped the PISG and UNMIK to improve the system by issuing public reports recommending concrete targeted measures to be implemented, such as the elaboration and full implementation of a property related legal reform and action plan, the establishment of effective conflict-related property disputes mechanisms, the adherence of municipal authorities to the legal procedures related to expropriation, construction and spatial planning, the integration of parallel administrative structures and the regularisation of informal housing areas.

It has also proactively co-ordinated the ‘Standards Implementation Plan’ related to property: a strategic master plan to reform the property rights mechanisms and ensure the protection of rights, in particular by the local authorities.

Moreover, the Mission is concentrating on the protection of those most affected by a dysfunctional property rights system. For example, one of its focuses has been to ensure the protection of the rights of persons who for decades lived in informal residential areas. The Mission advocates the right to housing for all and it will therefore continue to proactively monitor the situation and help local institutions – municipalities, ministries, courts, and police – to build effective tools to manage property issues in accordance with international standards.

### Paving the Long Road to instill Anti-Discrimination Standards

Considering that the discriminatory practices of government against a perceived minority led to the most recent and devastating conflict in Kosovo, the OSCE Mission has devoted significant attention to preventing the recurrence of such conflict-prone conditions.

The Mission initiated the drafting of the Anti-Discrimination Law (ADL) in 2002 following a year of consultations with numerous stakeholders. It took another two years for the Law to become effective, in September 2004. Despite the three years needed to bring it into force, Kosovo now has one of the most progressive and flexible laws of its type in Central and Eastern Europe.

Since its adoption and promulgation, a plethora of government actors and international donors, including the OSCE as a key interlocutor, have been working together to craft a Comprehensive Implementation Plan, to enact the law's core principle of “equal treatment” in every aspect of public life.

While human rights laws in a number of countries apply only to acts of persons exercising government authority, the ADL is progressive in that it also requires equal treatment in the acts of private persons. Further, it shifts the burden of proof from the claimant to the respondent. Although various forms of discrimination occur in every society, the ADL's definition of equal treatment is flexible because it aims to address the unique forms of discrimination known to occur in Kosovo. The equal treatment definition in the ADL distinguishes between:

### Ethnic origin, nationality and race;

Essentially the ADL replaces the former Yugoslav legal distinctions between constituent peoples, nationalities and ethnic groups. In the ADL **ethnic origin** is meant as a self-determined combination of ancestry, language, religion, customs, etc. For example, any child refused access to primary education because he/she is from a different ethnic group means that classmates and teachers would be discriminating on the basis of ethnic origin. **Nationality** refers to association with, particularly citizenship in, a specific nation state. Thus, persons of differing ethnic origins can share the same nationality, and according to the ADL should have the same right to equal treatment by their government. **Race** refers to genetic attributes historically used to distinguish groups by their outward appearance, such as color, although it has no scientific basis for predicting human potential. For a family with darker skin than the majority population to have their application for a rental apartment in Kosovo declined because of their physical appearance would be racial discrimination.



*Vulnerable social groups, women and children, are often subjected to various forms of discrimination. Sheltering them is sometimes the only solution. The OSCE Mission supports the work of a number of shelters.*

### Sex and gender;

While **sex** is determined by biological differences between males and females, **gender** refers to the cultural constructions of gender roles, privileges and exclusions. For example, refusing to hire a woman as a server in a restaurant because social norms dictate that serving food and drink in public is a “male” profession would be gender discrimination.

To introduce these principles of equal treatment into the culture of Kosovo, the latest draft of the two-year ADL Comprehensive Implementation Plan brings together expertise from every sector of government, from the judiciary, the Ombudsperson Institution and civil society.

***“The principle of equal treatment shall mean that there shall be no direct or indirect discrimination against any person or persons, based on sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status.”***

*Article 2(a) of the Anti-Discrimination Law*

The OSCE Mission will remain a dedicated participant throughout the implementation of the plan. It offers strategic and well-focused human resource support, including continued and extensive technical assistance and training for government officials so that they can, in turn, contribute to the mainstreaming of anti-discrimination principles in the development of subsidiary legislation, policy and practice in their respective fields.

For example, “positive action” including measures “to prevent or compensate for disadvantages linked to one or more grounds such as those stated in Article 2(a)” may be necessary in particular sectors, such as health, education, transport, spatial planning, etc. Further, the plan proposes a long-term public information campaign (for which the Mission has already begun funding the production of posters and brochures) and additions to the public school curricula.



*Due to ethnic discrimination many of Kosovo's children are denied the rights to basic education.*