

The background of the cover is a photograph of ancient stone ruins. In the foreground, there are large, rectangular stone blocks, some of which appear to be part of a wall or a platform. The stones are weathered and have a reddish-brown hue. In the background, there are more ruins, including a prominent column with a decorative capital. The overall scene is one of historical significance and archaeological interest.

Challenges in the Protection of Immovable Tangible Cultural Heritage in Kosovo

March, 2014

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LIST OF ABBREVIATIONS

CESCR

United Nations Committee on Economic, Social and Cultural Rights

ICCPR

International Covenant on Civil and Political Rights

ICESCR

International Covenant on Economic, Social and Cultural Rights

IMC

Implementation and Monitoring Council

KCCH

Kosovo Council for Cultural Heritage

KFOR

NATO Kosovo Force

KIPM

Kosovo Institute for the Protection of Monuments

MCYS

Ministry of Culture, Youth and Sports

MDP

Municipal Development Plan

MESP

Ministry of Environment and Spatial Planning

MLGA

Ministry of Local Government Administration

OSCE

Organization for Security and Co-operation in Europe Mission in Kosovo

RIC

Reconstruction and Implementation Commission

RCCH

Regional Centre for Cultural Heritage

SPZ

Special Protective Zone

UDHR

Universal Declaration of Human Rights

UDP

Urban Development Plan

UNESCO

United Nations Educational, Scientific and Cultural Organization

UNMIK

United Nations Interim Administration Mission in Kosovo

EXECUTIVE SUMMARY

There is a rich and diverse cultural and religious heritage in Kosovo, which is endangered by a lack of preservation, protection and promotion. Neglect and vandalism of sites, uncontrolled urban growth and little consideration of how to balance cultural and religious heritage protection with the rights of individuals and communities living around the sites, threaten this heritage. This report assesses whether the relevant international human rights standards related to the protection of immovable tangible cultural heritage are complied with by the Kosovo legal framework and to what extent the central- and local-level institutions apply these standards and thus respect, protect and fulfil everyone's right to access and benefit from cultural heritage.

The Kosovo legal framework related to cultural heritage protection in general is in line with international human rights standards, however, the legal framework does not clearly stipulate the division of responsibilities between different institutions. As a result, the OSCE Mission in Kosovo (OSCE) has observed, through its monitoring activities, that there continue to be shortcomings in the implementation of the legal framework on cultural heritage protection and responsible institutions remain to a large extent ineffective. The identified shortcomings include, inter alia, the failure to develop a comprehensive inventory for the protection of cultural heritage and the failure to integrate cultural heritage sites into local spatial plans. In addition, contrary to the legal framework, there has been a lack of inspection of cultural heritage sites, thereby resulting in the failure to prevent illegal constructions affecting heritage sites, particularly those of the Serbian Orthodox Church. Demolitions, acts of vandalism, theft, adverse municipal decisions and other destructive activities continue to affect cultural heritage sites, particularly those of the Serbian Orthodox Church. Further, the OSCE has observed through its monitoring that, despite the cross-sectorial nature of cultural heritage protection, the co-operation has been minimal between local- and central-level institutions as well

as between different line ministries, and observed only a few joint initiatives by institutions to promote the preservation of tangible immovable cultural heritage, especially of non-Albanian communities. Limited capacities of staff and a lack of political commitment further hampered the implementation of the legal framework on cultural heritage protection. For these reasons, the effectiveness of the central- and local-level institutions in applying international human rights standards to cultural heritage protection is limited. That is not to say that there have been no positive developments. Both the Implementation and Monitoring Council (IMC) and Ministry of Culture, Youth and Sports (MCYS) have dealt with some cases of illegal construction affecting SPZs and other cultural heritage sites, which has elicited some positive results.

The Law on Cultural Heritage is currently under amendment, offering an opportunity to better define the respective responsibilities of Kosovo institutions engaged in the protection of cultural heritage, including the division on integrated cultural heritage management established within the MCYS in 2012. However, it remains to be seen what changes the amended law will entail and how these will help to address the identified shortcomings in cultural and religious heritage protection in Kosovo.

The OSCE urges Kosovo institutions to ensure full implementation of the legal framework on cultural heritage protection, as well as the full staffing and effective functioning of all relevant institutions. Toward that end, Kosovo institutions should clearly define the roles of central- and local-level institutions in the protection of cultural heritage, and improve co-ordination between all stakeholders. Moreover, the OSCE encourages respective institutions to ensure immediate condemnation of all security incidents affecting cultural heritage sites, in particular of non-Albanian communities, and timely outreach activities with the aim of reassuring affected communities.

1. INTRODUCTION

As part of its mandate to promote and protect the rights of communities in Kosovo, the OSCE monitors and supports the protection of the cultural heritage of all communities in Kosovo, ranging from architectural and archaeological heritage to customary traditions such as arts and crafts. The protection of the cultural heritage of all communities is in the public interest of all persons in Kosovo. To preserve cultural heritage means to maintain and enhance its value and make it accessible; in turn such preservation helps to protect cultural heritage as it becomes a living part of the community. Communities can then benefit economically and culturally from the use and promotion of cultural heritage, which underscores its value and need for its protection. Furthermore, the protection and rehabilitation of the cultural heritage in Kosovo can play a fundamental role in fostering reconciliation and inter-ethnic dialogue.

Neglect and vandalism of sites and delays in integrating cultural and religious heritage into spatial planning threaten the protection of immovable tangible cultural heritage. Considering the rapid urban development in Kosovo, it is important to ensure that any proposed spatial plans take into account the need for protection of cultural heritage sites. This is particularly important for the cultural sites of non-Albanian communities and those who cannot take part in the process of public consultations due to their displacement.

In response to specific incidents against the cultural heritage, the OSCE and other international organizations, as well as Kosovo institutions, have voiced concerns with regard to protection and preservation of cultural heritage.

In order to better identify the existing gaps and challenges affecting the protection of cultural heritage sites in Kosovo and consequently promote their preservation, the OSCE used a human rights-based approach to cultural heritage protection to assess the conformity of the legal framework in Kosovo on

cultural heritage protection with relevant international human rights standards and the extent to which duty bearers in the field of protection of immovable tangible cultural heritage comply with this framework.

The report is based on the regular monitoring activities of the OSCE in the field of protection and promotion of cultural heritage conducted between January 2010 and February 2014, and on approximately 44 interviews conducted with relevant duty bearers and affected communities between September 2011 and October 2013. The issues identified in the interviews were monitored further throughout 2012 and 2013. In addition, the report takes into account issues raised by different stakeholders at five local-level workshops on “Cultural heritage legislation: implementation and challenges” which were organized in the second half of June 2012 as part of an OSCE project to support local-level institutions in promoting and protecting cultural and religious heritage in Kosovo.

Following the introductory notes, chapter 2 presents the relevant international human rights standards governing cultural heritage protection. It also describes and assesses the adequacy of the legal and policy framework in Kosovo for embodying these international standards. Further, it describes the institutional framework responsible for ensuring the implementation of the legal framework in Kosovo. Chapter 3 assesses the performance of specific duty bearers in complying with their obligations related to cultural heritage in identified key areas such as inventory of assets, spatial planning, and inspection of cultural heritage sites. Chapter 4 assesses specific concerns related to the protection of non-Albanian communities’ tangible cultural heritage, in particular security incidents at heritage sites, infringements of property rights and the promotion of cultural heritage. Chapter 5 outlines the main conclusions of the assessment and finally chapter 6 offers recommendations to duty bearers to remedy the identified gaps in the legal framework and in its implementation.

2. LEGAL AND INSTITUTIONAL FRAMEWORKS FOR THE PROTECTION OF CULTURAL HERITAGE IN KOSOVO

2.1 International human rights framework

While there is no universal definition of cultural heritage, it generally refers to the objects, places, and traditions that define individuals, communities, societies, nations and civilizations. It may be tangible (e.g. monuments, artefacts, antiquities, art, historic buildings, archaeological sites and sacred places)¹, intangible (e.g. “practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage”²) or natural³ (e.g. protected natural reserves, historic parks or gardens and cultural landscapes, which are areas, as perceived by people, whose character is a result of the action and interaction of both natural and/or human factors⁴). The concept of heritage reflects the dynamic character of something that has been created, interpreted and re-interpreted over time, and transmitted from generation to generation. From a human rights perspective, cultural heritage is also to be understood as resources that enable the cultural identification and development processes of individuals and communities⁵.

The right to cultural heritage is an internationally recognized right in different human rights instruments and in the practice of human rights monitoring bodies, including the right to take part in cultural life⁶ and the right of members of minority groups

to enjoy their own culture⁷. The right of everyone to take part in cultural life, as provided by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), imposes on institutions the obligations to respect, protect and fulfil the enjoyment of the right.⁸ The obligations to respect and protect the enjoyment to take part in cultural life require institutions to refrain from interfering and to take steps to prevent third parties from interfering, directly or indirectly, in the exercise of the right; whereas the obligation to fulfil requires institutions to take appropriate legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realization of the right.⁹

Numerous international human rights and fundamental freedoms are guaranteed directly under Kosovo law, including those contained in the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights (ICCPR) and its protocols; the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols; the Council of Europe Framework Convention for the Protection of National Minorities; and the ICESCR¹⁰.

The Council of Europe Framework Convention for the Protection of National Minorities in particular refers to institutions’ duty to “promote the conditions

necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage”.¹¹ Other human rights norms that must also be taken into consideration and interpreted in relation to the right to cultural heritage include, among others: the principle of non-discrimination, in particular on the basis of cultural identity; the right to education; the right to freedom of expression; the right to information; and the right to freedom of thought and religion¹².

In recent years, in international and regional human rights mechanisms the link between cultural heritage, cultural diversity and cultural rights has been strengthened.¹³ In order to respect and protect the rights to take part in cultural life and to enjoy one’s own culture, institutions must preserve tangible cultural heritage with a view to maintaining its authenticity and integrity, protect intangible cultural heritage to ensure its viability and continuity, and guarantee the rights of all individuals and communities to access and benefit from their cultural heritage. Effective participation of individuals and communities in decision-making processes relating to their cultural heritage is also necessary to ensure the full realization of their cultural rights¹⁴.

The Council of Europe Framework Convention on the Value of Cultural Heritage for Society refers to cultural heritage rights and stipulates that every person has a right to engage with the cultural heritage of their choice as an aspect of the right freely to participate in cultural life.¹⁵ Stating “the need to involve everyone

in society in the ongoing process of defining and managing cultural heritage”, it contains references to the right to benefit from cultural heritage and to contribute towards its enrichment, the participation of everyone “in the process of identification, study, interpretation, protection, conservation and presentation of the cultural heritage”, and the rights of “access to cultural heritage and democratic participation”.¹⁶ The right of access to cultural heritage refers to the assurance of 1) physical access to cultural heritage, which may include also access through information technologies;¹⁷ 2) economic access, which means access affordable to all; 3) information access, which refers to the right to seek, receive and convey information on cultural heritage; and 4) access to decision making and monitoring processes, including administrative procedures and judicial remedies. This concept is based on the overlapping principle of non-discrimination, with special attention paid to vulnerable groups.¹⁸

The enjoyment of all human rights requires access to effective remedies, including administrative and judicial remedies. Remedies should be made available to individuals and communities whose cultural heritage is not fully respected and/or protected or whose right of access to and enjoyment of cultural heritage has been infringed upon. The specific relationship between communities and their cultural heritage should be taken into consideration in arbitration and litigation processes¹⁹. An effective remedy, in case there is an infringement of a human right, ought to provide “return to the previous condition” to the extent possible and/or compensation for damage.²⁰

2.2 Kosovo legal framework

The Kosovo legal framework provides for the preservation, protection, public access, communication, and provision of necessary resources to facilitate the enjoyment of cultural heritage by current and future generations, and provides especially for the promotion and protection of the cultural heritage of all Kosovo communities.

Kosovo institutions have the responsibility to preserve and protect the cultural and religious heritage of all communities, and shall ensure effective protection

of the entirety of sites and monuments of cultural and religious significance to communities.

Giving those obligations greater depth, the Law on Special Protective Zones²¹, the Law on Cultural Heritage²² and its seven corresponding sublegal acts²³ issued by the MCYS provide specific modalities for the implementation of those protections. The Law on the Historic Centre of Prizren²⁴ and the Law on the Village of Velika Hoča/Hoçë e Madhe²⁵, which outline specifically what the protection of these



Hammām Mehmet Pasha (The Great Hammām), Prizren

two areas entails²⁶, were promulgated in 2012; two related administrative instructions are being drafted at the time of writing.²⁷ Further, the Annual Work Plan of the government for 2012 foresaw the drafting of a strategy on cultural heritage²⁸. In October 2013, a working group was established and has since completed the first draft of an action plan on the prevention of illicit trafficking and illegal excavation of movable cultural heritage. However, no strategy has yet been drafted for the effective protection of immovable cultural and religious heritage of all communities.²⁹

While the Law on Cultural Heritage is generally in line with international standards, the law does not make it clear what agency is responsible for what task (the term “competent institution” is used throughout rather than naming a specific agency). This is a particular problem in the area of inspections, as it is unclear whether inspection is the responsibility of

central- or local-level institutions. Amendments to the Law on Cultural Heritage were drafted during 2012 and 2013³⁰, aimed to address some of the shortcomings in the existing law which hamper the effective protection and promotion of cultural heritage sites. Though the new draft Law on Cultural Heritage is still at the stage of drafting in the MCYS, discussions concerning the draft law are currently focussing on assigning institutions’ responsibilities, assuring communities’ representation in cultural heritage decision-making bodies, clarifying sanctions against violations of legal provisions, and harmonization of the relevant terminology.³¹

Other laws relevant to the protection of cultural and religious heritage include the Law on Local Self Government³², the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo³³, the Law on Spatial Planning³⁴ and the Law on Construction³⁵.

2.3 Kosovo institutional framework

The Department of Cultural Heritage within the MCYS is responsible for the management of cultural heritage in Kosovo. It manages the Kosovo Institute for the Protection of Monuments (KIPM) and six regional centres for cultural heritage (RCCHs) in Prishtinë/Priština, Prizren, Pejë/Peć, Gjakovë/Đakovica, Mitrovicë/Mitrovica and Gjilan/Gnjilane, which carry out the responsibility for protection and preservation of tangible cultural heritage. They have overall responsibility for the protection and restoration of historic buildings and for permitted development within historic areas, although this responsibility has not always been appropriately discharged in the past – with many historic buildings falling into disrepair and many unauthorized developments occurring within historic areas in Kosovo. The Archaeological Institute and the Museum of Kosovo are also managed by the MCYS Department of Cultural Heritage. These institutions deal with the archaeological heritage and are responsible for the restoration, conservation, protection and presentation of the cultural heritage values. Additionally in each municipality a director for culture (including cultural heritage), reports to the regional institutes for the protection of monuments, as well as at the central level to the MCYS.

The Kosovo Council for Cultural Heritage (KCCH)³⁶, an advisory body to the Assembly of Kosovo, is mandated to approve the List of Cultural Heritage³⁷, to identify priority measures for financial support for cultural heritage protection³⁸ and to evaluate submitted cultural heritage-related project proposals³⁹. Further, the KCCH recognizes its responsibility to support the protection, conservation and management of cultural heritage.⁴⁰ However, the KCCH has not been functional since its establishment. While the executive board was established, membership was never complete. In addition, it is foreseen that the members of the KCCH represent different communities, which so far has not been the case.⁴¹

The Department on Spatial Planning and the Institute on Spatial Planning of the Ministry of Environment and Spatial Planning (MESP) are engaged in protecting Special Protective Zones (SPZs) and ensuring that spatial plans for areas within the SPZs are in conformity with laws regulating SPZs.

On 2 July 2013, the Council for Cultural Heritage of Prizren was established in conformity with the Law on the Historic Centre of Prizren⁴², comprising seven members representing leaders from the three main religious communities namely the Serbian Orthodox, Islamic and Catholic communities, as well as civil society representatives and a local government member. The council provides a forum for relevant stakeholders to share information pertaining to cultural and religious heritage protection in the historic centre of Prizren.⁴³ By contrast, the Council for Cultural Heritage of Velika Hoča/Hoçë e Madhe has yet to be established.⁴⁴

In addition to MCYS and MESP, the Ministry of Trade and Industry, the Ministry of Local Government Administration and the Ministry of Communities and Return also have a certain relevance concerning the protection of cultural heritage. Although the legal framework does not clearly provide for the roles and the responsibilities of the above institutions, they all de facto engage in activities related to cultural heritage protection and promotion. For example, in June 2008, they participated in an inter-ministerial working group for communication and implementation of the Law on Special Protective Zones which was established and co-chaired by MESP and MCYS. The working group was tasked to finalize and publicize the SPZ maps; oversee the integration of SPZs into spatial plans at central- and local-level; define administrative procedures for the management of SPZs; and conduct information and awareness raising activities on SPZs. However, this working group has not been functioning for a number of years⁴⁵.

The IMC is a special body which first became operational in June 2010 to monitor and facilitate the implementation of the Law on Special Protective Zones⁴⁶. The Facilitator for the Protection of the Cultural and Religious Heritage of the Serbian Orthodox Church in Kosovo was appointed as chairperson of the IMC; however, in its original format, in lieu of proper meetings, the IMC communicated through an exchange of letters between all its members⁴⁷. The IMC's efficiency was hampered due to this, as well as a lack of participation, lack of clarity about its decision-making authority, the failure to include MESP in the mechanism, and perceived political bias.



Historic Centre of Prizren

On 12 February 2013, the Minister of Environment and Spatial Planning signed the Administrative Instruction on the establishment of the IMC.⁴⁸ The Administrative Instruction defines the role of the IMC, stipulating that it “monitors and facilitates the implementation of the provisions of legislation relating to the protection of the Serbian Orthodox Church religious and cultural heritage in Kosovo, including in particular the provisions of the Law on Special Protective Zones, the Law on the historic centre of Prizren and the Law on the Village of Velika Hoča/Hoçë e Madhe”⁴⁹. Based on the new Administrative Instruction, the IMC has five members: one representative each from MESP, MCYS, the European Union, the OSCE and the Serbian Orthodox Church⁵⁰. The IMC currently meets on a monthly basis in order to discuss more pressing cultural heritage issues and has already achieved some positive results⁵¹.

Prior to the re-establishment of the IMC, the Council of Europe-led Reconstruction and Implementation Commission (RIC) was the only mechanism where

the Serbian Orthodox Church and the Kosovo institutions formally discussed cultural heritage issues. The RIC was originally established to manage the restoration and reconstruction of the 34 Serbian Orthodox Church premises which were damaged during the March 2004 riots; however its mandate ended in 2011 – completing reconstruction of over half of the damaged sites.⁵²

Finally, other actors engaged in cultural heritage protection include the Kosovo Police⁵³, the Association of Kosovo Municipalities⁵⁴, municipalities⁵⁵ and civil society.

While there are many stakeholders in the field of cultural heritage protection, throughout the Law on Cultural Heritage and its sub-laws the term “competent institution” is used rather than naming a specific agency. At the time of the Law’s drafting, according to the MCYS, this ambiguity was preserved to allow for necessary changes in the administrative and institutional structures to take place.⁵⁶ However, the Law still does not define

which responsible institutions are competent, which leaves a lack of legal clarity and the responsibilities of these institutions not clearly defined and open to interpretation. Despite the cross-sectorial nature of cultural heritage protection, the co-operation between local- and central-level institutions, as well as between different municipal departments and between line ministries, remains limited⁵⁷. Further, a clear co-ordination mechanism and regular information sharing forum for stakeholders working on cultural heritage issues are missing and ad hoc meetings mostly remain the only mode of communication between these actors. Usually most of the contacts are between the RCCHs and municipalities throughout the spatial planning process, while contacts between the Serbian

Orthodox Church and municipalities are mainly dependant on issues of concern for both parties, such as any illegal construction within or close to the Serbian Orthodox Church sites, or on-going projects.

Overall, it can be concluded that the Kosovo legal framework on cultural heritage protection is broadly in conformity with relevant international human rights standards. However, the failure to assign specific responsibilities to specific duty bearers has hindered the effective implementation of the commitments contained in the legal framework. The OSCE is strongly advocating for such ambiguities to be addressed during the ongoing amendment process.

3. COMMON CONCERNS IN THE PROTECTION OF CULTURAL HERITAGE

3.1 Inventory of cultural heritage assets

An inventory is a precondition for preserving and protecting cultural heritage sites. Inventories of different categories of cultural heritage sites provide harmonized, comparable and usable information on heritage and as such are an integral part of the system of protection of cultural heritage. The preparation of an inventory is an official research activity for the preliminary recording and documentation of cultural heritage sites. It provides the basis for the assessment of whether or not the site should be legally protected and in order to permanently secure its value through the preparation of a conservation plan.⁵⁸ Inventories should be developed for different categories of cultural heritage, whereby the inventory for immovable tangible cultural heritage sites in Kosovo should include “monuments, ensembles of buildings, architectural conservation areas, archaeological sites, archaeological reserves and cultural landscapes”.⁵⁹

The Law on Cultural Heritage foresees that the MCYS as competent institution identifies cultural heritage through an inventory.⁶⁰ The Law on Cultural Heritage further stipulates that from this inventory the MCYS shall select sites to be placed on a list of cultural heritage under temporary protection for one year. Further, the MCYS is required to propose cultural heritage assets to be put under permanent protection to the KCCH for review, adoption or rejection.⁶¹ Subsequently the Minister for Culture, Youth and Sports shall sign the list of cultural heritage under permanent protection. This list of cultural heritage under permanent protection shall be open to the public.⁶²

Since the promulgation of the Law on Cultural

Heritage in November 2006, the advocacy efforts by international stakeholders, including the OSCE, for the development of a comprehensive inventory remained unsuccessful as the MCYS has yet to provide an inventory for the protection of cultural heritage. The reasons that led to this delay, according to the MCYS, include a lack of personnel with adequate skills and financial resources to carry out the inventory process.⁶³ More recently, some progress has been made by MCYS in this regard. The OSCE has been informed⁶⁴ that MCYS has prepared a database for the protection of tangible cultural heritage (but not yet spiritual or intangible cultural heritage). According to the MCYS, this database will be accessible to the public by the end of March 2014.⁶⁵

The Council of Europe, in the framework of the European Union/Council of Europe Joint Programme Support to the Promotion of Cultural Diversity in Kosovo (PCDK), supported the development of guidelines for an inventory of cultural heritage assets in Kosovo. Following this initiative, in 2011 the MCYS prepared a temporary list of protected cultural heritage sites which included 930 archaeological and architectural sites. This list has been updated twice (most recently on 1 October 2013) and now includes 1,428 sites. This is the third year in which MCYS has issued a list of cultural heritage assets for temporary protection without conducting a follow-up assessment to determine which sites are to be put under permanent protection. This contradicts the Law on Cultural Heritage, as such assets should be put under temporary protection for one

year only⁶⁶. It is unclear what concrete measures the protection includes, what criteria are applied in establishing which of these sites are priorities to the MCYS, and which ones will be put on a permanent list of protection.

The MCYS has yet to compile a comprehensive inventory of immovable tangible cultural heritage assets in Kosovo and a list of cultural heritage assets under permanent protection.

3.2 Spatial planning

Although there is no approved inventory naming the cultural heritage sites to be protected and preserved yet, 45 Serbian Orthodox monasteries, churches, other religious sites, historical and cultural sites of specific significance for the Kosovo Serb community as well as other communities in Kosovo were declared as SPZs based on the Law on Special Protective Zones.⁶⁷ These are “defined areas surrounding a monument, building, group of buildings, ensemble, village, or historic town

centre that is safeguarded from any development or activity which could damage its historical, cultural, architectural or archaeological context, natural environment or aesthetic visual setting”.⁶⁸

The objectives of designating zones as SPZs are: a) to provide for a peaceful existence and functioning of the sites to be protected, and to preserve the monastic way of life of the clergy; b) to preserve the character and appearance of the



Novo Brdo Fortress

sites to be protected, in particular, the historical, cultural, architectural or archaeological context, natural environment or aesthetic visual setting; and c) to prevent adverse development around the sites to be protected, while ensuring the best possible conditions for harmonious and sustainable development of the communities inhabiting the areas surrounding such sites by regulating development and other activities⁶⁹.

In this regard, certain activities are restricted in the public interest to preserve cultural and religious heritage. While some activities are expressly prohibited, others are made conditional upon meeting certain criteria. According to the Law on Special Protective Zones, the 41 Serbian Orthodox Church sites, for which SPZs have been established, enjoy a level of protection, whereby industrial construction is prohibited, while urbanization of agricultural land may be permitted only with the consent of the Serbian Orthodox Church. The procedure used in seeking consent from the Serbian Orthodox Church and deadlines for the Serbian Orthodox Church to provide its consent are not defined, which leaves room for arbitrariness and delays. Activities within the four non-religious sites included in the Law on Special Protective Zones, require IMC approval. The Administrative Instruction on IMC is very clear when it comes to the deadline for the IMC to respond to the requests it receives.⁷⁰ However, the integration of all SPZs into local spatial plans, i.e. Municipal Development Plans (MDPs), Urban Development Plans (UDPs) and Urban Regulatory Plans, is still pending.

The legislation on cultural heritage foresees zoning measures controlling the use of property and prohibiting certain activities which harm the environment or disturb monastic life in the sites, such as industrial construction. The restriction on the use of property is not absolute, but should be the least necessary to achieve the aim pursued – in this case cultural heritage protection. Thus, the perimeter of SPZs, the conditions attached to it and its implementation need to ensure both effective protection of the cultural and religious heritage and the sustainable development and private property rights of the neighbouring communities. This requires a careful balance of individual rights and public interest considerations. Therefore, and to avoid adverse consequences, spatial planning

standards require that affected communities are genuinely consulted in both the design of the legislation and the design of the perimeter of the zones, and making zoning restrictions subject to the laws protecting related rights and interests.

While the Spatial Plan of Kosovo 2010–2020⁷¹ provides a strategic framework for integrated preservation of cultural heritage, including the 45 SPZs, the integration of cultural heritage sites in local spatial plans remains a concern. Not all municipalities have adopted municipal spatial plans, which are essential for regulating construction and development around SPZs and other cultural heritage sites. Many municipalities are currently in the process of drafting or adopting MDPs and reportedly will include SPZs and/or cultural heritage sites within their territories in the plans. For instance, although there are no SPZs in Kamenicë/Kamenica, the municipality has identified several possible sites for protection, such as churches, graveyards and teqqes⁷², and included them in its draft MDP. Some municipalities, such as Pejë/Peć and Lipjan/Lipljan, had adopted their MDPs already prior to the promulgation of the Law on Special Protective Zones. Thus, although the original MDP from 2007⁷³ already foresaw the Peć Patriarchate to be a “protected zone”, in order to comply with the relevant legislation⁷⁴, the Pejë/Peć municipal assembly approved an amendment of the MDP which refers to the protection the site enjoys according to the Law on Special Protective Zones⁷⁵. Of note, some municipalities which have approved MDPs and/or UDPs⁷⁶ have referred not only to SPZs but also to other cultural heritage sites in their territories as well. For example, Prishtinë/Priština municipality has included “Historic zone of Prishtinë/Priština” in the UDP (also mentioned in the MDP) as an area for restoration and preservation, which covers most of the city centre⁷⁷. However, in contravention of Article 13 of the Law on Spatial Planning, the MDP was not approved by MESP officials⁷⁸.

Prizren municipality adopted its MDP in September 2013 which includes general statements regarding the protection and development of cultural and religious heritage and refers to all applicable legislation. However, the protection of SPZs other than those within the Historic Centre of Prizren town is not explicitly mentioned in the MDP.

Deçan/Deçane municipality approved its MDP and UDP in 2009 and both plans refer to, among other sites, the Visoki Deçani Monastery and the protection it enjoys based on the Law on Special Protective Zones. However, the plans also still contain a reference to a proposed road to Montenegro, part of which is envisaged to pass by the SPZ. The road was planned to be constructed in 2007 but, following disagreement by the international community, the Ministry of Transport and Telecommunication withdrew the tender. According to Serbian Orthodox Church representatives, the reference to this road in the approved MDP and UDP is perceived as a threat towards the special protection regime. The site is granted by the Law on Special Protective Zones, which lists the construction of transit roads in rural areas as prohibited activities⁷⁹. Moreover, this road is also still foreseen in the Spatial Plan of Kosovo⁸⁰ although the SPZ of Visoki Deçani Monastery is at the same time mentioned as a “Special Interest Area” in the document⁸¹.

Also, Lipjan/Lipljan municipality recently revised its MDP and UDP to include the SPZ around the Church of Presentation of the Virgin.⁸² The director

of urbanism confirmed that the SPZ has been integrated in the amended plans with no adverse developments or construction activities being permitted within the delineation area of the SPZ.⁸³ During the process of the adoption of the MDP and UDP, the Serbian Orthodox Church priest and the municipal director of urbanism worked together in co-operation with the planning company contracted by the municipality for drafting the plans.⁸⁴ The illegal construction of a commercial warehouse within the SPZ in the beginning of 2013 raised the need for such co-operation⁸⁵.

As discussed, a specific regulatory plan for the SPZ, drafted in accordance with the Law on Special Protective Zones, would enable quicker responses to citizens’ requests for issuance of construction permits within the SPZ and avoid further disputes regarding illegal constructions. The inclusion of the SPZ in the process will help prevent further such disputes. This co-operation can serve as best practice also for other municipalities to improve their co-operation with the Serbian Orthodox Church in the spatial planning process affecting SPZs.

3.3 Inspection of cultural heritage sites

The protection of cultural and religious heritage requires regular inspection by public institutions. The legal framework provides for two types of inspection of cultural heritage sites:

1. Inspections conducted by the municipal level; and
2. Inspections conducted by the MCYS.

According to the Law on Construction, the municipal construction inspectors are obliged to report to the central level any constructions observed at cultural heritage sites.⁸⁶ Nevertheless, the OSCE is concerned that, as the examples below demonstrate, municipalities often appear to lack inspectors qualified for assessing the protection of cultural heritage sites and the necessary resources to train the existing ones.

In relation to the issue of inspections conducted by

the MCYS, a Regulation was issued⁸⁷ which, inter alia, sets out minimal standards and procedures for inspecting supervision of any relevant construction works by the MCYS⁸⁸. According to the director of the MCYS department for cultural heritage⁸⁹, the RCCHs (as part of the structure of MCYS) are supposed to conduct inspections on behalf of the MCYS. However, the RCCHs still do not have any specialised inspectors to deal with the inspection of cultural and religious heritage sites.

An example of the difficulties encountered when inspections are not carried out by MCYS is evident from the preparation of the most recent list of cultural heritage assets for temporary protection. The most recent list does not include 77 cultural heritage assets contained on the previous list from 2012⁹⁰. The 77 cultural heritage assets mainly comprised houses from the Ottoman period, old mills etc., located primarily in the western part of Kosovo. According to



St. Kyriake Church

the MCYS, the assets were removed from the current list because of “loss of value” due to damage and lack of maintenance. Many of the cultural heritage assets listed in 2012 had already been severely damaged or destroyed, predominantly due to lack of maintenance, and may not have been inspected when the list was prepared. In some cases, property owners had already demolished the cultural heritage assets in order to commence new constructions, which is an offence under the Law on Cultural Heritage⁹¹ but which remains unpunished to date⁹².

Additionally, neither municipal inspectorates nor RCCHs have plans in place for regular inspections at cultural heritage sites. Rather, inspections are conducted on an ad hoc basis when negative activities have already taken place, instead of ex-officio (preventive) inspections being undertaken to minimize damage to cultural heritage sites and thereby increase the likelihood of any damage being identified early and reversed⁹³.

An example is the unauthorized excavation works

which endangered the foundations of the church of St. Kyriake⁹⁴ located in the historic centre of Prizren town. In May 2011, a Kosovo Albanian property owner started excavation works on his property which is adjacent to the church. Following a complaint by the Serbian Orthodox Church to the Kosovo Police, the municipal construction inspector visited the site the same day and ordered the termination of the works, however the church foundation had already been endangered. As explained by the municipality⁹⁵, the urbanism office had authorized the owner only to “clear the site” and not to excavate. Had the municipal inspector carried out regular inspections of the site, this negative occurrence could have been prevented. At the very least, the municipal inspector should have proactively visited the site once the construction permit had been issued to ensure the terms thereof were being adhered to instead of waiting for a complaint from the Serbian Orthodox Church and then responding.

A more recent example of unauthorized construction

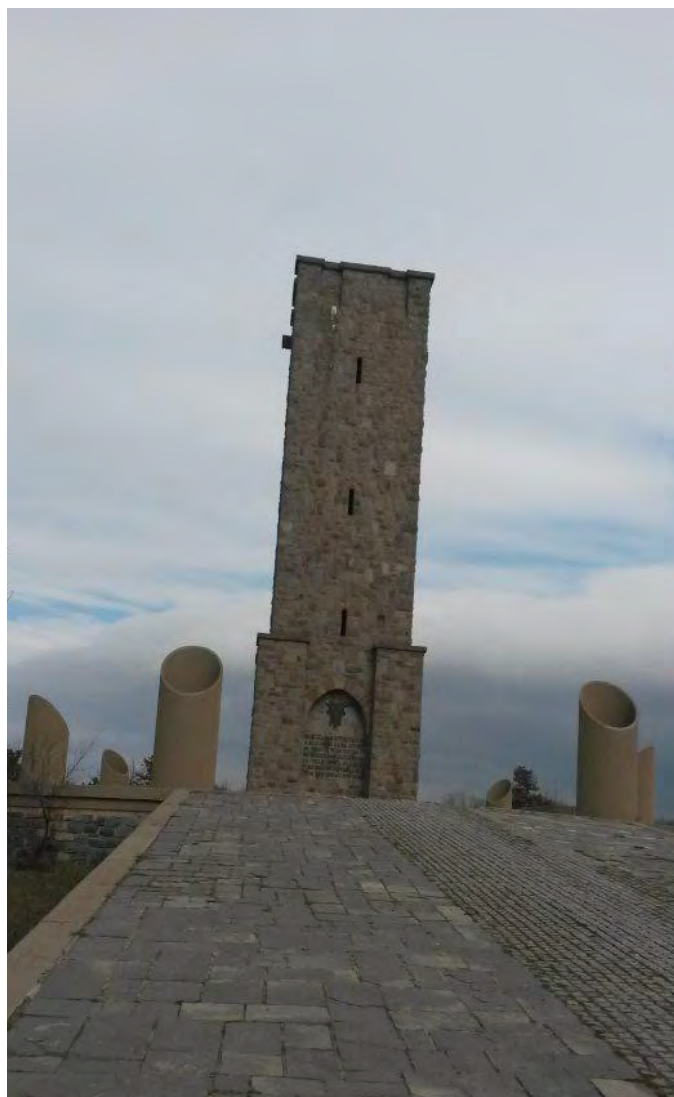
occurred at Visoki Dečani Monastery in Pejë/Peć region. A wooden bridge was constructed near the Monastery without the consent of the Serbian Orthodox Church. The person who constructed the bridge (who appears to have owned the land) did not apply for any permit or even approach the directorate of urbanism at any stage⁹⁶. Only subsequent to a visit from the municipal inspector⁹⁷ did the owner file a request with the directorate of urbanism for construction of a bridge. Regular inspections at SPZs by the municipal inspectors such as in the case of Dečani Monastery, could have brought the illegal construction to the attention of the municipality at an earlier stage and enabled proper procedures to be followed (including obtaining the consent of the Serbian Orthodox Church)⁹⁸.

Further, uncontrolled construction remains a concern affecting cultural heritage sites in Kosovo. Illegal construction activities continue to occur within the SPZs, such as warehouse constructions close to the Gazimestan monument in Obiliq/Obilić municipality and the Church of Presentation of the Virgin in Lipjan/Lipljan municipality. Between 2009 and 2011, the RCCH has addressed around 50 cases of illegal and/or uncontrolled construction⁹⁹ within the historic centre of Prizren to the municipality¹⁰⁰. In addition to the construction permits issued by the municipality, any construction within the historic centre of Prizren requires the final authorization/consent of the RCCH. Regardless, in most cases the parameters set out in the consent issued by the RCCH are not complied with and the municipal construction inspectors fail to intervene.

On a positive note, the IMC has dealt with a number of cases relating to illegal construction in or near SPZs which has elicited some positive results. One such example involves the SPZ of the Church of the Presentation of the Virgin in Lipjan/Lipljan¹⁰¹. In January 2013, a property owner commenced the illegal construction of a warehouse within the boundary of the SPZ which extended beyond the permit issued by the municipality¹⁰². The Secretariat of the IMC issued a request to MESP on 13 August 2013 for demolishing the illegal construction¹⁰³. As a result, the director of inspectorate at MESP, following an inspection of the property, on 15 August 2013, ordered the municipal inspectorate to stop immediately the commercial activities and to demolish the warehouse located in the SPZ, which

duly occurred at the end of August 2013¹⁰⁴.

The MCYS has also acted to ensure a halt to activities which infringed upon a protected cultural heritage site. For example, the Gjakovë/Đakovica municipality initiated construction works, including replacement of old cobblestones within the protected cultural heritage site of Çarshia e Madhe (Old Bazaar). However, the municipality undertook these works without first obtaining the consent of the RCCH. Following public protest by affected shop owners, on 5 November 2012, the MCYS issued a decision to immediately terminate the construction works. On 27 December 2012, the Minister issued a second decision, which allowed for continuation of the construction works, except for the replacement of cobblestones, requiring direct



Gazimestan Monument

supervision of the RCCH and obliging the municipality to provide three concept ideas on the cobblestones design.

In addition, in spring 2013 a fish farm was constructed close to Visoki Dečani Monastery with the consent of the Monastery and all necessary permits and licences were obtained by the applicant¹⁰⁵. The director of urbanism considers this a positive example to be followed in other cases. The issue was briefly discussed by the IMC wherein

it was stated that the fish farm was constructed after obtaining the consent of the Visoki Dečani Monastery.¹⁰⁶

In order to be able to better protect the cultural heritage sites, the MCYS and other relevant bodies shall seek ways either to clearly delegate cultural heritage inspection to the local level and ensure professional training of staff, or to engage central institutions more when it comes to field visits/ inspection.



Çarshia e Madhe [Old Bazaar]

4. ADDITIONAL CONCERNS RELATED TO THE PROTECTION OF NON-ALBANIAN COMMUNITIES' HERITAGE

4.1 Security and protection arrangements

To comply with their human rights obligations, institutions must not only abstain from interfering with the enjoyment of cultural rights by all persons, but also prevent private individuals and groups from obstructing the enjoyment of cultural rights of others, including the right to access and benefit from cultural heritage¹⁰⁷. During the conflict and in the immediate aftermath, many sites of cultural heritage in Kosovo were destroyed. Serbian Orthodox Church sites were targeted in ethnically-motivated violence during the March 2004 riots which led to the severe damage of Serbian Orthodox churches and monasteries. Presently, security threats to cultural heritage sites mostly come from instances of vandalism and theft.¹⁰⁸

While in the past most key Serbian Orthodox Church sites were protected by NATO Kosovo Force (KFOR) or private security guards hired by the MCYS, these days Kosovo Police protection is the key element in ensuring security of these sites. Since February 2009, the Kosovo Police has been implementing an operational order detailing the protocol for provision of security for Serbian Orthodox religious and cultural heritage sites¹⁰⁹. At the beginning, the operational order covered 17 Serbian Orthodox Church sites considered to be the most vulnerable. In 2011 Kosovo Police conducted a baseline analysis and on its basis gradually added numerous other sites to the operational order. In addition, between 2009

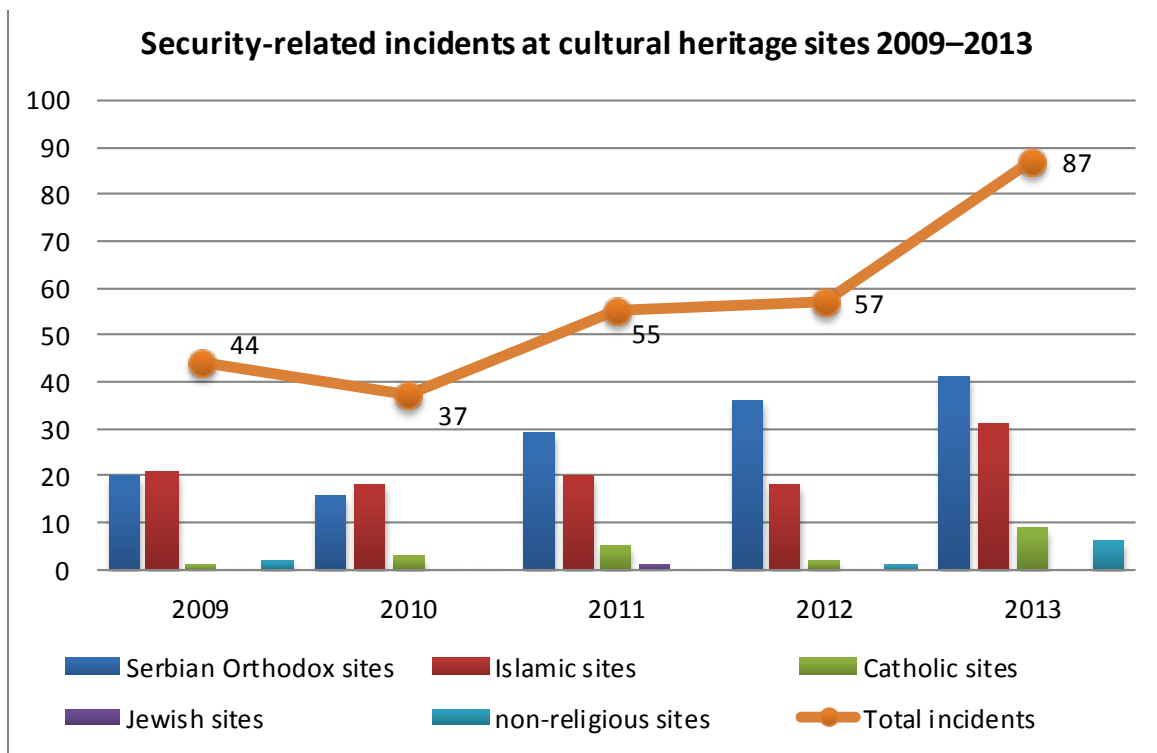
and 2011, i.e. following the original order, KFOR handed over responsibility for the protection of eight other sites to the Kosovo Police¹¹⁰, while another site¹¹¹ was passed on from KFOR to the Kosovo Police in April 2012. In August 2013 the Kosovo Police assumed full responsibilities for the security of Peć Patriarchate, following the gradual reduction of KFOR presence at the site. Currently, only one site¹¹² still remains under KFOR protection. Notably, with the exception of the Ulpiana archaeological site which was included in the 24-hour protection scheme by the Kosovo Police from 2009 to 2012, protection arrangements are only in place for Serbian Orthodox Church sites and Kosovo Serb heritage sites.¹¹³

According to the Kosovo Police, there was an increase in security-related incidents at cultural heritage sites¹¹⁴ in 2011, 2012 and 2013, compared to previous years when a decreasing trend of incidents had been noted (see Graph 1). The increase in security-related incidents affects in particular the Serbian Orthodox Church heritage sites. In total, in 2011 the Kosovo Police recorded 55 security-related incidents at cultural and religious heritage sites, out of which 16 incidents affected sites protected under the operational order.¹¹⁵ Out of these 16 incidents, two occurred at sites under 24-hour protection by the Kosovo Police.¹¹⁶ In 2012, 36 out of a total of 57 incidents¹¹⁷ (63 per cent)

affected Serbian Orthodox Church heritage sites, whereas in 2013, 41 out of a total of 87 incidents (47 per cent) affected Serbian Orthodox Church heritage sites.

motivated cases of burglary of churches (these incidents are qualified either as thefts or damage to religious facilities). In addition, ten reported cases of damage to Serbian Orthodox Church graveyards

Graph 1



Source: Kosovo Police

Based on the OSCE’s monitoring activities, which include interviews with Serbian Orthodox Church officials, Kosovo Police and community representatives, Kosovo Police has conducted regular threat assessments of all sites under the operational order and appear to be fulfilling the protocol for protecting Serbian Orthodox Church cultural heritage sites. Also, as cases of theft and vandalism against heritage sites increased in 2011, compared to 2009 and 2010, Kosovo Police consequently increased the number of patrols at sites which are not secured on a 24-hour basis. Despite this, the number of thefts and acts of vandalism in 2012 remained the same as in 2011.

Whilst the number of security incidents significantly increased during 2013, the OSCE has observed through its monitoring that this sharp increase was primarily as a result of an increase in economically-

occurred in January 2013 alone. These incidents were deemed extraordinary actions that were triggered by one specific event, the removal of a monument commemorating members of the Liberation Army of Preševo, Medveđa and Bujanovac (UÇPMB) who were killed in the 2000–2001 conflict.

In March 2013, the Kosovo Police established a specialized unit for the protection of cultural heritage and religious sites for the protection of cultural heritage, with four sub-units protecting Serbian Orthodox Church sites in Prishtinë/Priština, Mitrovicë/Mitrovica, Pejë/Peć and Prizren regions. This unit provides 24-hour protection to 24 Serbian Orthodox Church and Kosovo Serb cultural heritage sites, and regularly patrol and visit 169 Serbian Orthodox Church cultural heritage sites. In order to ensure that the specialized unit can operate as effectively as possible, the OSCE organized eight



Visoki Dečani Monastery

training sessions across Kosovo. Some 170 police officers were trained on the legal framework governing cultural and religious sites, new responsibilities for the police and communication approaches with the public and clergy.¹¹⁸ Yet, the significant increase in security incidents relating to cultural heritage sites is a worrying trend and it remains to be seen what additional measures the Kosovo Police will take in response.

Based on the OSCE's field monitoring and Kosovo Police reports, most of the incidents at cultural heritage sites appeared to involve break-ins and theft of money or valuable materials. Even if no ethnic motivation is reported, such incidents tend to have a negative impact on the perceptions of security and freedom of movement for affected communities, in particular the Kosovo Serbs. The negative impact on perceptions is even greater when the crimes are committed in areas where the

affected community had previously been a target of ethnically-motivated crimes or when the crimes occurred in an atmosphere of heightened tension, as was the case following the developments in northern Kosovo since July 2011.

In relation to enforcement, the number of arrests/prosecutions in response to security incidents by the Kosovo Police/judiciary is low. In 2012 for example, only 9 arrests were made by the Kosovo Police out of a total of 36 incidents. In addition, the OSCE has observed through its monitoring that the perpetrators of most incidents affecting religious and cultural heritage sites are unknown and therefore no trials were held for those cases in the courts. Although prosecutors have the obligation to follow up regularly on developments of the investigation into the damage to the cultural heritage site, they often fail in this duty. In addition, the OSCE has not recorded any cases in which charges were brought

against perpetrators who illegally constructed on cultural heritage sites or regarding any other violation of the Law on Construction. Having said that, the number of arrests did increase in 2013, with a total of 27 persons arrested.

Two mechanisms for municipalities to address security concerns are through the Municipal Community Safety Councils (MCSC)¹¹⁹ and Local Public Safety Committees (LPSC). Where established, MCSCs are the primary municipal bodies mandated to address the security of communities in numerical minority in a given municipality outside regular security and justice actors, such as Kosovo Police and the judiciary¹²⁰, which includes security incidents at cultural heritage sites. All but four municipalities have established MCSCs¹²¹; however, the effective functioning of the MCSCs varies. LPSCs are established by the police at the request of the local community¹²² and are a mechanism to implement community policing initiatives and improve community safety by bringing together local community members, police officers, local officials and representatives of schools, women and youth. Whilst many municipalities have established LPSCs, which have proven very useful in addressing remedial action for cultural heritage sites¹²³, they are only voluntary mechanisms and their performance depends on whether they convene regularly, whether the sector Kosovo Police officer participates in their meetings and if the minutes of meetings (or findings) are reported to the Station Commander or the Community Policing Coordinator. Some LPSCs cover many villages in one police

sector (with two or three communities) and in many cases the relationships with the Kosovo Police are weak and lack proactive, structured responses from either side.

However, a positive example has been observed by the OSCE in which Kosovo institutions provided redress following security incidents occurring at Serbian Orthodox Church sites. In January 2013, there was a series of attacks on Serbian Orthodox Church religious and cultural heritage sites.¹²⁴ The incidents caused serious concern among Kosovo Serb communities Kosovo-wide, even those who were not directly targeted or whose property was not directly damaged by the attacks. These actions were strongly condemned by senior central- and local-level officials as well as by the OSCE. In response to the attacks, Kosovo institutions allocated a sum of €97,000 for repairs¹²⁵, which was disbursed by the Ministry of Local Government Administration (MLGA). A local NGO, “Raskršće”, was selected and contracted by MLGA to manage the repairs and restoration of the desecrated graveyards/tombstones. All restoration works were completed by July 2013.¹²⁶

Overall however, the OSCE also observed that municipal responses to security incidents, including those related to cultural heritage sites generally occurred on an ad hoc basis and without consistency of approach among municipalities.¹²⁷ Regardless of the motivation behind the incidents, when municipalities fail to respond, perceptions of insecurity for the affected communities increase.

4.2 Infringement of Serbian Orthodox Church’s property rights

Aside from instances of theft and vandalism, cultural heritage in Kosovo – especially of the Serbian Orthodox Church – is also under threat by several municipal decisions which fail to comply with the legal framework which protects cultural heritage.

An example is the Rahovec/Orahovac municipality’s interference with the property of the Zočište Monastery¹²⁸ by excavating part of its land for the purpose of widening a local road and thus creating a risk of landslide which could potentially damage the graveyard within the Monastery estate¹²⁹. The municipality conducted geodesy measurements

which confirmed the municipality’s interference and subsequently suspended the road construction until a mutually beneficial agreement could be reached with the Monastery. In a letter to the competent Serbian Orthodox Church authorities, the municipality requested their agreement for the continuation of the works and offered to build a support wall along the affected Monastery property as compensation.¹³⁰ The Bishop of Raška-Prizren Eparchy replied requesting monetary compensation for the land taken in addition to the support wall¹³¹. Following this correspondence, the municipality



Peć Patriarchate

continued with the road construction and offered the Serbian Orthodox Church title to part of a parcel of land adjacent to the Monastery which is already being used by the Monastery as a parking area, in compensation for the “expropriation of the Monastery property which is taken from the Monastery for the purpose of construction and widening of the public road.”¹³² The road was completed in September 2011. However, construction of the support wall did not commence until 21 October 2013.¹³³

In this case the municipality commenced the works without seeking the agreement of the Monastery’s representatives. This clearly violates the Law on Special Protective Zones¹³⁴, as Article 7.1 of the law classifies the Monastery as a SPZ and thus the municipality would have had to “seek the agreement of the Serbian Orthodox Church” prior to carrying out any activities which may interfere with the zone and thereafter refer the matter to the IMC for review

if agreement is not reached¹³⁵. The deprivation of the Monastery’s property in this case constitutes de facto expropriation. This principle is further re-affirmed by the Law on Expropriation.¹³⁶ The offered land swap by the municipality raises an additional concern. At the time of the land swap, the applicable legislation did not foresee the possibility of an exchange of ownership with the municipality and any other legal or physical person¹³⁷, and therefore the adequacy of the land swap offered as compensation seems to run counter to the then applicable Kosovo institutions’ legal obligations.

Such unlawful interference with property rights outside of the relevant legal framework raises serious concerns particularly that, as the road construction has already been completed, the Monastery has been left in a vulnerable position and may be left with no choice but to accept the offer of land swap made by the municipality. The commencement of road

works prior to the fulfilment of all legal obligations in relation to protection of SPZs and the compensation obligations pursuant to the Law on Expropriation of Immovable Property¹³⁸ can lead to serious breaches of property rights. An implied agreement between the parties is not sufficient to outweigh the fulfilment of legal requirements. Noteworthy, the agreement reached constitutes a political rather than a legal solution of the case.

In another case, during 2011 and 2012 Pejë/Peć municipality implemented a European Union funded project focusing on tourism development in Rugova valley, which foresaw the development of existing cycling trails and walking paths, parts of which extend into the SPZ surrounding the Peć Patriarchate. The municipal officials wrote to the Peć Patriarchate about the project and requested their consent¹³⁹ in accordance with the Law on Special Protective Zones which requires the municipality to obtain the consent of the Serbian Orthodox Church prior to carrying out any activities which may interfere with the zone¹⁴⁰; however, the Patriarchate responded negatively to the request, reasoning that the project could result in increased numbers of individuals passing through the zone, which could threaten the security of the site. Furthermore, the Patriarchate pointed out that the existing paths are located within a forest zone where the municipality has in the past failed to stop illegal woodcutting.¹⁴¹ Subsequently, the municipality referred the matter to the MCYS and to the IMC to facilitate a solution,¹⁴² as is required pursuant to Article 6 of the Law on Special Protective Zones where there are cases of dispute between the parties involved. The facilitator (co-chair of the IMC)

had several meetings with the Mayor and Serbian Orthodox Church representatives to find a solution, but works were not stopped despite the ongoing disagreement. Whilst the Serbian Orthodox Church eventually ceased objecting to the works which completed in 2012, the municipality clearly violated its obligations under the Law on Special Protective Zones as:

1. The municipality failed to obtain the explicit agreement of the Serbian Orthodox Church prior to the commencement of the project, thus clearly violating Article 7.1 of the Law on Special Protective Zones. This is more concerning in circumstances where the expropriation of privately owned properties was involved; and
2. The municipality continued with the construction of the project despite the fact that the IMC did not succeed in facilitating an agreement with the Serbian Orthodox Church. This is a violation of Article 6 of the Law on Special Protective Zones.

Although communication between the Serbian Orthodox Church and municipalities has notably improved and increased over the past few years¹⁴³, the examples mentioned above illustrate that there is still a need to establish clear procedures and time-frames for municipalities to consult the Serbian Orthodox Church on restricted activities within the SPZs and for the Serbian Orthodox Church to respond. A further concern is that such cases may trigger similar actions and thus result in further unlawful interference with Serbian Orthodox Church properties also in other municipalities in Kosovo.

4.3 Promotion of cultural heritage

In addition to preserving and restoring cultural heritage sites, institutions have an obligation also to promote cultural heritage either through education or public-awareness campaigns¹⁴⁴ on the right to take part in cultural life and, by analogy, the corresponding need to respect cultural heritage and cultural diversity. Such promotional activities would help to create conditions conducive to constructive inter-cultural relations based on mutual respect, understanding and tolerance.

Some such efforts by Kosovo institutions to date include the annual participation by MCYS in the European Heritage Days¹⁴⁵, and the establishment of the inter-ministerial working group for communication and implementation of SPZs, the organization of a Kosovo-wide outreach campaign and publication of a brochure on Protective Zones¹⁴⁶ and SPZs in March 2010. In addition, various municipalities in Pejë/Peć and Prizren regions have started working on cultural heritage

management. The Local Cultural Heritage Plan 2012–2015 in Prizren¹⁴⁷ attempts to protect and conserve cultural and natural heritage, integrate cultural and natural heritage in contemporary life and local development, and educate, train and raise awareness on cultural and natural heritage. The Council of Europe, as part of a joint project with the European Union¹⁴⁸, supported six municipalities in the Pejë/Peć region to establish an office for the Promotion of Heritage Management – West (PHM)¹⁴⁹. This aims to identify the most appropriate strategies to advance the objectives in the context of developing a sustainable heritage tourism component within an overall tourism strategy for the region. In addition, at the end of 2012, the MCYS established a division on integrated cultural heritage management within the ministry with the aim to develop integrated management plans and strengthen links between cultural heritage and tourism, yet the activities of this division throughout 2013 were minimal¹⁵⁰. As these examples illustrate, such promotional initiatives for the promotion and preservation of tangible immovable cultural heritage of non-Albanian communities are rarely initiated by Kosovo institutions, and have rather been led mostly by international organizations, such as the Council of Europe, the OSCE and the European Union Office in Kosovo.

More recently however, one project has been identified in which a Kosovo institution has been directly involved and has participated in the financing in conjunction with the NGO “Hanarin”. On 6 November 2013, a Memorandum of Understanding for the Implementation of the project “Promotion of Cultural Values and Identification of Heritage” was signed by the MLGA and the Hani i Elezit/Elez Han municipality. Pursuant to this agreement, Hani i Elezit/Elez Han municipality received €10,000 to finance a project aimed at promoting cultural values and identifying cultural heritage in the municipality¹⁵¹. The project involved an outreach campaign¹⁵² and launching¹⁵³ of a catalogue, which included over 170 exhibits of different types, including a number of immovable heritage objects.

On a related note, in previous years a lack of public awareness and civil engagement related to cultural heritage protection and its socio-economic value has been observed. Further, the strong opposition to the promulgation of the Law on the Historic Centre of Prizren and the Law on the Village of Velika Hoča/Hoçë e Madhe illustrates that cultural heritage issues in Kosovo are highly politicized and a common understanding of the benefits of cultural heritage – regardless of its origin – for all communities in Kosovo is yet to be achieved.

5. CONCLUSION

The Kosovo legal framework on cultural heritage protection is generally in line with relevant international human rights standards. However, some responsible institutions, such as the KCCH and the inter-ministerial working group for communication and implementation of SPZs, remained to a large extent ineffective. Further, throughout the Law on Cultural Heritage and its sub-laws the term “competent institution” is used rather than naming a specific agency which leaves the responsibilities of different institutions unclear and not defined. The resulting room for different interpretations is a particular problem in the area of inspections, as it is unclear whether inspection is the responsibility of central or municipal institutions. While there are many stakeholders in the field of cultural heritage protection, a clear co-ordination mechanism is missing and information-sharing between relevant institutions occurs on an ad hoc basis only. Despite the cross-sector nature of cultural heritage protection, the co-operation between local and central-level authorities and between different municipal departments and different line ministries remains limited. Limited capacities of staff and lack of political commitment further hampered the implementation of the legal framework on cultural heritage protection.

The MCYS has yet to compile a comprehensive inventory of immovable tangible cultural heritage assets in Kosovo and a list of cultural heritage assets under permanent protection. In the absence of such inventory process, cultural heritage sites which are not part of SPZs are particularly vulnerable to demolitions, acts of vandalism, theft and other destructive activities. This particularly affects cultural heritage of non-Albanian communities. Aside from

instances of theft and vandalism, cultural heritage in Kosovo – especially of the Serbian Orthodox Church – is at risk by several municipal decisions which infringe upon property rights or undermine the protection of cultural heritage.

Further, the integration of cultural heritage sites in local spatial plans remains a concern. Not all municipalities have adopted municipal spatial plans, which are essential for regulating construction and development around SPZs and other cultural heritage sites. Construction works within and adjacent to SPZs continue to occur. Uncontrolled construction in close vicinity to other cultural and religious heritage sites can also be observed regularly and, due to a lack of inspectors and insufficient municipal resources, may not be addressed adequately. Institutions’ initiatives to promote the preservation of tangible immovable cultural heritage, especially of non-Albanian communities, are very limited. A common understanding of the benefits of cultural heritage – regardless of its origin – for all communities in Kosovo is widely missing.

With all these challenges remaining, the effectiveness of the local-level institutions in applying international human rights standards related to cultural heritage protection remains limited. It remains to be seen what changes the amended Law on Cultural Heritage will entail and how these together with the recent establishment of the division on integrated cultural heritage management within the MCYS will contribute to balance cultural and religious heritage protection with the rights of individuals and communities living around the sites and increase both access to and benefits of cultural heritage protection for all communities in Kosovo.

6. RECOMMENDATIONS

To the Ministry of Culture, Youth and Sports:

- Compile a comprehensive inventory of immovable tangible cultural heritage assets in Kosovo and a list of immovable cultural heritage assets under permanent protection, as per Article 4 of the Law on Cultural Heritage.
- Ensure professional training of municipal inspectors on cultural heritage and RCCH inspectors for protection of cultural heritage sites. Ensure advanced training for the newly established Kosovo Police unit on protection of cultural heritage, particularly once the new Law on Cultural Heritage is brought into effect.
- Advise municipalities, including through public statements, that security incidents at cultural heritage sites, in particular of non-Albanian communities, shall be publicly condemned.
- Publicly condemn cases where cultural heritage was infringed through illegal constructions.
- Propose amendments to the Law on Cultural Heritage to ensure better oversight towards local-level institutions' actions to protect and promote cultural heritage, clearer definition of roles and division of tasks between the central- and local-level institutions, inter-ministerial co-operation and co-ordination on issues related to cultural heritage protection and clearer definition of cultural heritage inspection obligations for both the municipal and MCYS inspectors.
- Co-ordinate regular exchange of information (projects, security issues) between central-level institutions involved in the implementation of cultural heritage legislation, including reconstruction activities at cultural heritage sites in Kosovo and municipal departments.

To the Assembly of Kosovo:

- Ensure that the KCCH is fully staffed and functional, including representation of non-Albanian communities in this body.

To the Kosovo Police:

- Continue protection of activities at cultural heritage sites through regular patrols and implementation of the operational order.
- Respond to security incidents through increased patrols.
- Provide regular patrols also at non-Serbian Orthodox Church cultural heritage sites affected by security incidents.
- Strengthening co-ordination and co-operation with the MCSCs, the LPSCs and community representatives with the aim to reassure affected communities.

To municipalities:

- Condemn all security incidents affecting cultural heritage sites, in particular of non-Albanian communities, and undertake timely outreach activities with the aim of reassuring affected communities.
- Provide support to the Kosovo Police through regular forums such as the Municipal Community Safety Councils, in their efforts to respond effectively and proactively to security incidents involving cultural heritage sites.
- Demonstrate commitment to respect/implement mechanisms for the protection of cultural heritage sites envisaged by relevant laws and regulations.
- Ensure participation of the Serbian Orthodox Church at early stages of constructions by municipalities which involve restricted activities within a SPZ in order to seek its agreement to the proposed construction/development pursuant to Article 6 on the Law on Special Protective Zones.
- Finalize the spatial planning documents as required under the Law on Spatial Planning¹⁵⁴, in order to ensure that the Law on Special Protective Zones and the Law on Cultural Heritage are properly implemented resulting in the legitimate protection of cultural heritage sites¹⁵⁵.

- Put a plan in place to ensure that regular inspection of cultural heritage sites occurs by municipal inspectors to ensure compliance with the obligation to report to the central level any constructions observed at cultural heritage sites, to ensure quicker responses to citizens' requests for issuance of construction permits within the SPZ, to avoid further disputes regarding illegal constructions and to minimize the damage to cultural heritage sites (thereby increasing the likelihood of any damage being identified early and reversed).¹⁵⁶

To the regional centres for cultural heritage:

- Put a plan in place to ensure that regular inspection of cultural heritage sites occurs in accordance with the MCYS Regulation on Authorizations and Competences of Inspections for Cultural Heritage.¹⁵⁷

Endnotes

1. See Article 1, United Nations Educational Scientific and Cultural Organization (UNESCO) Convention Concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972. Tangible heritage can again be divided into movable and immovable heritage.
2. See Article 2, UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 17 October 2003.
3. UNESCO defines "natural heritage" as "natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; or natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty". See Article 2, UNESCO, note 1, *supra*.
4. See Article 1, European Landscape Convention, ETS No. 176, Florence, 20 October 2000.
5. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, to the Human Rights Council, UN Doc. A/HRC/17/38, 21 March 2011, p. 4.
6. See Article 27, Universal Declaration of Human Rights (UDHR), United Nations General Assembly Resolution 217 A (III), 10 December 1948. See also Article 15, International Covenant on Economic, Social and Cultural Rights (ICESCR), United Nations General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 3 January 1976.
7. See Article 27, International Covenant for Civil and Political Rights (ICCPR), United Nations General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976.
8. See paragraph 48, United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 21: The Right of everyone to take part in cultural life, UN Doc. E/C.12/GC/21, 21 December 2009.
9. M. Sepúlveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (Oxford: Intersentia, 2003), p. 157–208.
10. The rights provided by the ICESCR give greater depth to those same rights as provided in the UDHR, including through the extensive and authoritative commentary of the independent UN body of experts in the CESCR, which oversees implementation of the ICESCR. (See in particular CESCR General Comment No. 21, note 8, *supra*.) The CESCR has

previously issued concluding observations on the extent of implementation of the rights provided in the ICESCR in Kosovo, and priority areas for future measures to respect, protect and fulfil those rights; see Concluding Observations of the CESCR, on the Document submitted by UNMIK, UN Doc. E/C.12/UNK/CO/1 (1 December 2008).

11. See Article 5, Framework Convention for the Protection of National Minorities, ETS No. 157, 1 February 1995.
12. See Articles 18, 19 and 26, UDHR, note 6, *supra*.
13. For example, through the UNESCO Convention on Cultural Diversity, 2 November 2001.
14. The role of communities and their involvement in nomination, management and monitoring of cultural heritage was increased over the years under the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, note 1, *supra*. In 2007, the World Heritage Committee introduced an additional strategic objective, calling on States to enhance the role of communities in the implementation of the Convention. Also see paragraphs 39 and 40 of the World Heritage Committee Operational Guidelines for the Implementation of the World Heritage Convention, 08/01, January 2008. Further, in its 32nd session, at the time of adoption of the Convention for the Safeguarding of the Intangible Cultural Heritage, note 1, *supra*, UNESCO specifically described the role of communities vis-à-vis the intangible cultural heritage, recognizing that: "communities, in particular indigenous communities, groups and, in some cases, individuals play an important role in the production, safeguarding, maintenance and recreation of the intangible cultural heritage". Furthermore, see paragraphs 14, 15 and 65, Advisory Committee on the Framework Convention for the Protection of National Minorities. Commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs. Adopted on 27 February 2008. ACFC/31DOC(2008)001, Strasbourg, 5 May 2008. In paragraph 65 the Advisory Committee elaborates that Articles 5, 6 and 15 of the Framework Convention for the Protection of National Minorities "protect both the right for persons belonging to minorities to preserve and develop their own cultural heritage and identity and the right for them to take part effectively and interact in mainstream cultural life, in a spirit of tolerance and intercultural dialogue."
15. See Preamble, Framework Convention on the Value of Cultural Heritage for Society. ETS No. 199, Faro, 27 October 2005.
16. See Articles 4, 12 and 14, *ibid*.
17. See in particular UNESCO Charter on the Preservation of Digital Heritage, 15 October 2003.
18. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, to the Human Rights Council, note 5, *supra*, p. 16.
19. See Article 2, ICCPR, note 7, *supra*; Article 8, UDHR, note 6, *supra*; paragraph 72, CESCR General Comment No. 21, note 8, *supra*. See also Article 11, Fribourg Declaration on Cultural Rights, 7 May 2007.
20. UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law, United Nations General Assembly Resolution 60/147, 16 December 2005.
21. Law No. 03/L-039 on Special Protective Zones, 15 June 2008.
22. Law No. 02/L-88 on Cultural Heritage, 6 November 2006 (Law on Cultural Heritage).
23. MCYS Regulation No. 01-2008 on Procedures for Excavations-Investigation, MCYS Regulation No. 02-2008 on Public access on Cultural Heritage in Private Ownership, MCYS Regulation No. 03-2008 on Conservation and Restoration Activities of Cultural Heritage, MCYS Regulation No. 04-2008 on Authorizations and Competences of Cultural Heritage Inspection, MCYS Regulation No. 05-2008 on Registration, Documentation, Assessment and Selection of Cultural Heritage for Protection, MCYS Regulation No. 06-2008 on Security Measures for Movable Heritage, MCYS Regulation No. 07-2008 on Licensing Procedures for Movable Heritage Traders.
24. Law No. 04/L-066 on Historic Centre of Prizren, 9 July 2012.
25. Law No. 04/L-062 on the Village of Hoçë e Madhe/Velika Hoça, 9 July 2012. The adoption of the Law was highly politicized by the Mayor and civil society representatives regarding the role of the Serbian Orthodox Church as member of the village council in policy-making on Velika Hoça/Hoçë e Madhe's spatial planning and protection of its cultural heritage. Velika Hoça/Hoçë e Madhe is a settlement, predominantly inhabited by Kosovo

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- Serbs, in Rahovec/Orahovac municipality (majority Kosovo Albanian community). The adoption of a specific law to give the village the status of a SPZ is envisaged by the Law on Special Protective Zones, note 21, supra.
26. The adoption of these two laws was highly politicized and faced strong opposition from municipal representatives and some civil society organizations in both Prizren and Rahovec/Orahovac municipalities.
27. Draft Administrative Instruction on the establishment, selection, responsibilities and the operation of the Council for Cultural Heritage; and Draft Administrative Instruction on the establishment, selection, responsibilities and operation of the Council on Hoçë e Madhe/Velika Hoça village.
28. See Annual Work Plan of the government for 2012, available at Office of the Prime Minister webpage: http://www.kryeministri-ks.net/repository/docs/Plani_i_dokumenteve_Strategjike_2012.pdf (accessed 26 March 2014).
29. Director of the MCYS department for cultural heritage, interview, 14 October 2013. The working group is made up of representatives from different Kosovo institutions (including MCYS), municipal officials, and representatives from tax administration.
30. The amended Law on Cultural Heritage is expected to be promulgated in 2014.
31. Meetings of the working group on the draft Law on Cultural Heritage, 16–22 October 2013.
32. See Article 22, Law No. 03/L-040 on Local Self Government, 15 June 2008.
33. See Articles 2, 5 and 7, Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, 15 June 2008.
34. See Law No. 04/L-174 on Spatial Planning, 7 September 2013. This Law repeals Law No. 2003/14 on Spatial Planning, 10 September 2003 and Law No. 03/L-106 Amending Law on Spatial Planning No. 2003/14, 17 November 2008. However the latter Laws are still relevant for this report as they represented the applicable law for many of the examples outlined in the Report.
35. See Articles 5, 21 and 25, Law No. 04/L-110 on Construction, 19 June 2012.
36. The KCCH was established in 2010, Article 4.8 of the Cultural Heritage Law, note 22, supra.
37. See Articles 4.3 and 4.4, Cultural Heritage Law, note 22, supra.
38. See Article 4.9, *ibid*.
39. See Article 5.2, *ibid*. Article 4.3 also provides that KCCH is tasked to review, adopt or reject submissions regarding cultural heritage assets proposed for permanent protection.
40. See KCCH website, <http://mem.rks-gov.net/?cid=2,1> (accessed on 26 March 2014).
41. Article 4.8, Cultural Heritage Law, note 22, supra, stipulates that the Council consists of seven members appointed for a three-year mandate by the Assembly of Kosovo respecting the ethnic composition in Kosovo.
42. Article 14, note 24, supra.
43. See European Union Office in Kosovo / European Union Special Representative in Kosovo, “The First Regional Cultural Heritage Centre in the Balkans opens in Prizren” http://www.eeas.europa.eu/delegations/kosovo/press_corner/all_news/news/2011/20110916_en.htm (accessed on 26 March 2014).
44. Pursuant to Article 4, Law on the Village of Velika Hoça/Hoçë e Madhe, note 25, supra.
45. Director of the MCYS department for cultural heritage, in-person interview, 18 December 2013. Although the working group met regularly, its most meaningful achievement was a Kosovo-wide outreach campaign including the publication of a brochure on Protective Zones and SPZs. Limited capacities of staff and lack of political commitment were cited as the main obstacles to progress on other tasks.
46. See Article 4, Law on Special Protective Zones, note 21, supra.
47. Members of the IMC included: MCYS, KIPM, Leposavić/Leposaviq-based Institute for the Protection of Monuments, Serbian Orthodox Church, Council of Europe, UNESCO and OSCE.
48. MESP Administrative Instruction No.03/2013 on the Implementation and Monitoring Council, 12 February 2013.
49. See Article 2, *ibid*.
50. The co-chair to the IMC (the Greek Ambassador to Kosovo) is also the EU Facilitator on issues relating to the protection of the Serbian Orthodox Church religious and cultural heritage.
51. See note 104, *infra*.
52. See Council of Europe report “Advisory Committee on the Framework Convention for the Protection of National Minorities” p. 22–23. Available at: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Kosovo_en.pdf.
53. In case of security incidents at cultural heritage sites (see Chapter 4.1 for more detailed information).
54. They have a special focus on spatial planning and SPZs.
55. In addition to municipal departments for culture, other municipal departments, i.e. for urbanism and spatial planning, also contribute to the protection and promotion of cultural heritage.
56. Chief of Cultural Heritage Division, Ministry of Culture, Youth and Sports, OSCE workshop on “Cultural heritage legislation: implementation and challenges”, Pejë/Peć, 19 June 2012.
57. See Chapters 3–5 below.
58. See European Union/Council of Europe Joint Programme, Support to the Promotion of Cultural Diversity in Kosovo, Guidelines for Inventories of Cultural Heritage Assets, February 2011, p. 9.
59. *Ibid*, p.9.
60. Article 3, Law on Cultural Heritage, note 22, supra.
61. Article 4, *ibid*. The director of the MCYS department for cultural heritage has stated that MCYS is ready to proceed in line with the Law on Cultural Heritage once the KCCH becomes functional (written correspondence, 17 February 2014).
62. Article 4.4, *ibid*.
63. These two issues were cited by the directors of the RIPMs during the OSCE sponsored roundtables on protection of cultural heritage, June 2012.
64. Director of the MCYS department for cultural heritage, written correspondence, 17 February 2014.
65. *Ibid*.
66. Article 3.6, Law on Cultural Heritage, note 22, supra.
67. Law on Special Protective Zones, note 21, supra.
68. See Article 2, *ibid*.
69. See Article 3, *ibid*.
70. See Article 12, MESP Administrative Instruction on the Implementation and Monitoring Council, note 48, supra.
71. MESP Spatial Plan of Kosovo 2010–2020, June 2010.
72. A teqqe is at the same time a funeral vault and a house of prayer for Sufi Shia Muslims (dervishes). The teqqe hosts the coffin of the sheikh, or religious leaders, usually of the teqqe’s founder.
73. Pejë/Peć municipality drafted the MDP in co-operation with the regional institute for the protection of monuments. Both the MDP and the UDP were approved by the MESP in early 2007.
74. Law Amending the Law on Spatial Planning, note 34, supra.
75. The MA decision was taken on 3 March 2011. Of note, the proposal to include the Peć Patriarchate as a SPZ in the municipal spatial plans was approved with 22 votes out of 37 MA members present at the session.
76. This includes Deçan/Deçane, Gjakovë/Đakovica, Istog/Istok, Junik, Mitrovicë/Mitrovica, Obiliq/Obilić, Pejë/Peć, Prizren and Vushtrri/Vučitrn.
77. A number of cultural heritage objects are located in that zone, including Fatih Mosque, Great Hammam, Ethnological Park, Clock Tower and Bazaar Mosque. The municipal directorate of urbanism drafted a project into the Urban Regulatory Plan which involves the restoration, preservation and inclusion of the historic zone which was reviewed by the MCYS. This information was provided to OSCE by an official from the department of urbanism, Prishtinë/Priština municipality, oral interview, 22 October 2013.
78. Official from department of urbanism, Prishtinë/Priština municipality, oral interview, 22 October 2013.
79. See Article 5, Law on Special Protective Zones, note 21, supra.
80. MESP Spatial Plan of Kosovo 2010–2020, note 71, supra, p. 179–180.
81. *Ibid*, p. 130.
82. This was reported to the OSCE by the director of urbanism, Lipjan/Lipljan municipality, on 4 September 2013. Since January 2013, the OSCE has been advocating continuously for the integration of the SPZ in the municipal spatial plans. The process of revision and amendment of the
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MDP and the UDP of Lipjan/Lipljan municipality ended on 24 July 2013 with the final approval by the Municipal Assembly.

83. *Ibid.*

84. On 21 May 2013, the Lipjan/Lipljan municipal director of urbanism met with the priest of the local Serbian Orthodox church of the Presentation of the Virgin at the premises of the municipality. The meeting had been facilitated by the OSCE, following previous discussions between the director and the OSCE regarding the process of revision and amendment of the MDP and the UDP.

85. See note 104, *infra*, for the IMC's involvement in the matter.

86. See Article 33.3, Law on Construction, note 35, *supra*. The municipal construction inspectors are also permitted to order the construction permit possessor to "demolish a building if it has been determined that there is an irreparable irregularity that endangers the stability of the building, the stability of neighbouring construction works or otherwise puts human life at risk" (Article 34). In addition, municipalities are obliged to assess their internal resources and capacities for issuance of construction permits and shall propose the construction permit fees (Article 38.5).

87. Article 38.4, Law of Construction, note 35, *supra*, provides that the Ministry is obliged to issue the necessary Administrative Instructions for the implementation of the Law to include minimal standards and procedures for inspecting supervision of construction works within its competency under the law.

88. See MCYS Regulation No.04/2008 on Authorizations and Competences of Inspections for Cultural Heritage, note 23, *supra*, which foresees inspections conducted by MCYS.

89. Director of the MCYS department for cultural heritage, in-person interview, 20 May 2013.

90. The new list of cultural heritage sites contains 45 archaeological cultural heritage assets, 77 architectural cultural heritage assets and, for the first time, 200 movable cultural heritage assets. See MCYS, "Temporary List of Cultural Heritage Monuments under Protection is Signed", <http://www.mkrs-ks.org/?page=2,6,655> (accessed on 26 March 2014). The previous list of cultural heritage assets under temporary protection was signed by the Minister for Culture, Youth and Sports on 1 October 2012 which contained 1,181 cultural heritage assets and was applicable for one calendar year.

91. Article 11.2, Law on Cultural Heritage, note 22, *supra*.

92. *Ibid.*

93. OSCE has been informed that, whilst no regular inspections are carried out, RCCHs – as instructed by MCYS – regularly monitor project activities in relation to cultural heritage sites and report them to the relevant municipalities, i.e. municipal inspectorates and directorates of urbanism. Source: director of the MCYS department for cultural heritage, written correspondence, 17 February 2014.

94. The Church of St. Kyriake (known among the Kosovo Serbs as Holy Sunday church) was built in the XIV century and fully restored in the 1960s. Its interiors, including wall paintings were damaged by fire during the March 2004 riots in Kosovo. The church is continuously guarded by the Kosovo Police.

95. Director of urbanism and spatial planning, Prizren municipality, in-person interview, October 2013.

96. Director of urbanism, telephone interview, 29 July 2013.

97. On 25 and 26 July, the director of inspection visited the site and spoke to the owner who indicated that he did not intend to build any additional constructions. Director of inspection, telephone interview, 29 July 2013.

98. This construction activity inside the SPZ of the Visoki Dečani Monastery was discussed at the 6th meeting of the IMC on 10 September 2013. The Minister for Environment and Spatial Planning stated that he would meet with the mayor of Deçan/Deçane municipality directly after the IMC meeting and he would raise the issue of the new construction activity previously raised by the Serbian Orthodox Church.

99. These are mostly constructions of private houses either without permit or exceeding the parameters set in the permit.

100. Director of the RIPM, Prizren region, in-person interview, October 2013.

101. Church of the Presentation of the Virgin is on the list of sites defined by SPZ pursuant to Article 7 of the Law on Special Protective Zones, note 21, *supra*.

102. The property owner had obtained from the municipality a permit for

technical conditions for the construction of a small temporary structure for dealing with administrative matters of the company. The municipality notified the Serbian Orthodox Church about the request, who expressed disagreement with the construction activities within the SPZ. The matter was then forwarded to the IMC for review.

103. Recommendation of the director of inspectorate of MESP dated 15 August 2013.

104. The demolition of the illegally constructed warehouse was reported at the 6th IMC meeting on 10 September 2013.

105. Director of urbanism, telephone interview, 29 July 2013.

106. As reported during the 6th IMC meeting on 10 September 2013.

107. As stemming from Article 15, ICESCR, note 6, *supra*.

108. According to Kosovo Police statistics and OSCE field monitoring.

109. See Article 7, Law on Special Protective Zones, note 21, *supra*.

110. Gazimestan monument on 18 March 2010, Gračanica Monastery on 23 August 2010, Sokolica Monastery on 25 September 2010, Zočište Monastery (Sveti Damjan i Kuzma) on 3 November 2010, Budisavci Monastery on 22 November 2010, Gorioč Monastery on 15 December 2010; and Holy Archangels Monastery on 10 May 2011.

111. Devič Monastery in Skenderaj/Srbica municipality.

112. Visoki Dečani Monastery in Deçan/Deçane municipality.

113. After a Kosovo Police risk assessment in 2013, the Ulpiana archaeological site was excluded from the 24-hour protection by Kosovo Police.

114. Sites other than Serbian Orthodox Church and Kosovo Serb heritage sites were called cultural heritage sites in Kosovo Police reports on an ad-hoc basis. None of these sites received special protection under the operational order.

115. The OSCE's field monitors identified 58 incidents affecting all sites in the same period.

116. The two incidents which occurred on sites under 24-hour protection were thefts. On 13 April 2011, some 14 square metres of lead cover were discovered as missing on the roof of the Serbian Orthodox Church of Bogorodica Ljeviška in Prizren. Kosovo Police have in the meantime presented photographs as evidence that the lead had already been missing from the roof at the moment security of the site was handed over to them. On 15 May, the statue of Emperor Dušan was stolen from the Manastir Sveti Arhangelj (Holy Archangels Monastery) in Prizren municipality.

117. Contrary to the Kosovo Police statistics, the OSCE's field monitors identified 71 incidents affecting all sites in the same period. The discrepancy is likely due to the fact that the Kosovo Police's categorization of what represents an incident affecting cultural heritage assets differs to the OSCE's categorization. In addition, not all security incidents affecting cultural heritage assets are reported to the Kosovo Police.

118. See OSCE website, "OSCE to train Kosovo Police on protection of cultural and religious heritage" <http://www.osce.org/kosovo/102830> (accessed on 26 March 2014).

119. MCSCs are mandatory municipal bodies, established under Law No. 03/L-035 on Police, 4 June 2008. According to Article 7(3), an MCSC is an "advisory body chaired by the municipal president, with membership representing all communities within the municipality"; Article 7(4) specifies that it is mandated "to develop awareness of the nature of crime, disorder and violent behaviour in the local community, to identify the local concerns regarding public safety and security, and to recommend action plans to address those concerns locally through the cooperative efforts of municipal authorities, local communities and the Police".

120. See OSCE Report, Municipal Responses to Security Incidents Affecting Communities in Kosovo and the role of Municipal Community Safety Councils December 2011. Available at <http://www.osce.org/kosovo/86766> (accessed on 26 March 2014). As the main consultative body of a municipality to address security issues affecting communities, MCSCs are to be established in every municipality and must ensure equitable representation of all "ethnic communities" residing in that municipality as well as other relevant stakeholders. See Articles 1 and 3 of Administrative Instruction No. 08/2009 Ministry of Internal Affairs (MIA) - 02/2009 Ministry of Local Government Administration (MLGA) for Municipal Community Safety Councils, 20 March 2009.

121. Zvečan/Zveçan, Leposavić/Leposaviq, Mitrovicë/Mitrovica and Zubin Potok.

122. OSCE, Local Public Safety Committee, available at <http://www.osce>.

org/kosovo/74732 (accessed on 26 March 2014)

123. A total of 38 LPSCs have been established in 17 municipalities.

124. There were reports of damage to over 150 Serbian Orthodox gravestones, as well as incidents of arson and graffiti targeting Serbian Orthodox churches. The incidents occurred in the municipality of Fushë Kosovë/Kosovo Polje, Klokot/Klokot, the villages of Plementin/Plementina and Milloshevë/Miloševo in the municipality of Obiliq/Obilić, the village of Prelluzhë/Priluzhje in Vushtrri/Vučitrn municipality, the village of Suvo Grllo/Syriganë in the municipality of Skenderaj/Srbica as well as in the historic centre of Prizren. Furthermore, the Serbian Orthodox Church chapel of the Milloshevë/Miloševo graveyard was set on fire.

125. The municipality of Fushë Kosovë/Kosovo Polje allocated €20,000, whereas €77,000 were allocated by the Kosovo government.

126. Head of NGO “Raskršće”, oral interview, 26 July 2013. Approximately 150 tombstones were repaired. The NGO re-directed the €30,000 savings to clean selected Serbian Orthodox Church graveyards. OSCE’s field teams visited the sites during July 2013 and confirmed the reparation works had been completed in all five regions.

127. See OSCE Report, Municipal Responses to Security Incidents Affecting Communities in Kosovo and the Role of Municipal Community Safety Councils (2011) at: <http://www.osce.org/kosovo/86766> (accessed on 26 March 2014).

128. The Monastery of the Holy Healers Cosmas and Damian in Zočište/Zoqishtë village is subject of a special protection regime under the Law on Special Protective Zones, note 21, supra.

129. This was reported to OSCE by the abbot of Zočište Monastery on 7 June 2011.

130. Letter from the municipality to competent Serbian Orthodox Church authorities dated 20 June 2011.

131. Letter from the Bishop of Raška-Prizren Eparchy to the municipality dated 21 July 2011.

132. Letter from the municipal director of cadastre, geodesy and property to the Bishop of Raška-Prizren dated 5 August 2011.

133. The delay was due to the fact that the municipality claimed to have insufficient funds to build the support wall. Interview with the director of urban planning, Rahovec/Orahovac municipality, 5 February 2013. In May 2013, the municipality requested funding from MESP. Interview with the director of urban planning, Rahovec/Orahovac municipality, 18 September 2013. On 4 September 2013, the Kosovo Public Procurement Regulatory Commission announced a tender for the construction of the wall. The IMC closely monitored the situation and updates were regularly provided during IMC meetings.

134. Law on Special Protective Zones, note 21, supra.

135. See Article 6(a), *ibid*, which stipulates that restricted activities requiring authorization from the Serbian Orthodox Church include road construction.

136. Article 3.3, Law No. 03/L-139 on Expropriation of Immovable Property, 28 October 2010, states that the “object of an expropriation within the scope of the present law may be private ownership or other private rights in or to immovable property, with the exception of rights in or to immovable property that falls with a class of property that the Constitution or the Comprehensive Proposal specifically provides shall not be subject to expropriation.”

137. This was only introduced in Law No. 04/L-144 on Allocation for Use and Exchange of Immovable Property of the Municipality, 22 November 2011.

138. Note 136, supra.

139. Letter from the project manager in Pejë/Peć municipality to the Peć Patriarchate dated 16 May 2011.

140. Article 6(a), Law on Special Protective Zones note 21, supra, stipulates that restricted activities requiring authorization from the Serbian Orthodox Church include road construction.

141. Letter from the Peć Patriarchate to the Pejë/Peć municipality dated 18 July 2011.

142. Letter from project manager in Pejë/Peć municipality to MCYS dated 15 August 2011.

143. For example, the OSCE has observed that the communication between the chairperson of the Municipal Assembly in Prizren and the Serbian Orthodox priest in charge of Saint George Cathedral in Prizren town has increased, which serves as an opportunity for both sides to raise

concerns regarding cultural heritage protection in Prizren.

144. See Article 1.1, Law on Cultural Heritage wherein it is stated that the objects of the law include the legal and technical tools for, *inter alia*, propagation, note 22, supra. “Competent Institution” is defined in Article 2.19 as the body assigned by law for overseeing the Propagation of Cultural Heritage. According to Article 2.13 of that law, “propagation” is stated to include “educational and awareness-raising activit[ies] related to values of the Cultural Heritage”.

145. The European Heritage Days are a joint initiative by the Council of Europe and the European Commission. Each year in September, national and regional events are organized around a special theme across Europe, highlighting local skills and traditions, architecture and works of art, but the broader aim is to bring citizens together in harmony even though there are differences in cultures and languages. In Kosovo, MCYS participates together with the Council of Europe in organizing events. For example, (in partnership with the British Embassy Pristina, the European Union Office in Kosovo/EU Special Representative and the Council of Europe) the NGO Promotion of Heritage Management West (PHM-West) organized the Heritage Train 2013 on two weekends between 14–29 September, which included travel from Prishtinë/Priština to Pejë/Peć and Deçan/Dečane as part of the celebration in Kosovo of the European Heritage Days 2013. The visit programme included a guided tour of main heritage sites of the municipalities of Pejë/Peć and Deçan/Dečani.

146. Article 2.21, Law on Cultural Heritage, note 22, supra, defines “Protective Zone” as “an area of land as is defined in Article 2 of the Law on Spatial Planning (Law No. 2003/14) which is surrounding the perimeter of protected immovable cultural heritage that may be safeguarded from any development or activity which could damage the visual setting or otherwise damage the cultural heritage.” See also Article 7, *ibid*. Whereas “Special Protective Zones” are established by the Law on Special Protective Zones, note 21, supra, around 45 specific cultural heritage sites of specific significance for the Kosovo Serb community as well as other communities in Kosovo

147. On 1 October 2012, the Cultural Heritage without Borders entered into a Memorandum of Understanding for the programme “The Local Cultural Heritage 2012–2015” with MCYS, MESP and the two municipalities of Dragash/Dragaš and Rahovec/Orahovac in Prizren region. See Council of Europe, “EU/CoE support to the promotion of cultural diversity in Kosovo” http://www.coe.int/t/dg4/cultureheritage/cooperation/Kosovo/default_en.asp and Promotion of Heritage Management – West (PHM) website, <http://www.phm-west.org/phm/index.html> (accessed on 24 October 2013).

148. See Council of Europe, “EU/CoE support to the promotion of cultural diversity in Kosovo” http://www.coe.int/t/dg4/cultureheritage/cooperation/Kosovo/default_en.asp (accessed on 26 March 2014).

149. See Promotion of Heritage Management – West (PHM) website <http://www.phm-west.org/phm/index.html> (accessed on 26 March 2014).

150. Director of the MCYS department for cultural heritage, in-person interview, 18 December 2013.

151. See Hani i Elezit/Elez Han municipality website, “10.000 € për “Promovimin e Vlerave Kulturore dhe Identifikimin e Trashëgimisë” - 06 nëntor 2013” <http://kk.rks-gov.net/hanielezit/News/Advertisment/10-000-%E2%82%AC-per--Promovimin-e-Vlerave-Kulturore-dhe-I.aspx> (accessed on 26 March 2014).

152. The campaign included, *inter alia*, television advertisements and postings on municipal web-page.

153. The launching of the catalogue took place on 16 December 2013.

154. Article 10, Law on Spatial Planning, note 34, supra.

155. Article 14, Law on Spatial Planning, note 34, supra, stipulates that “where the Special Protected Zones are within Special Zones, spatial planning documents are drafted in accordance with the provisions of Law No. 03/L-039 on Special Protective Zones”. Article 4.1 stipulates that spatial planning and regulation shall be done based on, *inter alia*, the protection of cultural heritage. Article 10, Law on Special Protective Zones, note 21, supra, poses on MESP the obligation “to ensure that spatial plans for areas within the Special Protective Zones are in conformity with Articles 5 and 6 of the Law on Special Protective Zones and the Law on Spatial Planning”.

156. Article 33, Law on Construction, note 35, supra.

157. Note 23, supra.



Challenges in the Protection of Immovable Tangible Cultural Heritage in Kosovo

March, 2014