

RULE OF LAW SUPPORT

The rule of law is a basic precondition for political, social and economic development. A legal system based on the principle of rule of law is reliable and consistent. Both reliability and consistency are necessary for the creation of an economic system where property is protected and investments are safe. Furthermore, the rule of law makes a society more stable and secure as criminality is prosecuted and human rights are respected.

Over the last six years the OSCE Mission has been responsible for helping to establish the rule of law in Kosovo by developing its legal and judicial systems. The first steps taken in 1999 included providing assistance to the re-establishment of the judicial system by identifying judges and providing necessary technical and logistical support to the establishments of courts.

Likewise in 1999, the Kosovo Chamber of Advocates (KCA) was in a state of disarray. The KCA lacked physical structures and the General Assembly of the KCA did not convene between 1992 and 2000. The Mission initially supported the KCA by completing a detailed assessment of the legal community in Kosovo and assisting in the convening of the KCA's General Assembly in 2000. Since then, the Mission has continued to provide the KCA with assistance through educational programmes, capacity building and technical support.



Rule of law is a key guarantee to peoples well being. Outburst of violence and other illegal activities harm the whole society. Violent riots of March 2004 were an example. They resulted with the death of a number of Kosovo Serbs and Albanians.

Throughout the last six years, the OSCE has also worked to develop independent institutions which promote the rule of law. These institutions include the Ombudsperson Institution, the Kosovo Judicial Institute, the Criminal Defence Resource Centre and the Kosovo Law Centre.

Today, the Mission continues to implement its mandate – to promote the development of institutions that ensure human rights and rule of law principles are respected. It is continuing to implement capacity building projects designed to empower legal professionals and professional institutions, which in turn enable them to better serve the community. These include: supporting the KCA through projects such as continuous legal education; supporting the work of NGOs involved in the delivery of legal services; and supporting the development of the Judicial/Bar exam.

Additionally, the Mission continues to monitor, analyse and report on the rule of law situation in Kosovo, while developing concrete strategies and recommendations to address problems. Recent focus areas include alternative dispute resolution, legal aid, and the implementation of Kosovo Assembly laws. The OSCE also provides technical legal support to the PISG, by reviewing draft legislation in terms of legislative clarity and rule of law principles.

Implementation of Kosovo Assembly Laws

The Kosovo Assembly passes laws but their implementation and application is often delayed. The root cause is lack of subsidiary legislation.

The Provisional Institutions of Local Self-Government (PISG) are relatively new and there is a concern that the Government and its ministries are not always properly implementing or applying the laws passed by the Assembly. In turn this could lead to an ineffective system of laws and lack of public confidence in the PISG.

To assess the level to which laws passed by the Assembly are implemented in practice the OSCE Mission recently monitored the destiny of 24 laws that were promulgated in 2003.

The first phase of the research focused on determining which subsidiary acts needed to be drafted to implement the laws, who is responsible for adoption of these acts, and what organizational units needed to be set up in order to have functioning institutions. "A matrix with relevant provisions from all 24 laws was put together and used in continuation of research," said Henry McGowen, Director of Mission's Human Rights and Rule of Law Department.



While the Kosovo Assembly adopts the laws their implementation is often stalled due to lack of subsidiary legislation. The OSCE is assisting both legislative and executive branches in their effort to remedy this shortcoming.

Interviews were made in the second phase, including with officials from the institutions responsible for the implementation of the laws. The matrix served as a tool for verifying which provisions of the law have been implemented by which subsidiary acts.

The general assessment of the first report, released in February 2005, was that the implementation of Kosovo Assembly laws has started with certain delay, after which most of the responsible institutions have managed gradually to overcome the initial difficulties. "They have currently achieved considerable success in the implementation process," added McGowen.

The research also identified the shortage of sufficient resources in the ministries' legal offices, as well as concentration on drafting new legislation instead of implementing the laws already in force as the

two main reasons for the delay in laws' implementation.

A major recommendation of the first report has been to strengthen the accountability of the executive branch of the PISG in passing subsidiary legislation. This should be achieved by the establishment of an oversight mechanism for the implementation of laws within the Office of the Prime Minister and by increased periodic parliamentary oversight over the activities of the executive.

A follow up report to assess implementation of the laws passed in 2004 was just released. While it echoes previous recommendations it also notes progress made in drafting subsidiary legislation. The report does, however, indicate that delays in adopting subsidiary legislation are further impeding the actual implementation of the laws.



Marek Antoni Nowicki is the first Ombudsperson in Kosovo. He will hand over his responsibilities to his local colleagues in 2006.

Ombudsperson Institution

As part of its mandate to build and support domestic institutions in Kosovo, the OSCE Mission helped establish Kosovo's first Ombudsperson Institution (OI). Inaugurated on 21 November 2000 as a multi-ethnic body it started operating independently as of May 2001.

"The Ombudsperson Institution is a key defender of people's rights in many Western European societies," said Henry McGowen, Director of the Mission's Human Rights and Rule of Law Department.

The OSCE in Kosovo initially supported the OI through its Ombudsperson Support Section that helped to draft the Rules of Procedure of the OI and provide human rights training for the Institution's staff. It also conducted public information campaigns to raise awareness about the role of the Ombudsperson.

The most important task of the OI is the investigation of complaints made by any person or entity in Kosovo, concerning human rights violations and action constituting an abuse of authority by the interim civil administration as well as any emerging central or local institution.

The OI in Kosovo accepts complaints regarding alleged abuses by authorities. "It works in an atmosphere of transparency, while keeping confidentiality where necessary to protect applicants, witnesses or others involved in cases," added McGowen.

During or following an investigation, the Ombudsperson may make recommendations to the relevant administrative authorities and officials on the appropriate measures to be adopted, including interim measures if necessary. "If the addressed authorities do not take the requested measures, or if they do not provide acceptable reasons for not respecting the recommendations, the Ombudsperson may draw the SRSG's attention to the matter and may make a public statement," concluded McGowen. To be able to conduct proper investigations, the Ombudsperson has full access to files and documents and offices of the PISG and the interim civil administration.

Currently, the OI is scheduled to become a fully local institution by 1 January 2006. The OSCE works with other organization and institutions to ensure that the process of handover happens smoothly. The Mission will continue to support the work of the OI in 2006 through the placement of advisors.

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Kosovo Judicial Institute

The Kosovo Judicial Institute (KJI) was born out of the OSCE Mission's role in training judges and prosecutors during its early days. In August 1999 the Mission established a Judicial Training Section that gradually developed and in February 2000 became the Kosovo Judicial Institute. The vision of the Institute is to become a full fledged magistrate school situated within the overall governmental structure of Kosovo.

The mandate of the KJI is to train judges and prosecutors to increase their professional and technical competence. These days it is implementing two main training programmes: the Continuous Legal Education Programme (CLEP) and the Initial Legal Education Programme (ILEP).

"The CLEP includes training activities for sitting judges and prosecutors both in and outside of Kosovo," said Katya Dormisheva, who serves as the International Co-Director of the Kosovo Judicial Institute. According to its newest training strategy, the KJI organizes regular seminars, workshops and round table discussions in all the regions in Kosovo, as well as study visits to other countries.



The Continuous Legal Education Programme aims to permanently increase professional and technical competencies of judges and prosecutors.

In early 2005 the Kosovo Judicial and Prosecutorial Council (KJPC) mandated KJI to conduct the first Initial Legal Education Programme (ILEP) as a three month pre-appointment pilot module for judicial candidates. Many distinguished legal professionals from all the levels of the judiciary and prosecution in Kosovo were involved as trainers in the ILEP.

"After the completion of the entire course, 57 of the initially selected 60 candidates were successful," said Dormisheva.

Currently, the KJI is still part of OSCE Mission but, in compliance with the Standards Implementation Plan, a draft law establishing the KJI as an independent institution is about to be adopted by the Kosovo Assembly.

"While awaiting its full institutional independence, the KJI is targeting the highest standards of professionalism in training of judges and prosecutors and aims to establish itself as one of the most efficient and self-sustainable new institutions in Kosovo," Dormisheva concluded.

Kosovo Law Centre - cultivating legal skills

One of the first questions raised by the international community upon the UN interim administration's establishment was how to develop a modern civil society, based on respect for human rights and the rule of law in Kosovo.

One of the answers was by cultivating the skills of local legal professionals.

In June 2000, the OSCE Mission established the Kosovo Law Centre (KLC) with the vision of developing a professional and independent NGO that would promote democratic principles, multiculturalism, ethical standards, the rule of law and respect for human rights. The KLC now implements a range of programmes that vary from legal research and analysis to raising public understanding of law and legal processes.

"At the beginning we supported the functioning of the KLC with providing for their staffing needs and staff training as well as with logistical support," said Henry McGowen, Director of Mission's Human Rights and Rule of Law Department. "As we built their



The Kosovo Law Center facilitates and conducts legal research and raises public understanding of laws and legal processes.

capacity we passed onto them more and more responsibilities and as of this year they function as an independent and genuine Kosovan NGO," added McGowen.

The KLC undertakes legal research and analysis, publishing materials such as the Kosovo Legal Studies journal, the Bulletin of Kosovo Supreme Court case law, and the Compilations of Applicable Laws. The latter is of utmost importance as there is a general problem of access to legislation. The KLC also translates, publishes and disseminates important selections of the applicable law.

To address different target groups the KLC has designed specific programmes. One example of this has been its "Street Law" programme which has raised awareness about the rule of law and democracy with the most vulnerable groups of society, such as women, minorities, juveniles and prisoners. On the other hand, the continuous legal education programme for legal professionals has aimed at regularly updating Kosovo's jurists on selected legal issues. As of late, the KLC also implements a similar programme for civil servants in municipalities throughout Kosovo.

The Mission's current support consists of funding the publication of specific legal materials and compilations of applicable laws.



Defense lawyers from throughout Kosovo attend and benefit from CDRC's activities.

Criminal Defence Resource Centre

To achieve "equality of arms" for defence lawyers working alongside judges and prosecutors, the OSCE Mission in 2001 created the Criminal Defence Resource Centre (CDRC). The Centre became independent of the OSCE's support and registered as a public benefit NGO in January 2004. It now assists Kosovo defence lawyers in their representation of persons accused of violating criminal laws and works to ensure that the rights of the accused are protected throughout the legal process.

The CDRC acts as a resource centre for defence counsel and focuses on providing direct case assistance to defence counsel who represent persons under investigation or charged with the offences under international humanitarian law and other serious ethnic or politically motivated crimes.

The CDRC strives for the protection of the rights of the accused at every stage of the legal process. The CDRC also focuses on other cases involving serious and systemic breaches of international standards in the course of the investigation, prosecution and/or judicial proceedings. These cases may include unlawful or arbitrary detention, judicial or prosecutorial bias or corruption, third party interference with the independence of the judiciary, and gross miscarriages of justice.

In addition, the CDRC also undertakes legal research on general topics of criminal law and issues of general concerns to defence counsel. The results of this research are then applied to individual cases and/or form the basis of training modules on these topics. Furthermore, the findings from these research projects are disseminated to the local defence counsel, as the primary targets and are also made available to partners serving other members of the Kosovo legal community (i.e. judges, prosecutors and law professors).

Finally, the CDRC, in co-operation with the Kosovo Chamber of Advocates, has assisted in providing training and legal education seminars to defence counsel. The main training programmes have been skills oriented and focused on practical aspects such as case preparation and strategies, legal research and interpretation skills, and structuring and presenting arguments through oral or written submissions.



The Criminal Defence Resource Center assists in providing training and legal education seminars to defense lawyers.