



**Organization for Security and Co-operation in Europe
MISSION IN KOSOVO**

Department of Human Rights and Communities

Communities Rights Assessment Report

December 2009

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LIST OF ABBREVIATIONS AND ACRONYMS

Advisory Committee's Opinion: Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on the Implementation of the Framework Convention for the Protection of National Minorities in Kosovo

Committee: Committee on Rights and Interest of Communities and Return

Council of Europe Recommendation: Council of Europe's Committee of Ministers regarding the implementation of the Framework Convention in Kosovo

Consultative Council: Consultative Council for Communities

EULEX: European Union's Rule of Law Mission

Framework Convention: Council of Europe's Framework Convention for the Protection of National Minorities

HPCC: Housing and Property Claims Commission

HPD: Housing and Property Directorate

IMC: Implementation Monitoring Council

IMO: International Monitoring Operation

Independent Commission: Independent Commission for the Review of Serbian Language Teaching Materials

Institute: Kosovo Institute for the Protection of Monuments

KCCH: Kosovo Council for Cultural Heritage

KPA: Kosovo Property Agency

KTA: Kosovo Trust Agency

Media Commission: Kosovo Independent Media Commission

MESP: Ministry of Environment and Spatial Planning

MEST: Ministry of Education, Science and Technology

Ministry of Culture: Ministry of Culture, Youth and Sports

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

PAK: Privatization Agency of Kosovo

PCC: Kosovo Property Claims Commission

PISG: Provisional Institutions of Self-Government

Press Council: The Press Council of Kosovo

Reconstruction Commission: Reconstruction Implementation Commission for Serbian Orthodox Religious Sites

RTK: Radio Television of Kosovo

SOC: Serbian Orthodox Church

SOEs: Socially-Owned Enterprises

SRSG: United Nations Special Representative of the Secretary General

Statistical Office: Statistical Office of Kosovo

UNHCR: United Nations High Commissioner for Refugees

UNMIK: United Nations Interim Administration Mission in Kosovo

UNDP: United Nations Development Programme

WHO: World Health Organization

EXECUTIVE SUMMARY

This report focuses on progress made by Kosovo institutions to implement specific standards of the Council of Europe's Framework Convention for the Protection of National Minorities¹ (Framework Convention) in the period January 2008 - June 2009.² It is based on field research conducted by the Organization for Security and Co-operation in Europe, Mission in Kosovo (OSCE) through interviews with central and local level officials, communities and civil society representatives.

The report finds that, although a comprehensive legal framework is in place to ensure promotion and protection of communities rights, its implementation remains insufficient or does not bring about sufficient positive changes in the daily life of non-majority³ communities. Difficult relations and prevailing separation between the Kosovo Albanian and Kosovo Serb communities pose a fundamental challenge to the development of a multi-ethnic society. However, the report identifies also other obstacles and describes areas where intervention is needed. Specifically, in the security and judiciary systems the main shortcomings relate to deficiencies in the classification, investigation and prosecution of ethnically motivated crimes since the sense of impunity among non-majority communities does not contribute to build confidence towards institutions. On return issues, the lack of proper conditions for sustainable return is still evident, particularly in relation to property restitution, reconstruction and economic integration. The implementation of existing policies through adequate funds and measures to accommodate the needs of a growing number of repatriated persons remains a major challenge for local authorities. More efforts and resources are necessary to protect and promote cultural rights of communities. Together with improved services for and representation of communities in the public broadcasting service, further steps are necessary to ensure compliance with the legal provisions for the protection of cultural and religious heritage sites.

A concerning reduction of human and financial resources allocated puts at risk the implementation of the Law on the Use of Languages⁴ and the effective provision and accessibility of multi-lingual public services. Independence and operational capacity of the Language Commission to monitor the application of the law and ensure remedies in case of violations needs to be enhanced. The continued existence of separate educational systems hampers dialogue and integration between Kosovo Albanian and Kosovo Serb communities. It underscores the urgency of educational reforms and measures promoting a multi-ethnic and multilingual society. The promotion of education in both official languages and the removal of linguistic and physical barriers separating children belonging to different communities remain a matter of priority. In addition, appropriate measures should be adopted and resources allocated to address the major educational concerns of other vulnerable non-majority communities, with a specific focus on Roma, Ashkali and Egyptians.

¹ Council of Europe, Framework Convention for the Protection of National Minorities (Framework Convention), Strasbourg, 1 February 1995, Council of Europe Treaty Series, N. 157.

² Some updates have been included and refer to events that took place beyond the reporting period.

³ For the purpose of the report, non-majority communities are all those communities who constitute a numerical minority at the municipal level in Kosovo.

⁴ Law on the Use of Languages promulgated by UNMIK Regulation 2006/51 (Law on Languages), 20 October 2006.

The report also finds that the functioning and co-ordination of communities participation mechanisms requires improvement and the representation of non-majority communities in public institutions, particularly at senior level needs to be enhanced. Expansion and implementation of effective policies for the integration of non-majority communities in cultural, social and economic life as well as in public affairs is key towards building a sustainable and multi-ethnic society.

1. INTRODUCTION

In 2008, the Assembly of Kosovo adopted a complex body of legislation related to the rights and interests of non-majority communities,⁵ which are based on the constitution that the Assembly adopted in the same period.⁶ Meanwhile, the United Nations Interim Administration Mission (UNMIK) reconfigured its presence and reduced staff from 5,000 to around 500. In December 2008, the European Union Rule of Law Mission (EULEX)⁷ was deployed, while the NATO-led peacekeeping force, KFOR, remained in Kosovo and continued exercising its mandate.

The legal framework in Kosovo defines communities as national, ethnic, cultural, linguistic or religious groups traditionally present in Kosovo that are not in the majority, and recognises specific rights to persons belonging to such communities.⁸ The Kosovo Serb, Kosovo Turk, Kosovo Bosniak, Roma, Ashkali, Egyptian and Gorani communities are explicitly recognised. Other communities (such as Kosovo Croats and Kosovo Montenegrins) and members of a community in the majority in Kosovo as a whole who are not in the majority in a given municipality (such as Kosovo Albanians in northern Mitrovica/Mitrovicë, Leposavić/Leposaviq, Zubin Potok, Zvečan/Zveçan, Štrpce/Shtërpçë or Mamuša/Mamushë/Mamuša) are also entitled to enjoy the rights listed in the law.⁹ Legislation on anti-discrimination, use of languages, education, guaranteed communities participation in public affairs, protection of cultural heritage and religious freedom is in force¹⁰ and the Framework

⁵ On 15 June 2008 Kosovo Assembly adopted the law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo (applied law on the rights of communities), the law on local self government (applied law on local self government), the law on administrative municipal boundaries (applied law on municipal boundaries), the law on the official holidays in Kosovo (applied law on official holidays), the law on education in municipalities of Kosovo (applied law on municipal education), and the law on special protective zones (applied law on special protective zones).

⁶ On 15 June 2008 Kosovo Assembly adopted constitution (constitution).

⁷ Within the framework of the UN Security Council Resolution 1244 and under the overall authority of the United Nations, EULEX began its operations on 9 December 2008. It assists and supports Kosovo institutions in the rule of law area, specifically with regards to the police, judiciary and customs.

⁸ Art. 4 (1), Constitutional Framework, UNMIK Regulation 2001/9, 15 May 2001, and subsequent amendments; Art. 57(1), constitution. Art 1(4), applied law on the rights of communities.

⁹ Art. 1(4), applied law on the rights of communities.

¹⁰ Law on Anti-Discrimination promulgated by UNMIK Regulation 2004/32, 20 August 2004; Law on Primary and Secondary Education in Kosovo promulgated by UNMIK Regulation 2002/19, 31 October 2002; Law on the Higher Education in Kosovo promulgated by UNMIK Regulation 2003/14, 12 May 2003; Chapters 9.1(3), 9.1(12), 9.1(17) and 9.3(5), Constitutional Framework; Art. 64(2), 65(2), 96 (3) to (5), constitution; Law on Cultural Heritage promulgated by UNMIK Regulation 2006/52, 6 November 2006; Law on Freedom of Religion in Kosovo promulgated by UNMIK Regulation 2006/48, 24 August 2006.

Convention as well as other international human rights treaties are directly applicable in Kosovo.¹¹

Therefore, following an Agreement with the Council of Europe,¹² on 2 June 2005 UNMIK submitted the first official report on the implementation of the Framework Convention in Kosovo.¹³ In August 2005, the Council of Europe also received a shadow report produced by representatives of Kosovo communities.¹⁴ On 25 November 2005, the Advisory Committee issued an Opinion,¹⁵ and on 21 June 2006 the Council of Europe's Committee of Ministers endorsed a Resolution on the implementation of the Framework Convention in Kosovo.¹⁶ UNMIK submitted a progress report on 21 July 2008.¹⁷

The monitoring, protection and promotion of human rights represent the core of the OSCE mandate. Consequently, the OSCE consistently supports the implementation of the Framework Convention and contributes to the UNMIK progress report. In addition, the OSCE also sponsored a project that enabled a panel of representatives of Kosovo non-majority communities to submit a shadow report on the Framework Convention in 2005. Further, between 1999 and 2002, in co-operation with the Office of the United Nations High Commissioner for Refugees, the OSCE produced ten Assessment Reports on the Situation of Ethnic Minorities in Kosovo.¹⁸ In 2008 and

¹¹ The Universal Declaration on Human Rights, the European Convention on Human Rights, the International Convention on Civil and Political Rights, the Framework Convention on the Protection of National Minorities, the Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and other Inhuman Treatment and Punishments, European Charter for Regional or Minority languages and the European Charter on Local and Self Government. Art. 22 and 58(2) and 123, constitution. However, there is concern for the fact that the International Covenant on Economic, Social and Cultural Rights is not recognized as applicable.

¹² Agreement between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe on technical arrangements related to the Framework Convention for the Protection of National Minorities, 23 August 2004.

¹³ Report submitted by UNMIK pursuant to article 2.2 of the Agreement between UNMIK and the Council of Europe related to the Framework Convention for the Protection of National Minorities, received on 2 June 2005.

¹⁴ Shadow Report On the Implementation of the Framework Convention for the Protection of National Minorities in Kosovo, Prishtinë/Priština, November 2004 – August 2005. Report produced by community working groups co-ordinated by an OSCE consultant and trained by Council of Europe and Minority Rights International's experts.

¹⁵ Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on the Implementation of the Framework Convention for the Protection of National Minorities in Kosovo (Advisory Committee's Opinion), ACFC/OP/I(2005)004, Strasbourg, 2 March 2006.

¹⁶ Council of Europe, Committee of Ministers, Resolution ResCMN(2006) on the implementation of the Framework Convention for the Protection of National Minorities in Kosovo (Republic of Serbia), Committee of Ministers, 969th meeting of the Ministers' Deputies, 21 June 2006, Strasbourg.

¹⁷ UNMIK, Progress report on the Implementation of the Framework Convention for the Protection of National Minorities in Kosovo submitted by the United Nations Interim Administration Mission in Kosovo (Progress Report), received on 21 July 2008, ACFC(2008)001. The report mainly covers developments until 2007.

¹⁸ Preliminary Assessment Of the Situation of Ethnic Minorities in Kosovo UNHCR/OSCE, 26 July 1999; Second Assessment of the Situation of Ethnic Minorities in Kosovo, UNHCR/OSCE, 6 September 1999; Overview of the Situation of Ethnic Minorities in Kosovo, UNHCR/OSCE, 3 November 1999; Assessment of the Situation of Ethnic Minorities in Kosovo (Period covering

2009 the OSCE reports have focused on several areas relevant to the implementation of the Framework Convention, such as the development and implementation policies aimed at creating conditions for sustainable return and reintegration, use of languages, freedom of movement, education and participation in public life.¹⁹

This report covers the period from January 2008 to June 2009. It is based on the recommendations of the Council of Europe's Committee of Ministers regarding the implementation of the Framework Convention in Kosovo (Council of Europe Recommendation) in the areas of remedies and law enforcement, return process and security, culture and media, use of languages, education and participation. Each sub-chapter recalls the relevant recommendations in a text-box before it focuses on the normative framework and policy, its implementation and impact on non-majority communities, and assesses progress attained and pending challenges. The report includes conclusions and recommendations.

2. REMEDIES AND LAW ENFORCEMENT

2.1. Collection of data on investigation and prosecution of ethnically based incidents

Council of Europe, Framework Convention Recommendation No. 5: Set up a permanent system for collecting data on the investigation and prosecution of ethnically-based incidents.

Normative Framework

The Ministry of Justice is mandated to provide information and statistics on the prosecutorial system and correctional service and to develop and implement policies to ensure fair and effective access of members of all communities to the justice system.²⁰ The Kosovo police has specific policies and definitions to classify hate crimes and hate incidents.²¹ In August 2005 the UNMIK Special Representative of the

November 1999 through January 2000), UNCHR/OSCE, 11 February 2000; UNHCR/OSCE Update on the Situation of Ethnic Minorities in Kosovo (Period covering February through May 2000), UNHCR/OSCE 31 May 2000; Assessment of the Situation of Ethnic Minorities in Kosovo (period covering June through September 2000), UNHCR/OSCE, 23 October 2000; Assessment of the Situation of Ethnic Minorities In Kosovo (period covering October 2000 through February 2001), UNHCR/OSCE, 26 March 2001; Ninth Assessment of the Situation of Ethnic Minorities in Kosovo (Period covering September 2001 to April 2002), UNHCR/OSCE, April 2002; Tenth Assessment of the Situation of Ethnic Minorities in Kosovo (Period covering May 2002 to December 2002), UNHCR/OSCE, March 2003.

¹⁹ In 2008 and 2009 the Mission published the following reports: 'Implementation of the Law on the Use of Languages by Kosovo Municipalities' (July 2008); 'Humanitarian Minority Bus Transportation' (I, II, III and IV during 2007-2008); 'Background Report: Lead contamination in Mitrovicë/Mitrovica affecting the Roma community' (February 2009); 'Kosovo non-majority Communities Within the Primary and Secondary Educational Systems' (April 2009); 'Kosovo Communities Profiles' (July 2009); 'Implementation of the Strategy for Reintegration of Repatriated Persons in Kosovo's Municipalities' (November 2009); 'Report on Protection and Promotion of the Rights of Communities in Kosovo: Local Level Participation Mechanisms' (November 2009). A substantive component on communities, and particularly education, health care, participation and parallel structures is included in the Mission's 2007-2008 report on 'Human Rights, Ethnic Relations and Democracy in Kosovo.'

²⁰ Annex XV, (viii) and (xii), UNMIK Regulation 2005/53 amending UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institution of Self Government in Kosovo, 20 December 2005.

²¹ Hate crime: "any unlawful action designed to frighten, harm, injure, intimidate, or harass an individual in whole or in part because of a bias motivation against the victim's actual or perceived

Secretary General (SRSG) set forth criteria and procedures for reporting on potentially ethnically motivated incidents,²² according to which: the victim has to belong to a vulnerable community; the offender has to be unknown or belong to a different community than the victim; and the circumstances of the offence have to disclose no likely, ethnically-neutral motive. Under the latter criteria all cases with a clear economic motive (including looting, theft and burglary) or arising from neighbourhood disputes, drunken brawls and similar situations are no longer classified as ethnically motivated.

Implementation/Situation on the Ground

Although not necessarily categorized as ethnically motivated,²³ incidents targeting mainly persons belonging to Kosovo Serb and Roma communities continue to occur.²⁴ While the Kosovo police statistics classify a certain number of potentially ethnically motivated incidents (82 from February 2008 to May 2009) it is difficult to obtain information on the prosecution of such cases. In fact, the Kosovo Courts' registry books do not generally provide information on ethnic background. Moreover, no special registry books on ethnically motivated incidents are kept, and such cases are registered mostly manually in registry books, as all other cases. When required, clerks extrapolate data on these incidents from the general registry books. In the meantime, the EULEX deployed two inter-ethnic crime advisors per region to monitor, mentor, and advise the police.

Overall Assessment

The lack of a computerised courts database and the fact that defendants are not classified according to ethnic background, equally prevent the availability of data on the prosecution of ethnically motivated crimes. Ongoing European Commission projects for the establishment of a Case Management Information System represent an opportunity for tracking the prosecution of ethnically motivated crimes, if police, prosecutors and judges can share information on the classification and prosecution of related incidents.

race, religion, ethnic background, sexual orientation, or disability;" hate incidents: "[...] actions by an individual or group that, while motivated by hate or bias, do not rise to the level of a criminal offence." Kosovo police Service Policies and Procedures, Hate Crimes and Ethnic Crimes, P-4.29, 22 July 2002, revised on 19 February 2003, part III. Definitions, A and B.

²² UNMIK SRSG, Criteria and Procedures for Reporting on Potentially Ethnically Motivated Incidents, 10 August 2005, including Annex A to C.

²³ For example, in July and October 2008 two cases of stoning of the white UN logoed humanitarian bus, transporting people belonging to non-majority communities through Kosovo Albanian inhabited areas occurred in Pejë/Peć region and in Gllgovc/Glogovac municipality, were not categorized as ethnically motivated. Although the bus is easily identifiable and has a regular schedule, the police was not able to ascertain whether the perpetrators were aware of the ethnicity of the passengers.

²⁴ OSCE reported on an increased number of incidents of harassment targeting Kosovo Serbs in June-August 2009 (including graveyard desecration, breaking into homes of returnees, vehicle stoning, robberies, assaults, intimidation, and murder), including two serious cases in Klinë/Klina municipality (where an elderly returnee was severely beaten while working his fields) and Gjilan/Gnjilane Municipality (where an elderly couple was shot dead in their home). In July-August 2009, as confirmed by the Gjilan/Gnjilane additional deputy mayor, Roma living in the Abdullah Preshevë/Abdula Preševo neighbourhood were verbally and physically assaulted by people belonging to the Kosovo Albanian community. These incidents may relate to property issues and adversely impact on return and integration of the affected community.

2.2. Impunity, prosecution of ethnically motivated crime and reporting of daily manifestations of intolerance

Council of Europe, Framework Convention Recommendation No. 8: Address the perceived impunity as regards ethnically motivated crime by giving such crime the highest priority within the law-enforcement and other bodies involved, and take steps to encourage reporting of everyday manifestations of intolerance.

Normative Framework

The Provisional Criminal Code of Kosovo (Criminal Code) sanctions the public incitement of national, racial, religious or ethnic hatred, discord or intolerance.²⁵ Fines, imprisonment and penalty enhancements are envisaged in cases in which the offence is committed systematically, by taking advantage of a position of authority, by means of coercion, jeopardizing of safety, exposing national, racial, ethnic or religious symbols to derision, damaging the belongings of another person, or desecrating monuments or graves; or when the offence causes disorder, violence, or other grave consequences.²⁶ The 2006 Ministry of Justice internal circular²⁷ gives high priority to solving cases related to non-majority communities.

Implementation/Situation on the Ground

In some cases the prosecution of ethnically motivated crimes over-relies on witness testimony. Often, change of opinion or lack of co-operation by witnesses undermine prosecution. While stating that they always treat ethnically motivated incidents with the highest priority,²⁸ judges and prosecutors often neglect to consider the ethnic motive behind the crime. In October 2008, in a case involving shooting against displaced Kosovo Serbs visiting a graveyard, the Kosovo Albanian defendant was tried for the crime of unauthorised use of weapons²⁹ and sentenced to a fine of 600 Euros. The facts of the case arguably called for more severe charges,³⁰ and perhaps also a different sentence,³¹ particularly on account of the probable ethnic motive behind the crime, which the court ignored.³² Thus, the prosecution and the court arguably did not fully encapsulate defendant's actions into a proper legal qualification/charge. Therefore, by failing to duly consider the ethnic motive as an aggravating factor they have in the end applied a punishment not proportionate to the gravity of the offence, contrary to the requirements of the law.³³ This example seems to represent a trend. Indeed, a recent analysis of the handling of the 2004 March riots cases by Kosovo prosecutors and judges revealed similar problems of undercharging and lenient sentencing of perpetrators of ethnically motivated crimes, and a

²⁵ Art. 115 of the Provisional Criminal Code of Kosovo promulgated by UNMIK Regulation 2003/25, 6 July 2003 with subsequent changes.

²⁶ Art. 64, 115, 147 and 260, Criminal Code.

²⁷ Ministry of Justice Internal Circular Ref. A-062/MD.

²⁸ See the Report 'Four Years Later. Follow up of March 2004 Riots Cases before the Kosovo Criminal Justice System,' OSCE Mission in Kosovo, July 2008.

²⁹ Art. 328(1), Criminal Code.

³⁰ Such as Art. 29(1), Causing General Danger, cumulatively with the charge of Art. 328, Unauthorised Use of Weapons. Furthermore, some statements of the targeted group about hearing bullets flying very close to them, might also support a charge of Art. 20 and 146, Attempted Murder.

³¹ The defendant was found guilty of the crime of Unauthorised Ownership, Control, Possession or Use of Weapons under Art. 328(1) Criminal Code, which is punishable by a fine of up to 10.000 EUR or by imprisonment of one to ten years.

³² The court's verdict expressly stated that it did "not find any especially aggravating circumstance".

³³ Art. 64(1), Criminal Code.

widespread failure to consider the ethnic motive as an aggravated circumstance.³⁴ Moreover, some Kosovo prosecutors and judges do not consider the ethnic motive behind a crime as an aggravating factor because all persons are equal before the law, irrespective of their nationality or ethnic background. However, treating the ethnic motive as an aggravating circumstance is in line with principles of equality and international standards.³⁵

A separate matter of concern regarding impunity is the situation of courts and prosecution offices in the northern municipalities of the Mitrovicë/Mitrovica region,³⁶ as well as the trust towards the police. The lack of a fully functioning judicial and prosecution system in the northern municipalities impedes the effective prosecution of all crimes, and is conducive to an atmosphere of overall impunity. In addition, Kosovo Albanians and other non-majority communities living in the area do not feel confident to report to the Kosovo police cases that might involve inter-ethnic reasons.³⁷ In northern Mitrovica/Mitrovicë, an increase of tensions between Kosovo Serbs and Kosovo Albanians, which led to ethnically motivated crimes, has been reported in regard to the return project to Brdjani/Kroi i Vitakut.³⁸ On 23 January 2009, Kosovo police established, in all the mixed areas in Mitrovicë/Mitrovica, a 17-member multi-ethnic community policing unit. The aim is to communicate and cooperate through confidence-building measures with people affected by recent outbreaks of inter-ethnic violence, and to collect information regarding past incidents.

Overall Assessment

Although the legal framework and policy documents give high priority to the investigation and prosecution of ethnically-motivated crimes, in several cases perpetrators cannot be identified or properly sentenced. Moreover as previously mentioned, a narrow interpretation of the law by judges and prosecutors contributes to increase the sense of impunity among non-majority communities. On the other hand,

³⁴ See the Report: 'Four Years Later. Follow up of March 2004 Riots Cases before the Kosovo Criminal Justice System', OSCE Mission in Kosovo, July 2008.

³⁵ See European Court of Human Rights' judgments *Nachova and Others v. Bulgaria*, 24 February 2004, paragraph 158; *Šečić v. Croatia*, 31 May 2007; *Cobzaru v. Romania*, 26 July 2007, paragraph 101; ICTY judgment case no. IT-96-23-T& IT-96-23/1-T, Judgment of 22 February 2001, paragraph 867; and UN Office of the High Commissioner for Human Rights in its General Recommendation No. 30: Discrimination Against Non-Citizens on the Convention on the Elimination of All Forms of Racial Discrimination, October 2004.

³⁶ Following 17 February 2008, there are no functioning municipal or minor offences courts in Zubin Potok and Leposavić/Leposaviq. The Mitrovicë/Mitrovica District Court and Municipal Court (covering Zvečan/Zvečan as well) function on a limited capacity in the premises of the Vushtrri/Vučitrn Municipal Court, covering also the municipalities of Skenderaj/Srbica and Vushtrri/Vučitrn. The regional prosecution offices also operate to a very limited degree from the Vushtrri/Vučitrn court building; therefore, they are unable to process most of the crimes which had occurred prior to 21 February 2008 since the files are located in the northern Mitrovicë/Mitrovica court. The deployment of EULEX judges and prosecutors (three for criminal and one for civil proceedings) at the courthouse in northern Mitrovicë/Mitrovica in December 2008, has not improved the situation. As of June 2008, EULEX had completed two criminal cases, while practical and legal issues may prevent them from fully replacing the region's judicial system.

³⁷ See report on: 'Measuring the Trust. Security and Public Safety Perceptions,' OSCE Mission in Kosovo, June 2008.

³⁸ Brdjani/Kroi i Vitakut is a mixed-ethnicity neighbourhood in northern Mitrovica/Mitrovicë. Discussions regarding a return project for displaced Kosovo Albanians began in October 2008; in spring 2009, the reconstruction of their houses began and resulted in repeated clashes between the two communities. While reconstruction is on-going, intermittent incidents keep occurring.

institutions did not take concrete steps in order to reverse this trend and to address impunity perceptions.

2.3. Representation and recruitment of persons belonging to non-majority communities by the courts

Council of Europe, Framework Convention Recommendation No. 6: Increase efforts to improve the functioning of the judiciary and to build the confidence of minority communities in the courts, inter alia, by further recruiting persons belonging to minorities and by improving the speed with which cases are dealt with.

Normative Framework

The Regulatory Framework for the Justice System³⁹ introduced quotas to ensure a 15 per cent representation of non-Albanian communities, including at least eight per cent for Kosovo Serbs, in the judiciary and prosecutorial service, through measures implemented by the Kosovo Judicial Council. However, the constitution requires a 15 per cent quota of non-Albanian judges only for the appeal courts.⁴⁰ As for the prosecutorial appointments the constitution stipulates that preference ought to be given to non-majority communities in order to reflect the ethnic composition of the relevant territorial jurisdiction.⁴¹

Implementation/Situation on the Ground

Currently, representation of non-majority communities in the Kosovo judiciary (11.4 per cent) and prosecution service (7.7 per cent) is lower than prescribed. Out of 298 judges, 264 (88.6 per cent) are Kosovo Albanian, 15 are Kosovo Serb, 11 are Kosovo Bosniak, five are Kosovo Turk, and three are from the Roma, Ashkali, and Egyptian communities. Out of 91 prosecutors, 84 are Kosovo Albanian (92.3 per cent), two Kosovo Serb, two Kosovo Bosniak, two Kosovo Turk, and one Ashkali.⁴² Additionally, the functioning of the courts was significantly affected in Mitrovicë/Mitrovica region in the period after 17 February 2008.⁴³ On 13 February 2009, a vetting, or appointment process, started, which may alter the representation of judges and prosecutors belonging to non-majority communities. On 26 June 2009 six constitutional court judges were appointed, including one Kosovo Turk and one Kosovo Serb.

Overall Assessment

Kosovo Judicial System's efforts to recruit candidates from the non-majority community are at times hindered by lack of applications or qualified candidates. Representation of non-majority communities is below the foreseen quotas, though relatively high. Further efforts are necessary to build confidence of non-majority communities in the judiciary, which remains the institution people are least satisfied with.⁴⁴ However, a comparative analysis recently conducted by the OSCE does not

³⁹ Art. 2(4) UNMIK Regulation 2006/25 on the Regulatory Framework for the Justice System in Kosovo, , 27 April 2006.

⁴⁰ Art. 103(3),(6) and Art. 108(2), constitution.

⁴¹ Art. 110(2),(3), constitution.

⁴² See report on 'Participation of Women and Representatives of Minorities in the Justice System in Kosovo', Kosovo Judges Association, 2009.

⁴³ See footnote 36 of this report.

⁴⁴ See Early Warning Report – Fast Facts #24, UNDP, May 2009, p. 2 and 5.

reveal significant differences in the treatment of defendants of different communities by the Kosovo justice system.⁴⁵

2.4. Transfer of the Ombudsperson Institution into a local institution

Council of Europe, Framework Convention Recommendation No. 7: Ensure that the transfer of the Ombudsperson institution into a local institution does not harm the effectiveness of the institution or erode the trust it has built to date amongst minority communities.

Normative Framework

According to the legal framework,⁴⁶ since 2007 the Ombudsperson operates as a local institution, that has no longer jurisdiction over complaints against UNMIK. The constitution equally recognises the Ombudsperson as one of the local independent institutions.⁴⁷ A draft law on People's Advocate is planned to be discussed in the Kosovo Assembly in November 2009. On 4 June 2009, the Assembly of Kosovo appointed a local Ombudsperson.⁴⁸

Implementation/Situation on the Ground

Access to the Ombudsperson Institution is ensured through a central office in Prishtinë/Priština and regional field offices in Gjilan/Gnjilane, Pejë/Peć, Prizren, Gračanica/Graçanicë and Mitrovicë/Mitrovica. The latter has a sub-office in the northern part of the city. However, this office suffers from problems of visibility since a large part of the population in northern Kosovo is not aware of its existence. As of 1 April 2008, the sub-office in Vidanje/Videjë, a village in Pejë/Peć region, which is mainly inhabited by Kosovo Serbs, was closed down due to lack of funding, thus depriving these communities of direct access to the Ombudsperson Institution. For similar reasons, staff of the field office in Gračanica/Graçanicë was also reduced. Further, efforts to include staff members, specifically those dealing with cases of non-majority communities, in the Kosovo consolidated budget were not successful.⁴⁹ Lawyers of the Ombudsperson Institution regularly visit municipalities, enclaves and areas inhabited by non-majority communities. The Institution also regularly schedules open days during which complainants may personally meet the Ombudsperson. Statistics show that the number of cases submitted by members of non-majority communities remained high until the end of 2007 (around 25 per cent) but started to decrease in 2008. Officially, in 2007/2008 17 per cent (12 per cent Kosovo Serbs, five per cent others) and in 2008/2009 only 13 per cent (nine per cent by Kosovo Serbs, four per cent by others) of the cases were submitted by persons belonging to non-majority communities. In the meantime, the general number of cases decreased from 690 in 2006/2007 to 523 in 2007/2008 and 411 in 2008/2009. Nonetheless, the Institution initiated more *ex officio* investigations.⁵⁰

⁴⁵ See Report on 'Different Communities before the Kosovo Justice System. A preliminary statistical overview of punishments and trial outcomes in district, municipal, and minor offences courts', OSCE Mission in Kosovo, December 2008.

⁴⁶ UNMIK Regulation 2007/15 amending UNMIK Regulation 2006/06 on the Ombudsperson Institution in Kosovo, 19 March 2007.

⁴⁷ Chapter XII, constitution.

⁴⁸ After the international Ombudsperson's mandate expired in December 2005, a temporary Acting Ombudsperson was nominated. Kosovo Assembly appointed an Ombudsperson only after five attempts.

⁴⁹ See Eighth Annual Report of the Ombudsperson Institution in Kosovo, July 2008.

⁵⁰ In 2008/2009, 62 *ex officio* investigations were opened; in 2007/2008, 10 and in 2006/2007 only two.

Overall Assessment

The post-February-2008 changes surely had an impact on the number of Kosovo Serbs filing their complaints with the Institution and partially affected the confidence built since localization of the Ombudsperson position in 2006. Moreover, the inability of the Assembly of Kosovo to appoint an Ombudsperson for more than three years eroded the trust of all communities in the authority of the Institution and in its ability to successfully resolve their complaints. Finally, field assessments carried out on a quarterly basis by the United Nations Development Programme (UNDP) indicate that Kosovo Albanians and other non-majority communities are generally more satisfied with the Ombudsperson Institution than Kosovo Serbs. The general population is still generally satisfied, although less than in the past.

3. RETURN PROCESS AND SECURITY

3.1. Creation of conditions for sustainable return, security, property repossession, income generating activities

Council of Europe, Framework Convention Recommendation No. 9: Take vigorous practical measures to remove the obstacles to sustainable return by seriously addressing security concerns of Serbs and others concerned and also by ensuring, including in the implementation of the recently adopted legislation, repossession of, and unhindered access to, agricultural and other property and by designing further targeted income generating activities.

Normative Framework

The legal framework reaffirms the right of all refugees and displaced persons to return to their homes in safety and recover their properties.⁵¹ The applied law on the Resolution of Claims Relating to Private Immovable Property⁵² reassigned UNMIK's authority over the Kosovo Property Agency (KPA)⁵³ to the International Civilian Representative. Further, the 2006 Revised Manual on Sustainable Return,⁵⁴ based on international standards, includes the main objectives of the updated returns policies adopted by the Kosovo government on 24 May 2006, as well as the Protocol on Voluntary and Sustainable Return.⁵⁵ To simplify and streamline returns policies, in October 2008, the Ministry of Communities and Returns initiated the revision of the Manual and has engaged in drafting a ministerial strategy for communities and returns.⁵⁶

⁵¹ Preamble, Sections 9(c), 11(k), 13 and Annexes, UNSC Resolution 1244 (1999), 10 June 1999; Art. 156, constitution.

⁵² On 13 June 2008 Kosovo Assembly adopted a law on the resolution of claims relating to private immovable property, including agricultural and commercial property (applied law on resolution of claims relating to private immovable property).

⁵³ To address the restitution of residential, commercial and agricultural private immovable property, UNMIK Regulation 2006/10, later substituted by UNMIK Regulation 2006/50, established the Kosovo Property Agency (KPA) as an independent body including the Kosovo Property Claims Commission (PCC), succeeding the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) initially established by UNMIK in 2001.

⁵⁴ UNMIK/PISG Revised Manual on Sustainable Return, July 2006.

⁵⁵ The protocol was signed on 6 June 2006 by UNMIK, Provisional Institution of Self Government and the Government of Serbia.

⁵⁶ A draft 2009-2013 Strategy for Communities and Returns was presented to the public in June 2009. Both the revision process of the Manual and the strategy drafting process are ongoing.

Implementation/Situation on the Ground

In 2008 and 2009 there was a considerable decline in the number of voluntary returns of persons belonging to non-majority communities.⁵⁷ While Kosovo institutions continued to encourage returns and to develop return strategies and projects at municipal level, lack of funding and limited administrative and managerial capacities of central and local authorities remain important obstacles to their implementation. Still, the number of displaced persons who have expressed desire to return to Kosovo is increasing gradually. This is due to renewed efforts to identify and register displaced persons interested in return to Kosovo by the international community and the authorities in Belgrade and Prishtinë/Priština in the first half of 2009. The Kosovo police plays an important role in ensuring effective security for non-majority communities and returnees/displaced persons, in building inter-community confidence and securing freedom of movement for all communities. Multi-ethnic community policing units throughout Kosovo have continued to engage in various community safety issues and to build relations with Kosovo residents, in particular in areas inhabited by non-majority communities. However, since February 2008, the work of these units has in some regions been impaired by the boycott of Kosovo Serb police officers. Return to work of most of these officers in June 2009 represents an improvement. In early 2008, a special Department for Community Affairs was created within the police service to oversee the work of community policing units. Local public safety committees and municipal community safety councils have yet to become fully functional and to effectively contribute to identifying and addressing issues of community safety, security and crime.⁵⁸ The humanitarian bus transportation continues to provide a key service to non-majority communities, including returnees, enhancing their freedom of movement and access to services.⁵⁹ The service continues to function relatively well, with most of the bus lines and stops regularly served and passengers generally satisfied with the quality of the services.⁶⁰

Since its establishment in 2006 until December 2007, the KPA received almost 40,000 conflict-related claims with regard to private immovable property including agricultural and commercial property. As of May 2009, the Kosovo Property Claims Commission (PCC) rendered decisions in 18,794 cases and has implemented 1,600 cases. In addition, the KPA assumed the Housing and Property Directorate's responsibility to administer residential properties, particularly properties deemed to be

⁵⁷ Only 679 non-majority community members returned to Kosovo in 2008, in comparison to 1,816 in 2007 and 1,669 in 2006 according to United Nations High Commissioner for Refugees (UNHCR) data. Between January and May 2009, only 240 displaced persons belonging to non-majority communities voluntarily returned to Kosovo (UNHCR Statistical Overview, May 2009).

⁵⁸ Art. 7 of the UNMIK Regulation 2005/54 on the Framework and Guiding Principles of the Kosovo Police Service, and subsequent amendments; on 15 June 2008 Kosovo Assembly adopted the law on police (applied law on police), Art. 7; Ministry of Internal Affairs, Administrative Instruction 08/2009 for Municipal Community Safety Councils, 20 March 2009.

⁵⁹ In accordance with the Operational Arrangement for the Transfer of Responsibilities for Humanitarian Transportation of Minority Communities in Kosovo between UNMIK and the PISG, the Ministry of Transport and Communications has taken over full responsibility for this service, including its funding, management, safety and security in January 2007.

⁶⁰ During an assessment conducted by OSCE in April 2009, passengers complained about temporary interruptions of the transport service due to weather conditions, the low number of round trips per day/month, and about the fact that buses were overcrowded or that transport fares increased. The transport advisory committee in charge of the humanitarian bus transportation has not yet met in 2009, and several requests for additional bus lines or for the extension of routes are still pending.

abandoned.⁶¹ According to the KPA, as of the end of April 2008, 3,848 out of 4,457 properties under its administration were rented out on behalf of claimants. Since October 2008, KPA delivers decisions electronically to claimants outside of Kosovo and started with the enforcement of PCC decisions. Due to the transfer of UNMIK's authority over KPA to the International Civilian Representative, on 19 June 2008 the Serbian government suspended operations of KPA offices in Serbia, claiming that the agency fails to protect the rights of Serbian citizens whose properties were usurped in Kosovo. This decision created serious problems for KPA case processing, including verification of documents, notification of parties or corroborative evidence. Therefore displaced claimants have to travel to KPA regional offices in Kosovo to process their cases.

Existing government-supported returns programmes⁶² assist individual and organized returnees with housing, community development as well as socio-economic measures to support economic livelihoods of returnees. In 2008 the Ministry of Communities and Returns has taken the lead in the implementation of community development and stabilization projects, and in other projects co-funded by the Ministry. Still, the long term economic integration of returnees remains a challenge, in particular with regard to the existing high unemployment rate in Kosovo.

Overall Assessment

The returns process remains a key challenge for Kosovo institutions. Limited access to property, blocked or delayed property restitution proceedings, lack of economic opportunities and a general feeling of insecurity among displaced persons continue to be the main obstacles for sustainable return. Thousands of displaced persons continue to live in very difficult conditions in collective centres and informal settlements. The return of displaced Roma, Ashkali and Egyptians is in particular impeded by the lack of civil registration and personal documents. Main areas of concern include: funding of return projects; property rights safeguards in return projects; measures to improve housing of displaced persons where they currently live; implementation of the KPA mandate over immovable private property claims related to the conflict and the effective enforcement of PCC decisions; and effective displaced persons' participation in central and local level policy-making and implementation.

3.2. Return assistance schemes and free choice of the place of residence

<i>Council of Europe, Framework Convention Recommendation No. 10: Pursue plans to make the assistance schemes more flexible so as to better guarantee the freedom of choice of place of residence in Kosovo for persons belonging to minority communities.</i>
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Normative Framework

⁶¹ Section 1 of the UNMIK Regulation 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, 31 October 2000.

⁶² The UNDP-managed Sustainable Partnerships for Assistance to Minority Returns to Kosovo programme, funded by the British Government provides multi-sectoral assistance to individual/spontaneous and organized returns since 2005. The Return and Reintegration to Kosovo project, launched in November 2008, aims to provide comprehensive return packages for some 180 displaced families, including socio-economic assistance. The project is funded jointly by the European Commission, the Ministry of Communities and Returns and UNDP.

The policy and legal framework for returns⁶³ endorsed in 2006 is based on international human rights standards, including the 1998 United Nations Guiding Principles on Internal Displacement.⁶⁴ It reaffirms the right of displaced persons to return to their place of origin and to freely choose their place of residence in accordance with international law. Besides return to the place of origin, the existing policy framework also enables alternative durable solutions, including local integration in the place of displacement or resettlement in a location different from the place of displacement or origin.

Implementation/Situation on the Ground

To date, Kosovo institutions and the international community have mainly prioritized return to the place of origin. Few efforts were made to enable and support displaced persons to resettle or locally integrate in freely chosen alternative places. For instance, in September 2008, a return project for 60 displaced and vulnerable families was launched in Laplje Selo/Llapllasellë (Prishtinë/Priština municipality) to a place other than the place of origin. Construction works as well as the identification and selection of beneficiaries are ongoing. In May 2009, the Ministry of Communities and Returns announced its intention to construct two buildings encompassing 40 apartments for vulnerable displaced persons/families in Štrpce/Shtërpçë municipality in an effort to locally integrate displaced Kosovo Serbs living in collective centres. The project has, however, been shelved due to a lack of funding. Finally, between January 2008 and June 2009, a number of individual returnees have benefited from reconstruction assistance in places other than place of origin under the UNDP programme on Sustainable Partnerships for Assistance to Minority Returns to Kosovo.

In practice, the lack of clear procedures for the allocation of municipal land and for housing reconstruction in locations other than the place of origin limits the ability of displaced persons to choose their place of residence and has in some instances jeopardized the implementation of return initiatives.⁶⁵ Problems relate mainly to overly complicated procedures for the issuance of construction permits, unclear guidelines for the allocation of municipal land and lack of clear beneficiary criteria, in particular for those who do not own land or property or cannot prove property titles. In October 2008, the Ministry of Communities and Returns initiated the revision of the 2006 Revised Manual on Sustainable Return, and established a working group on legal issues to address the described shortcomings.

Overall assessment

In addition to public efforts to ensure return to the place of origin, durable solutions remain to be found for those persons who wish to resettle to a different location or locally integrate in the communities where they are currently living, in particular those most vulnerable living in collective centres and irregular settlements.

3.3. Integration of repatriated persons

Council of Europe, Framework Convention Recommendation No. 11: Introduce assistance measures, and clearer allocation

⁶³ See paragraph 3.1 of this report.

⁶⁴ Guiding Principles on Internal Displacement, 11 February 1998. (UN Doc. E/CN.4/1998/53/Add.2).

⁶⁵ For instance, Kosovo Serbs displaced in Štrpce/Shtërpçë and Gračanica/Gračanicë, and Roma displaced in northern Mitrovica/Mitrovicë and Leposavić/Leposaviq have to date been unable to obtain assistance for integration in the place of displacement or relocation.

of institutional responsibilities, to ensure improved integration of those persons belonging to minority communities who have been forcibly returned to Kosovo.

Normative Framework

In 2007 UNMIK and the Provisional Institutions of Self-Government (PISG) formulated the Readmission Policy⁶⁶ and the Strategy for the Reintegration of Repatriated Persons⁶⁷ to manage and support the return of persons forcibly repatriated to Kosovo from host countries. In January 2008, UNMIK transferred limited readmission competencies, such as screening of potential cases, to the Ministry of Internal Affairs. On 1 November 2008, the Kosovo government took over all repatriation responsibilities from UNMIK and started bilateral negotiations on readmission agreements with several Western European countries.⁶⁸

Implementation/Situation on the Ground

Between January and May 2009, 1,143 persons were forcibly repatriated to Kosovo, out of whom 956 Kosovo Albanians,⁶⁹ in comparison with 2,495 in 2008, 3,125 in 2007, 3,598 in 2006 and 3,745 in 2005.⁷⁰ In April 2008, the Kosovo government finalized an action plan for the implementation of the Strategy for the Reintegration of Repatriated Persons. The Action Plan foresees necessary budgetary allocations by relevant ministries, responsibilities of relevant central and local authorities and timelines for their implementation. However, to date no concrete steps have been taken to implement the Strategy, nor have the necessary funds been allocated to extend specific reintegration assistance to repatriated persons. Municipalities have not implemented concrete measures to assist forcibly repatriated persons in the areas of housing, health, education or employment, nor have they established procedures or allocated resources to accommodate their specific needs.⁷¹

Overall Assessment

The reintegration of repatriated persons remains a major challenge. Concrete measures to specifically address their needs in relation to housing, property issues, employment and education are not in place. The successful implementation of the Strategy will depend on the allocation of adequate budgetary resources to ensure the special needs of repatriated persons are met, as well as on improved co-ordination between central and local institutions.

3.4. Measures to address the health situation of Roma in the lead contaminated camps in Northern Kosovo

⁶⁶ UNMIK-PISG Readmission Policy, October/November 2007.

⁶⁷ UNMIK-PISG Strategy for the Reintegration of Repatriated Persons, October 2007. The Strategy seeks to ensure sustainable and durable solutions for forcibly returned persons in the areas of health, education, employment, legal reintegration, social welfare, housing and property related issues. Special attention is paid to the needs of vulnerable sections of society and non-majority communities.

⁶⁸ In a letter to Embassies and Liaison Offices in Kosovo on 15 October 2008, the Ministry of Internal Affairs' Department of Border and Boundary Management, Asylum and Migration asked host countries to start communicating directly with the Ministry, instead of the UNMIK Office of Communities, Returns and Minority Affairs, on readmission requests and other readmission-related communication starting 1 November 2008.

⁶⁹ UNHCR Statistical Overview – Update as of end of May 2009.

⁷⁰ UNMIK Office of Communities, Returns and Minority Affairs.

⁷¹ For further information see the Report 'Implementation of the Strategy for Reintegration of Repatriated Persons in Kosovo's Municipalities,' OSCE Mission in Kosovo, November 2009.

Council of Europe, Framework Convention Recommendation No. 12: Take further urgent measures to address the alarming health situation of Roma in the lead-contaminated camps in Northern Kosovo, keeping the well-being and health of the Roma at issue as the primary consideration, and take additional measures to accommodate the return of the Roma and to prevent such health crises in the future.

Normative Framework

Legislation and return policies in Kosovo ensure the right of displaced persons to return and property repossession in accordance with international standards.⁷² Relevant legislation and policies set forth central and municipal responsibilities for the provision of equal health care services to all without distinction.⁷³ The applied law on Local Self Government attributes enhanced competencies on secondary health care to specific Kosovo Serb majority municipalities, including Mitrovica/Mitrovicë North.⁷⁴ In addition, the applied law on the Rights of Communities ensures equal access to health care for socially and economically vulnerable communities.⁷⁵

Implementation/Situation on the Ground

Around 700 Roma are still displaced in camps in Leposavić/Leposaviq, and northern Mitrovica/Mitrovicë. In April 2008, blood tests conducted by the local office of the Serbian Institute for Public Health and Protection showed the ongoing high level lead contamination of the displaced Roma.⁷⁶ In May 2008, UNMIK Department of Civil Administration transferred the responsibility for the camps to the Ministry of Communities and Returns.⁷⁷ In January 2009, the World Health Organization (WHO) called for the immediate relocation of the displaced persons and adequate health treatment.⁷⁸ On 7 May 2009, the Kosovo government expressed its willingness to further the closure of the camps and return of the displaced persons to the Roma mahala in southern Mitrovicë/Mitrovica or other places of origin. On 28 May 2009, the Mitrovicë/Mitrovica municipal assembly approved an urban regulatory plan allocating land for the construction of 184 row houses units in the Roma mahala.

Overall Assessment

Ten years after the conflict, no solution has been found for the sustainable return or alternative relocation of 700 displaced Roma exposed to high levels of lead poisoning in the camps in northern Kosovo. Since January 2007, the displaced Roma have been left without specific health treatment to counter the effects of lead contamination. Despite the willingness of central and local level authorities to close the camps in May 2009 and the allocation of land, no durable solution has been developed or implemented so far.

⁷² See Normative Framework, paragraph 3.1 of this report.

⁷³ UNMIK Regulation 2004/31 on the Promulgation of the Kosovo Health Law, 20 August 2004; UNMIK Regulation 2004/47 on the Promulgation of the Law on the Rights and Responsibilities of Kosovo Residents in the Health Care System, 19 November 2004; UNMIK Regulation 2004/32 on the Promulgation of the Anti-Discrimination Law, 20 August 2004.

⁷⁴ Art. 20, applied law on local self-government.

⁷⁵ Art. 10(2), applied law on the rights of communities.

⁷⁶ See Background Report on 'Lead contamination in Mitrovicë/Mitrovica affecting the Roma community', OSCE Mission in Kosovo, February 2009.

⁷⁷ Until the end of 2008, UNMIK Department of Civil Administration provided funding for the camp management to Norwegian Church Aid. In January 2009, the Ministry of Communities and Returns contracted the Kosovo Agency for Advocacy and Development for administering the two camps.

⁷⁸ WHO Press Conference in Prishtinë/Priština, 31 January 2009. Furthermore, on 27 March 2009, the Council of Europe Commissioner for Human Rights called for immediate action for the displaced Roma. On 1 April 2009, the Kosovo Ombudsperson Institution published the *ex officio* report on the investigation of the lead contamination and called for the immediate and sustainable relocation of the Roma population living in the camps.

4. CULTURE AND MEDIA ISSUES

4.1. Protection and reconstruction of cultural heritage: zoning measures; inclusion in the list of cultural heritage

Council of Europe, Framework Convention Recommendation No. 13: Expand efforts to protect religious sites from any incidents, while pursuing the crucial process of reconstructing the damaged Serbian Orthodox sites.

Normative Framework

Legislation on cultural heritage⁷⁹ and freedom of religion⁸⁰ ensures preservation of and access to cultural and religious heritage. Principles and provisions on promotion and protection of cultural heritage are further contained in the constitution⁸¹ and the applied law on the Rights of Communities.⁸² The applied law on Special Protective Zones establishes protective zones around 45 sites,⁸³ mainly but not exclusively⁸⁴ Serbian Orthodox, and prohibits a wide range of activities in such areas.⁸⁵ The law requires co-operation of municipalities and the Serbian Orthodox Church to ensure protection of the Serbian Orthodox religious sites and conditions for an harmonious and sustainable development of the communities inhabiting the surrounding areas. Establishment of an Implementation Monitoring Council (IMC) is envisaged to ensure consultation regarding protected non-religious sites.⁸⁶ The applied law on Spatial Planning⁸⁷ foresees the inclusion of special protective zones within the spatial plans of relevant municipalities.

Implementation/Situation on the Ground

The Kosovo Institute for Protection of Monuments (Institute) oversees the protection of cultural and religious heritage through its regional offices. Municipal institutions can authorize construction or other activities that might affect the value of the protected site, only with the written consent of the Institute.⁸⁸ However, the Institute has limited authority to effectively protect cultural and religious heritage sites and cannot prevent municipalities from issuing construction permits in areas close to protected sites. According to OSCE observations, 13 municipalities granted construction permits which might potentially affect the protection of cultural and

⁷⁹ UNMIK Regulation 2006/52 on the Promulgation of the Cultural Heritage Law (Law on Cultural Heritage), 6 November 2006.

⁸⁰ UNMIK Regulation 2006/48 on the Promulgation of the Law on Freedom of Religion in Kosovo (Law on Freedom of Religion), 24 August 2006.

⁸¹ Art. 9, constitution.

⁸² Art. 5, applied law on the rights of communities.

⁸³ Art. 7 and Annex, applied law on special protective zones.

⁸⁴ For instance, the historical centre of Prizren, the Isa Boletini Memorial Complex in Zvečan/Zvečan and the Gazimestan Memorial Monument in Prishtinë/Priština, the Vushtrri/Vučitrn medieval bridge and the Novobërdë/Novo Brdo fortress.

⁸⁵ Such as: constructions of buildings higher than the premises under protection, opening of restaurants, cafes, recreational activities, public gatherings, exploitation of mineral resources etc.

⁸⁶ On 15 June 2008, Kosovo Assembly adopted the law on special protective zones. Pursuant to art. 4, the IMC should be composed by seven members including Ministry of Culture, Youth and Sports, Institute for the Protection of Monuments in Prishtinë/Priština, Serbian Orthodox Church, Institute for the Protection of Monuments in Leposavić/Leposaviq, OSCE, Council of Europe, and UNESCO.

⁸⁷ On 17 November 2008, Kosovo Assembly adopted a law on spatial planning amending the Law on Spatial Planning promulgated by UNMIK Regulation 2003/30, 10 September 2003 (applied law on spatial planning).

⁸⁸ Art. 3(8), law on cultural heritage.

religious heritage of significant importance to non-majority communities.⁸⁹ In addition, the Institute's regional offices have limited expert staff, lack clear terms of reference and thus capacity to carry out protection tasks. Moreover, since February 2008 the Institute has not maintained relations with the Kosovo Serb community, and has limited co-operation with Gorani, Roma, Ashkali, Egyptian, and Kosovo Turk (particularly in Prizren) communities. There is concern for the fact that the Kosovo Council for Cultural Heritage (KCCH) has yet not completed the list of cultural and religious heritage, pending the submission of local lists by the Institute's regional offices.

As of February 2009, the Kosovo police has been protecting some religious and cultural heritage sites previously guarded by private security companies. Upon previous request, some Serbian Orthodox sites are still guarded by KFOR.⁹⁰ In 2008 and 2009, a number of incidents affecting cultural and religious sites, particularly Serbian Orthodox, occurred. The damages included damage of fences, windows, church walls, looting of copper roofs of churches and tombs' metal inscription letters. At the same time there were some positive examples of prosecution and conviction of perpetrators of similar incidents in 2008.⁹¹ After the March 2004 riots, the Reconstruction Implementation Commission for Serbian Orthodox Religious Sites⁹² (Reconstruction Commission) was established and ensured the rehabilitation of 11 Serbian Orthodox churches. However since February 2008, the Serbian Orthodox Church has not co-operated with Kosovo institutions, and resumed only recently technical co-operation with the Kosovo Ministry of Culture, Youth and Sports. As a result, the Commission published a new reconstruction tender on 8 June 2009.

On 1 July 2008, Gjakovë/Đakovica municipality violated the cultural and religious rights of the Kosovo Serb community by covering up and transforming the foundations of the Holy Trinity Cathedral into a public park. Notably, the Cathedral, razed to the ground during the March 2004 riots, is officially listed as a reconstruction site by the Reconstruction Commission. Upon official complaint by the Serbian Orthodox Church,⁹³ on 18 July 2008 the SRSG urged the Kosovo Prime Minister "to ensure respect for property rights of the church and protect the site under the framework of the reconstruction programme of the destroyed Serbian Orthodox Churches." However, to date the municipality has taken no steps to restore the site of the destroyed church.

⁸⁹ Kamenicë/Kamenica, Novo Brdo/Novobërdë, Viti/Vitina, Kaçanik/Kaçanik, Han i Elezit/Đeneral Janković, Štrpce/Shtërpçë, Ferizaj/Uroševac, Shtime/Štimlje, Glogovac/Glogovac, Vushtrri/Vučitrn, Skenderaj/Srbica, Mamuša/Mamushë/Mamuša, and Dragash/Dragaš.

⁹⁰ KFOR provides security to Visoki Dečani Monastery, the Patriarchate in Pejë/Peć, Gorioč Monastery in Istog/Istok, Budisalc/Budisavci Monastery in Klinë/Klina, Gračanica Monastery in Prishtinë/Priština, Gazimestan memorial monument in Obiliq/Obilić, Saint Archangel and Saint Cyriac in Prizren, Devič Monastery in Skenderaj/Srbica and Sokolica Monastery in Mitrovicë/Mitrovica.

⁹¹ Pejë/Peć District Court 42-month sentence for hand grenade attack against Dečan/Dečani Monastery in 2007. Trial against person suspected of stealing construction material from Orthodox church in Prizren.

⁹² The commission was established in June 2004 with an agreement between the Provisional Institution of Self Government and the Serbian Orthodox Church to oversee the repair and reconstruction process of the sites damaged or destroyed during the riots of March 2004.

⁹³ Letter of Bishop Teodosije to SRSG, 12 July 2008; and Letter of the Serbian Orthodox Church Representative to the SRSG, 5 September 2008.

The fact that the Institute approved on 26 June 2009 the project of the Vushtrri/Vučitrn municipality to construct a restaurant within the special protective zone surrounding the Vojnović Medieval/Old Bridge raises further concern. Such activity is restricted in the special protective zones and can only be approved by the Implementation Monitoring Council (IMC). However, the IMC has not been established yet and full protection of special protective zones through spatial planning measures is pending until the adoption of spatial plans in relevant municipalities. Only seven municipalities adopted spatial plans approved by the Ministry of Environment and Spatial Planning encompassing special protective zones.⁹⁴ An inter-ministerial group has been established to draft a law on the Prizren historical centre special protective zone, containing religious and cultural heritage sites of special relevance to different communities. The municipality is currently developing a conservation plan for the Prizren historical centre in co-operation with UN Habitat.

Overall Assessment

Protection and conservation of cultural heritage sites of all communities remains a challenge. Insufficient implementation of the legal framework exposes cultural and religious heritage sites to vandalism, damage and destruction, including through legal and illegal construction in their vicinity. Due to insufficient co-operation among municipal authorities, the Institute, and the Kosovo Council for Cultural Heritage, little progress was achieved to develop a comprehensive list of cultural and religious heritage sites. There is insufficient public awareness on the religious and cultural heritage of different communities, the duty of residents towards its protection and its value for the Kosovo society.

4.2. Support for the cultures of numerically smaller communities

Council of Europe, Framework Convention Recommendation No. 14: Increase measures to support cultures of minority communities, including numerically smaller ones, and ensure the participation of persons belonging to minority communities in the relevant decision-making process.

Normative Framework

The applied law on the Rights of Communities protects the right of non-majority communities to establish associations to express, maintain and develop their culture. These can be funded by the Kosovo Consolidated Budget.⁹⁵ The constitution calls Kosovo institutions to ensure conditions enabling communities to preserve, protect and develop their identities and to support cultural initiatives of communities including through financial assistance.⁹⁶ The Law on Institutions of Culture⁹⁷ regulates conditions, criteria and procedures for establishment of the public and private cultural institutions.

Implementation/Situation on the Ground

In 2009, the Ministry of Culture, Youth and Sports (Ministry of Culture), through its Division of Promotion of Culture, allocated a budget of 325,000 Euros to support

⁹⁴ The deadline for municipalities to draft spatial plans was extended by the law amending the Law on Spatial Planning promulgated by UNMIK Regulation 2003/30, 10 September 2003. The following municipalities adopted spatial plans: Gjakovë/Đakovica, Gjiilan/Gnjilane, Pejë/Peć, Istog/Istok, Mitrovicë/Mitrovica, Gillogovc/Glogovac, Deçan/Dečane.

⁹⁵ Art. 5, applied law on the rights of communities.

⁹⁶ Art. 58(1), constitution.

⁹⁷ UNMIK Regulation 2006/44 on the Promulgation of the Law on Institutions of Culture, 18 August 2006.

cultural projects, such as concerts, theatre, film and folklore festivals as well as TV programs on protection of cultural heritage and exhibitions. Eligibility criteria were fulfilled by 15 of the 39 projects submitted by non-majority communities and were duly funded.⁹⁸

At the local level, municipalities have not established institutions of culture. On a positive note, municipalities in the Prizren region appear the most active in supporting cultural initiatives of non-majority communities, although without the necessary central support. A proposal of the Prizren municipality to raise its 2009 budget for culture from 103,000 to 260,00 Euros, was rejected by central authorities. Municipal cultural initiatives target mainly the Kosovo Turk, Kosovo Bosniak, Roma, Ashkali and Egyptians communities. Few municipal initiatives were organized to promote the Kosovo Serb culture, and no cultural events supported Kosovo Albanians living in non-majority situations. Municipalities mainly fund cultural initiatives to mark public and religious holidays. Civil society organisations generally submit projects through communities committees or to municipal community offices.

Overall Assessment

Within available financial resources, the Ministry of Culture endeavors to support projects submitted by non-majority communities. However, due to a reactive approach, and lack of outreach activities to inform vulnerable or smaller non-majority communities and assess their cultural protection needs, available funds tend to be allocated to better established and organized communities' associations. No specific policy or co-ordination with the Ministry of Education appears in place to identify and protect cultures and languages at risk of disappearance (such as the Turkish in Janjevë/Janjevo or the Romani language in north western Kosovo). Municipal institutions devote insufficient efforts and resources or obtain insufficient central support to promote cultures of non-majority communities. Pressing problems, such as unemployment, return and property related issues, are prioritised over the promotion of culture. In addition, lack of or poor communities' initiative adversely affect the development of meaningful multi-cultural initiatives. Although municipal budgets include allocations for culture, youth and sports, there are no normative provisions ensuring equitable distribution of these funds to non-majority communities and their cultures. To organize initiatives enabling expression and preservation of their cultures, non-majority communities mostly rely on financial contributions of international organizations. Legal requirements for the establishment of institutions of culture appear too demanding in a context of limited resources and capacities.

4.3. Capacities and measures to support broadcasting for and by non-majority communities

Council of Europe, Framework Convention Recommendation No. 15: Process rapidly the delayed application for radio and TV licenses with the view to expand the scope and diversity of broadcasting for and by minority communities and take further steps to ensure that all communities have equal access to public service broadcast services.

Normative Framework

The constitution and the applied law on the Rights of Communities entitle non-majority communities to access information in their language in written and electronic

⁹⁸ Projects submitted by the Kosovo Serb (4), Kosovo Turk (3), Roma (2), Kosovo Albanian (1), Kosovo Montenegrin (1) and Kosovo Bosniak (1) communities. The other three eligible projects were considered multiethnic.

media, establish their own media, have access to a reserved number of frequencies for electronic media, and access to equitable representation in public broadcast media.⁹⁹ The public Radio Television of Kosovo (RTK), is obliged to provide all communities with services in their languages, through no less than 10 per cent of its programming budget and 15 per cent of its program time.¹⁰⁰ Public broadcasting must cover 90 per cent of the territory and 90 per cent of the area inhabited by non-majority communities.¹⁰¹ Five per cent of the public broadcasting fee has to be allocated to the Fund for the Support of Minority, Multiethnic and Disadvantaged Media,¹⁰² whose operation and management was regulated by the Prime Minister in December 2008.¹⁰³ The government is obliged to secure an international frequency plan allowing Kosovo Serb community access to a licensed Kosovo-wide independent Serbian-language television channel.¹⁰⁴

The Independent Media Commission (Media Commission) regulates broadcasting frequencies, licenses public and private broadcasters and develops broadcasting policies, through a council which must include one representative of non-Albanian and non-Serb communities of Kosovo.¹⁰⁵ The Press Council of Kosovo¹⁰⁶ (Press Council) is a registered association of Kosovo print media, which promotes and monitors respect of the Press Code for Kosovo,¹⁰⁷ including through the scrutiny of complaints and the issuance of fines in case of breaches such as hate speech and defamation.

Implementation/Situation on the Ground

The signal of the public broadcasting service covers only an estimated 75¹⁰⁸ to 78¹⁰⁹ per cent of the inhabited areas and is not available in Serb majority municipalities in northern Kosovo (inhabited also by Kosovo Albanians), Gorani and Kosovo Bosniak inhabited areas in the Dragash/Dragaš and Prizren municipalities, generating complaints and dissatisfaction among these communities.¹¹⁰ According to the Media Commission's monitoring report on the public broadcasting service,¹¹¹ less than 12 per cent of the daily RTK Radio and TV programming is in non-Albanian languages. Contrary to the law,¹¹² Radio Kosovo does not broadcast non-Albanian language

⁹⁹ Art. 59(10) and (11), constitution; Art. 6(1) and (2), applied law on the rights of communities.

¹⁰⁰ Art. 6(6), Law on Radio Television of Kosovo promulgated by UNMIK Regulation 2006/14, 11 April 2006.

¹⁰¹ Art. 8, Law on the Independent Media Commission and Broadcasting.

¹⁰² Art. 20(11), Law on Radio Television of Kosovo.

¹⁰³ Prime Minister's Regulation No. 01/2008 on Functioning of the Fund for the Support of Minority, Multiethnic and Disadvantaged Media.

¹⁰⁴ Art. 59(11), constitution; Art. 6(5), applied law on the rights of communities.

¹⁰⁵ Art. 2, and 4(1), (4), (8), Law on the Independent Media Commission and Broadcasting promulgated by UNMIK Regulation 2005/34, 8 July 2005; Art. 141, constitution.

¹⁰⁶ Kosovo Press Council Statute, Prishtinë/Priština, 10 August 2005. Eight Albanian-language and four non-Albanian language print outlets subscribed its statute.

¹⁰⁷ Press Code for Kosovo, Prishtinë/Priština, 18 March 2005.

¹⁰⁸ UNMIK Progress Report, 21 July 2008, p. 27.

¹⁰⁹ Europe Aid, Handbook on minority rights, April 2009, p. 16.

¹¹⁰ On 6 March 2009 the Council of Bosniak Intellectuals of Kosovo expressed specific concern during roundtables organised in the Župa/Zhupë valley (Prizren) and in the Gora region of Dragash/Dragaš.

¹¹¹ See report on 'Monitoring of One Month programming of the Public Broadcaster of Kosovo – Programme Scheme – Compatibility with the law on RTK and Regulation on Advertisements,' Independent Media Commission, June 2009, p. 3.

¹¹² Art. 8, Law on Radio Television of Kosovo.

programs on the same frequencies used for Albanian language programs.¹¹³ Non-Albanian communities programmes are transmitted on frequencies not commonly used, without sound-quality signal and universal coverage. Pending access to an international frequency plan, a Kosovo-wide Serbian-language television channel is not secured and the government is evaluating alternative solutions (cable TV).

According to the Media Commission's Directory of Licensed Broadcasters in Kosovo, out of 114 licensed radio and TV broadcasters (92 radio and 22 TV stations), 77 broadcast only in one language (50 in Albanian language, 22 in Serbian, three in Bosnian, one in Turkish and Gorani respectively); 35 in more than one language; and only two in both the Albanian and Serbian (with additional Romani programming). In July 2009, the Media Commission finalised the issuance of long term broadcast licences. While long term licenses replace temporary licenses of all active broadcasters, three of the Serbian-language media broadcasters¹¹⁴ did not apply for these licenses due to the lack of financial resources. Therefore, the Media Commission discontinued the licenses of these broadcasters.¹¹⁵

On 23 June 2009 the Press Council fined the Kosovo Albanian newspaper 'InfoPress' for inciting violence, jeopardising freedom of expression and posing a threat on a journalist who, without objective arguments, had been described as "a servant of the Serb secret police" and threatened in writing that she had chosen "not to live a long life."¹¹⁶ The described press articles also convey a continued sense of enmity towards the Kosovo Serb community and run counter the spirit of peaceful inter-ethnic relations. In a press release of 10 June 2009 the Media Commission labelled these threats as unacceptable and highly condemnable in a democratic society and called all Kosovo institutions to deal seriously with the incident.

On 9 June 2009, the Fund for the Support of Minority Media Multiethnic and Other Special Groups¹¹⁷ announced the selection of 15 projects prioritizing areas not covered by the public broadcaster's service. Nominated projects, submitted by Serbian (7), Bosnian (3) and Romani language (1) media, multiethnic initiatives (3) and media representing persons with special needs (1), await final approval by the Prime Minister.

Overall Assessment

Further concrete measures are needed to implement the normative framework and to support a multicultural public broadcasting service. Monthly fees collected by the Kosovo Energy Corporation for the provision of RTK services are imposed also on communities not reached by this service. Public radio broadcasting in non-Albanian

¹¹³ Programs in Albanian are broadcast in Long Wave FM and programs in non-Albanian languages are broadcast in Medium wave 549.0 KHz./AM.

¹¹⁴ Radio Index (Kamenicë/Kamenica), Radio M (Babin Most/Babimoc, Prishtinë/Priština), TV 3K (Mitrovicë/Mitrovica).

¹¹⁵ See <http://www.imc-ko.org/index.php?id=624&l=a&p=7>.

¹¹⁶ Adjudication of the Press Council of Kosovo on the complaint filed by Ms. Jeta Xharra, against the InfoPress Newspaper, 23 June 2009. See <http://www.presscouncil-ks.org/?cid=2,15,216>. The decision refers to the InfoPress articles: "Lushtaku: Jeta Xharra is a servant of the Serb secret police" – quoting a statement of the Skenderaj/Srbica mayor (2 June 2009) and "Four Treasons of Jeta" (4 June 2009).

¹¹⁷ The Fund Commission composed by representatives of the government, media, Media Commission and Press Council (four Kosovo Albanians, one Kosovo Serb and Kosovo Bosniak commissioner).

languages is inadequate. Lacking or dissatisfactory public broadcasting services for communities nurture a sense of discrimination. The Press Council and Media Commission adequately reacted towards press articles threatening journalists' freedom of expression and running counter to the spirit of an inter-ethnic democratic society.

5. USE OF LANGUAGES

5.1. Adoption, monitoring and implementation of legislation

Council of Europe, Framework Convention Recommendation No. 16: Adopt new language legislation in order to improve clarity and legal certainty as regards the use of languages, including in relations with administrative authorities, topographical indications, and registration of personal names, and closely monitor compliance with language requirements in the relevant sectors, including in the judiciary.

Council of Europe, Framework Convention Recommendation No. 17 Ensure that the adoption of new language legislation is coupled with adequate implementation capacity and that procedures, including judicial ones, are in place in case of non-compliance with language requirements, including for any illegal changes of place names.

Normative Framework

Albanian and Serbian are the official languages in Kosovo.¹¹⁸ Conditions for the recognition and use of other community languages before municipal authorities are specified by law.¹¹⁹ The constitution provides extensive linguistic rights¹²⁰ for communities. The applied law on the Rights of Communities¹²¹ requires affirmative measures to ensure non-official languages are preserved and promoted. Several municipalities adopted municipal regulations on the use of languages.¹²² The applied law on Municipal Boundaries defines official names of cadastral zones, municipalities, towns and villages. Pursuant to the applied law on Identity Cards, identity cards must be issued also in additional official languages of municipalities.¹²³ Personal names must be registered according to the alphabet and script of the native or official language of choice.¹²⁴ Court proceedings are conducted in the official language(s)¹²⁵ chosen by parties,¹²⁶ with free interpretation/translation assistance provided if requested.¹²⁷ Persons belonging to communities are entitled to use their language and alphabet freely in all contacts with the judiciary; including when submitting and receiving documents, during hearings, and anywhere in courts or prosecutors' offices.¹²⁸ All signs, notices, and court bulletins must be in the official

¹¹⁸ Art. 2(1), Law on Languages; Art. 5, constitution.

¹¹⁹ Art. 2(3) and (4), Law on Languages. Articles 7 and 9 specify rights of persons whose language is official and Article 8 provides rights of persons whose language is in official use.

¹²⁰ Article 59(5),(6),(8) and (9), constitution.

¹²¹ Art. 4(9), applied law on the rights of communities.

¹²² Regulations required by Art. 2(4), Law on Languages, and Art. 9(2), applied law on local self-government.

¹²³ On 13 October 2008 Kosovo Assembly adopted the law on identity cards (applied law on identity cards). Art. 9, applied law on identity cards.

¹²⁴ Art. 27, Law on Languages; Art. 6, Law on Personal Names promulgated by UNMIK Regulation 2008/11, 22 February 2008.

¹²⁵ Albanian, Serbian, English, and, in areas in which the Turkish community lives, Turkish. Section 5, UNMIK Regulation 2006/25 on a Regulatory Framework for the Justice System in Kosovo, 27 April 2006; Articles 2 and 12, Law on Languages; Art. 5, constitution.

¹²⁶ Art. 13, Law on Languages.

¹²⁷ Articles 13, 15 and 16, Law on Languages; Art. 15, UNMIK Regulation 2003/26 on the Provisional Criminal Procedure Code of Kosovo, as amended (CPCCK); and Art. 30(1) and (4), constitution.

¹²⁸ Section 5, UNMIK Regulation 2006/25 on a Regulatory Framework for the Justice System in Kosovo; Art. 14, Law on Languages; Art. 15, CPCCK, for criminal proceedings, 6 July 2003; Art. 6,

languages, and translation costs must be borne by the courts and prosecutors' offices.¹²⁹ Adoption of a law on courts is pending. The Kosovo Judicial Council organises court translation and hiring of interpreters¹³⁰ but has not initiated sub-legal acts to regulate their minimum requirements and regular examination. The government established three bodies to monitor the use of languages.¹³¹ The Language Commission has the authority to issue administrative sanctions against violations of the law¹³² and is obliged to submit an annual report to the government and to the Assembly of Kosovo on legal and other measures undertaken to implement the law.¹³³

Implementation/Situation on the Ground

No adequate co-ordinated system is in place to monitor the implementation of the Law on Languages and inadequate human and financial resources are allocated. Available educational systems do not provide for learning both official languages. Serbian curriculum students follow classes in the Serbian language, and there are no provisions for learning Albanian, while Kosovo curriculum students follow classes mostly in Albanian, but also in Bosnian or Turkish, and there are no provisions for learning the Serbian language.

A concerning reduction of the number of language assistants threatens the implementation of the Law on Languages.¹³⁴ Ten municipalities have no language assistants, while municipalities with sufficient language assistants decreased from 11 (in 2008) to 4 (in June 2009), due to non-replacement of departed staff or non renewal of expired contracts. Lack of regular systematic training for public administration language assistants affects the quality of their services.

The Language Commission lacks own budget, resources and office space and needs yet to ensure implementation of its mandate. The composition of the Commission does not ensure effective participation of all linguistic communities.¹³⁵ As of June

applied law on contested procedure adopted by the Assembly of Kosovo on 29 July 2008, for civil proceedings.

¹²⁹ Section 5, UNMIK Regulation 2006/25 on a Regulatory Framework for the Justice System in Kosovo, 27 April 2006.

¹³⁰ Section 1(4), UNMIK Regulation 2005/52 on the Establishment of the Kosovo Judicial Council, 20 December 2005.

¹³¹ Section for the Inclusion of Communities and the Use of Official Languages in the Ministry of Local Government Administration; Ministry of Public Services, Administrative Instruction No. 2006/10 on Rules and Work Procedures of the Monitoring Unit for Use of Official Languages in Central Institutions of Kosovo; Office of the Prime Minister's Administrative Instruction No. 03/2007 Composition and Competencies of the Language Commission. The Commission first met in May 2007.

¹³² Ministry of Public Services, Administrative Instruction No. 2007/01 On Determining Administrative Sanctions for Violation of the law on Languages.

¹³³ Art. 32(11), Law on Languages.

¹³⁴ The 33 municipalities employed 40 language assistants in June 2009 as opposed to 54 in September 2007, while ministerial language assistants reduced from 40 to 37 after the creation of two new ministries. In 63 courts and prosecution offices there are only 58 Albanian/Serbian language assistants.

¹³⁵ While Article 32(10) of the Law on Languages requires that composition of the Commission be determined "taking into account the rights and interests of all language communities in Kosovo, and taking into account the need to reflect the linguistic diversity of communities in Kosovo," the Prime Minister's Administrative Instruction No. 2003/07 reserves nomination and representation to six ministries and to the Assembly of Kosovo without consultation of linguistic communities.

2009, the government has yet to undertake the public information campaign required immediately upon promulgation of the Law on Languages.¹³⁶

Until June 2008 only one municipality (Klinë/Klina) had adopted a municipal regulation on the use of languages as required by the law. After promulgation of the applied law on Local Self Government, as of July 2009, 16 municipalities adopted municipal regulations on languages and other six were drafting them. However, most municipal regulations do not contain concrete procedures for the recognition and use of languages, implementation, monitoring and reporting mechanisms and remedies.¹³⁷

Nonetheless various municipalities¹³⁸ have recognised additional official languages through their new municipal statutes or other municipal decisions in 2007 and 2008. The Gjilan/Gnjilane and Mitrovicë/Mitrovica, Prishtinë/Priština and Vushtrri/Vučitrn municipalities recognised Turkish as language in official use, and a further request for recognition is pending in Lipjan/Lipljan.¹³⁹

The Ministry of Internal Affairs is not issuing identity cards in the additional Turkish official language in Prizren and Mamuša/Mamushë/Mamuša. Personal names are automatically registered only in Latin-based characters and, on occasions, do not respect the writing system or alphabet of the official or community language chosen by the person on identity cards, travel documents and civil status certificates.

Various municipalities continue to receive from central institutions documents only in Albanian or with a poor Serbian translation.¹⁴⁰ A number of municipalities¹⁴¹ have not translated all or most of their regulations and decisions in Serbian. On a positive note, in Prizren, Dragash/Dragaš, Pejë/Peć and Mamuša/Mamushë/Mamuša municipal acts are also translated in the additional official languages. With the exception of Pejë/Peć and Dragash/Dragaš, municipal decisions on street names provide most street and public venue names only in one of the official languages. The Ministry of Transport and Communications generally ensures the display of topographical signs in both the official languages along regional roads, but is not always proactive in cleaning or replacing defaced signs. There is a trend in some ministerial websites and government reports to make use of unofficial Albanian place names.¹⁴²

¹³⁶ Art. 36(2), Law on Languages.

¹³⁷ All regulations fail to include procedures for recognition and use of languages in official use prescribed by Ministry of Local Government Administration.

¹³⁸ Bosnian was recognised as official in Pejë/Peć (municipal decision 2003), Prizren (2008 municipal Statute), Dragash/Dragaš (municipal Statute) and as a language in official use in Istog/Istok (2008 municipal Statute). Turkish is recognised as official in Prizren (Art. 2(3), law on Languages and municipal Statute) and Mamuša/Mamushë/Mamuša (municipal Statute).

¹³⁹ On 14 July 2009 the Kosovo Turk community traditionally residing in Janjevë/Janjevo (Lipjan/Lipljan) has requested recognition of its language as language in official use.

¹⁴⁰ See Report on 'Implementation of the law on Languages by Kosovo Municipalities', OSCE Mission in Kosovo, June 2008, p. 8.

¹⁴¹ Han i Elezit/Đeneral Janković, Kaçanik/Kaçanik, Novobërdë/Novo Brdo, Mitrovicë/Mitrovica, Vushtrri/Vučitrn, Junik, Glllogvc/Glllogovac, Shtime/Štimlje, Malishevë/Mališevo, Suharekë/Suva Reka.

¹⁴² As of June 2009, the Office of the Prime Minister's 2008 government report (http://www.kryeministri-ks.net/repository/docs/raporti_vjetor_i_punes_se_qeverise_2008.pdf), the government portal (<http://www.rks-gov.net/sq-AL/Pages/InstitucioneteKosoves.aspx#>) and the Ministry of Local Government Administration websites (<http://www.ks-gov.net/mapl/Komunat.aspx>) contained the unofficial names such as Dardana/Kamenica, Artana/Novo Brdo, Kastriot/Obiliq, Drenas/Glllogoc, Istog/Burim, Podujeva/Besiana and Theranda/Suhareke.

Court proceedings are most commonly conducted in the Albanian language, with interpretation/translation provided to the parties who require it. Translators normally provide parties with written translations of the most relevant case-file documents. Insufficient capacity to translate further documents may cause procedural delay.

In the 63 functioning Kosovo courts and prosecution offices, there are 58 Albanian-Serbian translators/interpreters posts. Most courts and prosecution offices have one Albanian-Serbian language assistant. In the Prizren district court only one post of Albanian-Turkish translator/interpreter is budgeted. Courts and prosecution offices without Albanian-Serbian language assistants resort to *ad hoc* arrangements such as borrowing translators/interpreters from other offices, or asking court clerks to provide translations/interpretations when needed. These are inadequate, particularly in municipalities in which larger non-majority communities reside.

Overall Assessment

International requirements concerning linguistic rights of non-Albanian communities are met by the regulatory framework. However, Kosovo institutions do not ensure sufficient implementation. Minimal implementation of language-use standards, equal access to multi-lingual public services and effective participation by users of non-majority languages may be at stake if adequate human and financial resources are not provided to ensure quality of translation in courts and in the central and municipal civil service. Ongoing budget cuts are adversely affecting implementation of the Law on Languages. Lack of logistical and financial support and co-operation from institutions of the executive and legislative branch, prevents the Language Commission from becoming an effective monitoring and policy development mechanism. Legal framework and graduate curricula are necessary to ensure training, examination and professional standards of court and public administration translators.

5.2. Use of non-majority languages in public places

Council of Europe, Framework Convention Recommendation No. 18: Ensure that the adoption of new language legislation is coupled with adequate implementation capacity and that procedures, including judicial ones, are in place in case of non-compliance with language requirements, including for any illegal changes of place names.

Normative Framework

The Law on Languages and the applied law on the Rights of Communities promote and protect the creation of an environment where all communities can freely express and preserve their linguistic identity, and freedom of linguistic expression.¹⁴³

Implementation/Situation on the Ground

In or immediately before 2008 and 2009 few incidents were reported regarding the use of non-majority languages in public places. However, incidents continue to target and generate insecurity among the Kosovo Serb (and most recently Roma) communities. Occasionally, also Kosovo Albanians become targets in regard to these incidents.¹⁴⁴ While free public use of non-majority languages prevails in all or most of

¹⁴³ Art. 4(2), law on the rights of communities; Art. 1(1) (iii), 3(1), 29(1) Law on Languages.

¹⁴⁴ On 18 August 2009, on the main bridge in Mitrovicë/Mitrovica, two Kosovo Albanians, while crossing the bridge from south to north, were allegedly stopped by a police officer who told them that the northern part is Serbian land and only Serbian or English languages are permitted. Weekly security report, OSCE Mission in Kosovo situation centre, 12–18 August 2009.

the multi-ethnic municipalities of the Prishtinë/Priština,¹⁴⁵ Prizren and Gjilan/Gnjilane regions, instances of gradual improvement do not apply equally to all communities. In Gjilan/Gnjilane, use of the Serbian or Turkish languages in public improved, including by Roma, but some Kosovo Serbs have security concerns, and restrict movements and language use in some areas, or face difficulties to communicate with the younger Kosovo Albanians who do not speak Serbian.

Some municipalities took commendable initiatives to reinstall defaced bi-lingual topographical signs of the Visoki Dečani Monastery (Deçan/Deçane) and issued public statements requesting respect for non-majority communities, and Kosovo Serbs in particular (Deçan/Deçane and Klinë/Klina).

Despite absence of reported incidents, in some cases and locations non-majority communities refrain from using their languages in public. For instance, in Viti/Vitina, Kosovo Serbs, Kosovo Croats and Roma limit the use of their languages in the majority populated areas to the bare necessity. The situation is even more alarming when it comes to display of symbols and inscriptions, which these communities completely avoid in majority populated areas. Negative past experiences still nurture a sense of insecurity. Reluctance to use the Serbian and Bosnian languages is noticeable in Malishevë/Mališevo and Suharekë/Suva Reka municipalities.

Kosovo Serbs and Kosovo Albanians living in separate mono-ethnic settlements rarely visit majority towns or villages. Kosovo Serbs living in the remote Banja/Bajë and Suvo Grlo/Syrganë (Skenderaj/Srbica) villages and in the Vushtri/Vučitrn municipality are rather isolated and rarely travel to towns mainly inhabited by Kosovo Albanians. Visits to the Ferizaj/Uroševac town from neighbouring Kosovo Serb return villages are mostly limited to the municipal building or its close vicinity. Allegedly, occasional (generally not reported) incidents of verbal intimidation deter use of the Serbian language in public or prompt reversion to the Albanian language, if this language is known. In the Kosovo Serb majority municipalities of Zubin Potok and Zvečan/Zveçan, the population of Kosovo Albanian villages does not participate in the public life and has no or limited interaction with the Kosovo Serb majority. The Kosovo Albanian municipal community officer often accompanies Kosovo Albanians during their rare visits to the Zvečan/Zveçan municipality.

There is more interaction in Štrpce/Shtërpçë town, where, on working days, Kosovo Albanian workers freely move and use their language, although they communicate in Serbian with local Kosovo Serbs. In the mixed Novobërdë/Novo Brdo municipality, Kosovo Serbs are able to communicate in their language throughout the municipality. Kosovo Serbs and Roma continue to use the humanitarian bus lines, though to a lower extent on certain new routes mainly used by Kosovo Albanian customers heading to Prishtinë/Priština. Nonetheless Kosovo Serb passengers and students using these lines freely speak Serbian with drivers and seem to experience no insecurity or harassment.

¹⁴⁵ Residents from all communities use their languages during the weekly market-place in the centre of Lipjan/Lipljan. Kosovo Serbs, Kosovo Bosniaks and Roma inhabitants from different municipal settlements shop on daily basis in the Obiliq/Obilić town centre and marketplace, using Serbian, Bosnian and Romani languages especially inside shops. After the multi-ethnic Bresje/Bresje village market-place was relocated to Fushë Kosovë/Kosovo Polje town, Kosovo Serbs and Roma continue to visit the new market and use their languages freely.

In southern Mitrovicë/Mitrovica, the few Kosovo Bosniaks generally use the Albanian language. Kosovo Turks freely speak Turkish in public but mainly resort to Albanian to engage with the Kosovo Albanian majority. In northern Mitrovica/Mitrovicë, Kosovo Turks confine the use of their language to ethnically-mixed neighbourhoods outside of which they rarely move.

In Prizren and Rahovec/Orahovac, Kosovo Serbs freely use their language in public, as do the Kosovo Turks and Kosovo Bosniaks in Prizren and Gorani and Kosovo Bosniaks in Dragash/Dragaš. The Romani language is only used within the private and community spheres in Prizren, but apparently also in public in Suharekë/Suva Reka and Mamuşa/Mamushë/Mamuşa.

Overall Assessment

While the reporting period was characterised by a low number of reported language use incidents, low-level intimidation may go unreported and restraint to use non-majority languages remains in specific areas. Incidents continue to target the Kosovo Serb and, in some cases, Roma communities. There is a need of more proactive and consistent initiatives by municipal authorities to condemn incidents and promote tolerance and trust, particularly in mono-ethnic municipalities and in locations where returns are limited. Enhanced Kosovo police outreach to non-majority communities and awareness may support reporting of cases of low level intimidation that may impinge on the public use of non-majority languages. There is a need to ensure that threats related to the use of languages are classified, investigated and prosecuted as potentially ethnically related incidents or crimes, rather than generic minor offences.

6. EDUCATION

6.1. Opportunities for interaction between children of the Kosovo Albanian and Serb communities and elimination of linguistic barriers

Council of Europe, Framework Convention Recommendation No. 19: Consider ways to create opportunities for interaction between pupils from Serbian and Albanian communities and design a comprehensive plan that would progressively remove barriers, including linguistic ones, between pupils from different communities.

Normative Framework

Opportunities for multi-lingual education, encompassing learning of both official languages are not ensured by the normative framework. Students can receive education in the chosen official language at all levels,¹⁴⁶ but have no opportunity or obligation to learn the other, decreasing the opportunity of communication between Kosovo Albanian and Kosovo Serb students. Children whose language is not official are entitled to primary and secondary education in their mother tongue and obliged to learn one of the official languages of their choice.¹⁴⁷

Implementation/Situation on the Ground

In practice, two physically separate educational systems operate in Kosovo, one reporting to the Kosovo Ministry of Education, Science and Technology (MEST) and the other to the Serbian Ministry of Education. Through physical (separate schools)

¹⁴⁶ Art. 4(4b), Constitutional Framework; art. 19(1) of the Law on Languages; art. 8(1) of the applied law on the rights of communities; art. 59(2), constitution.

¹⁴⁷ Art. 21(1), Law on Languages; art. 8(10), applied law on the rights of communities; Ministry of Education, Science and Technology (MEST), Administrative Instruction No. 10/2007 on Learning in the Elective Official Language.

and linguistic separation, both educational systems perpetrate and reinforce separation between Kosovo Serb and Kosovo Albanian students. Students of other communities gravitate around the Kosovo or Serbian system, depending on geographical, linguistic and other identity factors. Few schools combine, Kosovo Albanian and Kosovo Serb students in separate shifts and with no or rare interaction.¹⁴⁸

Overall Assessment

There is a need for sustained initiatives to address barriers that continue to prevent the integration and interaction of students and teachers of the Kosovo and Serbian curricula. The Serbian and Kosovo curricula fail to ensure learning of both the official languages.¹⁴⁹ Therefore, future generations will be unable to communicate with each other, the Kosovo civil service will lack bi-lingual civil servants, and implementation of the Law on Languages will be at risk.

6.2. Measures to accommodate educational concerns of persons belonging to non-majority communities

Council of Europe, Framework Convention Recommendation No. 20: Accommodate concerns of persons belonging to minority communities and introduce measures that could reduce the demand for maintaining a parallel educational system.

Normative Framework

Legislation adopted in 2008¹⁵⁰ enables schools providing education in the Serbian language to use Serbian curriculum and textbooks, subject to the approval of the Ministry of Education, Science and Technology (MEST). An Independent Commission for the Review of Serbian Language Teaching Materials¹⁵¹ (Independent Commission) was established in April 2009. Through the Independent Commission, MEST intends to develop a Kosovo curriculum in the Serbian language by 2010/11. Applied legal framework¹⁵² attributes enhanced tertiary education competencies to the municipality of northern Mitrovica/Mitrovicë where public higher education in the Serbian language is provided.

Implementation/Situation on the Ground

Until July 2009, the Independent Commission had not started to operate and no administrative instruction on its terms of reference and procedures had been issued. Since two of the Ministry's appointees belong to the cabinet of the Minister of Education, independence of this body is not ensured. Furthermore, one of the Kosovo Serb members needs to be replaced after his appointment as constitutional court judge. Previous efforts to develop a Kosovo curriculum in the Serbian language acceptable to the Kosovo Serb community have been affected by lack of participation of Serbian educational experts, due to their non-recognition of Kosovo institutions.

¹⁴⁸ See report on 'Kosovo Non-majority Communities Within the Primary and Secondary Educational Systems,' OSCE Mission in Kosovo, April 2009, pages 15 to 17.

¹⁴⁹ The only exception is noticeable in Dragash/Dragaš, where Serbian-curriculum Gorani students are being taught two optional Albanian language classes per week in the grades 3-8.

¹⁵⁰ In case Serbian-curriculum textbooks are not approved by the Ministry, an Independent Commission introduces necessary amendments. See arts. 12 and 13, law on Education in Municipalities of Kosovo, adopted by the Kosovo Assembly on 15 June 2008 (applied law on education in municipalities of Kosovo); art. 8(5), applied law on the rights of communities.

¹⁵¹ The Commission is composed of seven members appointed by the MEST (3), by members of the Kosovo Assembly holding seats reserved to the Kosovo Serb community (3), and by the International Civilian Representative in Kosovo (1).

¹⁵² Art. 21, applied law on local self-government; art. 14, applied law on municipal education; art. 8(6), applied law on the rights of communities.

After February 2008, the university in northern Mitrovica/Mitrovicë has stopped recognizing secondary school diplomas issued by the Kosovo education ministry, making access to tertiary education in Serbian difficult for students of the Kosovo curriculum.

Overall Assessment

Intensified efforts are necessary to ensure the operation and effectiveness of the Independent Commission, as well as the participation and consultation of the Kosovo Serb community and curricular experts in the development of a Kosovo curriculum in the Serbian language. This process should also encompass public consultation and the publication of curriculum-based textbooks for all grades. In the meantime, the continued use of Serbian curricular materials should be ensured. There is a need for co-operation at technical level between the relevant institutions in Prishtinë/Priština and Belgrade to remove obstacles preventing access to public tertiary education in the Serbian language by Kosovo curriculum students.

6.3. Transport for children belonging to non-majority communities

Council of Europe, Framework Convention Recommendation No. 21: Address as a matter of urgency the issue of safe transport of pupils from minority communities to educational facilities.

Normative Framework

The Law on Primary and Secondary Education charges municipalities with the obligation to arrange safe, efficient and free of charge school transport for pupils in compulsory education (grades 1-9). Municipalities have no obligation to provide transportation for students of upper secondary education (grades 10-13).¹⁵³ The government is responsible to offer alternative solutions for children residing in areas where education in the chosen official language¹⁵⁴ or native non official language¹⁵⁵ is not available, including subsidised transportation to schools where such education is available.

Implementation/Situation on the Ground

Concerns regarding safe transportation of students belonging to non-majority communities have decreased in the reporting period. Kosovo Serb students heading to the university in northern Mitrovica/Mitrovicë are safely transported through the humanitarian bus transportation service managed by the Ministry of Transport and Communications.¹⁵⁶ The practices of a number of Kosovo Albanian majority municipalities¹⁵⁷ to provide free transport to Kosovo Serb and Roma students attending Serbian-curriculum education, are particularly positive. On the contrary, northern Kosovo Serb majority municipalities¹⁵⁸ do not support transportation for Kosovo Albanian pupils travelling to southern Mitrovicë/Mitrovica; Kosovo Albanian children living in northern Mitrovica/Mitrovicë are privately transported or have to

¹⁵³ Art. 22, Law on Primary and Secondary Education in Kosovo promulgated by UNMIK Regulation 2002/19, 31 October 2002, (Law on Primary and Secondary Education).

¹⁵⁴ Art. 19(4), Law on Languages; Art. 8.2, applied law on the rights of communities.

¹⁵⁵ Art. 8(2), applied law on the rights of communities.

¹⁵⁶ See the Reports on Humanitarian Minority Bus Transportation in Kosovo (November-December 2006; January-March 2007; April-June 2007; and June 2008), OSCE Mission in Kosovo. Humanitarian bus transportation route connecting Kamenicë/Kamenica, Ranilug/Ranillug, Šilovo/Shillovë, Gjilan/Gnjilane and Mitrovicë/Mitrovica.

¹⁵⁷ Vushtrri/Vučitrn, Fushë Kosovë/Kosovo Polje, Lipjan/Lipljan and Gjilan/Gnjilane.

¹⁵⁸ This is a case in the municipalities of Zvečan/Zveçan, Zubin Potok, and Leposaviq/Leposaviq.

walk through insecure areas to reach schools in southern Mitrovicë/Mitrovica. Kosovo Bosniak students, attending secondary education, face travel and transport costs not covered by municipalities. In Podujevë/Podujevo, Ashkali and Roma pupils living in remote areas have no access to school transport.

Overall Assessment

Security concerns decreased and municipal authorities operating under the Kosovo curriculum generally provide transport also to Serbian curriculum students. The continued existence of the humanitarian transport service remains essential to enhance access to the university in northern Mitrovica/Mitrovicë for Serbian speaking students living in southern Kosovo. On the contrary, northern Kosovo Serb majority municipalities do not provide for the transportation of Kosovo Albanian students of the Kosovo curriculum.

6.4. Provision of curricula, textbooks and qualified teachers for numerically small communities

Council of Europe, Framework Convention Recommendation No. 22: Address the existing needs for education in the languages of the minority communities, including by clarifying the threshold for opening a class with instruction in a minority language while aiming to accommodate the requests made by numerically smaller communities and take measures to provide adequate textbooks and qualified teachers for instruction in mother tongue.

Normative Framework

The legal framework secures the opportunity for mother tongue education in non-official community languages from pre-school to secondary education.¹⁵⁹ Kosovo developed primary and secondary education curricula also in the Bosnian and Turkish languages. Classes for primary and secondary education in non-majority languages should have a minimum of 15 students per teacher (compared to 21 when education is in Albanian).¹⁶⁰ The MEST is obliged to provide free of charge textbooks for all grades of compulsory education¹⁶¹ and adequate textbooks in the pupils' mother tongues.¹⁶² Community-specific curricula and textbooks are foreseen for 'national subjects' covering the language, history, art and music of communities.¹⁶³ Applied legislation¹⁶⁴ further requires that education in non-majority languages is delivered by native or qualified speakers; sufficient qualified personnel is available to train community language teachers; and that existing or additional professional training and higher education in non-majority languages is maintained or introduced in accordance with expressed needs and financial viability. Managers and teachers of public educational institution operating in non-majority languages should be mainly communities' representatives or be fully familiar with these communities.

Implementation/Situation on the Ground

¹⁵⁹ Art. 4(4b), Constitutional Framework; art. 3(2c), Law on Primary and Secondary Education; art. 20(1), Law on Languages; art. 8(1), applied law on the rights of communities art. 59(3), constitution.

¹⁶⁰ Art. 2, MEST Administrative Instruction No. 16/2002 on Determination of the Relationship Teacher-Student, 17 October 2002.

¹⁶¹ Section 3(2b), Law on Primary and Secondary Education.

¹⁶² Section 7(6), Law on Primary and Secondary Education.

¹⁶³ Art. 8(12), applied law on the rights of communities.

¹⁶⁴ Art. 8, applied law on the rights of communities.

Within the Kosovo educational system, curricula in the Albanian, Turkish and Bosnian language have been developed. Kosovo Bosniak and Kosovo Turk¹⁶⁵ students have access to mother tongue education but lack curriculum-based textbooks for secondary and, in some cases, primary education. In the 2008/2009 school year, Bosnian and Turkish language students received incomplete free-of-charge sets of grade 1-5 textbooks from the MEST. Community-specific 'national-subject' books available to Kosovo Bosniak and Kosovo Turk students are imported from Bosnia and Herzegovina or Turkey and do not reflect the Kosovo curriculum and the specific identities of their communities. These books are often outdated, worn-out by intensive use or students use handwritten notes provided by teachers.

Roma students have access to limited classes in their mother tongue only in a few Serbian-curriculum schools, while textbooks in Romani do not reflect the linguistic and cultural specificities of the Roma community in Kosovo. The MEST has initiated a project to develop Kosovo curricula and textbooks for a Romani language subject in 2009. Kosovo Albanian students in northern Kosovo have access to primary education in their mother tongue, but the municipalities in which they reside do not support the provision of such education. Serbian-curriculum education provided to Kosovo Bosniak students in northern Kosovo lacks adaptation to their cultural diversity.

Kosovo offers a limited range of higher education opportunities in non-official languages.¹⁶⁶ Students of non-majority communities often migrate¹⁶⁷ to expand their options. In 2009 the MEST has simplified the process and reduced costs of recognition of qualifications obtained outside Kosovo.¹⁶⁸ This particularly affected Kosovo Turk students who obtained higher education degrees in Turkey. Prishtinë/Priština University offers reserved seats for Albanian language education only to specific communities.¹⁶⁹ Since 2008/2009, the universities under Serbian administration do not recognize diplomas obtained in Kosovo-curriculum secondary schools, affecting Kosovo Bosniak students' access to higher education in Serbian language.¹⁷⁰ The need to train a sufficient number of qualified Bosnian and Turkish language university professors is pressing. Professors providing graduate courses for prospective Bosnian and Turkish primary and secondary education teachers are numerically insufficient, and lack, in most cases, necessary academic qualifications.

¹⁶⁵ In Mitrovicë/Mitrovica Vushtri/Vučitrn and Janjevë/Janjevo, Kosovo Turks follow the Kosovo curriculum in Albanian and do not demand instruction or classes in their mother tongue. However, some of them continue secondary education in a Turkish language school in Prishtinë/Priština.

¹⁶⁶ The Prishtinë/Priština University offers some Bosnian and Turkish language courses on Turkish philology (50 seats), Bosnian and Turkish language for teachers (35 seats each), information technology (in Bosnian, 35 seats) and business administration (in Bosnian, 80 seats).

¹⁶⁷ Kosovo Turk, Kosovo Bosniak, Gorani, Roma, Kosovo Croat, and also Kosovo Albanian and Kosovo Serb students. Kosovo Turk students have access to Turkish government scholarships.

¹⁶⁸ MEST, Administrative Instruction No. 8/2009 on Principles and Procedures on Recognition of Degrees Obtained from Higher Vocational Schools and Universities Outside of Kosovo.

¹⁶⁹ In 2008/2009, the Prishtinë/Priština University reserved 134 Albanian language seats only for Kosovo Turk, Kosovo Bosniak, Roma, Ashkali and Egyptian candidates. The fact that applicants from out of Kosovo and from non-Albanians communities can apply only within the quotas foreseen for them and community belonging can be proved only through a statement of a community representative organization raises concern.

¹⁷⁰ In the academic year 2008/2009 the MEST authorized the issuance of duplicate certificates with an UNMIK stamp enabling a number of Kosovo Bosniak students to enrol at universities in northern Mitrovica/Mitrovicë and Serbia. However in 2009/2010 the Ministry is not authorizing this practice and claims that UNMIK stamps are no longer available.

Resort to expatriate visiting professors is expensive. The Turkish government funds a certain number of expatriate professors to teach at the Prizren Education Faculty, although the range of graduate courses available in Turkish is limited. In May 2009, the Prishtinë/Priština University signed co-operation agreements with the Universities of Sarajevo, Tuzla, Zenica and Mostar. Consequently, the Education Faculty in Prizren plans opening new courses for prospective Bosnian-curriculum teachers, including on mathematics and information technology. Bosnian language university courses currently available in Kosovo do not ensure training of secondary education Bosnian-curriculum teachers for all subjects. In-service professional development training for Turkish and Bosnian language teachers is mostly provided in Albanian, and simultaneous interpretation is at times inadequate. Access to professional development training is limited for Serbian-curriculum teachers, as this is provided outside Kosovo, and no specific training is provided for Romani language teachers.

Overall Assessment

Adequate financial means need to be allocated to ensure complete subsidised publication and distribution of Bosnian and Turkish language textbooks for all grades and subjects of primary and secondary education, to improve the quality of available national-subject books and professional translation of general-subject books. There is a continued need to prioritize the participatory development of curricula for community-specific ‘national subjects’ on the language, history, art and music of the most vulnerable communities. Efforts to further expand graduate studies in non-official languages are necessary to increase the number of qualified teachers and foster professional development training for these teachers. The development of a cross-curricular subject on intercultural education appears advisable to mainstream issues regarding communities and communities’ rights and to promote intercultural education and understanding.

6.5. Measures to enhance access to and completion of education by children of the Roma, Ashkali and Egyptian communities

Council of Europe, Framework Convention Recommendation No. 23: Ensure that decisive steps are taken to address the educational needs of Roma, Ashkali and Egyptian communities, including by ensuring the sustainability of the programmes designed to help pupils from these communities to integrate and stay in the education system.

Normative Framework

In order to increase the educational integration of the Roma, Ashkali and Egyptian communities, strategies¹⁷¹ adopted by the MEST and government in 2007 and 2009 require concrete measures to: tackle educational drop-out and exclusion; train teachers of these communities at all levels; provide free transport and textbooks for the most vulnerable families; develop a curriculum in Romani language and include teaching on the culture and history of these communities in the general curricula; offer support to children with learning difficulties; and raise awareness of parents about the importance of formal education.

Implementation/Situation on the Ground

¹⁷¹ MEST Strategy for Integration of Roma, Ashkali and Egyptians Communities in Kosovo - Education Component 2007-2017, July 2007; Strategy for the Integration of Roma, Ashkali and Egyptians Communities in Kosovo 2009-2015, pg. 34-44, Prishtinë/Priština, February 2009.

The government strategy for the integration of Roma, Ashkali and Egyptians is not implemented due to lack of action plans and budget, while the MEST strategy over-relies on donations. Within both curricular systems¹⁷² Roma, Ashkali, Egyptians are insufficiently integrated. Children of these communities, and particularly girls, are vulnerable to low enrolment, high drop-out rates and educational exclusion. Effective systematic measures addressing poverty and educational exclusion are lacking. Measures undertaken¹⁷³ including scholarships¹⁷⁴ are mostly of an *ad hoc* or local nature and the free supply of school books is intermittent. While a MEST project to develop a Romani language subject is ongoing in 2009, community-specific educational subjects enabling each of these communities to preserve their identity and culture have not been introduced in the Kosovo curriculum. Roma students have access to classes in their mother tongue only in some Serbian-curriculum schools. No university curriculum is in place to ensure training of qualified Romani language teachers. Few students of these communities complete secondary education and have the opportunity to benefit of the enrolment quotas¹⁷⁵ reserved for their communities by the Prishtinë/Priština University.

Overall Assessment

Little progress has been made to increase access to education for Roma, Ashkali and Egyptian children. Adopted strategies and policies are not implemented yet and lack adequate financial support from the Kosovo Consolidated Budget and rely mostly on donors' funding. Measures taken on *ad hoc* basis, often by civil society organisations, need to be integrated within a more systematic approach by responsible institutions.

6.6. Measures to ensure access to education by the Gorani community

Council of Europe, Framework Convention Recommendation No. 24: Allow for flexibility in the implementation of the educational reforms in relation to those pupils from the Gorani community who have not yet integrated into the new education system.

Normative Framework

The legal framework protects access to education in the chosen official language at all levels for all communities in Kosovo.¹⁷⁶

Implementation/Situation on the Ground

Within the available curricula, students belonging to the Gorani community have no access to community-specific educational subjects enabling the preservation of their identity. In Dragash/Dragaš, large part of the community decided to have education in Serbian language, available under the Serbian curriculum. Since 2006, Gorani

¹⁷² Roma residing near or in areas mainly inhabited by Kosovo Serbs usually follow the Serbian curriculum; while Roma residing in Albanian neighbourhoods, and Ashkali and Egyptians generally follow the Kosovo-curriculum.

¹⁷³ See report on 'Kosovo Non-Majority Communities within the Primary and Secondary Educational Systems,' OSCE Mission in Kosovo, April 2009, p.14. Catch-up classes, support activities for drop-out students, or awareness campaigns organized by some municipalities, schools and NGOs, and *ad-hoc* donations of school books by the Kosovo or the Serbian Ministry of Education, international or NGOs.

¹⁷⁴ Sixty annual 50 Euro scholarships have been awarded in 2009 by the Ministry of Communities and Returns and 39 United Nations Development Programme scholarships distributed in Prizren and Ferizaj/Uroševac.

¹⁷⁵ 38 reserved seats in 2008/9 and 58 in 2009/10. University of Prishtinë/Priština, announcements for the registration of students in the first year of studies in the academic years 2008/9 and 2009/10.

¹⁷⁶ See normative framework, paragraphs 6.1, 6.2, 6.3, 6.4 of this report.

teachers have refused to sign contracts with Dragash/Dragaš municipality, due to their contracts with the Serbian Ministry of Education. Thus, in September 2008 the municipality banned Gorani teachers from entering a municipality-run primary school in Dragash/Dragaš. As a result, from September to December, 135 Gorani children were unable to access school premises and education in Serbian language. In January 2009 Gorani students and teachers moved to satellite schools in neighbouring villages severing their contacts with Kosovo-curriculum staff and students. However, due to lack of space and distance between villages, organization of regular education was seriously disrupted. On 3 March 2009, following an agreement facilitated by the OSCE High Commissioner on National Minorities and the OSCE Mission in Kosovo, most of the Gorani teachers and children¹⁷⁷ temporarily returned to the school. On 17 March 2009, due to the issuance of house rules and an alleged interference by the Kosovo-curriculum director on the Serbian-curriculum education system, Gorani teachers withdrew again. Although the municipality annulled contested house rules, further negotiations aiming at finding durable solutions did not bring about the return of Serbian-curriculum staff and pupils. Despite continued mediation by the OSCE, Serbian educational authorities have not taken steps to ensure the return of teachers under their payroll. Disagreements over contractual arrangements and new proposals aiming at physical or shift separation of Serbian-curriculum students threaten the return of and access to adequate Serbian language education for Gorani children in the school year 2009/2010.

Overall Assessment

In the school year 2009/2010 stakeholders of the Kosovo and Serbian curricula have the opportunity and obligation to ensure that Gorani children return to common multi-curricula school premises and enjoy adequate education in the chosen official language. The conflict between Kosovo and Serbian curriculum stakeholders should not jeopardize the right of Gorani children to education. Polarised positions divide representatives of the Dragash/Dragaš municipality, Gorani teachers and the Serbian Ministry of Education; moreover, Gorani pupils are currently segregated from their Kosovo Albanian and Kosovo Bosniak fellows. While Gorani teachers and the Serbian-curriculum school director have only recently ceased to propose return solutions based on physical segregation, such as use of separate buildings or construction of dividing walls or separate shifts, no concrete preparations have been made to ensure return and reintegration of Gorani children in a multi-ethnic school.

7. PARTICIPATION

7.1. Population census and participation of non-majority communities

Council of Europe, Framework Convention Recommendation No. 3: Delay the organisation of the enumeration phase of the population and household census until a maximum level of participation of all communities can be ensured and the census can be carried out in accordance with international standards.

Normative Framework

The Law on the Kosovo Population and Housing Census¹⁷⁸ entrusts the Statistical Office of Kosovo (Statistical Office) and the Central Census Commission as the main

¹⁷⁷ Children and teachers of grades 5-8 returned to the school from 3 to 16 March 2009. Children of grades 1-4 did not return because the Kosovo-curriculum director prevented the return of some Gorani teachers and attempted to assume control on the Serbian-curriculum educational process.

¹⁷⁸ Law on the Kosovo Population and Housing Census promulgated by UNMIK Regulation 2004/53, 9 December 2004.

executive bodies for the conduction of a future census.¹⁷⁹ The European Commission, the Council of Europe and UNMIK (on behalf of the Ministry of Public Services) signed a Memorandum of Understanding¹⁸⁰ establishing the International Monitoring Operation (IMO), that is in charge of monitoring the preparation of the census.

Implementation/Situation on the Ground

As a follow up to the pilot test conducted in 2006, a field test took place between 27 October and 10 November 2008 in selected enumerated areas¹⁸¹ with the purpose of testing the census materials, including questionnaires, manuals and procedures with a special focus on the different ethnic communities involved. While the Statistical Office improved its technical capacity, the field test confirmed that there is still need for progress. The Statistical Office has yet to conduct an in-depth analysis on the reasons of the boycott of the 2006 pilot test by the Kosovo Serb and Roma communities and has not developed a concrete plan and strategy encouraging all communities to participate in the census.¹⁸² Due to the “friendly and non representative character of the sample of municipalities”¹⁸³ successful participation of non-majority communities in the field test, does not indicate that conditions promoting participation of Kosovo Serbs and Kosovo Roma have been created. With a view of reaching a common understanding on a possible census date, and on conditions to meet before a full census takes place, the European Commission, on 24 March 2009, organized a roundtable asking all the stakeholders¹⁸⁴ to present their opinions. Finally, on 25 June 2009, Kosovo government announced that the Housing and Population Census will take place between 30 March and 11 April 2011.

Overall Assessment

The availability of “reliable [...] data is an essential precondition [...] to encourage effective equality of non-majority communities,”¹⁸⁵ especially given the tendency to adopt policies and legislations based on numerical ethnic thresholds.¹⁸⁶ However, the Kosovo institutions still do not meet the conditions to carry out a population census in compliance with international standards. First, the current political stalemate¹⁸⁷ does not allow to achieve the principle of full coverage and universality within a defined territory.¹⁸⁸ Second, the full participation of all communities, including refugees and

¹⁷⁹ Art. 5 and 12, Law on the Kosovo Population and Housing Census.

¹⁸⁰ The Memorandum of Understanding entered into force on 24 March 2006.

¹⁸¹ In Dragash/Dragaš, Lipjan/Lipljan, Mamuša/Mamushë/Mamuša, Prishtinë/Priština, Prizren and Vushtri/Vučitrn municipalities.

¹⁸² Report of the October 27-10 November 2008 Field Test, Submitted by the Chairman of the Management Group, IMO, Steering Committee, 11 December 2008, paragraph 67.

¹⁸³ Ibid, paragraph 11.

¹⁸⁴ Including: UNMIK, Council of Europe, UN Statistic Division, UN Economic Commission for Europe, UN Population Fund, International Civilian Office.

¹⁸⁵ Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs (Commentary on Participation), Advisory Committee on the Framework Convention, 27 February 2008, p. 4.

¹⁸⁶ Art. 64(2), constitution; Art. 12(6), applied law on the rights of communities; Art. 54 and 61, applied law on local self-government; Art. 2(3), 2(4), Law on Languages.

¹⁸⁷ Including the lack of *de facto* authority of Kosovo institutions over the majority Kosovo Serb population residing in the three municipalities north of the Ibar/Ibër River (Leposavić/Leposaviq, Zvečan/Zvečan and Zubin Potok) as well as the Kosovo Serb and Roma boycott of Kosovo institutions following the 2008 political events.

¹⁸⁸ UN Principles and Recommendations for Population and Housing Census, Revision 2, 2008, Essential features, p. 8.

displaced persons is highly questionable and remains legally problematic.¹⁸⁹ Third, the fulfilment of other conditions, e.g. language and data protection¹⁹⁰ or ethnic self-identification, still needs to be addressed.

7.2. Personal data related to community affiliation

Council of Europe, Framework Convention Recommendation No. 5: Take measures to ensure effective protection of personal data relating to community affiliation.

Normative Framework

The constitution guarantees the protection of personal data and authorises to regulate the modalities for their collection, preservation, access, correction and use by law.¹⁹¹ However, such a law is still in drafting phase. It defines data relating to community affiliation as “sensitive personal data” and requires adequate legal safeguards, particularly with regards to their processing,¹⁹² in line with the European Convention for Protection of Human Rights and Fundamental Freedoms and its jurisprudence.¹⁹³

Implementation/Situation on the Ground

Although the legislative drafting started in July 2007 and was continuously deferred on 19 February 2009, the Ministry of Internal Affairs established a working group to draft a law on data protection with the assistance of the European Commission. An inter-ministerial working group, composed by representatives of the civil society and other local and international stakeholders, will further discuss the new draft law soon. The current draft is based on the Slovenian Data Protection Act.¹⁹⁴

Overall Assessment

The protection of personal data and voluntary self-identification are essential requirements in a functioning democratic society. This has particular relevance in Kosovo, where non-majority communities are socially and economically vulnerable. The Advisory Committee on the Framework Convention recognizes the necessity to collect comparative data on the socio-economic and educational situation of persons belonging to non majority communities, although in full respect of international standards.¹⁹⁵ At the same time, the right not to be treated as a person belonging to a national minority needs to be equally protected, and persons concerned need to be consistently informed that the provision of data on community affiliation is voluntary.¹⁹⁶ Usually, Kosovo institutions, particularly at municipal level, collect data on individuals’ community affiliation in various contexts, from education to employment without previous consent of the affected person. Kosovo institutions seem committed to fill the current legal gap concerning the protection of personal

¹⁸⁹ The definition of ‘Resident population’ as per Article 3(a) leaves open the question of the inclusion of refugees and displaced.

¹⁹⁰ See paragraph 7.2 of this report.

¹⁹¹ Art. 36(4), constitution.

¹⁹² Art. 8 of the EU Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, 23 November 1995.

¹⁹³ Art. 22(2) and 53, constitution. The Convention is directly applicable in Kosovo and prevails over conflicting domestic legal provisions and acts of public institutions. Human rights guaranteed by the 2008 constitution need to be interpreted consistently with the jurisprudence of the European Court of Human Rights.

¹⁹⁴ Personal Data Protection Act (ZVOP-1), No. 001-22-148/04, Republic of Slovenia, 15 July 2004.

¹⁹⁵ Commentary on Participation, Advisory Committee on the Framework Convention, 27 February 2008, p. 4.

¹⁹⁶ Advisory Committee’s Opinion, 02 March 2006, p. 13-14.

data. However, public administration implementation of a system of data protection which requires sophisticated technology, comprehensive understanding of the legal framework and appropriate underlying policy remains a challenge.

7.3. Communities participation in the Kosovo civil service

Council of Europe, Framework Convention Recommendation No. 26: Pursue further efforts to ensure improved participation of persons belonging to minority communities in the PISG structures and processes.

Normative Framework

The legal framework promotes the multi-ethnic character of Kosovo, equitable representation of all communities in the Kosovo civil service and equal gender participation.¹⁹⁷ It also guarantees community participation in the judiciary and the prosecution service.¹⁹⁸ The composition of the Kosovo police should reflect the ethnic composition of the municipal population to the highest extent possible.¹⁹⁹

Implementation/Situation on the Ground

Kosovo municipalities usually keep disaggregated data on the number of male and female employees and their ethnic background, although ethnic classifications are not consistent or in some cases respectful of the identifications of the respective communities.²⁰⁰ Generally data on gender and ethnicity are not disaggregated by level of seniority, preventing the assessment of differential access to managerial posts. According to an OSCE survey of February 2009, out of 35,188 municipal civil servants 0.69 per cent (242) were classified as Roma, Ashkali or Egyptians; 0.05 per cent (19) Kosovo Croats; 1.49 per cent (525) Kosovo Bosniaks; 0.85 per cent (299) Kosovo Turks and 0.66 per cent (232) Gorani. Communities' access to senior positions is limited.²⁰¹ Although budgets of most municipalities in 2009 do not foresee staff reductions, there is a risk that future downsizing/restructuring may negatively affect communities' participation and representation in the municipal civil service. Participation and representation of non-majority communities is relatively high in the judiciary and prosecution service.²⁰² In the central civil service it decreased from 12 per cent in 2006 to 9 per cent in 2009,²⁰³ and remains particularly low at senior

¹⁹⁷ Art. 61 and 101, constitution; Art. 9(5) and (6), applied law on the rights of communities; Section 2, UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, 22 December 2001; Section 2a, Administrative Instruction No. 2003/01 on Recruitment Procedures; Section 3, Administrative Direction 2003/02 implementing UNMIK Reg. 2001/36 on the Kosovo Civil Service; art. 2(b), Anti-Discrimination Law; Section 3, Law on Gender Equality promulgated by UNMIK Regulation No. 2004/18, 7 June 2004.

¹⁹⁸ See chapter 2.3 of this report.

¹⁹⁹ Arts. 128(2) and (4), constitution; Art. 2(1). and 34(4), applied law on police; Kosovo police service Policy and Procedure Manual, Policy P -1.13, Section IV A (4), Policy and Organizational Aspects, Kosovo police service Policy Development, February 2007.

²⁰⁰ Compared data include municipal administration, primary health-care sector, and primary and secondary educational institutions. In Fushë Kosovë/Kosovo Polje, municipal civil servants of the Roma, Ashkali and Egyptian communities are registered as 'RAE', while the Dragash/Dragaš municipality does not distinguish between Kosovo Bosniak and Gorani employees and uses both terms interchangeably. Kosovo Montenegrins are not registered separately.

²⁰¹ Four (males) Roma, Ashkali and Egyptians out of 242; one (female) out of 19 Kosovo Croats; 18 (12 males and 6 females) out of 525 Kosovo Bosniaks; 10 (9 males and 1 female) out of 299 Kosovo Turks and 11 (males) out of 232 Gorani.

²⁰² See chapter 2.3 of this report.

²⁰³ See 'Handbook on Minority Rights,' Further Support to the Justice Institutions in Kosovo, Human Dynamics, April 2009, p. 11.

level.²⁰⁴ As of June 2009, 85 per cent (6,109) of the Kosovo police staff were Kosovo Albanians, 9.7 per cent (700) Kosovo Serbs, and 5.3 percent (386) belonged to other communities.²⁰⁵ There is low representation of Roma, Ashkali, and Egyptians especially in senior positions. Although after the political developments of 2008 Kosovo Serb police officers stopped reporting to work,²⁰⁶ and were suspended with pay, most of them had (318 out of 325) returned to their posts by the end of June 2009.²⁰⁷

Overall Assessment

Equitable communities' participation in the municipal civil service is still a challenge. This applies also to the central civil service and the judicial and prosecutorial service. More efforts should be undertaken to increase the participation of non-majority communities, including through the implementation of targeted educational, professional training and mentoring programmes, especially to equalize opportunities of highly under-represented communities such as Roma, Ashkali and Egyptians. Kosovo institutions should also enhance their outreach efforts to the Kosovo Serb and other non-majority communities' representatives in judiciary and prosecution, particularly in the context of the ongoing recruitment and vetting process.

7.4. Dialogue between Ministries and the Committee on Rights and Interests of Communities in the Assembly of Kosovo

Council of Europe, Framework Convention Recommendation No. 27: Introduce regular meaningful dialogue between the relevant Government Ministries and the Committee on Rights and Interests of Communities of the Assembly of Kosovo.

Normative Framework

The Constitutional Framework and the constitution entrust the Committee on Rights and Interest of Communities and Return (Committee) with the mandate to advise the Assembly of Kosovo regarding communities' rights and interests. The Committee reviews draft legislation, can propose laws, issue recommendations and opinions.²⁰⁸ The constitution has changed its composition.²⁰⁹

Implementation/Situation on the Ground

With the exception of relations with the Ministry of Communities and Returns,²¹⁰ there is no regular dialogue between the Committee and ministries. There is no formal

²⁰⁴ In March 2008, civil servants belonging to non-majority communities represented 4 per cent of senior management and 3.16 per cent of middle management staff. Source: Ministry of Public Services, Department of Civil Administration.

²⁰⁵ In total, 208 Kosovo Bosniaks, 84 Kosovo Turkish, 38 Gorani, 20 Roma, 20 Ashkali, seven Egyptians, five Cerkezi, three Kosovo Croats, and one Macedonian.

²⁰⁶ Only in Mitrovicë/Mitrovica police region, being still at that time under the UNMIK Police Regional Commander, the Kosovo Serb police officers continued their service.

²⁰⁷ This was also the result of a Ministry of Internal Affairs decision issued in April 2009 anticipating that officers who did not report to work would be suspended without pay after 15 May, or have their contracts terminated after 30 June.

²⁰⁸ Art. 9(1)(12) to (17) of the Constitutional Framework; Art. 78, constitution.

²⁰⁹ Under art. 9(1)(12) of the Constitutional Framework all communities had equal representation. Art. 78(1) of the constitution, provides a 1/3 representation to Kosovo Serbs and Kosovo Albanians, while all other communities have to share the remaining seats. However as of July 2009, the Committee maintains its previous composition: two Kosovo Albanians, two Kosovo Serbs, two Kosovo Turks, two Ashkali, two Kosovo Bosniaks, one Roma, one Egyptian and one Gorani.

²¹⁰ The Committee's chairperson and Minister of Communities and Returns share a common political affiliation.

co-operation with reference to the review or development of draft legislation or policies. Rare exchanges rather refer to specific issues, mainly arising from the Committee's field visits. Occasionally, the Committee invites competent ministries to consultation sessions,²¹¹ or submits formal requests for information, though the level of responsiveness of ministries varies.²¹² However, generally there is no consistent follow up to ensure concrete executive measures and policy results.

Overall Assessment

Some progress has been achieved in terms of substantive mutual co-operation between the Committee and ministries, but it still remains a challenge. The fact that the chairperson of the Committee belongs to the ruling government coalition²¹³ currently offers an opportunity for the introduction of procedures on substantive co-operation at the stage of both legislative/policy drafting and implementation. However, the Committee has so far taken insufficient steps to systematize relations with the executive branch. The Committee's activities are also affected by the fact that Kosovo Serb members insufficiently represent or enjoy limited support by their community due to the ongoing boycott of Kosovo institutions. The Committee generally has difficulties in reaching out to Kosovo Serb majority areas due to the political situation. Kosovo Bosniak members belong to rival parties,²¹⁴ and members of other communities appear not proactive.

7.5. Community participation mechanisms

Council of Europe, Framework Convention Recommendation No. 28: Consider ways to improve the representativeness and effectiveness of the communities committees in municipalities.

Normative Framework

To enable protection and representation of communities' interests at municipal level, the applied law on Local Self Government provides that communities committees are in place in all municipalities. Deputy municipal assembly chairpersons and deputy mayors for communities must be established only in municipalities where non-majority communities represent at least 10 per cent of the municipal population. Since 2005, municipal communities safety councils and local public safety committees are established.²¹⁵ The mandate of municipal communities offices and municipal returns

²¹¹ For instance, the Ministry of Local Government Administration, the Ministry of Public Services and the Ministry of Communities and Returns, attended a Committee's roundtable on communities representation in the public service on 29 June 2009. On 17 June 2009, the Minister of Communities and Returns, as formally requested, attended a Committee's meeting, providing information on the development of a return database.

²¹² A July 2007 official letter to the Ministry of Communities and Returns on the living conditions of the Egyptians in the Kolonia informal settlement in Gjakovë/Djakovica received no response. Further, in response to a May 2009 letter to Minister of Internal Affairs on lack of implementation of the Law on Languages (failure to use the Turkish language on identity cards), the Minister justified non-compliance with lack of funds.

²¹³ The Committee's chairperson, the Minister of Communities and Returns and the Minister of Labour and Social Welfare all belong to the Independent Liberal Party. The Committee's chairperson is also chairperson of the Consultative Council for Communities.

²¹⁴ Democratic Party Vakati and 7+ parliamentary group on one side and Democratic Action Party (SDA) on the other.

²¹⁵ Municipal communities safety councils and, in areas inhabited by numerically small communities, local public safety committees are mandated to build up confidence between police and communities, raise awareness at local level, identify local concerns regarding public safety and propose action plans aimed at addressing those concerns. Art. 7, UNMIK Regulation 2005/54 on

officers is not regulated by the law or secondary legislation, but in some cases by municipal statutes. Municipal working groups on return operate in accordance to the Revised Manual on Sustainable Returns.²¹⁶ At central level, the constitution establishes the Consultative Council for Communities²¹⁷ (Consultative Council), confirms the mandate of the Committee on Rights and Interests of Communities,²¹⁸ and provides for equitable representation of communities within the ministries.²¹⁹ The Ministry of Communities and Returns was established by an UNMIK Regulation,²²⁰ while the Office for Communities Affairs was established by an executive decision of the Prime Minister.²²¹

Implementation/Situation on the Ground

At municipal level, communities committees are generally established Kosovo-wide; but while the multi-ethnic composition of the body is widely ensured,²²² its performance is generally poor. Regardless of the too demanding threshold of 10 per cent, 12 municipalities, where substantive non-majority communities live, have appointed deputy municipal assembly chairpersons and 14 appointed deputy mayors for communities. Municipal communities safety councils have been established in 23 of 33 municipalities, although fair representation of all residing communities is not always ensured. While the deputy mayors are to a certain degree effective in enhancing communities' participation,²²³ the same cannot be said for the deputy municipal assembly chairpersons. Despite lack of explicit provisions in the applied law on Local Self Government, non-mandatory mechanisms, (municipal community offices, the municipal return officer and the municipal working group on returns), are well established in most municipalities and ensure the participation of communities in public life. However, not always all communities are represented and Roma, Ashkali and Egyptians are the most under-represented communities.

At central level, on 23 December 2008 the Consultative Council's members were appointed. By mandate and composition,²²⁴ the Consultative Council can enhance communities' participation and consultation. However, public access to its meetings is not ensured²²⁵ and the initial appointment has provoked criticism as to the genuine

the Framework and Guiding Principles of the Kosovo Police Service, 20 December 2005; Art. 7(2) to (5), applied law on police.

²¹⁶ 2006 Revised Manual for Sustainable Return, UNMIK-PISG, July 2006, p. 13.

²¹⁷ Presidential Decree No. CCC-001-2008, on the establishment of the Consultative Council for Communities, 15 September 2008. The Consultative Council is an advisory body within the President's Office.

²¹⁸ See paragraph 8.4 of this report.

²¹⁹ Art. 60, 78 and 96, constitution.

²²⁰ Annex XII, UNMIK Regulation 2005/15 amending UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, 16 March 2005. Its mandate includes development and promotion of police protecting the rights of communities including the right to return, the creation of conditions conducive to dialogue and reconciliation among communities.

²²¹ Office of the Prime Minister, Decision No. 030, 15 July 2008.

²²² Roma, Ashkali and Egyptian representation is not satisfactory as well as the Kosovo Montenegrin and Kosovo Croat, although for different reasons.

²²³ For example in Gjilan/Gnjilane region considerable efforts have been put to assist Kosovo Serbs.

²²⁴ Art. 12(6), applied law on local self-government.

²²⁵ Art. 7.3 of the Statute provides that Council meetings are public unless Council otherwise decides. However, in practice, meetings are not open to public and contradictory provisions included in the Council's draft rules of procedure prescribe that "the meetings of the Council and its subsidiary

representation of specific communities.²²⁶ Following a formal request, a Kosovo Montenegrin representative has been appointed. With the support of the European Centre for Minority Issues, the Consultative Council defined strategic and operational objectives for 2009, and is developing rules of procedure and established working groups on education and on recognition of the Kosovo Montenegrin community by law. Moreover, the Consultative Council tackled specific areas of communities concerns.²²⁷ As of April 2009, the Ministry for Communities and Returns, Ministry of Local Government Administration, Ministry of Education, Science and Technology, Ministry for Culture, Youth and Sport and Ministry of Labour and Social Welfare appointed their representative. In July 2008, the Kosovo Prime Minister established the Office for Communities Affairs.²²⁸ The office has a very broad mandate,²²⁹ and capacities of the staff should be built. With the support of the Minister of Local Government Administration, the Office for Communities Affairs conducted a survey to assess the level and quality of representation of communities in the civil service. However, results have not been published yet. The Ministry of Communities and Returns is undergoing a restructuring phase including the revision of the 2006 Revised Manual on Sustainable Return and the drafting of the 2009 Ministerial Strategy on Communities.²³⁰

Overall Assessment

At local level, demanding legal thresholds for the establishment of important communities participation mechanisms have so far been interpreted flexibly and should be lowered. Although the legal framework establishes new mechanisms to ensure effective communities participation in decision-making, implementation of their mandates is insufficient. The fact that the existence of long standing mechanisms, such as municipal community offices is no longer foreseen by law, makes their continuity dependent on local political will and should be remedied. It may further decrease communities' confidence in Kosovo institutions.²³¹ Despite the efforts made by certain municipalities to ensure fair participation of all communities, some communities still refuse to co-operate and engage with Kosovo institutions. At the central level, Consultative Council could provide opportunities for enhanced participation of communities in public life but needs to ensure representation of smaller communities, proper functioning, transparency and public information regarding its activities. Unless harmonization and co-ordination of their activities is ensured, the proliferation of communities' representation bodies with overlapping mandates depletes opportunities for effective communities participation. Co-

bodies shall be held in private unless the Council decides otherwise or it appears from the relevant provisions of the Mandate the meeting should be held in public" (Rule 32).

²²⁶ According to some representatives of the Kosovo Bosniak community, the appointment of the Communities Consultative Council lacked transparency and was arbitrary. In addition, the representation of smaller communities (such as the Kosovo Croats) is not secured.

²²⁷ On 27 April 2009, discussed agenda items included non-recognition of Prishtinë/Priština University diplomas issued from 1991 to 1998; non-compliance with legislation on use of languages; cases of non-implementation of the applied law on rights of communities; Kosovo Montenegrin community's inclusion in the constitution; Roma, Ashkali and Egyptian strategy not reflecting special interests of Egyptian community.

²²⁸ Prime Minister decision No. 030, 15 July 2008.

²²⁹ See Prime Minister's Office for Communities Affairs, Briefing Documents, August 2008.

²³⁰ See paragraph 3.1 of this report.

²³¹ Mainly Kosovo Serb, and to a lower degree, Gorani, Roma, Ashkali and Egyptian communities.

ordination, clear distribution of responsibilities and transparent decision-making are necessary.

7.6. Effective participation in economic and social life

Council of Europe, Framework Convention Recommendation No. 29: Step up efforts to ensure that persons belonging to all communities can effectively take part in the economic and social life of Kosovo, including by monitoring how the privatisation process and its outcome impacts on, and involves, minority communities.

Normative Framework

As of September 2008, the Privatization Agency of Kosovo (PAK)²³² took over the responsibilities of the Kosovo Trust Agency (KTA).²³³ It administers the privatization of economic assets and resources of Socially-Owned Enterprises (SOEs), while ensuring statutory payments (20 per cent of the liquidation proceeds)²³⁴ to their eligible former and current employees. SOE workers are eligible if “at the time of privatization” they were “established to have been on the payroll of the SOE for not less than three years.”²³⁵ Employees may file a complaint before the Special Chamber of the Supreme Court if they can prove that: they were excluded from the SOEs workers’ list without justification; or, due to discrimination, they were unable to continue working in the SOE for at least three years.²³⁶

Through UNMIK, Kosovo has signed the Vienna Declaration on Informal Settlements in South Eastern Europe.²³⁷ As the normative framework provides, central and municipal authorities are obliged to include informal settlements in their respective spatial plans to ensure their regularization.²³⁸ The Ministry of Environment and Spatial Planning (MESP) is currently drafting a strategy on informal settlements to prevent increase of informal settlements and to regularize existing ones.

On 24 December 2008 the Kosovo government adopted the Strategy for the Integration of Roma, Ashkali and Egyptian Communities (2009-2015) to enhance their inclusion into the Kosovo society in particular in the areas of education, employment, health, housing, return as well as access to services and participation in public life.

Implementation/Situation on the Ground

With just over one fifth of approved payments made since the beginning of the privatisation process, there is a concern that a disproportionately low level of payouts

²³² On 15 June 2008, Kosovo Assembly adopted the law on the privatization agency of Kosovo.

²³³ KTA was established under the authority of UNMIK, to administer publicly-owned and socially-owned enterprises (SOEs) and related assets. UNMIK Regulation 2008/27, amending UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency, 27 May 2008.

²³⁴ Section 10, UNMIK Regulation 2004/45, amending UNMIK Regulation 2003/13, on the Transformation of the Right of Use to Socially-owned Immovable Property, 19 November 2004. The Regulation was implemented by the Administrative Direction No. 2005/12.

²³⁵ Section 10(4), UNMIK Regulation 2003/13 On the Transformation of the Right of Use to Socially-owned Immovable Property, 9 May 2003.

²³⁶ Section 4(1), UNMIK Regulation 2002/13 On the Establishment of a Special Chamber of the Supreme Court of Kosovo on KTA Related Matters, 13 June 2002.

²³⁷ On 17 March 2005, UNMIK signed the Vienna Declaration on Informal Settlements in South Eastern Europe.

²³⁸ On 17 November 2008, Kosovo Assembly adopted the law amending the Law on Spatial Planning promulgated by UNMIK Regulation 2003/30, 10 September 2003.

have been made to Kosovo Serb former-employees to date.²³⁹ The fact that only persons on the SOE workers' list at the time of privatization are entitled to receive a share of the privatisation proceeds is perceived as discriminatory by many non-majority community employees, particularly those living in displacement. The latter claim that they were unable to report to work for a variety of reasons, including perceived insecurity. Since PAK has no offices out of Kosovo, the ability of non-majority community employees to challenge exclusion from eligible workers' list is often limited by displacement, limited freedom of movement and inadequate access to relevant electronic and media information.²⁴⁰ Considerable delays in payment of privatization proceeds affect all eligible employees. The complicated history of immovable property since 1945, followed by KTA/PAK-led privatization, generated an avalanche of claims²⁴¹ addressed to the Special Chamber of the Supreme Court.²⁴² Claimants include persons who lost property rights acquired during the privatization of socially owned enterprises conducted under the 1991 restitution law.²⁴³ Although UNMIK never abrogated the 1991 law,²⁴⁴ KTA, after 1999, often disregarded the previous privatization process and proceeded with a new privatization of the same assets.

Roma, Ashkali, and Egyptians often live in marginal informal settlements, without access to adequate infrastructure, electricity, clean water, sewerage, and garbage disposal services. Lack of urban or construction licenses and necessary property titles, or unregistered transactions and/or land occupation,²⁴⁵ often deprives residents of these neighborhoods of security of tenure. In several cases, Roma, Ashkali and Egyptian inhabitants of informal settlements are subject to health hazards such as pollution, structurally unsound dwellings and other negative environmental factors.²⁴⁶ To date only few municipalities identified informal settlements in their

²³⁹ According to PAK, as of 12 December 2008 total numbers of employees who received 20% share from the privatization is 10,293, of whom 426 are Kosovo Serbs.

²⁴⁰ Section 64, UNMIK Administrative Direction 2006/17, 6 December 2006. PAK must first publish a provisional list of eligible employees. Challenges to the list must be submitted to the PAK within 20 days and are subject to request for evidence or evidentiary hearings. Only after adjustment and publication of the final list, can complaints be submitted to the Special Chamber of the Supreme Court.

²⁴¹ Report on 'Judicial Review of Kosovo Trust Agency Matters by the Special Chamber of the Supreme Court of Kosovo,' OSCE Mission in Kosovo, May 2008.

²⁴² Section 1, Administrative Direction 2005/7 implementing UNMIK Regulation 2002/13 on the Establishment of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters, 2 June 2005.

²⁴³ Law on Method and Conditions to Recognize Rights and Return Land Turned into Socially Owned for the Purposes of the Agricultural Land Fund, and Land Confiscated Due to Failure to Fulfil Obligations on Mandatory Purchase of Agricultural Products, Official Gazette of Republic of Serbia No. 18/90, 27 March 1991.

²⁴⁴ UNMIK Regulation 1999/10 On the Repeal of Discriminatory Legislation Affecting Housing and Rights in Property, 13 October 1999, explicitly repealed the Law on Changes and Supplements on the Limitation of Real Estate Transactions, Official Gazette of Republic of Serbia No. 22/91, 18 April 1991; and the Law on the Conditions, Ways and Procedures of Granting Farming Land to Citizens who Wish to Work and Live in the Territory of the Autonomous Province of Kosovo and Metohija, Official Gazette of Republic of Serbia No. 43/91, 20 July 1991.

²⁴⁵ MESP organized conferences and workshops in various municipalities, in co-operation with the OSCE and UN Habitat, with the aim of raising awareness of the inhabitants of informal settlements.

²⁴⁶ The Kolonia settlement in Gjakovë/Đakovica, inhabited by Egyptians, is located close to the city dumpsite.

municipal development plans or started a regularization process.²⁴⁷ Instead municipal strategies mainly aim at containing the growth of existing informal settlements through urban regulatory plans²⁴⁸ and relocating inhabitants into collective or social housing. The fact that many informal settlements occupy socially-owned land delays or impedes the regularization process. The initiative of the Istog/Istok municipality to facilitate return of the displaced Egyptians and to regularize the destroyed informal settlement of Rudesh/Rudeš²⁴⁹ through a land swap was put on hold in June 2008.²⁵⁰ Only in June 2009 displaced persons were offered a relocation alternative to a social housing programme in Srbobran/Serbobran (Istog/Istok).²⁵¹ The case of the informal settlement Kristali²⁵² in Pejë/Peć municipality illustrates further institutional and social barriers faced by non-majority communities in exercising their right to return to the place of origin.

Although Roma, Ashkali and Egyptian community representatives participated in the development of the integration strategy, some of their recommendations were not included in the final document. With the exception of some initiatives by the Ministry of Education and Technology, the Kosovo government has not finalized action plans and earmarked budget to implement the strategy. Recipient communities have not been consulted on this regard.

Overall Assessment

Ongoing privatization processes do not ensure sufficient transparency, outreach and equal opportunity for obtaining proceeds for all the entitled former workers of socially owned enterprises, especially non-majority and displaced workers. Potential ownership challenges of the privatization process can be expected, especially by Kosovo Serb beneficiaries of the 1989-1999 privatization process. When dealing with informal settlements and return sites²⁵³ located on socially-owned land, the privatization of SOEs should also accommodate the need to ensure regularization of informal settlements, security of tenure and better living conditions for their inhabitants.²⁵⁴

²⁴⁷ MESP approves Municipal Development Plans and ensures that municipalities included informal settlements in these plans.

²⁴⁸ Urban Regulatory Plans do not require Ministry of Environment and Spatial Planning's approval.

²⁴⁹ In 2005, the municipality initiated a return project for 70 displaced Egyptian families from Rudesh/Rudeš whose settlement was completely destroyed in the aftermath of the conflict.

²⁵⁰ The SRSG did not approve the land swap between the municipality and the KTA because in June 2008 the Rudesh/Rudeš settlement was included in the Special Protective Zone for Gorioć Monastery (Istog/Istok). Further the municipality constructed a municipal cemetery on part of the settlement.

²⁵¹ 'Return and Reintegration to Kosovo' Programme funded by the European Commission Liaison Office and implemented by UNDP.

²⁵² Informal settlement Kristali, inhabited by over 100 Roma and Egyptian families since the 1940s, was destroyed in the aftermath of the 1999 conflict. Later in 1999, the remains were cleared by the municipality. In 2001 the municipality designated it as industrial zone and prevented residential construction. Simultaneously, the municipality tolerated illegal construction in the same area. In 2003, Kristali was re-classified as a residential area and the former residents made a new attempt to reconstruct their houses; however, any construction work undertaken during the days was demolished by unknown perpetrators during the nights. So far no return to Kristali has taken place.

²⁵³ The economic imperative of the privatization regime should not supersede the obligations of public authorities to ensure the right to return to place of origin (e.g. Kristali in Pejë/Peć, Rudesh/Rudeš in Istog/Istok).

²⁵⁴ Such as Kolonia in Gjakovë/Đakovica and Roma Mahala in south Mitrovicë/Mitrovica.

There is a pressing need to assess all informal settlements and develop a strategy for their regularisation. Only in few examples municipal development plans ensured regularisation.²⁵⁵ The lack of effective participation of affected communities in the regularisation process is of particular concern. One of the consequences is that often institutions offer to the inhabitants of informal settlements relocation into collective social housing blocks as the only solution. Often municipalities do not identify and incorporate destroyed and abandoned informal settlements into municipal development plans, thus preventing potential return of vulnerable non-majority communities, in particular Roma, Ashkali and Egyptians. The strategy for the integration of Roma, Ashkali and Egyptians has not been budgeted and implemented.

8. CONCLUSIONS

The Kosovo institutions adopted comprehensive legislation and policies for the protection and promotion of communities rights. However, its implementation lags behind. The creation of a stable, democratic and multi-ethnic society requires increased institutional commitment and the genuine participation of all communities. Further progress is necessary to implement the Council of Europe's recommendations in relation to the Framework Convention.

The appointment of a local Ombudsperson was achieved after several years and may support renewed confidence in the institution. Lack of a co-ordinated police and judicial approach, no database regarding the classification, investigation and prosecution of inter-ethnic incidents and practical problems related to the functioning of the courts in northern Kosovo convey a continued sense of impunity for crimes targeting communities.

Despite expanded efforts to create conditions for sustainable return, the Kosovo institutions still face challenges related to property restitution, regularization of informal settlements, and to ensure resettlement of displaced persons in places different from those of origin. Appropriate measures and funding are not ensured to accommodate the needs of an increasing number of repatriated persons. Communications between the Ministry of Internal Affairs and receiving municipalities is not properly in place. There is particular concern for the situation of Roma displaced in lead contaminated camps in northern Kosovo for whom, despite recent commitments, no sustainable solutions has been provided in the past ten years.

Special protective zones have been established to secure cultural heritage of communities. However, their concrete safeguard is at stake in specific cases, and local institutions have not developed a comprehensive list of cultural heritage sites. Protection of cultures of smaller communities is mainly based on financial support for cultural initiatives, but proactive outreach to and promotion of the most vulnerable cultures is not envisaged. Incompliance persist regarding the provision of some of the public broadcaster services to non-majority communities.

²⁵⁵ With the exception of the current discussion to regularise the settlement Kolonia, the few examples, such as the allocation of municipal land in the Roma mahala in Mitrovicë/Mitrovica, or the return/relocation project implemented within Return and Reintegration to Kosovo in Serborbran/Serbobrane, are related to return projects.

Comprehensive linguistic legislation is in place but its implementation is affected by allocation of inadequate resources, lack of public information, and insufficient monitoring. Translation and interpretation capacities have decreased to a concerning extent and lack of education in both the official languages puts the future existence of bi-lingual civil service at risk. Although incidents have decreased more proactive public measures are necessary to promote tolerance and use of non-majority languages especially in mono-ethnic areas

Kosovo Albanian and Kosovo Serb students continue to receive education in separate schools and education systems and no concrete measures have been taken to promote contacts among students and teachers of the Kosovo and Serbian curricular systems. Lack of measures to ensure learning both official languages nurtures a sense of increasing separation between the two largest communities. Steps undertaken to promote education in community languages and ensure educational preservation of the cultures of other non-majority communities need to be intensified.

Positive efforts to ensure representation of non-majority communities in public institutions and central and municipal communities participation mechanisms have been created. However further efforts are necessary to enable effective co-ordination and functioning of these mechanisms, and to increase gender-balance and communities representation in senior positions.

9. RECOMMENDATIONS

In view of the above, OSCE advises the Kosovo institutions to consider the following recommendations.

Remedies and law enforcement

Ministry of Internal Affairs, Ministry of Justice, Kosovo police and courts:

- Set up a permanent system for the collection of data on the investigation, and prosecution of ethnically motivated incidents and crimes;
- Improve the confidence of all communities in the judiciary through effective investigation and prosecution of ethnically motivated incidents and crimes.

Return process and security

Ministry of Communities and Returns, Ministry of Education, Science and Technology, Ministry of Internal Affairs, Ministry of Local Government Administration, Ministry of Labour and Social Welfare, Ministry of Health, Ministry of Finance and Economy, Kosovo municipalities as well as the Kosovo Property Agency:

- Remove the obstacles to sustainable return and address security, economic, property and educational concerns of potential returnees through concrete measures;
- Ensure expedient sustainable return or relocation of all Roma displaced in the lead contaminated camps in northern Kosovo and provide adequate health treatment;
- Implement the Strategy for the Reintegration of Repatriated Persons through adequate funding, inter-institutional co-ordination and targeted services.

Culture, and media issues

Ministry of Culture, Youth and Sports, Ministry of Internal Affairs and Ministry of Transport and Telecommunications, Kosovo Institute for Protection of Monuments and Kosovo Council for Cultural Heritage:

- Complete a comprehensive list of cultural and religious heritage sites, set up mechanisms to safeguard protective zones, and increase public awareness on cultural heritage and promote inter-ethnic and religious tolerance;
- Enable equal access of non-majority communities to public broadcasting services in their own languages and cultures in compliance with the law.

Use of languages

Office of the Prime Minister, Language Commission, Ministry of Internal Affairs and Kosovo municipalities:

- Provide adequate human and financial resources to ensure implementation of language-use legislation, equal access to multi-lingual public services and effective participation by users of non-majority languages;
- Empower the Language Commission to become an effective monitoring and policy development mechanism;
- Condemn incidents and promote use of all non-majority languages in public places throughout Kosovo, especially in mono-ethnic areas.

Education

Ministry of Education, Science and Technology, Office of the Prime Minister, Office of Good Governance, Ministry of Communities and Returns, and Ministry of Finance and Economy:

- Develop curricula and provide textbooks to ensure access to education in all official languages and in other community languages and enhance opportunities for graduate training of community language teachers;
- Provide opportunities for education in both official languages for all and promote removal of linguistic and physical barriers separating children belonging to different communities;
- Ensure the educational integration of children of the Roma, Ashkali and Egyptian communities through adequate resources and targeted measures;
- Prioritise full access to education in the chosen official language and integration in multi-curricula schools for Gorani children.

Participation in public life

Ministry of Public Administration, Ministry of Local Government Administration, Office of the Prime Minister, Office of Good Governance, Ministry of Communities and Returns and Kosovo municipalities:

- Pursue enhanced participation and representation of non-Albanian communities in the civil service and in the decision making process, while respecting the right to self-identification as well as protection of sensitive personal data on their ethnic affiliation;
- Take concrete measures and allocate resources to promote inclusion of non-Albanian communities in economic and public life, including by ensuring equal access to the privatization process, regularization of informal settlements and credible implementation of the strategy for the integration of Roma, Ashkali and Egyptians.

ANNEX 1. Ethnic composition of Kosovo



Legend: This map is not an official document and is provided for reference only.