

the market. The consortium thus reaped profit at the expense of Geneks and the budget of the Republic of Serbia. The above are also charged with other illegal activities, such as granting free of charge board at the Kopaonik hotels Grand and Sunčani vrhovi whereby they incurred 4.5 million dinars (around 56.250 Euro) of damage to Internacional CG. The prosecutors asked the judge to order up to one-month custody of all six arrested. After hearing the accused, the investigating judge allowed them to await trial at liberty.

The Special Organised Crime Prosecution Office in September indicted a group of Wahhabis from Novi Pazar. The 15 men are accused of association to commit crimes against the constitutional order and in relation to the crimes of terrorism and unlawful possession of weapons and explosive material. One of them, Senad Ramović, is accused also of attempted murder in the first degree. Some of the inductees were arrested in March, while the others were apprehended in the police action in April 2007, when the leader of the group was killed, while one member of the group and one police officer were wounded.⁵⁹⁰ In mid-April, the Special Organised Crime Prosecution Office stated that this case has been declared a state secret.⁵⁹¹

2.6. Human Rights Situation in Kosovo and Metohija under UN Administration

2.6.1. Introduction

Most political analysts, scholars and journalists predicted that 2007 would be the decisive year for determining the future status of the Serbian province under UN administration. However, the United Nations Mission in Kosovo, which has been governing all aspects of life in Kosovo since the 1999 air strikes on the former Yugoslavia, is still in place. Just as it had been expected, the negotiations between the Serbian government and Kosovo Albanians, mediated by the “Troika” (USA/EU/Russia) did not reach any results.

The United Nations Interim Administration Mission in Kosovo (UNMIK) was established in accordance with UN Security Council Resolution 1244 (1999).⁵⁹² The Resolution 1244 entrusted UNMIK with the duty of performing all functions that a state normally performs and, at the same time, with the task of creating a basis for functional self-governance in the province. The Special Representative of the UN Secretary General (SRSG) bears the ultimate legislative and executive authority.⁵⁹³

590 *B92*, 14 September, www.b92.net.

591 *B92*, 16 April, www.b92.net.

592 UN doc. S/RES/1244, 10 June 1999.

593 Section 1 of UNMIK Regulation No. 1999/1 on the Authority of the Interim Administration in Kosovo of 25 July 1999.

Pending a final settlement over the Kosovo status and with the aim of creating conditions for the province's self-government, UNMIK transferred extensive powers to the Provisional Institutions of Self-Government (PISG). The transfer started already in 2001 but was particularly accelerated in autumn 2005 when the political process of determining the future status of Kosovo started. However, the large presence of the NATO-led military force in the province (KFOR) and the institutions operating in the areas predominantly settled by the Serbian community and directly financed by the Republic of Serbia have significantly decreased the extent of PISG's control over the territory.

SRSG Joachim Rücker on 1 June 2007 announced that the Mission had begun preparations for leaving Kosovo.⁵⁹⁴ The UN mission will probably be replaced by an EU mission in 2008. Although the Ahtisaari plan⁵⁹⁵ was not formally endorsed, it is used as guidelines for planning international engagement in the province in the absence of an agreed blueprint.⁵⁹⁶

2.6.2 Negotiations

Martti Ahtisaari, former Finnish president, was appointed Special Envoy to the UN Secretary General in 2005 and tasked with elaborating a plan for the future status of Kosovo. In March 2007, after months of negotiations between the Serbian Government and the Kosovo Albanian "Unity Team", Ahtisaari presented his Comprehensive Proposal for the Kosovo Status Settlement to the UN Secretary General. The Secretary General subsequently presented the proposal to the Security Council.⁵⁹⁷ Ahtisaari's plan proposed a sort of supervised independence for the province, including the possibility to seek membership in international organisations and become party to international agreements. A broad range of protection measures in favour of minorities was also included in Ahtisaari's "package", ranging from considerable autonomy of the areas predominantly inhabited by Serbs (decentralisation) to financial support to these areas from the Republic of Serbia.

Belgrade and Priština did not come any closer to an agreement on the future status of Kosovo during the negotiations. Belgrade proposed a broad autonomy of Kosovo within Serbia under which Kosovo could not become a member of any international organisation or have an army, whereas Priština did not agree to any other solution save full independence. The Kosovo Albanian parliament on 14 March 2007 fully supported the solutions in the Ahtisaari plan,⁵⁹⁸ but Belgrade rejected it.

594 *Express, Kosova Sot, Epoka e Re*, 1 June 2007.

595 Comprehensive Proposal for the Kosovo Status Settlement, Addendum to the Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council.

596 Interview with the representatives of the ICO Planning Team, 18 September 2007, Priština.

597 *Ibid.*

598 European Commission, *Kosovo (Under UNSCR 1244) 2007 Progress Report*, Brussels, 2007, p. 5.

Belgrade and Priština held direct talks after the Ahtisaari plan was not upheld by all parties. These talks, too, ended in failure. The “Troika” was expected to present its final report to the UN on 19 December. The delay of any decision on the status until the announcement of the results of the Serbian presidential elections scheduled for 20 January 2007 will, however, be the most probable outcome after the failure of the talks between the delegations from Serbia and Kosovo.

Whilst mostly focusing on status negotiations, both international and local authorities at central and municipal levels often paid little attention to the everyday problems of Kosovo’s residents. Negotiations about its final status overshadowed many of the pressing human rights issues in 2007.

2.6.3. Human Rights in Kosovo Legislation in 2007

The legal system in Kosovo remains an overtly confusing and complicated amalgam of different sources of law. Besides the legal texts enacted by the UNMIK administration, the laws applicable in Kosovo also include the Kosovo Assembly laws promulgated by the SRSG and laws that were in force in Kosovo *on* 22 March 1989. If a subject matter is not covered by the above sources, laws adopted in Kosovo *after* 22 March 1989 also apply under the condition that they are not discriminatory and are in accordance with international human rights instruments.⁵⁹⁹ In addition, although Kosovo does not have the international legal subjectivity necessary to become a party to an international treaty, the major human rights instruments are directly applicable in the territory of the province by virtue of UNMIK Regulation 1999/24 and the Constitutional Framework for Provisional Self-Governance.⁶⁰⁰

A legal system composed of such a great number of disconnected sources of law is inevitably characterised by lack of legal certainty and transparency. Not only is it hard to grasp which law to apply in a specific situation; the applicable laws are hard to access as well. While old Yugoslav laws still applicable in Kosovo are almost impossible to find, other laws – including the directly applicable international human rights instruments – are often not translated into the official languages or can be accessed only via the Internet.

Another hindrance lies in the fact that hardly any of the Kosovo Assembly laws or UNMIK regulations specify which laws or provisions they have replaced and contain only a general provision about superseding any other inconsistent legal acts. It is even less clear which laws from the Yugoslav times are still applicable i.e. which of them are not discriminatory, as there is still no higher judicial body competent to address such matters. The Special Chamber of the Supreme Court for Constitutional Matters, as foreseen in Chapter 9.4.11 of the Constitutional Frame-

599 Art. 1 of UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo of 12 December 1999 as amended by UNMIK Regulation No. 2000/59 of 27 October 2000.

600 Art. 1 of UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo, Chapter 3 of UNMIK Regulation No. 2001/9 on the Constitutional Framework for Provisional Self-Government in Kosovo of 15 May 2001.

work, has not been constituted yet. The UNMIK Department of Legal Affairs has rarely exercised its powers to give authoritative interpretations of the UNMIK regulations and has thus left many human rights related norms ineffective in practice.

Almost without exception, laws and regulations enacted in Kosovo enter into force immediately after being promulgated by the SRSG without any *vacatio legis* i.e. the time of delay between the promulgation of a law and its entry into force.⁶⁰¹ This increases the periods necessary for the implementation of laws and, when it comes to human rights legislation, creates an unfortunate picture in which the legal texts are being passed only for the sake of demonstrating that human rights standards are being fulfilled rather than because there is an adequate institutional set-up and readiness to implement them.

Despite the Kosovo Assembly's intensive legislative activities, none of the laws passed in 2007 were of direct relevance to the state of human rights in the province. Only two regulations enacted by UNMIK at the beginning of the year and several Administrative Instructions issued by the PISG directly address human rights protection.

2.6.3.1. Establishment of the Human Rights Advisory Panel. – The SRSG issued UNMIK Regulation No. 2007/3 amending UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel⁶⁰² in January 2007 with the aim of enabling its final establishment. The Panel, which only has advisory powers, is supposed to deal only with the “complaints relating to alleged violations of human rights that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights”.⁶⁰³

2.6.3.2. Appointment of the Ombudsperson in Kosovo. – Another legal act endorsed in 2007 and relevant to human rights protection is UNMIK Regulation No. 2007/15 amending UNMIK Regulation No. 2006/06 on the Ombudsperson Institution.⁶⁰⁴ Its primary goal is to simplify the procedure for appointing a new Om-

601 The main purpose of this institute is to give the public and those institutions applying the law a chance to adjust and prepare for the new legal situation. As such, *vacatio legis* is a necessary feature of an accessible and transparent legal system. See the case law of the European Court of Human Rights (for instance, *the Sunday Times v United Kingdom* ([1979–80] 2 EHRR 245, 26 April 1979) or the cases including the quality of domestic remedies such as *Akdivar and Others v. Turkey* (judgment of 16 September 1996, Reports of Judgments and Decisions 1996-IV, p. 1210, para. 67), *Andronicou and Constantinou v. Cyprus* (judgment of 9 October 1997, Reports 1997-VI, pp. 2094–95, para. 159), *Assanidze v. Georgia*, (71503/01 [2004] ECHR 140 (8 April 2004), para. 127, etc.).

602 UNMIK Regulation No. 2007/3 amending UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel of 12 January 2007.

603 Section 2 of UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel of 23 March 2006.

604 UNMIK Regulation No. 2007/15 amending UNMIK Regulation No. 2006/06 on the Ombudsperson Institution of 19 March 2007.

budsperson. UNMIK Regulation No. 2006/06 as amended sets up an institution with the local ombudsperson and four deputies where two shall represent the local Serbian community and other local non-majority communities entitled to be represented in the Assembly, while one deputy shall be female.⁶⁰⁵

2.6.3.3 Implementation of the Law on the Use of Languages. – Subsequent to the promulgation of the long awaited Law on the Official Languages,⁶⁰⁶ the Kosovo Government adopted Administrative Instruction No. 3/2007 on the Composition and Competences of the Language Commission in February 2007.⁶⁰⁷ This body is to discharge the important task of receiving complaints and carrying out investigations aimed at “protect[ing] the official languages and their equal status in Kosovo, as well as ensur[ing] protection of the languages of communities whose mother tongue is not an official language”.⁶⁰⁸ Just two months later, the Ministry of Public Services issued Administrative Instruction No. 2007/01-MPS On Determining Administrative Sanctions for Violation of the Law on Language Use⁶⁰⁹ with the goal of determining administrative sanctions “[to] be pronounced to the entity which violates the provisions of the Law on Language Use”.⁶¹⁰

2.6.3.4. Establishment of Human Rights Units. – In March 2007, the Prime Minister of Kosovo issued an administrative instruction on human rights units in the Kosovo Government Ministries.⁶¹¹ The purpose of the instruction was to determine the structure of the human rights units that were supposed to be created within each ministry, by specifying their size, structure, and the range of their tasks. The instruction also envisioned regular reporting duties of the units and information exchange within the ministries and other governmental structures as well as regular cooperation with the Ombudsperson Institution. This legal text can be seen as a significant step forward in securing respect for human rights within the governmental structures in Kosovo. However, as in the case of Administrative Instruction No. 8/2005

605 Article 6.6 and 6.7 of the UNMIK Regulation No. 2006/06 on the Ombudsperson Institution as amended of 16 February 2006.

606 Law No. 02/L-37 on the Use of Languages as promulgated by UNMIK Regulation No. 2006/51 on the Promulgation of the Law on the Use of Languages Adopted by the Assembly of Kosovo of 20 October 2006.

607 See: Annex 1, Technical assessment of progress in implementation of the standards for Kosovo, United Nations Security Council (UN SC), 9 March 2007, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2007/134, paras. 10 and 23, at: <http://www.un.org/Docs/sc/sgrep07.htm>.

608 Article 32 of Law No. 02/L-37 on the Use of Languages of 20 October 2006.

609 Administrative Instruction No. 2007/01-MPS on Determining Administrative Sanctions for Violation of the Law on Language Use of 11 April 2007.

610 Article 1 of Administrative Instruction No. 2007/01-MPS on Determining Administrative Sanctions for Violation of the Law on Language.

611 Administrative Instruction No. 4/2007 on Securing the Structure and Integration of the Human Rights Units within the Kosovo Ministries of 19 March 2007, at: <http://md-ks.org/?cid=2,407>.

On Terms of Reference for Human Rights Units⁶¹² that gave the initial impetus for the establishment of these bodies, its value is undermined by the fact that it is not accessible and that there are serious discrepancies between the versions in the two official languages.

2.6.3.5 *Implementation of the Anti-Discrimination Law.* – Similar problems have been observed *vis-à-vis* Administrative Instruction No. 04/2006 on Implementation of the Anti-Discrimination Law.⁶¹³ Although Kosovo became a society with one of the most advanced anti-discrimination laws in Europe back in 2004,⁶¹⁴ a long awaited legal instrument for its implementation saw the light of the day only in the spring of 2007.⁶¹⁵ Administrative Instruction No. 04/2006 is comprised of nine articles that are supposed to regulate several important issues, such as the nature, composition and responsibilities of the bodies responsible for the promotion of equal treatment,⁶¹⁶ bodies responsible for the implementation of the instruction⁶¹⁷ and time-frames for their establishment. The central provision of the Instruction is Article 3 identifying the Office for Good Governance and the Units for Human Rights in the ministries as the key bodies for the promotion of equal treatment.

As the Anti-Discrimination Law is designed to protect an individual against the very sophisticated forms of discrimination, one of the main objectives of the Instruction was to set the “practical and accurate definition[s] of the rights and obligations of [complainants] who claim to be victims of discrimination”.⁶¹⁸ However, the Instruction accomplishes this aim just partially.

Be it due to the lack of resources or gross negligence with respect to the provisions of the very law it is supposed to implement, the spelling mistakes in both the English and Serbian versions of the Instruction⁶¹⁹ are so numerous that they

612 Administrative Instruction No. 8/2005 on Human Rights Units in the Kosovo Government of September 2005.

613 Administrative Instruction No. 04/2006 on Implementation of the Anti-Discrimination Law of 5 May 2006. Although the given instruction has been issued in 2006, the fact that it has become public just at the beginning of 2007 is the reason why it is dealt with in this year’s Report.

614 Anti-Discrimination Law No. 2004/32 promulgated by UNMIK Regulation No. 2004/32 on the Promulgation of the Anti-Discrimination Law, of 20 August 2004.

615 More M. Matijević, “An outline on the Implementation of the Kosovo Anti-Discrimination Law – The Serbian Perspective”, in: OSCE Mission in Kosovo, *Study on the Implementation of the Kosovo Anti-Discrimination Law*, Priština, 2007; Youth Initiative for Human Rights: *Report on the Implementation of the Kosovo Anti-Discrimination Law*, Priština, 2007.

616 Article 3, 4, 5, 6 of Administrative Instruction No. 04/2006 on Implementation of the Anti-Discrimination Law of 5 May 2006.

617 Article 7 and 8 of Administrative Instruction No. 04/2006 on Implementation of the Anti-Discrimination Law of 5 May 2006.

618 Article 1 of Administrative Instruction No. 04/2006 on Implementation of the Anti-Discrimination Law of 5 May 2006.

619 Since the English language version had the same legal validity as the Albanian and Serbian versions at the time of the endorsement of the Instruction, the analysis is based on all three language versions of the Instruction.

render the meaning of certain provisions dubious, questionable, or, at the very least, imprecise. This is particularly the case with the Serbian version of the text, which is literary ‘flooded’ with typing errors.⁶²⁰

Examples are numerous and often bordering on absurdity. The Instruction, which tasks the Office for Good Governance with conducting public awareness campaigns, prescribes in Article 7 (in both the English and Serbian versions) the duty of the Office to provide information on “places also relevant institutions where every person can address to, submit a request or assume an answer if they *pretend that they are victims of discrimination* (italics added).”⁶²¹

The interpretation of the by-law becomes even more challenging once the reader realises that each of the three texts of the Instruction contains a different number of provisions. For instance, Article 6 has a different number of paragraphs and different content in each language version.⁶²² Moreover, the Instruction seriously departs from the text of the Anti-Discrimination Law as it contains an incomplete and partly distorted list of the prohibited grounds of discrimination compared to the one in Article 2 (a) of the Anti-Discrimination Law.⁶²³

These serious shortcomings of the Administrative Instruction No. 04/2006 show that the implementation of the Anti-Discrimination Law is still almost at the beginning despite complex and time-consuming preparations and although nearly three years have passed since its enactment. Ironically enough, the core provision of the Anti-Discrimination Law – prohibition of direct discrimination on the grounds of language (Art. 2 (a)) – has been violated in the very by-law that is supposed to give it operational value.

2.6.3.6. Rights of Minority Communities

2.6.3.6.1. Continued Problem Related to the Licensing of the University of Kosovska Mitrovica. – UNMIK re-accredited the University of Kosovska Mitrovica, allowing it to participate in the Bologna process in March 2007.⁶²⁴ The University

620 The Serbian version of the Instruction suffers from the same weakness as the last Draft of the Anti-Discrimination Law. For instance, the Anti-Discrimination Law would have been adopted much earlier if, prior to its adoption in February 2004, it had not been rejected by the Serbian MPs in the Kosovo Assembly due to its distorted translation into Serbian. See in: S. Šabović, U. Steinle, *‘Lost in Translation’ or How to Make Three Languages Speak One Legislative Voice*, OSCE Assembly Support Initiative Newsletter, Special edition, No. 15, Priština, 2005.

621 The spelling mistake found in Article 2 (i) also smacks of surreal humour: “Practical rule – means the practical and accurate definition of the rights and obligations of *complainers* who claim to be victims of discrimination” (italic added).

622 For instance, only the Serbian version Article 6 refers to the Anti-Discrimination Units of the Ombudsperson Institute in Kosovo.

623 Anti-Discrimination Law No. 2004/32 promulgated by UNMIK Regulation No. 2004/32 On the Promulgation of the Anti-Discrimination Law, of 20 August 2004.

624 European Commission, *Kosovo (Under UNSCR 1244) 2007 Progress Report*, Brussels, 2007, p. 21.

of Kosovska Mitrovica is one of the two main university centres in Kosovo, the other being the University of Priština. The two university institutions can be clearly distinguished by their student bodies. The University of Priština is attended by Albanian-speaking students as it does not offer any programmes in the Serbian language,⁶²⁵ while the lectures at the University of Kosovska Mitrovica are conducted only in the Serbian language.⁶²⁶

These two university centres differ in their legal status in the Kosovo educational system. While the University of Priština has been accredited by virtue of the Law on Higher Education enacted in 2003,⁶²⁷ the University of Kosovska Mitrovica has been granted a temporary licence by an SRSG decree every year since 2003. For this reason and given the fact that the Government of Serbia finances it, this university practically belongs to the so-called “parallel institutions”.⁶²⁸

This practice is very much a consequence of the unfortunate events related to the enactment of the Law on Higher Education.⁶²⁹ The Assembly of Kosovo passed the Law on Higher Education in 2003. The legislator granted an unlimited licence to the University of Priština while omitting to grant such a licence to the University of Kosovska Mitrovica. In accordance with the procedures for adopting laws laid down in Section 9 of the Constitutional Framework, the representatives of the Serbian community in the Assembly then submitted a motion to the Presidency of the Assembly claiming that the Law on Higher Education “violates vital interests of the Community to which they belong [i.e.] adversely affects the rights of the Community or its members under Chapter 4”.⁶³⁰ As the Presidency of the Assembly failed to submit an agreed-on proposal within the prescribed period, the Special Panel was established to seize the matter.⁶³¹ Within five days, the Special Panel issued its decisions recommending that the Assembly adopt the Law on Higher Education with amendments aimed at licensing the University of Kosovska Mitrovica and thus enabling the Serbian speaking communities to exercise the right to receive higher edu-

625 Although the system of quotas for minority communities has now been in place since 2004, lectures at this university are delivered only in Albanian although the students are entitled to take their exams in Serbian.

626 In addition, the Business School in Pejë/Peć and the Faculty of Pedagogy of the University of Prizren, provide tuition also in the Bosnian language.

627 UNMIK Regulation No. 2003/14 on the Promulgation of a Law adopted by the Assembly of Kosovo on Higher Education in Kosovo of 12 May 2003.

628 Parallel structures in Kosovo can be qualified as institutions that have continued to be financed and administered by the Government of Serbia after 1999. They are not formally recognised but are informally endorsed by UNMIK in the territory of Kosovo.

629 Law No. 2002/3 on Higher Education in Kosovo as promulgated by UNMIK Regulation No. 2003/14 on the Promulgation of a Law adopted by the Assembly of Kosovo on Higher Education in Kosovo of 12 May 2003.

630 Section 9.1.39 of UNMIK Regulation No. 2001/9.

631 Section 9.1.40 and Section 91.41 of UNMIK Regulation No. 2001/9.

cation in their own language.⁶³² However, the Assembly of Kosovo rejected the recommendations of the Panel and the Law remained as initially approved by the Assembly.⁶³³

By virtue of Section 9.1.45 of the Constitutional Framework, a law becomes effective “on the day of [its] promulgation by the SRSG”. However, promulgation of the Law on Higher Education in Kosovo without the amendments recommended by the Special Panel would have been in breach of the responsibilities of the SRSG in the sphere of protection of the rights and interests of Communities.⁶³⁴ In result, the Law on Higher Education in Kosovo was promulgated with new provisions inserted by SRSG in Section 10, granting a temporary license to the University of Kosovska Mitrovica almost a year after its adoption by the Assembly.

The functioning of the University of Kosovska Mitrovica has been legalised for a while by the described legislative developments, but this has not improved its legal standing. Furthermore, the legal framework came no closer to the existing human rights standards. The Kosovo legal framework still does not contain any provision that explicitly recognises the right to higher education for the members of the communities speaking Serbian. Although it is the basic law regulating higher education, the Law on Higher Education nowhere reiterates the fact that both Albanian and Serbian are the official languages in Kosovo⁶³⁵ and that the system of higher education shall be based on the principle of equality of those two languages.⁶³⁶ The Law contains just a general prohibition of discrimination with respect to access to higher education (Section 3.1) and a prohibition of discrimination against students (Section 29.4, para (c)).⁶³⁷

This situation just adds to the group of factors that increase the level of uncertainty as one of the main impediments to the return process. As noted by many

632 According to James C. O’Brien, presiding member of the Panel, this decision was brought because the consequence of the Assembly’s refusal to authorise the operation of the University of Kosovska Mitrovica was that this University “had no practical way of applying for certification in the near term, even if it chose to do so, because the procedures for certifying universities will not be in place.” In: James C. O’Brien, “Working Towards a Unified System”, *Focus Kosovo*, Priština, August 2002.

633 Section 9.1.42 of UNMIK Regulation No. 2001/9.

634 As prescribed *inter alia* in Chapter 8 of UNMIK Regulation No. 2001/9.

635 Law No. 02/L-37 on the Use of Languages promulgated by UNMIK Regulation No. 2006/51 of 20 October 2006.

636 It also does not include other types of guarantees necessary for the effective functioning of a bilingual higher education system such as, for instance, affirmative action in the sphere of employment by public providers of higher education or the use of official languages in the documents issued by a higher education institution, etc.

637 The only provision that indirectly invokes the right of the Serbian speaking communities to higher education in their native language, is contained in the Section 4.2 regulating the responsibilities of the Ministry of Education: “In exercising powers and duties under this Law, the Ministry shall respect and promote the rights of Communities and their members established in Chapter 4 of the Constitutional Framework for Provisional Self-Government.”

IDPs/returnees, the fact that the existing educational system in the Serbian language in Kosovo is inadequate and that its legal foundations are constantly brought into question, has negatively affected their decision on whether to return or not.⁶³⁸

2.6.3.6.2. *Continued Problem of Discriminatory Norms Regulating the Process of Privatisation in Kosovo.* – Due to the special status of employees in socially-owned enterprises (SOE)⁶³⁹ and the impact privatisation has had on them, the laws in Kosovo entitle SOE employees to shares of the proceeds from privatisation on a priority basis.⁶⁴⁰ However, the former SOE employees belonging to non-majority communities continued to contend in 2007 that they were unable to profit from the on-going privatisation process due to the discriminatory character of the regulatory framework.⁶⁴¹ The deficiencies of the legal framework regulating the privatisation process were noted back in 2005 but nothing has been done yet to rectify its discriminatory effects.⁶⁴²

The process of privatisation in Kosovo started in 2003, long after the large-scale displacement of non-Albanian communities from Kosovo. Most of the non-Albanian employees of SOEs in Kosovo were indeed forced to stop working as they were directly threatened or exposed to the inter-ethnic violence that had reigned in the province. This process was additionally aggravated by the March 2004 events.

These considerations were not taken into account during the drafting of UNMIK Regulation No. 2003/13.⁶⁴³ Its main setback lies in Section 10.4 providing that an “[e]mployee is eligible if such employee is: “a) registered as an employee with the Socially-Owned Enterprise *at the time of privatization*” (emphasis added).⁶⁴⁴ As noted above, most IDPs do not meet this criterion since they had already fled Kosovo by 2003 and were no longer employed in the SOEs.

638 Interviews conducted across Kosovo and in the area of Smederevo in August 2006 and June 2007 respectively.

639 Socially owned enterprises are enterprises constituted under a unique form of organisation permitted by the laws of the former Yugoslavia. The assets of these companies were notionally owned by the workforce. In theory, the workforce also appointed its managers, although in practice state party managers were in control.

640 This share is determined as 20 per cent of the proceeds from the sale of shares of a privatised Socially-Owned Enterprise and the Kosovo Trust Agency has been tasked with distributing the given amount to the benefit of eligible employees.

641 European Commission, *Kosovo (under UNSCR 1244) 2007 Progress Report*, Brussels, 2007, p. 26.

642 See for instance: Letter of the Ombudsperson in Kosovo to the Special Representative of the UN Secretary-General of 21 December 2005.

643 UNMIK Regulation No. 2003/13 On the Transformation of the Right of Use to Socially-Owned Immovable Property of 9 May 2003.

644 The Section 10.4 reads as follows: “10.4 For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-Owned Enterprise at the time of privatisation and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim

These workers who, in some cases, had worked in the SOEs 25 years or longer, have thus been denied benefits from the privatisation process. The existing legal framework envisages a right to submit a complaint to the Special Chamber of the Supreme Court on Kosovo-Trust Agency-Related Matters where former employees who were not placed on the list of eligible workers can challenge the KTA decision, claiming discrimination. This right is, however, hampered by several practical obstacles reflecting the specific position of the communities affected by displacement.

Firstly, the complaints before the Special Chamber are to be lodged “*within 20 days after the final publication in the media [...] of the list of eligible employees by the Agency*”. However, this time-frame is impossible to meet by a large number of the ex-employees due to their displacement and the obstacles arising from it. Many of the displaced ex-workers, mostly residing in Serbia proper, are poor and often do not have access to the print media or the necessary means to travel long distances in order to submit their complaints to the Supreme Court in Priština.⁶⁴⁵ Moreover, the procedure requires a considerable level of legal skills but *no legal aid is available* to potential claimants intending to initiate the procedure before the Special Chamber.⁶⁴⁶

Lack of Safeguards Ensuring Non-discriminatory Employment Policies. – It has been observed that the privatisation process has further increased the unemployment rate among the non-Albanian communities in Kosovo as the existing privatisation policies do not provide any safeguards for the adequate application of non-discrimination employment policies in the privatised companies.

The provisions on the reorganisation or liquidation of SOEs in UNMIK Regulation 2005/48 determine the role of non-price criteria such as investment, employment and other types of commitments aimed at safeguarding the employees’ rights during the selection of the winners amongst the bidders for the reorganisation of SOEs.⁶⁴⁷ One of the criteria applied in selecting the bids, according to Section 27.3 (d), is “the extent to which a plan will achieve the preservation of employment for the *current employees* of the Enterprise (emphasis added)”.

that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6.”

645 It is important to point out in this context, that under UNMIK Regulation 2003/13 employees are not entitled to have access to the “employee lists” before publication in the media and therefore have no opportunity to object to them except before the Special Chamber. IDPs are thus forced to undergo a judicial procedure to challenge such lists and have very little impact on the role of the KTA in the process of verifying the list.

646 With the exception of the Civil Rights Project (Kosovo), a Priština-based NGO, which has recently started providing legal assistance in this process.

647 UNMIK Regulation 2005/48 on the Reorganisation and Liquidation of Enterprises and their Assets under the Administrative Authority of the Kosovo Trust Agency of 21 November 2005.

The international legislator in Kosovo has obviously enacted legislation that contains standard privatisation procedures without adjusting it to the post-conflict reality of Kosovo's society. In other words, provisions attach importance to the preservation of employment for the *current* employees of a SOE undergoing privatisation without taking into account that the ethnic composition of SOE at the time of privatisation had already been changed by the forced migrations in the aftermath of the conflict.⁶⁴⁸ In the situation where the ethnic composition of workers of SOE in Kosovo has radically changed due to the displacement of a large part of population, "ethnically-blind provisions" of this kind serve to preserve the existing forms of ethnic division rather than eradicate it. By equally treating SOE workers from different ethnic groups, the legislator places persons belonging to a minority community affected by displacement at a particular disadvantage *vis-à-vis* those belonging to the majority group. It can, thus, be concluded that the given provisions are in breach of Articles 2 and 3 of the Kosovo Anti-Discrimination Law and of international standards prohibiting discrimination.⁶⁴⁹

2.6.4. Human Rights in Practice in 2007

2.6.4.1. *Cases before the European Court of Human Rights.* – As the status of Kosovo has not been defined yet, the Serbian province under UN administration cannot ratify any human rights treaties. However, under the Constitutional Framework for Provisional Self-Government, the major human rights instruments are directly applicable in Kosovo. The first two applications related to Kosovo – *Behrami v. France*⁶⁵⁰ and *Saramati v. France, Norway and Germany*⁶⁵¹ – were filed with the European Court of Human Rights (ECtHR) in 2006 but the ECtHR declared both inadmissible in May 2007. The ECtHR also dismissed the case *Gajić v. Germany*, in which an IDP from Kosovo initiated proceedings claiming that the German KFOR had violated his right to private and family life (Art. 8 (1) Convention) and his right to peaceful enjoyment of property (Art. 1 Protocol No. 1).⁶⁵² The applicant claimed

648 The same concerns have been voiced by Mr. Kai Aide, the Special Envoy of the UN Secretary-General to Kosovo: "This process could have a direct and positive impact on the economy in Kosovo, as many of the socially owned enterprises have been idle. Most of the privatized enterprises are taken over by Kosovo Albanians in Kosovo or residing abroad. [...] It is important to take into account the effects of this process on the different ethnic groups. The privatization process could lead to discrimination in employment along ethnic lines and affect the economic sustainability of minority communities. This process must move forward, but in a way which safeguards the interests of the minority population during and after privatization." In: Annex to the Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council – A comprehensive review of the situation in Kosovo (so called 'Kai Aide Report'), p. 3

649 Anti-Discrimination Law No. 2004/32 promulgated by UNMIK Regulation No. 2004/32 on the Promulgation of the Anti-Discrimination Law, of 20 August 2004.

650 ECHR, App. No. 71412/01.

651 ECHR, App. No. 78166/01.

652 *Gajić v. Germany*, App. No. 31446/02, ECHR 2007, para. 1.