



Strasbourg, 31 May 2010

GVT/COM/II(2010)002

**ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES**

**COMMENTS BY THE UNITED NATIONS INTERIM ADMINISTRATION
MISSION IN KOSOVO (UNMIK) TO THE SECOND OPINION OF THE
ADVISORY COMMITTEE ON THE IMPLEMENTATION OF THE
FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL
MINORITIES IN KOSOVO¹**

(received on 31 May 2010)

¹ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

UNMIK comments to the 2nd Opinion on Kosovo² of the Advisory Committee on the Framework Convention for the Protection of National Minorities

UNMIK welcomes the assessment of the situation relating to the protection of the rights of minority communities in Kosovo, depicted in the 2nd Opinion on Kosovo adopted on 5 November 2009 by the Advisory Committee on the Framework Convention for the Protection of National Minorities (the Advisory Committee). UNMIK also wishes to take this occasion to underline the critical importance of the work of the Advisory Committee and their contribution to national and international efforts to promote a stable multi-ethnic democratic order responsive to the needs of all communities in Kosovo.

UNMIK generally agrees with the broad characterisation of the situation of the minority communities in Kosovo described in the 2nd Opinion. UNMIK wishes to underline that inter-ethnic relations between Kosovo Serbs and Albanians remain tense in specific situations, and stresses that public discourse by local and international leaders should at all times take this into account so as not to jeopardise the prevailing stability. Policy decisions and corresponding action by local and international stakeholders in various spheres of activity, for example, the returns and privatisation process and associated implementation steps, must be informed by an active rights and peace building perspective, in order to reduce tensions, prevent a relapse into conflict and solidify gains achieved over the years.

In the following comments, UNMIK offers additional perspectives as well as further clarification on specific issues. UNMIK wishes to acknowledge the contribution of the Organisation for Security and Cooperation in Europe Mission in Kosovo in reviewing the 2nd Opinion. Their comments, as well as additional information and clarification from other UNMIK components, are detailed below under the relevant headings and related paragraphs of the Opinion.

Monitoring process

Paragraph 9

The Advisory Committee “notes that the Progress Report [...] was mainly prepared by the OSCE Mission in Kosovo” and “provides detailed and useful information on the legislative, policy and institutional developments [...].” At the same time, the Advisory Committee “[...] regrets that persons belonging to minority communities were not consulted on the content of the Progress Report.”

While there was no formal consultation process, the OSCE Mission, through daily meetings at local community, municipal, regional and central levels, is engaged on an ongoing basis in a consultative process with representatives of all of Kosovo’s communities. Similarly, UNMIK’s Office of Community Support and Facilitation maintains regular liaison and interaction with all relevant stakeholders at the community level. Previous consultative processes (such as on

² All reference to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with UN Security Council Resolution 1244.

the drafting of the Kosovo Strategy for the Integration of Roma, Ashkali and Egyptians) and the regular informal follow-ups on these processes provided additional opportunities for understanding the situation on the ground. UNMIK and OSCE are thus able to maintain a comprehensive picture of the situation as well as of the perception of all communities about specific issues related to the implementation of the Framework Convention.

Situation of Roma, Ashkali and Egyptians

Paragraphs 18 to 19

In addition to the observations under these paragraphs, it is important to recall that many of the Roma, Ashkali and Egyptian displaced persons participating in Go-and-See Visits do not possess land because they lived in informal settlements before the conflict. In order to address their situation, and for sustainable returns, it is necessary to develop and implement a comprehensive policy for land allocation. In this respect, UNMIK welcomes the recent instructions issued by the central authorities in April 2010 for municipalities to allocate land for returns project on a long-term basis of 99 years.

Freedom of movement and return process

Paragraphs 20, 80 to 92

With the development of a Strategy for Communities and Returns and the revision of the 2006 Manual on Sustainable Return, the Ministry for Communities and Returns has begun to expand its focus from return issues to the stabilization and integration of communities. According to the MCR, the authorities approved the Strategy for Communities and Returns in February 2010, and it is available in both Serbian and Albanian languages.

Since its adoption in October 2007, only a few steps have been taken to implement the Strategy for Reintegration of Repatriated Persons at the local or central level. Concrete measures to facilitate the reintegration of repatriated persons in the key areas of health, education, employment and housing are still inadequate. No costs associated with the reintegration of repatriated persons have been included in the respective municipal budgets. Furthermore, the establishment and proper functioning of referral and coordination mechanisms between central and local levels remain a major challenge for all stakeholders involved. As a consequence, repatriated persons often remain without any assistance, information on access to services, or other reintegration opportunities upon their arrival in Kosovo. In April 2010, the Ministry of Internal Affairs conducted and shared the results of an "Assessment of the mechanisms for reintegration of repatriated persons – Ensuring best possible treatment and respect for human rights to all repatriated persons". The main recommendations include the revision of the Strategy and accompanying Action Plan, the establishment of a reintegration fund, building of physical and human capacities at central and local levels, as well as improving communication and inter-institutional coordination.

Tolerance and inter-ethnic dialogue

Paragraphs 24, 41

As stated above, UNMIK considers that political discourse on all sides bears a major role in continuing inter-ethnic tensions, and agrees with the Advisory Committee that minority

issues need to be understood as integral to the protection of human rights for all communities in Kosovo. The excessive politicisation of minority-related as well as other issues continues to adversely affect community relations, which remain strained by strong undercurrents of mistrust and suspicion along ethnic and/or religious lines. It is important to recall that in Kosovo, all communities find themselves in the position of a minority community, and hence, the protection of minority rights is of relevance to all.

Use of minority languages

Paragraph 32

The Advisory Committee notes that “[...] topographical signs have not always been displayed in some minority languages, such as Turkish, Roma and Bosnian.” Although it is recommendable, there are no obligations on local or central level institutions to have topographical signs in Romani language, since there are no municipalities where Romani is an official language or a language in official use.

Human rights and the protection of minorities

Paragraph 42

The Advisory Committee incorrectly describes the Human Rights Advisory Panel (HRAP) as a ‘quasi-judicial body’, while noting that its establishment has contributed to the enhancement of the human rights framework in Kosovo. UNMIK established the HRAP (UNMIK Regulation 2006/12) as an advisory body with a mandate to examine human rights complaints based on UNMIK’s exercise of its responsibilities as interim administration in Kosovo. Under Regulation 2006/12, the HRAP submits its findings and recommendations in the form of advisory opinions to the SRSG.

In relation to the HRAP recommendations, particularly for payment of adequate compensation in cases where it finds that a human rights violation attributable to UNMIK has occurred, UNMIK continues to address the issue with the United Nations Headquarters in New York with the aim of drawing the attention of the General Assembly of the UN to the need to review its currently established rules for compensation, which do not provide for payment of compensation for non-pecuniary damage.

UNMIK is committed to support the HRAP’s effective functioning and has been in regular consultations with its Secretariat in order to address operational issues, including gaps in its capacity for translation of relevant documents. Recent efforts have focused on securing the support of concerned members of the UN family of agencies in Kosovo to fill the gap in resourcing requirements.

Paragraphs 44, 46

The Advisory Committee may wish to note that individuals may refer to the Constitutional Court of Kosovo violations by local Kosovo authorities of their individual rights and freedoms guaranteed under the Kosovo Constitution, which also refers to international human rights treaties, after the exhaustion of all legal remedies provided by law. Although the Constitutional Court was not established in accordance with international law and outside of

UNSC resolution 1244 (1999), it benefits from the support of international judges from countries that recognized the Unilateral Declaration of Independence of Kosovo.

Personal scope of the application

Paragraph 50

The Advisory Committee states that “[...] the abbreviated term ‘RAE’ is still used in official documents and statistics, in particular by international organisations, to designate Roma, Ashkali and Egyptian communities”. The OSCE Mission has been using the term “Roma, Ashkali and Egyptian communities” in all of its official documents and public reports for many years. Since 2006 the OSCE has reinforced this policy internally and regularly reminded all of its staff to use “Roma, Ashkali and Egyptian communities” instead of “RAE”. The UN has also encouraged and adopted the practice of specifying the community concerned in its reporting.

Population and Housing Census

Paragraph 58

The Advisory Committee notes that “No disadvantage should result for persons belonging to minority communities from their choice to affiliate with a minority community or for the exercise of any related right.” It should also be made clear that no disadvantage should result in cases where an individual exercises the choice not to express affiliation with a minority community.

Anti-discrimination legislation and practice

Paragraphs 68 to 70

In addition to the positive developments discussed in these paragraphs, in October 2009 the authorities launched a much-needed television campaign to promote and raise awareness of the Anti-Discrimination Law. The initial stage of the campaign, launched with support from OSCE, focused on age and sexual orientation, which are among the least understood bases of discrimination in Kosovar society. Other anti-discrimination initiatives tackled general issues of prejudice and promoted cross-cultural and cross-sectoral exchange, particularly on the plight of Roma communities.

Paragraphs 70, 74

Problems of electricity supply persist in villages and areas inhabited by both Kosovo Serbs and Kosovo Albanians, as well as by other communities. In the course of 2009, the Kosovo Energy Corporation (KEK) and most of the minority communities south of the Ibar, including the Serbian Orthodox churches and monasteries, have reached agreements stipulating monthly payments. UNMIK and OSCE are closely following the situation, and assist by bringing these cases to the attention of the KEK senior management. In the majority of cases, these irregularities are rectified immediately.

The situation is more complex in cases where, for example, a Kosovo Serb village is on the same electricity line with one or more neighbouring Kosovo Albanian villages. KEK has recently stated that the majority of the new Kosovo Serb clients south of the Ibar river are

regularly paying their electricity bills. This is often not the case with Kosovo Albanians. The OSCE has received reports of cases where a Kosovo Serb village is in a load-shedding scheme and is regularly being disconnected from electricity, because of non-payment in Kosovo Albanian villages on the same line. So far, KEK says it is not able to make individual disconnections. However, KEK must allocate resources to improve existing infrastructure to allow for individual disconnection for non-payment instead of undertaking collective disconnections.

Paragraph 79

“The Advisory Committee urges the speedy appointment of the Deputy Ombudspersons.” UNMIK wishes to underline the importance of filling the vacant posts not only in a speedy manner, as recommended, but also in accordance with stipulated requirements that they be appointed from different communities to reflect the ethnic diversity of Kosovo, as well as stipulated competencies in the sphere of human rights.

Freedom of movement and returns process

Paragraphs 91 to 92

UNMIK agrees with the recommendations in these paragraphs, and warns against forced returns of individuals, in particular those belonging to groups who may be at risk upon return to Kosovo. Such returns are likely to further strain absorption capacity and in the current circumstances may lead to secondary displacement. In this respect, UNMIK wishes to draw attention to UNHCR’s eligibility guidelines adopted in November 2009, which provide guidance for assessing the international protection needs of individuals from Kosovo.

Access to justice and fair trial issues

Paragraphs 93 to 94

The Appointment Process has also contributed to the slow service of justice in the courts as judges anticipate changes in their positions. The process is taking longer than expected with the first appointments only being made in February 2010, 1 year and 4 months from the commencement of the project. There was a 5-month delay from the Independent Judicial and Prosecutorial Commission’s recommendations until the appointments were made - a delay that is quite excessive. Greater efforts are needed to ensure appointments of new judges and prosecutors are made as quickly as possible.

Full and effective equality of Roma, Ashkali and Egyptians

Paragraphs 95 to 103

The Kosovo Strategy for the Integration of the Roma, Ashkali and Egyptian communities provides for a good framework for improving the situation of Roma, Ashkali and Egyptians in many areas. The Kosovo Foundation for Open Society and the European Union have pledged funding for its implementation. Although persons belonging to Kosovo’s Roma, Ashkali and Egyptian communities benefit from some government projects, neither the 2009 nor the 2010 Kosovo Consolidated Budgets have earmarked funding for different Kosovo ministries for the implementation of the Strategy or for the Action Plans, which are based on the Strategy and were endorsed by the authorities in December 2009.

UNMIK remains committed to play its part in finding a viable and sustainable solution to the health risks posed by exposure to lead contaminants in the northern Mitrovicë/Mitrovica camps. In this respect, UNMIK is actively engaged with concerned UN agencies and other international partners to enhance cooperation and coordination of efforts by all relevant stakeholders, in support of the Government of Kosovo's efforts to relocate the affected families to safer environments.

UNMIK appreciates the importance of putting together all the necessary elements to secure a viable solution to the camps, i.e. relocation of their residents to a lead-safer area, giving priority to families of the most lead-contaminated camp at Cesmin Lug, chelation therapy, health care assistance, education programs and support, and employment opportunities. In this regard, UNMIK welcomes the support provided by the US Agency for International Development and the European Commission Liaison Office to two projects of critical importance in securing the overall objective of closing the lead-contaminated Mitrovicë/Mitrovica camps.

Inter-ethnic dialogue and tolerance

Paragraph 122

"The Advisory Committee notes with satisfaction that the authorities denounced publicly, on several occasions, inter-ethnic violence and hostility."

Although it is to be appreciated that authorities responded on several occasions, municipal officials, the police and all relevant government institutions should respond to incidents of inter-ethnic violence and hostility in a systematic and consistent manner, including issuing public statements, addressing any incidents during sessions of the municipal community safety councils (MCSCs), and promoting dialogue amongst the communities involved to build trust and reassure affected communities.

Paragraph 123

"[...]the Advisory Committee also notes that isolation and lack of contacts between persons belonging to the two communities are also the result of shortcomings in the operation of public transport [...]." The Ministry of Transport and Telecommunications must ensure the functioning of the Humanitarian Bus Transportation service through the allocation of sufficient budgetary resources beyond 2010. Furthermore, instances of poor and irregular service should be promptly addressed while ensuring that the humanitarian spirit of the initiative is not undermined by the recent privatisation of the same.

Paragraph 126

"The Advisory Committee regrets the absence of a Kosovo-wide general strategy for reconciliation and inter-ethnic dialogue. Instead initiatives in this field have been almost entirely left to civil society and the international community." Kosovo municipalities continue to behave more reactively than proactively regarding the promotion of trust and dialogue between and among Kosovo's communities. Outreach activities to promote dialogue often take place in response to specific complaints or incidents, and are not part of a comprehensive and systematic approach to grassroots peace-building. Locally-sponsored

cultural and sporting activities bringing together diverse communities have been reported, often creating an opportunity for dialogue rather than explicitly promoting tolerance and reconciliation. However well-intentioned, these activities fall short of challenging fundamental and structural barriers still separating Kosovo's communities.

Paragraph 128

"The Advisory Committee urges the authorities to elaborate and implement a comprehensive long-term strategy for reconciliation and inter-ethnic dialogue." In this respect, it is recommended that municipal authorities develop and support dialogue strategies or initiatives in partnership with community leaders and civil society, including allocation of specific resources for the same.

Police behaviour

Paragraphs 139 and 141

The stopping of vehicles by Kosovo Police Service officers of vehicles with licence plates issued in Serbia, as well as confiscation of these plates, adversely impact on community relations and unduly disrupt daily lives. UNMIK notes that some Kosovo Serbs have expressed willingness to apply for Kosovo driving licenses, if there is enough flexibility in the procedures.

Use of minority languages in the public sphere

Paragraph 169

Although the law foresees the possibility to apply for its recognition upon fulfilment of the set criteria, UNMIK notes that there are no municipalities where Romani language is an official language or a language in official use.

Paragraph 170

Although efforts have been made by Skenderaj/Srbica municipality to issue documents in the Serbian language, the new topographical signs read Skenderaj/Skenderaj.

Paragraph 174

Two mistakes in the use of official names. The correct spelling is the following: Prishtinë/Priština and Vushtrri/Vucitrn.

Paragraph 175

In 2008 and 2009, on several occasions, the OSCE addressed the Kosovo Ministry of Internal Affairs regarding the legal obligation and the request of the Kosovo Turkish community to have official documents printed in the Turkish language, in addition to the two Kosovo-wide official languages. The Ministry repeatedly stated it did not yet have the technical equipment to do so. It is recommended that the Ministry of Internal Affairs makes provisions to secure technical equipment in order to fulfil its legal obligations.

On a similar note, names of non-Albanians on KEK bills are often misspelled or spelled according to the Albanian alphabet. In addition, names of places (municipalities, cities, towns and villages) on KEK bills are written exclusively in the Albanian version, although the

Albanian and Serbian names (and in some places names in additional languages) are the official names for all places in Kosovo. The KEK has stated that some years ago it had bought software, which uses only the Albanian language and alphabet version of places. To change this software would cost, according to KEK, several million euros.

Paragraphs 178 to 181

The Advisory Committee may wish to make a call on international actors to lead by example, ensuring that their own documents are produced in the official languages and that they actively encourage the local institutions they are working with to use official languages.

Inter-ethnic interaction in education

Paragraph 193

Against the background of two parallel educational systems, the 'Fetah Sylejmani/Nebojša Jerkovic' school in Dragash/Dragaš town represents a particularly serious case. Even before the conflict in 1998/1999, this school building was shared by Gorani teachers and Gorani primary school pupils following the Serbian education system and by Kosovo Albanian teachers and Kosovo Albanian pupils who followed the Kosovo education system, which was the "parallel" system at that time. The "two schools under one roof" approach continued after 1999, when the Kosovo education system became the official one and the Serbian education system the "parallel" one. Thus, there was at least some kind of interaction and communication between the Kosovo Albanian and Gorani teachers who shared the same teachers' room and the Kosovo Albanian and Gorani pupils who shared the same school yard. This 'shared use arrangement' lasted until the beginning of the school year 2008/2009, when Gorani teachers and pupils were refused access to the school building by municipal authorities due to the Gorani teachers' refusal to sign contracts with Kosovo institutions. Following the OSCE High Commissioner on National Minorities' and the OSCE Mission's intervention in February 2009 the Gorani teachers and pupils returned to the 'Fetah Sylejmani/Nebojša Jerkovic' school. However, they left the school again after only ten days, following the attempt of the Kosovo Albanian school director to seize control over the Gorani teachers and the curricula they use. The case was also reported by the Council of Europe's High Commissioner on Human Rights.

Since March 2009, despite numerous concessions made by central and local authorities in Dragash/Dragaš upon the mediation efforts of the OSCE Mission and the OSCE High Commissioner on National Minorities, the Gorani teachers have refused to return to the 'Fetah Sylejmani/Nebojša Jerkovic' school. Serbian institutions do not encourage them to return to the school.

Intercultural content of education

Paragraphs 197 to 198

The Advisory Committee notes that "it is also commendable that an independent commission has been set up to improve the curriculum in the Serbian language." However, it should be noted, the independent commission has been set up for the revision of the Serbian language teaching materials/textbooks, not for the improvement of the curriculum in the Serbian language, since the Kosovo educational system provides curricula for primary and

secondary mother-tongue education in the Albanian, Turkish and Bosnian languages but not in Serbian. Moreover, the commission has convened for the first time only at the beginning of 2010.

Paragraph 199

The 2nd Opinion of the Advisory Committee states that “textbooks in use on the basis of the Kosovo-wide curriculum insufficiently reflect the specific features and history of some minority communities, such as the Bosniac, Roma, Ashkali and Egyptian ones.” To the knowledge of the OSCE the specific features and history of these communities are not reflected at all in Kosovo curricula textbooks.

At the beginning of 2010, however, the Kosovo Ministry of Education, Science and Technology published the newly developed curricula for Romani pupils. The quality of these curricula remains to be seen.

Instruction in and of minority languages

Paragraph 226

UNMIK is informed that the Gorani community has never requested to receive education in their Gorani mother tongue, a local Slavic language dialect, which is closer to the Slavic language spoken in the former Yugoslav Republic of Macedonia language than to the Serbian language. However, for more than 80 years they have been taught in the Serbian language and they have expressed their desire that Serbian, one of the two official languages in Kosovo, remains their language of instruction.

Participation in public life

Paragraph 229 to 234

There are positive indications of outreach and concrete action to ensure participation of minority communities in decision-making at the municipal level. For example, in the municipalities of Pejë/Pec and Rahovec/Orahovac, the Mayor took the decision to appoint a Deputy Mayor for the minority Serb communities, although the stipulated population threshold has not been met.

Consultation of minority communities

Paragraph 243

It is true that there is a general lack of legal guarantees specifically meant for persons belonging to the Kosovo Montenegrin community. In April 2010, the authorities has initiated the process of amending the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, with the aim of granting official recognition to the Montenegrin community in Kosovo.

Paragraph 245

Parts of the Strategy for the Integration of Roma, Ashkali and Egyptians represent compromises agreed upon between representatives of the three communities and the ministries. The Council of Europe seconded a chairperson to one of the working groups

leading to the strategy development, while another three working groups were chaired by a member of the OSCE and several more by an external consultant hired by the OSCE. In all of these working groups the concerns of the three communities were strongly taken into account, even if they are not reflected item by item in the Strategy, as compromises had to be made. Altogether, the government has adopted a strategy that is more open in the description of the current situation, the assessment and the measures to be taken, than the majority of strategies existing in the region. Only for a few chapters of the strategy, such as the chapter on education, were the consultations not sufficient or the concerns and proposals of the three communities not sufficiently taken into account.