

# Chicago-Kent Law Review

---

Volume 80  
Issue 1 *Symposium: Final Status for Kosovo:  
Untying the Gordian Knot*

Article 10

---

December 2004

## Final Status of Kosovo: The Role of Human Rights and Minority Rights

Wolfgang Benedek

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>



Part of the [Law Commons](#)

---

### Recommended Citation

Wolfgang Benedek, *Final Status of Kosovo: The Role of Human Rights and Minority Rights*, 80 Chi.-Kent L. Rev. 215 (2005).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol80/iss1/10>

This Article is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact [jwenger@kentlaw.iit.edu](mailto:jwenger@kentlaw.iit.edu), [ebarney@kentlaw.iit.edu](mailto:ebarney@kentlaw.iit.edu).

# FINAL STATUS OF KOSOVO: THE ROLE OF HUMAN RIGHTS AND MINORITY RIGHTS

WOLFGANG BENEDEK\*

## INTRODUCTION

After the experience of massive human rights violations in Kosovo, which led to a humanitarian intervention by NATO, it is crucial that the reconstruction of society in Kosovo is based on human and minority rights. Human rights and minority rights will play a major role in building the standards necessary for the final status of Kosovo. However, human rights and minority rights will also be of major importance after the final status has been determined, expectedly in favor of the independence of Kosovo.

The Council of Europe, the European Union, and the Organization for Security and Co-operation in Europe ("OSCE") define themselves as organizations based on the rule of law, democracy, and human rights. Since the 1990s, minority rights have gained additional importance and constitute an additional pillar of the European order. Rule of law, democracy, and human rights also constitute important preconditions for accession to the Council of Europe and the European Union, as can be seen in the present enlargement process of the European Union. These principles also constituted important criteria for the European Union's recognition of the successor states of the former Yugoslavia and the former Soviet Union. Joining the European institutions means also accepting increased scrutiny and monitoring of a member state's protection of human rights and minority rights (i.e., whether the member states have implemented these standards into their practices).

All studies on Kosovo's final status agree that effective human and minority rights, as well as the rule of law, are indispensable elements of any settlement,<sup>1</sup> particularly after the widespread violations of human and

\* Professor of International Law, University of Graz, Austria; Director of European Training and Research Centre for Human Rights and Democracy (ETC) in Graz; Dr. hc of the University of Pristina and Sarajevo.

1. See JANUSZ BUGAJSKI, R. BRUCE HITCHNER & PAUL WILLIAMS, CTR. FOR STRATEGIC & INT'L STUDIES, ACHIEVING A FINAL STATUS SETTLEMENT FOR KOSOVO 9 (2003); see James R. Hooper & Paul R. Williams, *Earned Sovereignty: The Political Dimension*, 31 DENV. J. INT'L L. & POL'Y 355 (2003); see Michael P. Scharf, *Earned Sovereignty: Juridical Underpinnings*, 31 DENV. J. INT'L L. &

minority rights that took place before, during, and after the NATO intervention.<sup>2</sup> In simulations of final status negotiations, the human rights situation in Kosovo became the central issue in each.<sup>3</sup>

This Article first identifies the relevant European standards and procedures regarding human and minority rights and the relevance of the concept of human security in this context for Kosovo. From a theoretical perspective of the development of human rights and the obligations of state authorities, this Article compares the role given to human and minority rights in the Constitutional Framework of Kosovo<sup>4</sup> to the protection of these rights in practice as reflected in the reports of the Ombudsperson. Furthermore, the Kosovo Standards Implementation Plan of 2004 ("KSIP")<sup>5</sup> is reviewed with regard to the role of human and minority rights and, in particular, the improvements foreseen as a result of the Plan. Finally, this Article will discuss some specific as well as general conclusions on strengthening the role of human and minority rights in Kosovo. In this context, issues regarding the accountability and limitations of the international administration are also raised.<sup>6</sup>

## I. RELEVANCE OF EUROPEAN STANDARDS OF HUMAN AND MINORITY RIGHTS

Applicable legal instruments regarding human and minority rights can be found on the regional as well as on the universal level. Instruments at the universal level will be of particular importance for the United Nations Administration in Kosovo. However, because Kosovo is part of Europe, the European regional standards need to be applied as well. In the framework of the Council of Europe, the European Convention on Human Rights and

POL'Y 373 (2003); see Paul R. Williams, *Earned Sovereignty: The Road to Resolving the Conflict over Kosovo's Final Status*, 31 DENV. J. INT'L L. & POL'Y 387, 422 (2003).

2. See, e.g., WILLIAM G. O'NEILL, KOSOVO: AN UNFINISHED PEACE 60-63 (2002).

3. See PAUL WILLIAMS, REBECCA GRAZIER & JAMES HOOPER, U.S. INST. OF PEACE, SPECIAL REPORT 95, SIMULATING KOSOVO: LESSONS FOR FINAL STATUS NEGOTIATIONS 9 (Nov. 2002).

4. Constitutional Framework for Provisional Self-Government, U.N. Interim Administration Mission in Kosovo, U.N. Doc. UNMIK/REG/2001/9 (May 15, 2001), available at <http://www.unmikonline.org/constframework.htm>.

5. U.N. INTERIM MISSION IN KOSOVO, KOSOVO STANDARDS IMPLEMENTATION PLAN (Mar. 31, 2004), available at [http://www.unmikonline.org/pub/misc/ksip\\_eng.pdf](http://www.unmikonline.org/pub/misc/ksip_eng.pdf) [hereinafter KOSOVO STANDARDS IMPLEMENTATION PLAN].

6. See, e.g., Michael Bothe & Thilo Marauhn, *U.N. Administration of Kosovo and East Timor: Concept, Legality and Limitations of Security Council-Mandated Trusteeship Administration*, in KOSOVO AND THE INTERNATIONAL COMMUNITY: A LEGAL ASSESSMENT 217, 235 (Christian Tomuschat ed., 2002).

Fundamental Freedoms of 1950,<sup>7</sup> the European Convention for the Prevention of Torture and other Inhuman and Degrading Treatment of 1987,<sup>8</sup> the European Charter for Regional or Minority Languages of 1992,<sup>9</sup> and the Framework Convention for the Protection of National Minorities of 1994<sup>10</sup> deserve particular attention. These instruments not only represent the value systems of the presently forty-five members of the Council of Europe, but also contain implementation and monitoring procedures. They represent the highest standards worldwide, both in substantive and procedural terms.

With regard to monitoring bodies of the Council of Europe, the European Court of Human Rights in Strasburg can receive individual applications from complainants of all member states of the European Convention, which consists of the same member states as the Council of Europe. The European Committee for the Prevention of Torture and other Inhuman or Degrading Treatment ("CPT"), which was established in 1989, can visit all places of detention, including psychiatric hospitals, without giving prior notification. Also, the Advisory Committee of the Framework Convention on National Minorities, which was established in 1998, besides receiving and commenting on state reports, has developed the practice of visiting certain problem areas. In addition, the European Commission on Racism and Intolerance ("ECRI"), which was established in 1993, produces country reports and studies and thus monitors racism and intolerance in the whole area represented by the Council of Europe. Finally, a European Commissioner for Human Rights was set up in 1999 and can play an active role wherever human rights problems occur.

In addition, OSCE standards of human and minority rights, including the human dimension standards based on the Helsinki Final Act of 1975,<sup>11</sup> the Copenhagen Meeting of the Conference on the Human Dimension of 1990,<sup>12</sup> and the Charter of Paris for a New Europe of 1990,<sup>13</sup> need to be

7. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

8. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Nov. 26, 1987, Europ. T.S. No. 126, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/126.htm>.

9. European Charter for Regional or Minority Languages, Nov. 5, 1992, Europ. T.S. No. 148, § 1(a)-(c).

10. Framework Convention for the Protection of National Minorities, Feb. 1, 1995, Europ. T.S. No. 157, available at <http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>.

11. Conference on Security and Co-operation in Europe: Final Act, Aug. 1, 1975, 14 I.L.M. 1292.

12. Conference on Security and Co-operation in Europe: Document of the Copenhagen Meeting of the Conference on the Human Dimension, June 29, 1990, 29 I.L.M. 1305, available at <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>.

13. Conference on Security and Co-operation in Europe: Charter of Paris for a New Europe and Supplementary Document to Give Effect to Certain Provisions of the Charter, Nov. 21, 1990, 30 I.L.M. 190.

respected. OSCE monitoring bodies like the High Commissioner on National Minorities, the Representative for the Media, and the Office on Democratic Institutions and Human Rights (“ODIHR”) are very present in Kosovo, where one of the largest field missions of OSCE is in place.

It should be noted, however, that with regard to **economic, social, and cultural rights** the European system is less developed, although several revisions and amendments to the European Social Charter of 1961<sup>14</sup> have strengthened the social dimension of European human rights protection. As economic and social problems tend to be more accentuated in Eastern and South Eastern Europe, particular attention has to be given to economic, social, and cultural rights. However, the European Social Charter and the International Covenant on Economic, Social and Cultural Rights<sup>15</sup> have been left out of the international human rights agreements directly applicable to Kosovo, although the Covenant is still referred to in regulation 24/1999.<sup>16</sup> The main reason seems to be that, in the absence of a solution on public property, the Special Representative of the Secretary-General (“SRSG”) still has the final word on matters related to its administration,<sup>17</sup> which could lead to conflicts with the economic freedoms guaranteed in the Covenant and the European Social Charter. However, it also appears unclear whether the social rights contained in both instruments can be provided for under the present structure of governance.

Special focus is also necessary on issues of equality and nondiscrimination, in particular with regard to the human rights of women, where major developments have taken place on the European regional level and the universal level as a result of several world conferences on women’s rights.<sup>18</sup> Women’s rights have become a major issue in Kosovo today.

In this context, the relevance of **human security** for human rights needs to be emphasized.<sup>19</sup> Human security, described as freedom from fear and freedom from want, appears to be a key issue for stability in Kosovo.

14. European Social Charter, Oct. 18, 1961, 529 U.N.T.S. 89.

15. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

16. On the Law Applicable in Kosovo, U.N. Interim Administration Mission in Kosovo, U.N. Doc. UNMIK/REG/1999/24 § 1.3(d) (Dec. 12, 1999).

17. See On the Authority of the Interim Administration in Kosovo, U.N. Interim Administration Mission in Kosovo, U.N. Doc. UNMIK/REG/1999/1 § 6 (July 25, 1999). For all regulations, see U.N. Interim Mission in Kosovo, *Official Gazette*, available at [www.unmikonline.org/regulations/index.htm](http://www.unmikonline.org/regulations/index.htm) (last visited Nov. 10, 2004).

18. See Wolfgang Benedek, *The European System of Protection of Human Rights and Human Rights of Women*, in *THE HUMAN RIGHTS OF WOMEN: INTERNATIONAL INSTRUMENTS AND AFRICAN EXPERIENCES* 210 (Wolfgang Benedek, Esther M. Kisaakye & Gerd Oberleitner eds., 2002).

19. See generally BERTRAND G. RAMCHARAN, *HUMAN RIGHTS AND HUMAN SECURITY* (2002); see also COMM’N ON HUMAN SECURITY, *HUMAN SECURITY NOW* (2003).

As in other cases, there seems to be a much stronger emphasis on freedom from fear than freedom from want, meaning that more attention is given to military stabilization than to the achievement of social and economic progress, which is indispensable for political and economic stability. However, the close link between personal security, i.e., the absence of corruption and organized crime, and social and economic security needs to be recognized.

Human security is focused on the individual and the people, i.e., the human being and his or her security needs. It includes personal security, social security, economic security, food security, and access to education and health services. These elements of security correspond to human rights, where the state, regardless of who is representing it, has the obligation to prevent violations, to protect the people, and to provide the services required by international instruments to the best of its abilities and on an increasing basis.

The human security approach, which is very close to the human rights approach, focuses on the prevention of threats to human security, cooperation with civil society, and empowerment of people by teaching them about their rights and respecting those rights in practice. At the same time, people are also expected to respect human rights among themselves. In this way, human rights can serve as a common value and a framework for making claims and settling disputes.

With regard to the **protection of minority rights**, the OSCE High Commissioner on National Minorities, established in 1992, needs specific mentioning. In the region of the Balkans in particular, he has played an invaluable role, going as far as establishing the South Eastern European University in Tetovo and creating new educational opportunities based on international standards, mainly, but not exclusively, for Albanians. Different systems of minority protection existing in Europe should be studied in order to also find an appropriate solution for Kosovo. This appears to be a key issue for the final status of Kosovo.

However, every solution needs to be tailor-made, as it cannot be expected that models, often developed in the context of particular historic conditions, can be transferred in a copy-and-paste way. The main purpose of the different systems of minority protection, which is the preservation of the minority and its livelihood, has to be kept in mind. At the same time, the state can expect a basic loyalty from the minorities under its protection.

Internationally, the protection of human rights has gone through different phases; from the accusatory phase, where violations are being recognized and denounced; to the standard-setting phase, where international declarations and conventions are adopted; to the implementation phase,

where human rights are realized through international institutions and procedures monitoring state practices. In a similar way, in states and subdivisions of state governments, legislation is adopted in order to address human rights problems that were identified through standard setting, and institutions and procedures are established and charged with assuring implementation of the standards. For this purpose there are three basic obligations of the government: to respect, protect, and fulfill human rights.<sup>20</sup> In the following Parts, these phases and obligations will be used to analyze the development of human and minority rights in Kosovo.

## II. STANDARDS AND INSTITUTIONS OF PROTECTING HUMAN RIGHTS IN KOSOVO

Standards and institutions on human rights in Kosovo have been developed through different UNMIK regulations, in particular the Regulation on the Constitutional Framework.<sup>21</sup> Under the “**Constitutional Framework for Provisional Self-Government**” of May 2001, published as UNMIK regulation 2001/9, human rights are given a prominent role.<sup>22</sup> The major conventions, with the exceptions noted above, are referred to in the preamble, and they are also listed in Chapter 3, entitled “Human Rights.”<sup>23</sup> The Provisional Institutions of Self-Government (“PISG”) are required to observe and ensure internationally recognized human rights and fundamental freedoms, **including** the ones in the Universal Declaration on Human Rights and the conventions listed.<sup>24</sup> This means that the obligations are not limited to the listed texts and that the rights contained in the Universal Declaration on Human Rights, which was adopted by a nonbinding resolution of the General Assembly of December 10, 1948, also need to be observed and ensured, including the main economic, social, and cultural rights contained in the Universal Declaration.

According to Chapter 3.3 of the Constitutional Framework, these rights and freedoms are directly applicable in Kosovo, meaning that the PISG, and in particular the courts, can apply them in daily practice without the enactment of any further legislation.<sup>25</sup> An even larger chapter (Chapter 4) is devoted to minority rights, which are described as the “rights of com-

20. See MANFRED NOWAK, INTRODUCTION TO THE INTERNATIONAL HUMAN RIGHTS REGIME 48–51 (2003).

21. See Marcus G. Brand, *Institution-Building and Human Rights Protection in Kosovo in the Light of UNMIK Legislation*, 70 NORDIC J. INT'L L. 461, 473–74 (2001).

22. UNMIK/REG/2001/9 ch. 3.

23. *Id.* at pmb., ch. 3.

24. *Id.* at ch. 3.2.

25. *Id.* at ch. 3.3.

munities and their members,” whose members are defined as “inhabitants belonging to the same ethnic or religious or linguistic group.”<sup>26</sup> In this case, the Constitutional Framework spells out a number of specific rights, going beyond or specifying rights contained in the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

Regarding the implementation of these rights, the Constitutional Framework in Chapter 4.5 provides that the PISG “shall ensure that all Communities and their members may exercise the rights specified” and also “ensure fair representation . . . in employment in public bodies at all levels.”<sup>27</sup> In view of his mandate to protect and promote human rights and to support peace-building activities under Resolution 1244, Chapter 4.6 provides that the SRSG retains the authority to intervene when necessary in order to protect the rights of communities and their members.<sup>28</sup> These provisions together with other provisions of the Constitutional Framework, e.g., the provision on representation in the Assembly, show the particular importance given to the protection of minority rights, which are defined as the common responsibility of the Kosovar institutions and the SRSG, who maintains full authority to ensure the protection of the rights and interests of communities, an authority that ranks first on the list of his reserved powers.<sup>29</sup>

The Constitutional Framework does not foresee a constitutional court, which could be used in cases of violations of human rights and minority rights, as is the case in other countries like Austria and Bosnia-Herzegovina. The Constitutional Framework foresees only a “Special Chamber of the Supreme Court on Constitutional Framework Matters,” which primarily has the task of resolving conflicts between the different provisional institutions.<sup>30</sup>

However, the **Ombudsperson** is established as an independent office to which natural and legal persons can complain regarding violations of human rights or actions constituting abuses of powers by any public authority in Kosovo.<sup>31</sup> The Ombudsperson can “investigate complaints, monitor, take preventive steps, make recommendations and advise” on such matters, giving priority to allegations of severe or systematic violations and dis-

26. *Id.* at ch. 4.1.

27. *Id.* at ch. 4.5.

28. *Id.* at ch. 4.6.

29. *Id.* at ch. 8.1(a).

30. *Id.* at ch. 9.4.11.

31. *Id.* at ch. 10.1.



crimination against communities and their members.<sup>32</sup> Its recommendations are addressed to the SRSG as the highest civil authority in Kosovo.<sup>33</sup>

In practice, the Ombudsperson, with the assistance of OSCE and other institutions, has developed into the main public institution of human rights protection in Kosovo, pursuing numerous cases and issuing regular annual reports, as well as special reports on certain issues of general concern. For example, Special Report No. 1 of April 2001 dealt with the problem of the immunity of UNMIK and Kosovo Force ("KFOR"), which was considered incompatible with international human rights standards.<sup>34</sup> However, as can be seen from the Fourth Annual Report of 2003–2004,<sup>35</sup> this situation remains largely unchanged and has led to serious problems in pursuing claims against UNMIK by victims of human rights violations, which creates a situation of lack of accountability of UNMIK as a surrogate state.<sup>36</sup> This situation is described as "a paradox, whereby those entities that are in Kosovo to help preserve human rights and the rule of law are themselves not answerable to the very persons they are obliged to protect."<sup>37</sup>

According to the report of the Ombudsperson, there are still major shortcomings with regard to the rule of law and the human rights situation in Kosovo for which UNMIK has the main responsibility, not at least because it still controls the judiciary, the police, and the legislature.<sup>38</sup> In the field of democracy and governance the report speaks of a "legal chaos" due to the fact that the Constitutional Chamber of the Supreme Court or preferably a Constitutional Court, which could decide on the applicability and constitutionality of certain laws, has not been created.<sup>39</sup> It points out that the wider public, because of the lack of an official procedure regarding the publication of laws in Kosovo, is often unaware of laws applicable in Kosovo and that judges and prosecutors are not properly prepared for the implementation of new laws.<sup>40</sup> The public is also not aware of the applicability of international human rights conventions, and "their practical implementation into the Kosovo legal system remains a myth."<sup>41</sup> As early

32. *Id.* at ch. 10.2, 10.3.

33. *See generally* On the Establishment of the Ombudsperson Institution in Kosovo, U.N. Interim Administration Mission in Kosovo, U.N. Doc. UNMIK/REG/2000/38 (June 30, 2000).

34. OMBUDSPERSON INST. IN KOSOVO, SPECIAL REPORT NO. 1 (Aug. 18, 2000).

35. OMBUDSPERSON INST. IN KOSOVO, FOURTH ANNUAL REPORT (July 12, 2004) [hereinafter OMBUDSPERSON FOURTH ANNUAL REPORT].

36. *See id.* at 14–15.

37. *Id.* at 16.

38. *Id.* at 7.

39. *Id.* at 8.

40. *Id.* at 14.

41. *Id.*

as its Second Annual Report of 2000, the Ombudsperson criticized that in UNMIK Regulation 2000/59, which amended a previous regulation that set out the applicable law in Kosovo,<sup>42</sup> international human rights standards were given neither priority nor binding force, which would have been required by Security Council Resolution 1244.<sup>43</sup>

There is also the problem of the independence of the judiciary, which continues to be largely dependent on the international and local executive, which, *inter alia*, is in charge of all judicial administration due to a lack of proper legislation regarding the administration of justice. Serbian parallel courts still play a major role.<sup>44</sup> Court judgments are not executed in a timely manner.<sup>45</sup> The jurisdiction of local courts is limited by UNMIK regulations with regard to occupancy rights and because of UNMIK immunity, which prevents local courts from hearing cases against UNMIK, including employment disputes.<sup>46</sup>

The report also points out shortcomings in the cooperation of UNMIK, e.g., failure to provide access to files of UNMIK police, lack of response by the SRSG to the recommendations made by the Ombudsperson, and lack of cooperation from the PISG, which limit the effectiveness of the Ombudsperson institution.<sup>47</sup> It is most deplorable that the existing legal situation, for which UNMIK carries the main responsibility, constitutes a sort of “human rights black hole” in Europe.<sup>48</sup> The inhabitants of Kosovo still lack access to the European Convention on Human Rights, although Serbia and Montenegro are now member states.<sup>49</sup> They also were not provided with an alternative judicial body like the Human Rights Chamber in Bosnia-Herzegovina. The Courts are not properly capable of applying international human rights law. This situation seems to confirm the general principle that “the realization of the right of self-determination is a *conditio sine qua non* for the effective guarantee and observance of individual hu-

42. *Id.* at 7; Amending UNMIK Regulation No. 1999/24 On the Applicable Law in Kosovo, U.N. Interim Administration in Kosovo, U.N. Doc. UNMIK/REG/2000/59 (Oct. 27, 2000); see also BLERIM REKA, UNMIK AS AN INTERNATIONAL GOVERNANCE IN POST-WAR KOSOVO: NATO'S INTERVENTION, U.N. ADMINISTRATION AND KOSOVAR ASPIRATIONS 186 (Logos-A, Pristina 2003) (ISBN 9998-58-096-0).

43. S.C. Res. 1244, U.N. SCOR, 54th Sess., 4011th mtg., ¶ 11, U.N. Doc. S/RES/1244 (1999) (giving UNMIK the task of protecting and promoting human rights).

44. OMBUDSPERSON FOURTH ANNUAL REPORT, *supra* note 35, at 12.

45. *Id.* at 13.

46. *Id.* at 15.

47. *Id.* at 16–17.

48. *Id.* at 18; see also OMBUDSPERSON INST. IN KOSOVO, THIRD ANNUAL REPORT 7 (July 10, 2003).

49. OMBUDSPERSON FOURTH ANNUAL REPORT, *supra* note 35, at 17.

man rights.”<sup>50</sup> The recommendations of the Ombudsperson cannot be enforced. Implementation depends on the discretion of the SRSG and the PISG, and there is no forum to discuss the recommendations. Although UNMIK took the legal position that it cannot be a party to the European Conventions, there are technical arrangements available to apply the European Framework Convention on the Protection of National Minorities and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Although the Convention on the Prevention of Torture and the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 are not included in the list of human rights instruments in the Constitutional Framework,<sup>51</sup> UNMIK and the Council of Europe, based on the ratification of the Convention by Serbia and Montenegro, have concluded an “agreement on technical arrangements,” which will allow the Committee to visit any place in Kosovo where persons are deprived of their liberty by an authority of UNMIK.<sup>52</sup> Places of detention that are regularly visited by the International Committee of the Red Cross (“ICRC”), meaning KFOR places, are excluded. The CPT provides its report to UNMIK, which is also a counterpart in all matters of the visit. The inclusion of Kosovo in this European monitoring system, notwithstanding the final status of Kosovo, is a positive step towards extending the benefits of international conventions to Kosovo and proof of the applicability of European standards.

In view of the legitimate critique of UNMIK by the Ombudsperson, it is troubling that there are discussions that this institution should be transformed into a local institution under the PISG by mid-2005, which would deprive it of its function of monitoring the work of UNMIK. Therefore, international human rights NGOs like Human Rights Watch have intervened with the U.N. Secretary-General to maintain the Ombudsperson with its present authority as a mixed international-local institution with a U.N. mandate as long as UNMIK exists.<sup>53</sup>

The reasons for the present human rights situation in Kosovo are manifold, ranging from ignorance and the lack of implementation provi-

50. DAVID RAIĆ, STATEHOOD AND THE LAW OF SELF-DETERMINATION 240 (2002).

51. UNMIK/REG/2001/9 ch. 3.2.

52. SRSG Sorren-Jessen Petersen & Walter Schwimmer, Secretary-General of the Council of Europe Sign Two Agreements, U.N. Interim Administration Mission in Kosovo, U.N. Doc. UNMIK/PR/1216 (Aug. 23, 2004).

53. See Rachel Denber, Human Rights Watch, *Ombudsperson Institution in Kosovo Should Remain Independent: Letter to Secretary-General Kofi Annan*, available at [www.hrw.org/english/docs/2004/08/17/serbia9256.htm](http://www.hrw.org/english/docs/2004/08/17/serbia9256.htm) (Aug. 17, 2004).

sions, institutions, and procedures to lack of political will. The existence of internationally binding standards is not sufficient, and courts and administrations are turning to domestic law to implement international standards. For example, in most European countries, Austria being the exception, the European Convention for Human Rights is not directly applicable, but implementation legislation was introduced for this purpose. This explains, at least in part, why the simple enumeration of international conventions in constitutional texts, as in the Dayton Agreement or in the Constitutional Framework, is only of limited use. Constitutions often lack effective remedies. In addition, institutions and procedures are needed to turn those human rights into practical reality. The same is also true for many other standards, and this is the main reason why the KSIP has been elaborated by the international community and the PISG with the involvement of the Ombudsperson.

### III. HUMAN AND MINORITY RIGHTS IN THE KOSOVO STANDARDS IMPLEMENTATION PLAN

In the process of clarifying the final status of Kosovo, the question of standards has gained growing importance. "Standards before status" has been the slogan of UNMIK under SRSG Michael Steiner, making the resolution of the final status conditional on progress in the field of standards in Kosovo. A document on "Standards for Kosovo" was made public in Kosovo on December 10, 2003 (the international human rights day!), and endorsed by the U.N. Security Council on December 12, 2003.<sup>54</sup> Basically, the standards represent the vision of a "truly multi-ethnic, stable and democratic Kosovo which is approaching European standards."<sup>55</sup>

After the violence of March 17–20, 2004, KSIP was quickly published to provide benchmarks for progress.<sup>56</sup> It is of obvious interest to analyze the role of human and minority rights in this plan under the criteria identified. However, the voluminous document has 118 pages and eight chapters and therefore cannot be analyzed in full detail. The KSIP, in Chapter 1, sets out with "**functioning democratic institutions**" based on elections.<sup>57</sup> The performance of public administration is to be strengthened with regard to the "availability of basic public services such as health care, utilities and

54. Standards for Kosovo, U.N. Interim Administration Mission in Kosovo, U.N. Doc. UNMIK/PR/1078 (Dec. 10, 2003), available at <http://www.unmikonline.org/press/2003/press/pr1078.pdf>; United Nations, *Statement by the President of the Security Council on Kosovo*, available at [http://www.un.int/bulgaria/unsc\\_en/kosovo\\_dec.htm](http://www.un.int/bulgaria/unsc_en/kosovo_dec.htm) (Dec. 12, 2003).

55. KOSOVO STANDARDS IMPLEMENTATION PLAN, *supra* note 5, at 2.

56. *See id.* at 2–3.

57. *Id.* at 5.

education,” to be provided on a nondiscriminatory basis for which purpose “anti-discrimination law is adopted and enforced, in compliance with relevant European standards.”<sup>58</sup> It is interesting to note that basic social rights appear as priorities among the standards to be implemented, although these rights have not been enshrined in the Constitutional Framework as such. This proves their importance in the Kosovar reality.

With regard to anti-discrimination law, the anti-discrimination directives of the European Union, which have recently been implemented by EU-member states seem to be envisaged with the European standards mentioned. All PISG ministries and municipalities have to “establish public grievance redressal offices with adequate community representation” as well as a system to address complaints against public utilities providers.<sup>59</sup> All communities have to be given “fair access to employment in public institutions.”<sup>60</sup> Codes of conduct and enforcement procedures are to be established to assure “transparent and accountable government.”<sup>61</sup> The “recommendations of Ombudsperson are given full weight.”<sup>62</sup> The “[p]romulgation and enforcement of an Anti-corruption law” should address allegations of misconduct in public service.<sup>63</sup> A law on gender equality is to be promulgated in order to improve participation of women in the institutions of the PISG.<sup>64</sup> An Office of Gender Equality is to be created, and a Kosovo Action Programme for Gender Equality is to be developed, disseminated, and implemented.<sup>65</sup>

With regard to media and civil society, a “strategic plan for minority broadcasting” is to be developed in accordance with the European Convention on Minority Rights to provide better “access to information for all communities throughout Kosovo.”<sup>66</sup> Freedom of information, including the implementation of the “Law on Access to Official Documents” is to be ensured.<sup>67</sup>

An Independent Media Commission is to be established on the basis of an Independent Media Commission law, which guarantees the independence of media regulation, “aspiring to European standards.”<sup>68</sup> A new code

58. *Id.* at 15.

59. *Id.* at 16.

60. *Id.* at 18.

61. *Id.*

62. *Id.*

63. *Id.* at 19.

64. *Id.* at 20.

65. *Id.*

66. *Id.* at 21.

67. *Id.* at 22.

68. *Id.*

of conduct for journalists should prevent hate speech or any form of incitement to hate.<sup>69</sup> A multiethnic “press council” should provide a “self-regulatory system for print media.”<sup>70</sup> A Freedom of Association law is to be adopted in order to give “[n]on-governmental organizations, in particular those representing minorities, [the ability] to operate freely” and to allow individuals to join them without discrimination.<sup>71</sup>

Chapter 2 is devoted to the “**rule of law**” and describes a vision of “sound legal framework and effective law enforcement, compliant with European standards. Police, judicial and penal systems act impartially and fully respect human rights. There is equal access to justice and no one is above the law: there is no impunity for violators.”<sup>72</sup> Among the multitude of measures foreseen is the further strengthening of police capacity to investigate crimes against members of ethnic groups and the improvement of standards for judges and prosecutors by an entrance examination and a new school of magistrates.<sup>73</sup> In the future, local judges and prosecutors should also be trained to take on cases of corruption and organized crime.<sup>74</sup> For example, a new Kosovo Judicial Institute will be in charge of advanced legal education of judges and prosecutors.<sup>75</sup> All communities will be equally represented. Effective action to eliminate trafficking and violence against women and children, and preventive education and legal and social services to victims are foreseen.<sup>76</sup> Special attention is given to tackling economic crime and money laundering.<sup>77</sup>

Only a few elements should be mentioned regarding the remaining six priority areas: Chapter 3 on “**freedom of movement**” is concerned with “access to places of employment, markets, public and social services, and utilities” free of fear of attack and the free use of the native languages.<sup>78</sup> Accordingly, “[p]ersonal documents are issued in the native language of the recipient[s],” and names of cities, villages, streets, and public places need to be in Albanian, Serbian, and the languages of other communities living there in significant number.<sup>79</sup>

69. *Id.* at 23.

70. *Id.*

71. *Id.* at 24.

72. *Id.* at 27.

73. *Id.* at 28–29.

74. *Id.* at 28.

75. *Id.* at 35.

76. *Id.* at 38.

77. *Id.* at 44–45.

78. *Id.* at 47.

79. *Id.* at 52.

Major human and minority rights issues are raised by Chapter 4 on “**sustainable returns and the rights of communities and their members,**” which have to “be able to participate fully in the economic, political and social life of Kosovo” in security.<sup>80</sup> All refugees and displaced persons need to be able to return in safety and dignity. That means in practice that jobs, health care, social services, and public utilities need to be available to returnees on an equal basis with others.<sup>81</sup> “International human rights standards, including standards relating to the rights of women and children, are incorporated into domestic legislation,” and an “[a]nti-Discrimination Law (ADL) consistent with European Union Directives and international standards” has to be endorsed by the Kosovo Assembly.<sup>82</sup> Kosovo is also included in the monitoring process of the European Framework Convention on National Minorities.<sup>83</sup>

A strategy for “central human rights structures” is agreed and implemented.<sup>84</sup> Within the PISG, offices with responsibilities for human rights, minority rights, and rights of women are to be effectively functioning.<sup>85</sup> On the local level of municipalities, mechanisms responsible for the protection of human and community rights have to be functioning as well.<sup>86</sup> Reports and recommendations of the Ombudsperson have to be complied by all PISG structures. School textbooks are to be developed that encourage tolerance and respect.<sup>87</sup>

Further measures are provided by Chapter 5 on the “**economy,**” where a legal framework is to be put in place to move Kosovo towards the achievement of European standards,<sup>88</sup> and by Chapter 6 on “**property rights,**” which includes religious and cultural heritage.<sup>89</sup> According to Chapter 7, “**dialogue**” needs to be restarted on the four basic issues already identified, i.e., energy, missing persons, returns, and transportation and telecommunications, to be complemented by additional working groups established by mutual consent between UNMIK, PISG, and Belgrade au-

80. *Id.* at 53.

81. *Id.* at 62.

82. *Id.* at 66.

83. *Id.* at 67.

84. *Id.* at 68.

85. *Id.*

86. According to UNMIK Regulation 2000/45 On Self-Government of Municipalities in Kosovo, the principles of legality and human rights are to be observed, but no mechanism exists to monitor this obligation. See Brand, *supra* note 21, at 476 (citing On Self-Government of Municipalities in Kosovo, U.N. Interim Administration Mission in Kosovo, U.N. Doc UNMIK/REG/2000/45 § 33 (Aug. 11, 2000)).

87. KOSOVO STANDARDS IMPLEMENTATION PLAN, *supra* note 5, at 70.

88. *Id.* at 72.

89. *Id.* at 85, 87–88.

thorities.<sup>90</sup> Finally, Chapter 8 is devoted to the future of the “**Kosovo Protection Corps**,” which needs to recruit members of all communities in Kosovo.<sup>91</sup>

This short review of the KSIP shows that numerous crucial objectives accompanied by concrete measures are foreseen. The major problems are well identified, and hot issues are among the priorities, such as the dismantling of parallel structures in Mitrovica and elsewhere in cooperation with the government of Serbia and Montenegro. For all measures, the responsible institutions and deadlines are indicated, which are generally very short, normally not going beyond 2005. This does not appear very realistic, particularly because the budgetary consequences and human resources needed are nowhere identified. But it may provide a sense of urgency needed after the violence of March 2004. Measures implementing human and minority or community rights are given broad attention directly and indirectly. Certain measures for minorities presuppose generally functioning institutions of human rights that already exist, like the Ombudsperson, or that are to be created on all levels of government. This could potentially lead to a major strengthening of human and minority rights if implemented as foreseen. The benchmarks are often identified as “European standards,” meaning standards as defined by the European Union or the Council of Europe.

#### IV. TOWARDS A CULTURE OF HUMAN RIGHTS THROUGH HUMAN RIGHTS EDUCATION

It is important to keep in mind that the European system of human rights protection is not a matter of joining institutions or ratifying treaties. It is also not only an issue of the multitude of institutions created, which have the task of protecting human rights as can be seen from the example of Bosnia and Herzegovina.<sup>92</sup> It is a matter of the daily practices of the administrations and courts in the participating countries themselves. Therefore, cosmetic signatures are of no relevance; what counts is the implementation of human rights and minority standards by the respective authorities, based on the necessary political will. For this purpose, both government officials and the public at large need to be educated; they have to go through a learning process on human and minority rights. The long-term objective is the establishment of a “Culture of Human Rights,” which in the Balkans faces several problems of historical, sociological, and political

90. *Id.* at 105.

91. *Id.* at 111.

92. *See generally* HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA AFTER DAYTON: FROM THEORY TO PRACTICE (Wolfgang Benedek ed., 1999).



nature.<sup>93</sup> Such a culture, which always has to be part of the “political culture,” needs to be based on a solid “understanding of human rights,” according to the title of a recent publication of the European Training and Research Centre for Human Rights and Democracy (“ETC”) in Graz,<sup>94</sup> which was produced for the Austrian Ministry for Foreign Affairs during its chairmanship of the Human Security Network.<sup>95</sup> It is presently being translated into Albanian with the help of the Finnish Human Rights Programme in Prishtina and members of the Law Faculty.

Education and training in Human Rights is also one of the major objectives of the Human Rights Centre of the University of Prishtina, created in 2000 soon after the return of the Albanian members of the University of Prishtina to their buildings. Hosted by the Faculty of Law and supported by the University as well as various international donors, it has an important role to play in educating not only the public at large, but also experts in the field of human rights, which will be much needed in the future when Kosovo will participate in the European and United Nations human rights institutions. The importance of a university-based Human Rights Center can also be seen from the fact that the South Eastern European University in Tetovo has also established a Human Rights Center, which started in April 2004. These centers also form part of a larger network of human rights centers in South Eastern Europe, coordinated by the Human Rights Centre in Sarajevo and the ETC in Graz.<sup>96</sup> The Human Rights Centre of the University of Prishtina therefore contributes to local capacity building and the strengthening of local institutions necessary for future self-government, in conformity with Resolution 1244. Consequently, there should be more support for its activities both from the international community and local structures.

Human rights education has also become a major focus of the Human Security Network, a network of thirteen like-minded states from all over the world, chaired by Canada for one year beginning May 2004. At its meeting in Graz in May 2003, the so-called “Graz Declaration on Principles of Human Rights Education and Human Security” was adopted, which underlines in particular the interrelationship between human security and

93. See contributions of Vojin Dimitrijevic, Wolfgang Benedek, and others in *CULTURE OF HUMAN RIGHTS* (Mirjana Todorovic ed., Belgrade 2003) (ISBN 86-7202-060-X).

94. See HUMAN SECURITY NETWORK, *UNDERSTANDING HUMAN RIGHTS: MANUAL ON HUMAN RIGHTS EDUCATION* (Wolfgang Benedek & Minna Nikolova eds., 2003), available at [www.etc-graz.at](http://www.etc-graz.at).

95. See Human Security Network, [www.humansecuritynetwork.org](http://www.humansecuritynetwork.org) (last visited Nov. 10, 2004).

96. See Human Rights Networking Project in South East Europe, [www.see-hrc.net](http://www.see-hrc.net) (last visited Nov. 10, 2004).

human rights as well as human development.<sup>97</sup> Among the principles are “re-enforcing human security through human rights education;”<sup>98</sup> the “right to know one’s human rights;”<sup>99</sup> “strengthening society and empowering the individual;”<sup>100</sup> and “respecting diversity: gender, culture, equality and good governance.”<sup>101</sup> It also emphasizes that “[h]uman [r]ights [e]ducation can provide a valuable basis and common vision with regard to norms and standards for sustainable conflict resolution. Strategies of conflict prevention and post-conflict rehabilitation should therefore be built integrally upon strategies of promoting and protecting human rights.”<sup>102</sup>

Human rights education includes not only formal education, but also informal education including the training of journalists and learning from examples given by others. In this respect the present international administration of Kosovo, led by the United Nations, has an important responsibility to demonstrate how human rights, together with the rule of law and democracy, are to be respected in practice. They also have the responsibility of assisting local institutions in their efforts to develop broad education and training programs in the field of human rights, primarily in the sector of education, but also in all other sectors. In addition, institutions need to be developed that will provide effective remedies in cases of violations of human and minority rights. The final vision would be that the state, as well as the people, will respect the human rights and minority rights of others and that people can feel secure on the basis of human and minority rights.

Unfortunately, in practice, UNMIK has not always been respectful of human rights, as can be seen from the reports of the Ombudsperson.<sup>103</sup> The Constitutional Framework for Provisional Self-Government clearly states that the authority of the SRSG and KFOR shall not be affected by the Constitutional Framework when they are ensuring the full implementation of Resolution 1244,<sup>104</sup> and there is no other institution except the Security Council and NATO to supervise the execution of these exceptional powers. In addition, UNMIK and KFOR officials enjoy full immunity before Kos-

97. HUMAN SECURITY NETWORK, GRAZ DECLARATION ON PRINCIPLES OF HUMAN RIGHTS EDUCATION AND HUMAN SECURITY 3 (May 10, 2003), available at <http://www.etc-graz.at/human-security/declaration/declaration.pdf>.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 3–4.

102. *Id.* at 3.

103. See FOURTH ANNUAL REPORT, *supra* note 35, at 17; REKA, *supra* note 42, at 297.

104. UNMIK/REG/2001/9 ch. 12–13.

ovar courts.<sup>105</sup> In view of the obvious demonstrated effects on the present and future self-government in Kosovo, utmost restraint should be exercised in using these powers when it comes to human rights.

### CONCLUSION

In conclusion, human rights and minority rights, i.e., rights of communities, are of key importance for the achievement of the final status of Kosovo. First, because they represent a major part of the values and standards at which the Kosovar society is aiming. They contain universal and European human rights, but as Kosovo is part of Europe, it is logical that European standards, which usually provide for a higher level of protection, are being used. This raises the issue of European monitoring mechanisms. While the European Court of Human Rights still is not available to Kosovars, and the European Social Charter has not been made applicable at all, the recent agreements with regard to the European Convention for the Prevention of Torture and the European Framework Convention on National Minorities point to how the deprivation of Kosovars regarding those standards and mechanisms can be overcome.

Second, human rights must not be separated from minority rights, as the European Framework Convention provides only for a minimum standard. As the provision of minority rights in the form of community rights is a crucial factor for the future state of Kosovo, it goes without saying that positive measures beyond human rights are needed in order to make the minorities feel personally secure in Kosovo and also to give them a perspective of economic, social, and cultural security. Therefore, human rights and human security have to be indivisible for all people living in Kosovo.

Third, the KSIP is necessary as it specifies the legal, institutional, and procedural measures required to build the "infrastructure" for human rights implementation, which can turn standards into daily practice. It may take some time until all the measures foreseen are in place and even longer until they are functioning and producing results. Hardly any country had to fulfill all these conditions in order to have its final status clarified. Therefore, it is important that the problems of implementation are not just used to delay the negotiations on the determination of the final status, which have to start sooner rather than later. Furthermore, as long as the Provisional Self-Government of Kosovo has only limited responsibility in certain areas,

105. This is due to UNMIK regulation 2000/47. On the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo, U.N. Interim Administration Mission in Kosovo, U.N. Doc. UNMIK/REG/2000/47 §§ 2.1, 3.1 (Aug. 18, 2000).

like the crucial fields of justice, law enforcement, and correctional service, it will not be able to develop the necessary capacity and accountability. In any case, there is a coresponsibility of UNMIK for achieving the standards agreed upon.

Fourth, UNMIK should not insist on being untouchable and should voluntarily refrain from making full use of the immunity of itself and its staff. It should strengthen cooperation with the Ombudsperson in particular to give a positive example and also strengthen the rule of law with regard to the activities of the international community. There is a joint responsibility of the SRSG and the PISG to provide effective remedies for violations of human rights as well as to ensure their fulfillment.

Fifth, local trainers and to-be-developed domestic learning institutions of human rights education and training need to strengthen the capacity of local institutions with regard to human and minority rights. In this way, the civil society also grows stronger, which must happen to allow citizens to individually and collectively claim their human and minority rights. Confidence in the rule of law needs to grow, which is best achieved through visibly successful human rights cases. An active civil society is needed to counter authoritarian interests and support public interests over personal ones.

Sixth, in the absence of a constitutional chamber or court, it is most important to make the European Convention on Human Rights also applicable for Kosovars, i.e., to establish the admissibility of complaints from Kosovo in the European Court of Human Rights. Generally, the European mechanisms of human rights protection, including the Social Charter, should be made applicable in Kosovo.

Finally, the protection and fulfillment of human rights are basic state functions. Accordingly, the strengthening of human and minority rights in Kosovo is an important emanation of statehood. Consequently, the PISG should understand them not only as conditions, but also as opportunities for state building, moving Kosovo closer to the clarification of its final status.

