Human rights challenges in Kosovo

By Ieva Liepina, student

Introduction

Arriving in Kosovo, Pristina airport surprised me with an European country-specific modern infrastructure and with the trade point of IPKO (recognized as one of the fastest growing telecommunications company in Europe) in the very centre of the arrival terminal. This confirmed that the state takes care of its image and focuses on direction of the fast development, free movement and modern technologies. The first impression of the country was created and it was positive. However, it turns out that such first impression can also be delusive. Later observations and conversations with people stated that "the spacious and modern airport gate" for Kosovars themselves is not at all so wide open and available. Often the traveling abroad may have different restrictions linked with the states international recognition, the strict visa regime and the financial capabilities of people.

During the visit I continued constantly to face with these contradictions - on the one hand we were told and shown how successfully develops a “newborn” country, but on the other hand – we saw how many problems in fact Kosovo’s people have in their everyday life.

Speaking about human rights situation in Kosovo, the first of all I would like to refer to the latest report published by Human Rights Watch on January 2014. It says: “Human rights protection remains weak in Kosovo. Despite reforms, the justice system continues to have a large backlog. Ethnic minority communities, Roma, Ashkali, and Egyptians in particular, continue to suffer discrimination, Journalists and human rights defenders were subjected to threats and attacks during 2013.”

At least a part of these mentioned human rights problems, we managed to get to know more deeply during of our short, however very intensive visit on the ground. The goal of this essay is not to give full overview of

1 http://www.hrw.org/sites/default/files/related_material/Kosovo_0.pdf
human rights challenges in Kosovo. That would be impossible in such a short format. Therefore more attention will be paid to the problems identified through discussions with different institutions in Kosovo as well as to the observations done during the field trip to Kosovo.

Rule of law and corruption

The very first meeting in our agenda was to EULEX – European Union Rule of Law Mission – the institution, which supports Kosovo on its path to greater European integration in the rule of law area. EULEX became fully operational in April 2009, and still works within the framework of UN Security Council Resolution 1244. EULEX’s skills and expertise are being used to support the key EU aims in the visa liberalization process, the Feasibility Study and the Pristina-Belgrade Dialogue. EULEX also supports the Structured Dialogue on rule of law, led by Brussels. EULEX continues to concentrate on the fight against organised crime and corruption, and works closely with local counterparts to achieve sustainability and EU best practices in Kosovo. EULEX prioritises the establishment of the rule of law in the north. The Mission is divided into two “divisions”: the “Executive Division” and the “Strengthening Division”. The Executive Division investigates, prosecutes and adjudicates sensitive cases using its executive powers. The Strengthening Division monitors, mentors and advises local counterparts in the police, justice and customs fields. However, despite the EULEX’s ambitions in its objectives in talks with several representatives of non-governmental organizations (for example, D.Tomic, Head of SPARK Mitrovica Office; A.Kurti, President of the Movement for Self-determination) we found out that the rating of the international institution in society is relatively low.

In this context, it is very commendable that in order to review allegations of human rights violations committed by EULEX staff, was established the Human Rights Review Panel

2 www.eulex-kosovo.eu
(HRRP) on 29 October 2009. During the meeting, F.Razesberger, Legal Officer of HRRP told us that the current HRRP Statistics is: violation was found in 9 cases and 20 cases are pending.

In my view one of the most visible problems considering rule of law in Kosovo is parallel legal systems and many institutions involved. After many discussions with governmental institutions, OSCE, EULEX and also NGOs, it is obvious that there is no clear understanding in practical terms about competence and role of each institution. Goals of work often overlap and even if they are defined on the paper, in practical work and public communication lines are often blurry.

As it can easily be guessed, from the existence of various authorities, many laws and documents enacted by different institutions are in force in Kosovo. As a result of that Kosovo’s legal system lacks clearness, legal certainty and is often too complex even for the judges to apply. It is not surprising if we take into account that in the territory of Kosovo are valid UNMIK Regulations, Kosovo laws, old Yugoslavia laws and international documents not directly ratified but directly applicable in Kosovo.

Unclearness of laws creates not only legal difficulties but also confusion among individuals about their rights and duties. From discussions with Ombudsperson it was evident that large part of population was not aware of both what their human rights are and how to protect them. And for sure the transparency of legal system can only be guaranteed if the population is aware of its rights and duties.

At the same time the judicial system in the country is going through consecutive reforms with the purpose of rendering it functional in accordance with the international standards; in spite of these reforms and some advancement in this area though, the results for citizens are yet insufficient. According to the report of Ombudsperson of Kosovo non-functioning of the judicial power over the entire territory of the country; delayed decisions in civil and criminal cases; number of unresolved cases brought forward from earlier years; low rates of execution of court decisions; cases running statute of limitations, even internationally at times; court proceedings against judges; failure to execute in practice the ECHR and failure to interpret ECHR decisions in court decisions are only some of the most pronounced difficulties and problems.³

Complaints received at the Ombudsperson’s office prove that temporary judges often do not fulfil their duties properly and in some cases permit serious human rights

³ Twelfth annual report (1 January- 31 December 2012), the Ombudsperson Institution of Republic of Kosovo, Pristina, 2013; p.84
violations. On the other hand the report of Ombudsperson of Kosovo shows that lack of independence and neutrality of national judges does not allow establishment of judicial system of Kosovo only consisting of Kosovo judges.

For sure not only political or ethnical interests can stand in a way of ensuring independent judicial system. Economic security plays an important role to prevent corruption in structures of investigative and enforcement levels. In order to create loyal and independent personnel, ethical education would not be sufficient. Low level of wages for judges, prosecutors and policemen in Kosovo should be seen as a serious barrier in prevention of corruption. As the Ombudsperson reports: “Unfortunately, a large number of complaints concerns unfair decisions with elements of corruption and forgery, which implies injustice on the part of those people who are expected to deliver justice in the country. In spite of undertaking actions to fight this phenomenon by the judiciary, based on the Ombudsperson Institution data in general we have no improvement in this respect compared to earlier reporting periods.”

**Issue of human rights and minority rights protection**

Out rule of law follows that human rights should be protected within the territory of state without any discrimination. In case of Kosovo two problems can be identified: first, the protection of minority rights and second, the inefficient implementation of human rights.

The issue of minority rights is quite controversial in Kosovo. International bodies (such as UN Committee on Economic, Social and Cultural Rights and Human Rights Committee) are highly recommending Kosovo to ensure effective participation and non-discrimination of non-Albanian communities in public and political life.

The ambience of tolerance and minority rights protection was always present during official meetings with international and national governmental institutions (such as OSCE, German KFOR, Ombudsperson and Minister of Culture, Youth and Sports) and also NGO’s working in the field of human rights. At the same time more informal discussions with Kosovo NGO’s and other people involved in political life of Kosovo (O.Ivanovic, A.Kurti) expressed more honest and alarming perspective. After discussions with representatives of the Movement for Self-Determination “Vetëvendosje!” and Humanitarian Law Centre Kosovo (HLC Kosovo) it was clear that the issue of war crime memory and

---

4 Twelfth annual report (1 January- 31 December 2012), the Ombudsperson Institution of Republic of Kosovo, Pristina, 2013; p.11
human rights violations committed against Albanians before war in 1999 are not so easily forgotten. In recent years, one of the main functions of the HLC Kosovo was systematic monitoring of trials for war crimes and criminal offences with ethnic and political background. As stated by a representative of HLC Kosovo B.Blakaj it’s some kind of paradox that: “in 15 years, only 15 war criminals have been convicted!” He called it: “a culture of impunity”. In the same time Serbian politicians O.Ivanovic claimed us: "We will never give up!", Mr. D.Tomic in the North Mitrovica said that: “the Albanian mafia as second largest in the world” and Mr. A.Kurti in allegories talked about "the Big Octopus - Russia and the Small Octopus – Serbia", but Major of Pristina Mr. S.Ahmeti said, that: “We agree with American politics more than Americans themselves!” This rhetoric, in my opinion, is a vivid proof, that none of the parties involved (Serb minority and Albanian majority), are not quite ready to seek pragmatic solutions to pressing problems putting aside the heavy shield of the past and the national identity.

In some extend the impression appeared that minority right protection and non-discrimination in Kosovo was not a value created by itself but was more seen as an acceptable request from international institutions and as a precondition for creating stability in state and region and entering in such institutions as European Union in the future.

Besides the main confrontation between Serbs and Albanians communities, Roma, Ashkali, and Egyptian communities, numbering approximately 40,000 people, are the most vulnerable and marginalized groups in Kosovo and continue to face difficulties obtaining personal documents, impeding their access to the health care, social assistance, and education. According to the Human Rights Watch report in July 2013, the Ministry of Social Welfare changed the eligibility criteria for social assistance in a way that effectively prevents many Roma, Ashkali and Egyptian families from accessing social benefits. The 2010 Strategy for integration of Roma, Ashkali, and Egyptians continues to exist on paper only, with the government failing to allocate necessary funds to implement the strategy.
Conclusion

Considering human rights protection in Kosovo, the main problem could be identified in legal uncertainty and non-awareness of population about existing human rights norms and mechanisms. The positive aspect is high trust and efficient work of national Ombudsperson of Kosovo. The Ombudsman has given and continues to give recommendations to improve the shortcomings and errors noted. In the same time unfortunately though the absence of the influence of the Ombudsman’s recommendation to the state institutions is evident, as a large part of though regrettably do not make even the slightest attempt to improve this situation. As the Ombudsman himself described this position: “the Ombudsman institution is a lion without teeth.”

From the meetings and discussions during field trip it is still very much unclear when Kosovo would be able to ensure rule of law itself without international assistance. For ensuring rule of law in state’s territory, many aspects should be taken into account. One of the main issues needed undeniably is security and stability of the state and region. It would be the basis for improving economic level and prevent organized crime and corruption within the state. In the case of Kosovo question of ethnical minorities, full international recognition and relations with EU countries and Serbia are one of the main issues for successful implementation of rule of law.

At the end I would note that also in a resolution adopted in January, the Parliamentary Assembly of the Council of Europe called on Kosovo authorities to fight corruption, make judicial reforms, address war crimes, protect and promote the rights of Roma, Ashkali, and Egyptians, ensure independence of media and adequate protection for journalists, and strengthen the fight against human trafficking. It also urged the European Union to focus its policy dialogue with Kosovo on strengthening the rule of law.5

5 http://www.hrw.org/sites/default/files/related_material/Kosovo_0.pdf