

ARTICLES

SPECIAL ISSUE – WHAT FUTURE FOR KOSOVO ?

Birth of a Nation: Kosovo and the Persecution of Pariah Minorities

By *Claude Cahn**

“In August 1998, at the ‘Black Eagles’ unit headquarters at Rznic, Idriz Balaj detained as prisoners Zenun Gashi, a former policeman, Misin Berisha and his son, Sali Berisha, all of Roma ethnicity. Zenun Gashi was last seen in the village of Kosuric/Kosuriq, municipality of Pec/Peja. On the day of his abduction, he was observed to have been badly beaten in a car with three KLA soldiers, in the neighbouring village of Barane/Baran. While detained, Sali Berisha’s nose was cut off, in the presence of Idriz Balaj and of two other KLA soldiers. Idriz Balaj cut each of the three men on their necks, arms and thighs, rubbed salt into the cuts and sewed them up with a needle. Idriz Balaj then wrapped Zenun Gashi, Misin Berisha and Sali Berisha in barbed wire and used an implement to drive the barbs of the wire into their flesh. Idriz Balaj also stabbed Zenun Gashi in the eye. The three men were then tied behind Idriz Balaj’s vehicle and dragged away in the direction of Lake Radonjic/Radoniq. They have not been seen alive since this day and are presumed to have been killed.”¹

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¹ Prosecutor v. Haradinaj, Balaj, & Brahimaj, Case No. IT-04-84-I, Indictment Decision, ¶ 64 (4 March 2005) [hereinafter Haradinaj ICTY Indictment].

A. Introduction

Millions of Roma and other persons regarded as “Gypsies” live throughout Europe, from Lisbon to Vladivostok. The Romani language is Indic and closely related to modern Hindi; Roma are descended from a disparate group of persons who arrived in Europe from India around one thousand years ago. However, not all persons regarded as Gypsies accept the term “Roma” as their ethnonym. In Kosovo, three prominent groups exist: Roma, explicitly recognized in the Constitutions of the former Yugoslavia, “Egyptians”, a group first declaring their existence in the 1990 Yugoslav census, and claiming origins in Egypt not India, and “Ashkalis”, a group first declaring their presence in 1999. Under UN governance in Kosovo, it has become customary to speak of “RAE minorities” (RAE) as the sum of the three groups. Linking these disparate groups is the treatment to which they are subjected: Roma, Ashkalis and Egyptians are collectively targeted for negative treatment because of the corpus of complex animosities known as “anti-Gypsyism”. In Kosovo these forces have had a particularly powerful impact in the context of the conflict in the former Yugoslavia.

Following the cessation of NATO action against the Federal Republic of Yugoslavia in June 1999 and the subsequent return of ethnic Albanians from abroad, approximately four fifths of Kosovo's pre-1999 RAE population -- an estimated 100,000 people -- has been expelled from their homes. The European Roma Rights Centre (ERRC) conducted field research in Kosovo during the summer of 1999. This field research and subsequent missions in 2000, 2002, 2004, 2005 and 2006 documented numerous abuses after the withdrawal of Yugoslav forces from the region in early June 1999, primarily by ethnic Albanians intent on purging Kosovo of RAE individuals and communities, along with other minorities. Documented abuses include the killing of RAE by ethnic Albanians; abduction and illegal detention of RAE by ethnic Albanians; torture, beating and other physical abuse; rape; expulsions of Roma from homes and communities; house burnings; forced labour; forced entry into RAE houses; and confiscation of houses and other property.² Ethnic Albanians burned whole RAE settlements to the ground, in many cases while NATO troops looked on. A number of RAE individuals who disappeared during the summer of 1999 remain missing and are presumed dead.

During the implementation by the Milosevic regime of “Operation Horseshoe” in Kosovo in the early months of 1999, Roma and others regarded as Gypsies were

² Claude Cahn and Deyan Kiuranov, *ERRC in Kosovo: Pogrom Situation*, in *ROMA IN THE KOSOVO CONFLICT* 14 (European Roma Rights Center, 1999).

complicit. The facts are not disputed: Roma assisted the Serbian police in plundering shops to supply the military action, and in burying the Albanian dead. However, there is no common ground on the interpretation of these facts. Roma say that the forces of the state coerced them into assisting the military operation and that there was no space for resistance. Albanians regarded these acts as further evidence that Roma and other RAE had allied themselves with the enemies of the Albanian nation.

Today, persecution of members of these RAE communities continues, manifested in their systematic exclusion from access to fundamental human rights. Racial discrimination against RAE communities in Kosovo is pervasive, depriving tens of thousands of their dignity. Anti-Gypsy sentiment among the ethnic Albanian majority is widespread. Today, RAE and others considered Gypsies in Kosovo live in a state of pervasive fear, fostered by routine intimidation, verbal harassment, and periodic racist assaults. Those negotiating Kosovo's future have effectively abandoned the RAE communities.

B. You Have to Live Here: Impunity for Ethnic Cleansing

In March 2005, the International Criminal Tribunal for the Former Yugoslavia (ICTY) indicted Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj on 37 Counts, including *inter alia* Crimes Against Humanity, and Violations of the Laws or Customs of War.³ The indictment was the first such act by the ICTY Prosecutor related explicitly to violence against Roma or others regarded as Gypsies in Kosovo. Mr. Haradinaj, who was Prime Minister of Kosovo on the day the indictment was brought, resigned and turned himself over to the Hague tribunal. He has since been released from custody.

The Haradinaj indictment is one of two indictments by the ICTY against members of the Kosovo Liberation Army (KLA) or others involved in the violent struggle against Serbian authorities over Kosovo.⁴ No other indictments make reference to

³ Haradinaj ICTY Indictment, *supra* note 1.

⁴ The other being an indictment against Kosovar Albanians for crimes against humanity and violations of the laws and customs of war involving violence against Serb and Albanian civilians in Lapusnik/Llapushnik Prison Camp of the KLA in the municipality of Glogovac/Glogoc. This indictment covered crimes committed from May to July 1998, and does not mention minorities as victims. See Prosecutor v. Limaj, Bala, Musliu, & Murtezi, Case No. IT-03-66-I, Indictment (24 January 2003, amended 7 March 2003) available at <http://www.un.org/icty/indictment/english/lim-ai030307e.htm>. In the amended indictment, charges against Murtezi were dropped. In a decision issued on 30 November 2005 concerning the actions of Bala, Limaj and Musliu, the Court found only Bala guilty of any acts for which charges had been brought.

crimes committed against Roma or others regarded as Gypsies. However, similar to all of the actions brought by the ICTY Prosecutor in matters related to actions by the KLA, the Haradinaj indictment confines itself to actions carried out by the three men during 1998.

No indictments have to date been brought by the ICTY against ethnic Albanians or their allies in connection with acts committed after 10 June 1999, the date of UN Security Council Resolution 1244 establishing the United Nations Interim Administration Mission in Kosovo (UNMIK).⁵ It is increasingly apparent that indictments for these crimes may never be brought by the ICTY. Queries by the author to the ICTY, sent on 1 August 2006, as to planned, pending or existing investigation into anti-minority violence in Kosovo after 10 June 1999, have not to date been answered. Statements by ICTY officials in August 2006 point toward the conclusion that no one will ever be indicted by the ICTY for post-June 1999 actions against minorities in Kosovo.⁶

Kosovo courts have not engaged adequately to prosecute persons for the massive crimes committed after June 1999. According to Amnesty International, only 23

⁵ Chief Prosecutor Del Ponte announced on 21 March 2001 that her office had opened an investigation into "activities against Serbs and other minorities in Kosovo by unidentified Albanian armed groups from June 1999 until the present...." Press Release, Statement by the Prosecutor, Carla Del Ponte, U.N.Doc. FH/P.I.S./578e (21 March 2001) available at <http://www.un.org/icty/pressreal/p578-e.htm>. Half a year earlier, in an address to the Security Council, Del Ponte acknowledged receiving "passionate pleas to investigate allegations of continuing ethnic cleansing against the remaining Serb and Roma population." Asking the Council to modify the Tribunal statute to cover the alleged crimes (see section on the "armed conflict" jurisdiction requirement, below), Del Ponte expressed her office's belief in the importance of pursuing these allegations: "We must ensure that the Tribunal's unique chance to bring justice to the populations of the former Yugoslavia does not pass into history as having been flawed and biased in favour of one ethnic group against another. Besides, if we obtain this morally justified and necessary extension of our mandate, the Tribunal might become a deterrent factor against the ongoing ethnic-cleansing campaign in Kosovo." Address to the Security Council by Carla Del Ponte, Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, to the UN Security Council, U.N.Doc. JL/P.I.S./542-e (24 November 2000). The ICTY has however indicated that it did not intend to be "the main investigatory and prosecutorial agency in Kosovo," and Del Ponte has stated that "[t]he vast majority of crimes committed during the armed conflict will have to be dealt with by the local Kosovo police and judiciary, currently under the mandate of the [UNMIK]." Press Release, Statement by Carla Del Ponte, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, on the Investigation and Prosecution of Crimes Committed in Kosovo, U.N.Doc. PR/P.I.S./437-E (29 September 1999).

⁶ "In response to a question as to whether the OTP was conducting an investigation into the tape that had recently been broadcast showing a Serb civilian being killed by Croatian soldiers, Nikiforov stated that it was regrettable that the tape had surfaced now just as the OTP had finished its investigative mandate." See ICTY Weekly Press Briefing (9 August 2006) available at <http://www.un.org/icty/briefing/2006/PB060809.htm>.

prosecutions for war crimes have taken place since 1999, the majority before 2002.⁷ Since 2002, only six prosecutions for war crimes have taken place, and “[i]n very few cases have the victims been non-Albanians.”⁸

Serbian authorities have brought a number of indictments against Kosovo Albanians for crimes committed during this period, but they have not yet secured the cooperation of the international community in carrying out prosecutions. For example, the Serbian government has posted an international arrest warrant for Mr. Agim Ceku, a former commander of the Kosovo Liberation Army. Mr. Ceku has been arrested twice, once by Slovene police and once by Hungarian police while traveling through those countries. On both occasions he was released following rioting by Albanians in Pristina, and the apparent intervention of powerful government forces opposed to acting on a Serbian arrest warrant and in response to the threat of unrest in Kosovo should he remain in custody or be prosecuted. On 10 March 2006, Mr. Ceku was elected Prime Minister of Kosovo, an office he currently holds. In addition, according to Amnesty International, UN authorities have actively intervened to obstruct Serbian prosecutions of Albanians suspected of war crimes:

Amnesty International is particularly concerned at the extraordinary intervention by the SRSG in challenging the jurisdiction of courts in Serbia over cases involving war crimes allegedly committed in Kosovo in June 1999. For example, on Wednesday 3 April 2006, the Kosovo daily *Koha Ditore* reported that the SRSG had written to the Serbian authorities challenging the jurisdiction of the Belgrade War Crimes Chamber over proceedings against Anton Lekaj.

Anton Lekaj was arrested in Montenegro in August 2004 (in connection with the theft of a car) and transferred to Serbia under an indictment by the War Crimes Chamber at the Belgrade District Court dated 7 July 2005, (KTRZ No. 7/04). He was charged with war crimes against the civilian population, including the rape of a minor Roma female at the Hotel Pastrik in

⁷ Amnesty International, *Kosovo (Serbia and Montenegro) United Nations Interim Administration*

Mission in Kosovo (UNMIK): Briefing to the Human Rights Committee, 87th Session, July 2006, 15 (2006).

⁸ *Id.* at 15.

Prizren; the beating and other ill-treatment of two individuals on 13 June 1999 at the same hotel; the inhuman and or degrading treatment on the night of 13 and 14 June of a male detainee; and the transfer of four Romani men to another location on the night of 15 June 1999, and the murder of three of those men. Proceedings against Anton Lekaj opened at the War Crimes Chamber at Belgrade District Court on 18 November 2005. To date, the trial has reportedly been conducted in accordance with international standards. [Italics retained from original].

In a meeting with the UNMIK Office of Legal Affairs (OLA) on Thursday 4 April 2006, Amnesty International delegates were informed that the OLA considered the indictment of former KLA member Anton Lekaj (and three others) to be unlawful, having been made by the “parallel courts”, established in Niš in Serbia proper following the withdrawal of the Serbian authorities from Kosovo in July 1999.

Amnesty International considers that, irrespective of the issue of UNMIK’s recognition or not of the parallel courts, 35 Serbia is obliged to investigate violations of international humanitarian law which took place on its territory. The organization also notes that even if Serbia were a separate state, under the principle of universal jurisdiction, it would have a duty to investigate and prosecute grave crimes under international law, or if they fail to do so, extradite the suspect to a state willing and able to do so. As far as the organization is aware, neither UNMIK police nor the Department of Justice have taken any measures to date to open investigations into allegations against Anton Lekaj or three other men indicted by the Serbian authorities. The OLA informed Amnesty International that if the Serbian authorities were to provide UNMIK with the evidence, they would “look into it”. Amnesty International members have repeatedly written to the UNMIK police (both

the Missing Persons Unit, and Central Criminal Investigations Unit) since 2000 urging them to open investigations into some of the allegations – (specifically the extra-judicial execution of three Romani men, including Rexh Shalla,) – included in the indictment. This information was based on an eye-witness account of the extra-judicial executions.⁹

As a result of these and related concerns, the United Nations Human Rights Committee, in their observation report released in July 2006 and submitted by UNMIK on the state of the administration's compliance with prevailing human rights norms, noted concern with the "continuing immunity enjoyed" by perpetrators of war crimes and crimes against humanity prior to June 1999, as well as "ethnically motivated crimes perpetrated since ... including those committed in March 2004."¹⁰ The Committee also signaled concerns that "some 1,713 ethnic Albanians and 683 non-Albanians, including Serbs, Roma, Ashkali and Egyptians, continued to be reported as missing as of May 2006, that low priority has been given to investigations of disappearances and abductions by the Missing Persons Unit of the UNMIK police and, since 2003, by the Central Criminal Investigative Unit, and that in closed cases of disappearances and abductions perpetrators were rarely, if ever, prosecuted and brought to justice."¹¹ With reference to both before and after NATO's actions, the Committee regretted "the failure of UNMIK to fully cooperate with the International Criminal Tribunal for the Former Yugoslavia."¹²

⁹ *Id.* At 15-7. Note: the events at issue in the Lekaj prosecution concern torture in the Hotel Pashtrik in Gjakove/Djakovica, not Prizren, as stated here. All other information included in the Amnesty report is beyond dispute.

¹⁰ Human Rights Committee, Eighty-Seventh Session, Geneva, Switz., 10-28 July 2006, *Concluding observations of the Human Rights Committee, Advanced non edited version, Kosovo (Republic of Serbia)*, ¶¶12-13, U.N.Doc. CCPR/C/UNK/CO/1 (25 July 2006).

¹¹ *Id.*

¹² *Id.*

C. Factors Establishing a Human Rights Vacuum for Minorities in Kosovo

Several factors have been crucial in creating a human rights vacuum in Kosovo with respect to minorities. These include: (1) the lack of any policy or action to disarm extremists in Kosovo; (2) the capitulation by the international authorities in Kosovo to the threat of armed violence by majority Kosovo Albanians; (3) the role of the UN administration in insulating itself from any form of liability or culpability; (4) the tendency in Kosovo to blame internationals for all issues, including the total lack of engagement by the Kosovo judiciary on minority rights issues; and (5) the role of Western European states, and in particular Germany, in prioritizing the forced return or return under pressure of Kosovars (including vulnerable minority Kosovars) over other goals in Kosovo.

From the beginning, UN authorities and international police forces, such as the NATO-led Kosovo Force (KFOR), have left all parties fully armed and indeed have worked with the most extreme ethnic cleansers in Kosovo, particularly those on the Albanian side.¹³ The logic of this policy has been simple: UN authorities and the international community broadly perceived the primary threat to be a reinvasion of Kosovo by Serbian forces. As such, they have never pursued actions to disarm extremists in Kosovo. The effect is an effort to secure results equivalent to those sought in Northern Ireland, without any of the actions pursued in Northern Ireland to secure that goal.

Having left the KLA and others fully armed, international authorities capitulated to majority Kosovars following the organized rioting of March 2004, in which minorities, their homes and their churches were set upon by huge mobs of armed ethnic Albanians.¹⁴ On 17 November 2004, the UN Secretary General presented a Letter to the President of the Security Council. Appended to the Letter was a report by Norwegian Ambassador Kai Eide. The report recognized that the "international community failed to read the mood of the majority population, its frustrations and impatience. It also failed to understand the potential for extremists to mobilize

¹³ Commenting on Prime Minister Ramush Haradinaj's resignation to face war crimes charges in the Hague in March 2005, then-SRSG Søren Jessen-Petersen said, "Thanks to Ramush Haradinaj's dynamic leadership, strong commitment and vision, Kosovo is today closer than ever before to achieving its aspirations in settling its future status. Personally, I am saddened to no longer be working with a close partner and friend."

¹⁴ Human Rights Watch estimates that approximately 51,000 Kosovars took part in the March 2004 rioting. See Human Rights Watch, *Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004*, Vol. 18, No 4(D), p. 5 (May 2006).

support for ethnic violence ...”¹⁵ The report, the letter and indeed UN policy then proceeded to draw an entirely counter-intuitive, and pernicious conclusion: the UN needed to leave Kosovo as quickly as possible. This dramatic capitulation to armed violence and the threat of further armed violence was couched in clouds of UN-speak: “The ‘standards before status’ policy should be immediately replaced by a dynamic priority-based standards policy within the overall framework of the integrated strategy in order to facilitate orderly future status discussions...”¹⁶ Minorities in Kosovo perceive clearly the meaning of such jargon; they will be abandoned, persecuted, and that any efforts to see the perpetrators punished are now being cancelled.¹⁷

A third factor contributing to the current human rights vacuum in Kosovo is the immunity of UN officials from any form of culpability for human rights violations, combined with very serious difficulties in holding KFOR accountable. KFOR is under the national military command of the countries providing the troops in question (Italy, Germany, France, United Kingdom, United States, and others). Pursuing justice where responsibility lies with KFOR officials is therefore difficult. However, these difficulties pale in comparison with efforts to hold UN officials accountable, since they are both unelected, and immune from prosecution.¹⁸

The immunity of UN officials from prosecution, and therefore from any form of real accountability is not an idle, theoretical concern, but one with real and direct implications. One especially glaring illustration of this concern is the placement by UN officials of displaced Roma from the Mitrovica settlement, which was burned to the ground by ethnic Albanian mobs in 1999, in housing situated in extremely toxic environs in the towns of Zitkovac/Zhikoc, Cesmin Lug/Cesminlukë and Kablare, approximately two kilometers from the Trepca Mines factory complex. The World Health Organization (WHO) has declared a health emergency for displaced persons in these camps. Although the camps were reportedly intended as temporary housing for victims of the 1999 looting and burning of the Romani settlement in Mitrovica, they continue to exist today under UN supervision, despite known and

¹⁵ [Letter from the Secretary-General addressed to the President of the Security Council](#) (includes the Eide Report), p. 10, U.N.Doc. S/2004/932 (17 November 2004).

¹⁶ *Id.* at 6.

¹⁷ ERRC files NKos 447/2004-662/2006.

¹⁸ The UN Charter grants broad-based immunities to the UN and its employees. U.N. Charter art. 105 para. 1 and 2. *See also* Convention on the Privileges and Immunities of the United Nations (“CPIUN”), U.N.Doc. A/Res/22 (I) (13 February 1946).

documented health hazards arising from toxic lead contamination.¹⁹ Since the camps were established more than six years ago, dozens of inhabitants have fallen ill from lead-related illnesses, and two people, including at least one young child, have died.²⁰

It is probable that UNMIK knew of the scale of the health emergency as early as 2000, when the WHO issued its first report analyzing the effect of lead pollution on the Mitrovicë/Mitrovica region. The report found that all children and most adults living around the industrial site had blood lead concentrations exceeding the permitted limits.²¹ Specifically, the researchers found a higher than average lead concentration among the RAE communities as compared with the non-RAE population.²² By October 2004, the WHO had declared the area in and around the internally displaced person (IDP) camps uninhabitable, issuing a report that revealed that the soil in Zitkovac/Zhikoc camp was 100.5 times above recommended levels, while in Cesmin Lug/Cesminlukë, the levels exceeded 359.5 times those considered dangerous to human health.²³ Although UNMIK is authorized by UN Security Council Resolution 1244 to act as the civilian administration in Kosovo,²⁴ there is effectively no domestic remedy available for human rights violations committed by it or any other UN organ operating in Kosovo. In July 2005, the ERRC sent a letter to UN Secretary General Kofi Annan urging him to lift immunity for any persons responsible for crimes resulting from

¹⁹ Adverse health effects of lead exposure include: damage to the brain and nervous system; reproductive abnormalities in males and females; high blood pressure; memory and concentration problems; muscle and joint pain; and digestive irregularities. In children, the effects can be even more detrimental and include; behavior and learning problems; slowed growth, hearing problems; headaches, and damage to the brain and nervous system. See, e.g., Y. Finkelstein, M.E. Markowitz, and J.F. Rosen, *Low-level lead-induced neurotoxicity in children: an update on central nervous system effects*, BRAIN RESEARCH. BRAIN RESEARCH REVIEWS (BRAIN RES BRAIN RES REV), 1998 Jul; 27(2):168-76. See also G. Winneke and U. Kramer, *Neurobehavioral aspects of lead neurotoxicity in children*, CENTRAL EUROPEAN JOURNAL OF PUBLIC HEALTH (CENT EUR J PUBLIC HEALTH), 1997 Jun;5(2):65-9.

²⁰ ERRC files NKos 387/2004-665/2006.

²¹ Sandra Molano and Andrej Andrejew, *First Phase of Public Health Project on Lead Pollution in Mitrovica Region*, 17 (November 2000).

²² *Id.* at 13, 18 and 19.

²³ Memorandum of the World Health Organization, *Capillary Blood Lead Confirmation and Critical Lead-Related Health Situation of the Roma Camps Children*, 3 (22 October 2004).

²⁴ S. C. Res. 1244, U.N.Doc. S/RES/1244 (10 June 1999).

the negligent or malicious failure to move RAE persons from the contaminated areas.²⁵ To date, the UN has not done so.

During 2006, UNMIK pressured all but a handful of camp inhabitants into moving to Osterode, a new camp just a stone's throw from the Cesmin Lug/Cesminlukë camp and still in the shadow of the massive Trepca mine tailings. In Osterode, as of December 2006, the displaced RAE live in former barracks, containers, and in converted garages previously used for housing KFOR vehicles. Living conditions differ little from those that prevailed at the three toxic camps.²⁶

Although a number of institutions in Kosovo, including the judiciary, are independent, there is a tendency at the local level to blame the international community for all failings in Kosovo, whether or not blame in any given area should be assigned to international agencies. Thus, although the question whether or not to prosecute war criminals for perpetrating anti-minority violence is first and foremost an issue for Kosovar institutions, local interlocutors generally blame internationals for inaction in this area.

As a result of intensely anti-foreigner moods prevailing in Western Europe, a number of states have prioritized the forced return of minorities to Kosovo over establishing a satisfactory human rights environment in Kosovo. In April 2005, Killian Kleinschmidt the then-head of UNMIK's Office for Communities and Returns signed an agreement with the German Foreign Ministry on "forced returns" of Ashkalis, Egyptians and certain other categories of minority, despite the absence of any indication that conditions in Kosovo were in place for such actions. The UN High Commissioner for Refugees (UNHCR) has refused to cooperate with UNMIK in the integration of forced returnees, as a result of its principled disagreement with UNMIK on the matter. At other times, the racism driving international policy has remained confined to the backroom, as when visiting German officials reportedly told UN administrators in Kosovo that "the German people can accept these Albanians, but they will never tolerate Gypsies."²⁷

Commitments to ensure the voluntary return of all, in safety and dignity, to their respective place of origin, are not seriously acted upon. KFOR is unable to secure the safety of those still present in the territory. The forced returnees, having

²⁵ Letter from Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations to Claude Cahn, Acting Executive Director of the European Roma Rights Centre (9 November 2005). On file at the ERRC.

²⁶ ERRC files NKos 447/2004, NKos 449/2004, NKos 557/2005 and NKos 664/2006.

²⁷ The UN official in the meeting at issue requested anonymity.

forfeited their property, enter a twilight existence in one of Kosovo's enclaves, half-hiding, half imprisoned.

D. Anti-Discrimination Law in Kosovo

Kosovo currently has one of the worlds most comprehensive and detailed domestic laws banning discrimination, including racial discrimination. The Anti-Discrimination Law (ADL) entered into effect on 19 September 2004.²⁸ The Law appears to comply with the European Union's Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (RED), and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation prohibiting discrimination on the grounds of religion or belief, disability, age or sexual orientation (FED). Kosovo's ADL goes far beyond the protections set out in these two European Union directives. For example, while the RED prohibits direct or indirect discrimination based on racial or ethnic origin, Article 2 of the ADL prohibits direct or indirect discrimination based on any ground. Second, while the RED is limited in the scope of the rights which are protected, Article 4 of the ADL prohibits direct or indirect discrimination in access to and enjoyment of any right set forth by law. Additional rights specified under Article 4 include fair treatment before tribunals and all other organs administering justice, personal security, participation in public affairs including the right to vote and be voted for, and access to public places. The ADL also provides that segregation as defined in Article 3(f) shall be deemed to be discrimination in violation of the principle of equal treatment as defined in Article 2(a) of that law. In addition, ADL provides in Article 9.4 that all monies collected through the imposition of penalties on those who have violated its provisions shall be placed in a fund for the purposes of supplying free legal assistance to any natural or legal person whose right to equal treatment is violated.

While Kosovo authorities must be commended for adopting the Anti-Discrimination Law of September 2004, similar praise is not merited with respect to efforts at implementing that law: as of late 2005, actions to apply the ADL were limited or non-existent, and no one had been brought to justice under it.²⁹

For now, discrimination against RAE in Kosovo is widespread and overwhelming. Unemployment in Kosovo is generally high. Although no adequate statistical data

²⁸ UNMIK Regulation On the Promulgation of the Anti-Discrimination Law adopted by the Assembly of Kosovo, UNMIK/REG/2004/32 (20 August 2004).

²⁹ ERRC files NKos 32/2002-436/2006.

exists on unemployment among minorities, empirical evidence and field research by the ERRC indicates that it is close to 100% in many places for RAE minorities. Apart from a lucky handful of individuals who work in civil service and municipal offices, very few others have any form of regular employment. Many RAE individuals lack any form of work at all. The Ombudsperson Institution in Kosovo noted in a recent press release that in a meeting with community minority leaders, all agreed that their citizens are routinely overlooked when employment vacancies were posted.³⁰ According to RAE testimonies in all municipalities visited by the ERRC, RAE (as well as minorities in general) were entirely or nearly entirely excluded from the workforce after privatisation of Kosovo enterprises.³¹

High levels of unemployment and lack of access to social benefits have resulted in severe deprivation for many RAE families. Most of the returnee community are unemployed and often do not have money to buy food.³² These persons must therefore resort to scavenging from garbage containers.³³

The question arises as to how it is possible that minorities in Kosovo live under durable, race-based oppression when an extensive legal framework exists to provide victims a mode for challenging their oppression. One answer must be that the threat of violence is too present, and the rule of law too weak, for anyone to consider seriously using the ADL as a mode to secure redress.

E. Conclusion

At the end of "Operation Horseshoe," despite the massive violence to which Kosovo had been subjected, the Romani community of Kosovo, among Europe's most vibrant Romani communities, was largely intact. Today, it is for the most part destroyed. While international forces looked on, it was destroyed by ethnic Albanians, under international governance in the forms of United Nations administration. These same powers have allowed a situation to continue in which this destruction has not been reversed, victims have been left without due legal remedy, and perpetrators have been left to enjoy the fruits of their plunder, as well as, in many cases, high office in the new Kosovo.

³⁰ Press Release, Ombudsperson Institution in Kosovo, *Non-Serbian Minority Representatives Discuss Ongoing Human Rights Issues with Ombudsperson Institution* (7 July 2004). The Ombudsperson also reported that, as an urgent solution, several community leaders described situations in which citizens were forced to sell their property and homes as an emergency source of income.

³¹ ERRC files NKos 447/2004, NKos 449/2004, NKos 557/2005 and NKos 664/2006.

³² ERRC files NKos 301-307/2006.

³³ *Id.*

It is unclear what the immediate future holds for RAE minorities in Kosovo. Contingency plans reportedly exist for a possible mass exodus of minorities – including RAE – to rump Serbia in the days and weeks following expected independence. Others speculate that if an initial burst of nationalist euphoria on the part of ethnic Albanians can be weathered, including racially motivated attacks, then it may later be possible to envision the reconstruction of a life in Kosovo for RAE and other minorities.

The optimistic scenarios must however contend with some unsettling realities. First, the halls of power in the new Kosovo will be occupied by a number of persons implicated in very serious violent crimes. This means that if Kosovo remains a peaceful polity, it will not be one at peace, in any real sense of the word. Secondly, the massive criminal violence of the recent past has left an indelible legacy on ethnic relations in Kosovo. RAE are oppressed in Kosovo in the most fundamental sense of the word. The treatment to which they have been subjected is internalized and self-distorting. In this context, minority rights cannot be exercised in any meaningful sense without being rendered a parody of themselves.

Finally, the legacy of Kosovo's violent seizure, undertaken with the complicity of the international community, will not go away. Kosovar extremist elites have "gotten away with it", a fact noticed by RAE and other groups.³⁴ The lesson this episode, throughout the Balkans, is that armed insurgency is a worthy and rewarding undertaking, provided the international community can be brought in to assist in the pursuit of the insurgency's goals.³⁵ From the point of view of early 2007, that is a worrying outcome.

³⁴ ERRC files NKos 447/2004-NKos 664/2006.

³⁵ ERRC files NKos 447/2004, NKos 452-458/2004, NKos 557-585/2005 and NKos 626-664/2006.