

ADDENDUM 2

THE REPORT OF THE OFFICE FOR KOSOVO AND METOHIJA

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The civil and security presence in Kosovo and Metohija under auspices of the United Nations was established by the Security Council Resolution 1244. Protection and promotion of human rights was established as one of the basic responsibilities of UNMIK.¹

By UNMIK Regulation 1999/1² of 25 July 1999 “all legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK...” and is exercised by the Special Representative of the Secretary General. This Regulation prescribes that in exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognised human rights standards...³

Within its mandate, as prescribed by UNMIK Regulation 1999/24⁴, in exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognised human rights standards, as an integral part of comprehensive legal framework applicable in Kosovo and Metohija and the most significant documents were numbered.⁵

Also, UNMIK Regulation 2001/9 on the Constitutional Framework for Provisional Institutions of Self-Government provides directly applicable international instruments on human rights⁶ and prescribes that “*the Provisional Institutions of Self-Government shall observe and ensure internationally recognised human rights and fundamental freedoms, including those rights and freedoms set forth in... [italics added]*”, thus making the list of applicable human rights and fundamental freedoms practically open, although Articles 3.2 and 3.3 seem to be limiting.

In the meantime, after the unilateral declaration of independence, the Constitution of so-called Republic of Kosovo was adopted specifying in details international agreements and instruments to be directly applied in the territory of so-called Republic of Kosovo.

The intention to transfer reporting to the treaty bodies of the United Nations to so-called Kosovo authorities has been noted lately. In this respect we point out that the representatives of UNMIK administration are included in invitations to so-called Kosovo authorities to join the reporting⁷ and participate at the meetings examining the reports concerned. All the time before the declaration of independence, UNMIK administration in Kosovo and Metohija carried out this process, which, in cooperation with the provisional institutions of self-government, without prejudice for the legal status of Kosovo, submitted the report on implementation of conventions in Kosovo and Metohija. The Republic of Serbia mostly had no opportunity to see the reports and give its comments or include UNMIK report in the part that must be forwarded to the relevant treaty body by the Republic of Serbia.

¹ Paragraph 11 (k) of UN Security Council 1244 (10 June 1999).

² UNMIK Regulation 1999/1 on Authorities of the Interim Administration in Kosovo.

³ Article 1 paragraph 1 and Article 2.

⁴ Including supplement from the Regulation 2000/59 (27 October 2000).

⁵ Article 1.3 of the Regulation 1999/24 (12 December 1999).

⁶ Articles 3.2 and 3.3 of the Regulation 2001/9 (15 May 2001).

⁷ It is concretely about the implementation of the Convention on Elimination of All Forms of Discriminations against Women.

So-called Government of the Republic of Kosovo may not directly receive invitations from the relevant committees of the United Nations to prepare reports, thus neither for the Convention for the Protection of All Persons from Enforced Disappearance and it is the least UNMIK to request from so-called Kosovo authorities to participate in the submission of and presentation of reports. This in particular, if we take into account the fact that Kosovo is not a member state of the United Nations or a contracting party to the Convention for the Protection of All Persons from Enforced Disappearance and all other conventions, so that it is understood it has no right to submit independently a report to the Committee on Enforced Disappearances through the Secretary General or to any other treaty body of the United Nations.

In view of specific circumstances and impossibility to monitor directly the circumstances that might be of importance to realise the facts necessary to monitor the activities of provisional institutions of self-government, we will point out to only some of the existing problems in Kosovo and Metohija, affecting the members of the Serbian community and of other non-Albanian communities. It might be of significance in the framework recognition of certain issues that might be classified in the group of issues partially related to the issues covered by the International Convention for the Protection of All Persons from Enforced Disappearance.

We primarily stress the phenomenon of detention of a larger number of members of the Serbian community for which there is no relevant explanation of who issues and under what legal grounds the impugned orders are issued.

Please be reminded that similar things also happened before. Detained Serbs were released from charges by so-called Kosovo authorities, unfortunately, only after long trials, ill-treatment and financial exhaustion of families of detained persons. Let us only mention some cases of this type:

- The case of M. Trajković from Kosovska Kamenica who was arrested on 9 July 1999 and convicted on 6 March 2001 by the District Court in Gnjilane to a 20-year prison sentence and then released in the reopened proceedings.
- The case of M. Vučković from Kosovska Mitrovica who was detained on 23 August 1999 and stayed in detention as long as 15 July 2004, to be released from charges by the judgement of EULEX chamber of the Supreme Court of Kosovo of 7 October 2009.
- The case of S. Stojanović, Slobodan and Srećko Martinović, 3 Serbs from Novo Brdo who were brutally detained at their houses in the morning hours on 23 September 2009 by several hundred EULEX and KPS police officers under the charges of having committed war crimes in April 1999, namely impaired bodily integrity of 2 Albanians, S. Bećiri and H. Demolji. The outcome of this act is the judgement of EULEX mixed chamber of the District Court in Priština of 21 July 2011 releasing the accused persons from all charges.

In respect of the latest detentions of persons of Serbian nationality without any material evidence, except for accusations by their Albanian neighbours, we would like to mention the following:

- The case of A. Bulatović, a displaced person from Kosovo Polje, who has been living in Niš since 1999. On 13 August 2012 the person concerned was detained at the Merdare administrative border crossing by the Kosovo Police, under charges that in April 1999 he had killed neighbours of the Albanian nationality. He has been prosecuted for the alleged act before the District Court in Priština, although there is no material evidence, except for a statement by another Albanian neighbour. The motive of his detention is not clear if we take into account the fact that the son of the killed person claims he has no knowledge of the

murder committed by Bulatović as well as that from 1999 until the date of his detention Bulatović visited his family living in the territory of Kosovo and Metohija and was accessible to the investigation bodies of UNMIK, EULEX and the Provisional Institutions of Self-Government and that he was deprived of liberty only 13 years after the alleged murder.

- The case of J. Dejanović from Priluzje near Vučitrn and the case of Đ. Bojković from Babin Most near Obilić, who were detained on 27 September 2012 under charges that in April 1999 they had committed the criminal act of rape of women allegedly of the Albanian nationality. Both detained persons lived in the territory of the Autonomous Province Kosovo and Metohija all the time after June 1999 and J. Dejanović was even employed with the Kosovo Police. They have been prosecuted before the District Court in Kosovska Mitrovica although there is no material evidence they had committed the criminal act they are charged with.
- The case of Z. Kolić from Dobrotin who was detained in April 2011 and convicted by the District Court in Priština on 12 May 2012 to a prison sentence of 14 years for the alleged murder of Albanian prisoners in Lipljan in 1999. Before detention he lived in Dobrotin, the Lipljan Municipality and was even a member of the Municipal Council of the Gračanica Municipality formed according to the plan of Martti Ahtisaari.

There are numerous examples of selective criminal acts for which the Serbs had been detained under the most severe charges, even for genocide, because their Albanian neighbours pointed to them thus wishing to keep as their property Serbian flats and other real estate appropriated without authority.

It is interesting that the Serbs from Kosovo and Metohija, who have been living in the territory of Kosovo and Metohija all the time or who have been visiting the Province as displaced persons and were accessible to the judiciary bodies of UNMIK, EULEX and the Provisional Institutions of Self-Government, are detained more than 12 years after the war conflicts.

The fact that after more than 13 years from the completion of war conflicts in Kosovo and Metohija there are now witnesses sharing their knowledge with the judiciary bodies in Kosovo and Metohija is of particular interest, and “only after slightly more than a decade“ from the allegedly committed criminal acts. It is absurd to claim that someone who had allegedly committed severe criminal acts they are charged with, would voluntarily bring themselves into the state of exposing to detention, long-lasting and painful processes, unjustifiable accusations, fixed statements, deprivation of liberty by entering Kosovo on each occasion or staying there.

Unfortunately, such acts by the judiciary bodies and behaviour of next-door neighbours until recently are only an indicator of further continual pressure over the remaining Serbian population to move out while sending messages of being unwanted to those who wish to return. Therefore, a conclusion may be made that the Serbian people are left to arbitrariness of individuals as well as to unprofessional and partial conduct of the judiciary bodies.

In this respect, we also underline enabling “integration“ of so-called Republic of Kosovo with Interpol by UNMIK, including the issuance of red Interpol person wanted.⁸ This for the reason it may have far-reaching negative consequences. If we take into account the information on existence of lists of Serbs to be detained because of the proceedings allegedly initiated before so-called Kosovo judiciary bodies, the persons concerned may also very easily be placed on

⁸ S/2012/818 of 8 November 2012, paragraph 26 of the report of the UN Secretary-General on UNMIK and of the High Representative of the EU on the activities of EULEX in Kosovo and Metohija for the period from 16 July to 15 October 2012. (Note: so-called Republic of Kosovo is not a member of Interpol but the state of Serbia).

Interpol person wanted. It would mean that the Serbs may be detained not only when entering Kosovo and Metohija but also on the occasion of attempt to enter any other country in the world, which is a member of Interpol.

We also underline the sensitivity of the position of the wards of the Special Institute for Persons with Mental and Intellectual Disabilities in Štimlje. Namely, until 1999 users from social welfare centres from the entire Serbia were placed in the Special Institute in Štimlje. According to the data from March 2003 there were 111 users in Štimlje under the competence of the social welfare centres from Serbia, 18 users of Serbian nationality from Kosovo and Metohija under the competence of the social welfare centres from Kosovo and Metohija and 16 users with the status of refugees, meaning 145 users in total. The report drawn up by various organisations in various time periods indicate difficulties in the operation of this Institute, but also absolutely different data on the number of persons of the Serbian nationality placed in this Institution. In 2010 the number of wards was decreased to 61 and in spite of the efforts of the authorities of the Republic of Serbia no information about the destiny and exact number of wards of the Serbian nationality and other non-Albanian wards in Štimlje have been obtained so far, or information about their health conditions and, for those who had died, no data about the time and cause of death and place of burial.

The findings and recommendations of the Mental Disability Rights International (herein after: MDRI)⁹ were more than worrying. The requests and recommendations of MDRI based on the conditions on site were, *inter alia*, that the Secretary-General of the United Nations was to instruct UNMIK to immediately protect people detained in institutions from further violence or sexual abuse, create safe living conditions, and separate abusers from patients, create a system of human rights oversight in the field of human rights to ensure rights enforcement in institutions and community-based programs for people with mental disabilities, create a time-table for the closure of Štimlje, ensure participation by organisations of people with mental disabilities in policymaking, report to the UN Commission on Human Rights on steps taken to end abuses against people with mental disabilities in Kosovo, in accordance with the Resolution of the Commission on Human Rights from April 2002.¹⁰

In its report MDRI stated it would be logic for the Ombudsman to take over the care for international standards, meaning the United Nations, but also that the operations of the UN in Kosovo and Metohija were in no way at the level assigned to them.

“In social care institutions and psychiatric institutions in Kosovo, people are illegally and inadequately closed [kept, isolated], contrary to the national and international laws. Persons placed under such conditions neither receive adequate [medical, psychological, psychiatric]

⁹ Mental Disability Rights International is an American organisation established with the aim to promote human rights and full participation of persons with mental disabilities in any society. The organisation was established in 1993 by Eric Rosenthal, a lawyer. The organisation is located in Washington while the regional European office is located in Budapest. MDRI prepares and publishes the documents on living conditions of persons with mental disabilities, monitors the implementation of documents on human rights and promote international supervision of the exercise of rights of persons with mental disabilities. On the occasion of drawing up the reports MDRI also collects evidence of violations of human rights.

¹⁰ This Resolution requests the Secretary-General to report on the activities of the UN institutions in respect of protection of human rights of persons with difficulties.

*treatment nor assistance for care, and they are also exposed to physical, sexual and psychological ill-treatment.*¹¹

We also cite a part of the report concerning politically motivated disappearances in Kosovo and Metohija: *“There is no single report on politically motivated disappearances. However, in accordance with the International Committee of the Red Cross, until the end of the year, another 1,796 are considered disappeared as the result of the conflicts in 1998 and 1999. Out of this number, 70% are Albanians from Kosovo and 30% are Serbs and other minorities from Kosovo. On 14 September the Law on Missing Persons entered into force, which defines the notion of a missing person, prescribing the rights of family members of missing persons to information and establishing the Commission on Missing Persons of the Government, as a body to deal with coordination of issues related to missing persons.*¹²

¹¹ “Human Rights of People with Mental Disabilities in Kosovo (2002)” International Organisation for the Rights of Persons with Mental Disabilities, pages 6 and 7.

¹² “Country Reports on Human Rights Practices” submitted to the Congress by the State Department of 24 May 2012, page 3.