The Ombudsperson Institution in Kosovo and the Protection of Minorities

I. INTRODUCTION

The Ombudsperson Institution in Kosovo (hereinafter 'the OIK') is the one institution to which people in Kosovo1 can complain about individual measures and policies implemented by the United Nations Interim Administration Mission in Kosovo (UNMIK), which since 1999 has been the main authority in the territory. The OIK therefore has a central role when it comes to the protection and promotion of human rights, including the rights of minorities.2 The Ombudsperson Institution has, in its mandate a special focus on complaints from minorities; since minorities have a particular vulnerability in Kosovo, a major part of the work has thus far been focused on this issue.

The severe persecution of Serbs, Roma and other minorities by the Kosovo Liberation Army (UCK) and Kosovo Albanian civilians during the first months after the international forces arrived in Kosovo in 1999 led to mass flight. Although a lot of effort has been put into the issue of return, very little has been actually achieved. After almost four years of United Nations administration, the remaining minority population still suffers from

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1 For the purpose of this article the English spelling of the names of geographic places is used to the extent possible (for example 'Kosovo') and otherwise both the Albanian and Serbian names respectively are used (for example 'Fushë Kosovë/Kosovo Polje').

2 The term 'minority' is used in this article merely to describe groups of persons who are in a numerical minority situation in a particular location (for example municipality or village), regardless of their status elsewhere in a state or province. See UNHCR/OSCE, 'Overview of the Situation of Ethnic Minorities in Kosovo' (3 November 1999) (hereinafter 'OSCE/UNHCR Third Minority Report'), para. 1. This report, as all other reports published by the OSCE Mission in Kosovo, is available at http://www.osce.org/kosovo/documents/reports.
discrimination with regard to their human rights, particularly when it comes to freedom of movement, access to public and social services and employment.

This article attempts to describe the work and function of the Ombudsperson Institution in Kosovo, particularly with regard to minority protection. To this end, it is essential to understand the particular political, legal and social context in which the OIK operates, in particular, the context of past and present human rights violations, especially with respect to minorities, and the functioning and role of the UN administration itself.

II. Kosovo after June 1999: The United Nations Mission in Kosovo and the Situation of Minorities

By the end of the NATO campaign against the Federal Republic of Yugoslavia in June 1999, Kosovo was left in a state of political, economic and social chaos. Around 800,000 Kosovo Albanians had been forced out of the province while around 500,000 were internally displaced. Those who returned with the NATO troops and during the subsequent months often found their homes and possessions destroyed. The economy in Kosovo had basically come to a halt as a result of Serb repression during the preceding years, war damage and the departure of key Serbian personnel, in connection with, and after, the NATO bombings.

The peace agreement after the NATO intervention not only marked both the end of the persecution of Kosovo Albanians by Yugoslav authorities and the deployment of an international military and civil presence in Kosovo. It also was the beginning of an era of revenge against Kosovo Serbs and other minorities, such as Roma, Bosniaks and Gorani. The persecution to which these minorities were subjected by the UCK as well as by Kosovo Albanian civilians took the form of physical violence, harassment, intimidation, destruction and looting of homes, Orthodox churches and monasteries. The security vacuum following the departure of the Serbian police and military could only partly and over time be filled by Kosovo Force (KFOR) and this left the field open to revenge attacks on minorities. In November 1999, the United Nations High Commissioner for Refugees (UNHCR) reported that approximately 240,000 persons had been

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4 Michael J. Matheson, 'United Nations Governance of Postconflict Societies', 95 AJIL (2001), 76-85, at 78. See also Secretary-General July 1999 Report, paras. 11-6.