

Kosovo 2002: The War against Terrorism has a global reach as BHHRG found out on a recent visit to Kosovo

Guantanamo Bay in the Balkans:

The Rule of Law in NATO - administered Kosovo

“If one wants to join the club of European democracies one has to accept the fundamental rules. And the part of the fundamental rules is the rule of law.”

Michael Steiner, High Representative in Kosovo
(at his inaugural press conference, 15th February 2002)

Introduction

The international community, which governs the former Yugoslav province of Kosovo and the former Yugoslav republic of Bosnia & Herzegovina, bases its legitimacy on the concept of the rule of law. On 12th February 2002, indeed, the trial began in The Hague of the former Yugoslav president, Slobodan Milošević. This trial is intended to embody the way in which the international community is working towards the realisation of the rule of law in the Balkans in particular and in international affairs on a global scale.

The procedural shortcomings of The International Criminal Tribunal for the former Yugoslavia at The Hague have been discussed by BHHRG members on several occasions.¹ However, even in terms of the way in which the international community runs Kosovo itself, it can be seen that the international community's attachment to the principle of the rule of law is very weak indeed. Moreover, it is to be feared that, as in Bosnia & Herzegovina², far from embodying the rule of law, the international bodies which have been put in place to run Kosovo are a law unto themselves. It seems that their actions are to no extent subject to the rule of law or due process.

The purpose of this report is to discuss the arrest by Kfor police and troops of three men on 14th December 2001 and their incarceration without charge or trial for 38 days. The report will argue that this was a gross violation of the principles of the rule of law allegedly promoted by Western intervention. It is a rich and bitter paradox that such acts can occur in a territory where the doctrine of human rights is proclaimed loud and wide, and where international NGOs as well as local organisations claiming to protect human rights grow like weeds. The UNMiK authorities have even established an Ombudsperson's office supposedly to guarantee the rights of the residents of Kosovo against incursions by the authorities. However, this report will argue that, as with so much international policy-making, these institutions and doctrines appear to be little more than tokenism designed to disguise what often appears to be arbitrary and often brutal rule of the international community.

The general situation in Kosovo

The gulf between human rights theory and practice in UNMiK administered Kosovo becomes much more comprehensible when put in the context of the everyday failings of the international authorities to return the province to normal life and a half years after the end of the conflict between NATO and Yugoslavia in 1999.

¹ See for instance "Victors' Justice" by John Laughland, *The Spectator*, 9th February 2002. See "An Insiders View of the International War Crimes Tribunal at the Hague" by Christine Stone, 7/7/2000, <www.antiwar.com>

² See BHHRG report on Bosnia & Herzegovina, 2001.

When a government consistently cannot supply the basic requirements for civilized life, then it is failing in its primary duties. This is certainly the case in Kosovo. From the end of the war in June 1999 the authorities there have failed to organize regular supplies of water and electricity or a proper system of garbage collection. Litter is strewn across most of the province's territory leading to understandable fears for public health and hygiene. The universal shortage of electricity compounds the problems of restoring normal economic and social conditions at every level. After two and a half years of international administration – with all the paraphernalia of peace-keeping, human rights activism, civil society building and voter education – the electricity works for, at best, a few hours a day. By night and for many hours of the day, the streets of the province resound to the din of electricity generators without which most commercial activity would be impossible. Of course many ordinary people cannot afford to generate electricity for themselves in this way and must go without. At night, the unrelieved darkness also provides useful cover for criminal gangs to operate undetected.

In the words of one young Kosovo Albanian entrepreneur, whom the BHHRG's rapporteurs interviewed, "Kosovo is like a jungle". He alleged that "more people are emigrating now than under the Serbs" and that "our politicians and the international community are stealing the electricity and selling it abroad". The BHHRG's representatives heard this particular allegation on numerous occasions. Another young Kosovo Albanian man from the town of Djakova, close to the Albanian border, complained that large numbers of young men were coming over from Albania itself adding to the crime wave in the province. "They come here, they steal, they rape the local women." Although, like most other Kosovar Albanians he would not want Serb rule to return, he did claim that "under the Serbs, there were no rapes".

The suggestion that crime has shot up in the last two years is very striking in view of the massive resources available to the police in Kosovo. Scores of big white police jeeps are parked behind the Grand Hotel in Pristina. They can be seen all over the province leading to the conclusion that Kosovo must be one of the most intensively policed regions in the world. (This is in addition to the troops of the former Kosovo Liberation Army, now called TMK or Kosovo Protection Corps, whose uniformed men are also to be seen in the streets.) However, the number of policemen, soldiers and vehicles visible around the province seems to be in inverse proportion to the residents' sense of security.

In reality, however, the police seem to be unevenly deployed. BHHRG observed numerous instances of traffic police equipped with a laser gun which detects cars exceeding the 60 km/h speed limit. This seems an inappropriate deployment of resources while violent and organised crime continues to fester in the province. Such neglect only harms ordinary, law-abiding Kosovo Albanians while allowing big-time criminals to prosper.

A further complaint concerns the way in which the massive presence of the international community perverts the normal functioning of the economy in Kosovo. According to ordinary Albanians interviewed by BHHRG, their presence means that all economic and political activity is devoted to fighting over slices of this cake and not to any genuinely productive domestic economic activity. The lavishly-funded international agencies and NGOs siphon off scarce qualified personnel from hospitals and schools because their language skills will earn them more money as interpreters than their higher qualifications in medicine or other subjects can earn for them serving the public directly. According to one young man, his dream of freedom for Kosovo is generations away from being achieved, thanks to the enduring presence of the international community which undercuts the incentives for Kosovar society to organise itself.

The rule of law in Kosovo

The situation in the international protectorate of Kosovo then is far removed from the success story described by spokesmen for both Kfor and UNMiK. This is in large part because of the distorting effect of the international presence, which stymies self-generated improvements in infrastructure and economic conditions. However the international community's commitment to proper governance and the rule of law is nowhere more

questionable than in the way it deals with suspected criminals - as the events which took place in Kosovo on 14th December 2001 demonstrate.

Around 1.30 pm that day, the last day of Ramadan, a unit of Italian carabinieri (military police) and other Kfor troops surrounded the offices in Djakova of two humanitarian organisations. They arrived with tanks and were surveyed by helicopters whirring above. The Director of one of the charities, the Global Relief Foundation, was in his office and he bid the soldiers and the police welcome. They responded by telling him to get out. He was threatened with beating and told to come with them. He was made to stand spread-eagled against a wall and his cap was violently pulled over his eyes so that he could not see. He was taken to the main military base in Djakova, where he was brutally pulled out of the vehicle by the face. He stumbled to the ground and the soldiers started to beat him. They pulled him up, causing him great pain in the process.

He was taken inside a building where he was stripped to his underwear and made to stand in a freezing cold room. He was kicked. His money and passport were taken away and the soldiers laughed as they did this. When he fell over, they beat him again and again – “maybe 20 times”, according to the account he gave to BHHRG. Then he was told to sit down. A heater was brought and his clothes returned. After an hour or so, he was handcuffed very tightly and painfully and dragged by the wrists to a helicopter. He was convinced that the soldiers were going to kill him by throwing him out of the helicopter but instead he was flown to Camp Bondsteel, the huge American military base in Kosovo. There he was kept outside in the cold for half an hour. He was then taken inside, finger-printed and told to sign a form outlining the rules and regulations of the camp. He was given orange prison clothes and placed inside a small hut measuring 3 metres square. By this time it was about 10 p.m. Although there was a heater, it did not work and consequently the hut was extremely cold.

Although he begged his American captors to let him go and return to his family, the man was to be kept in Camp Bondsteel for 38 days. Only after 6 days was he allowed to phone his family. He was interrogated 20 or 30 times during his incarceration. On one occasion, the interrogation occurred at 4 o'clock in the morning. Every night, he was woken every fifteen minutes and then every hour. Torches were shone into his eyes to make sure that he was awake, or the door slammed in order to disturb him.

During the interrogation, a number of false allegations and accusations were made. This had a profound psychological impact on the captive, who told BHHRG, “It destroyed me”. He begged not to be kept in solitary confinement. After 4 days, a letter was brought accusing him of complicity in the attack on the USS Cole and saying that he would be detained for 30 days. He was made to sign this form. Later, however, his captors returned and asked for his signed copy back. 10 days later they brought a different letter saying that he was being detained as a danger to security of Kosovo under the terms of United Nations Security Council Resolution 1244. In other words, no proper charge was made.

After 14 days of captivity, a woman from the OSCE visited the man who told him he had the right to a lawyer and to a translator. Neither of these ever materialised. After 32 days, the Red Cross visited him. During the whole time, the man was in a deeply suicidal state. He was given Valium of which he apparently took too much.

After 38 days in captivity, the man was released. Two other men who had also been taken captive on 14th December were released at the same time. One of them is a doctor attached to the Global Relief Foundation; another is a citizen of a European Union country who works for another humanitarian organisation, COF. Like the GRO, it is basically a Muslim organisation which gives humanitarian assistance to the Kosovo population which is mainly Albanian Muslim. The EU citizen's organisation paid monthly stipends to 1,000 fatherless families and provided educational facilities, including computer literacy (though like other IT schools in Djakova it lacked internet access because of the parlous state of the phone system complicated by frequent power cuts and the lack of local ISPs).

These two other detainees received the same treatment as the first, except that they were not beaten by the carabinieri at the moment of their arrest. No charge was served on any of them; none of them ever saw a lawyer; and of course no judicial proceedings were brought. Two of the three men are Iraqi exiles. They evinced no sympathy for the current Iraqi regime, blaming it for the hardships which forced them into exile abroad. They now fear for their lives if they ever try to return to Iraq: Saddam's security police will surely consider them to be American agents, having spent over a month at an American military base at a time when US media regularly report the plans of the Pentagon to use dissident Iraqis to spearhead an assault on Saddam Hussein's regime. They are therefore now without income, their foundation having been closed down, and with nowhere to go, prisoners in a foreign land, even if no longer confined at Bondsteel. Their insecurity is a form of mental torture.

Police searches were also conducted on 14th December on another humanitarian organisation in the town of Djakova, the Al-Haramain Foundation. Founded by the Saudi government, it runs a small community and educational centre for young people in Djakova, who can go there to play table tennis or pool, or to learn how to use a computer. The centre also offers religious instruction. BHHRG interviewed the Secretary of the foundation, who was also highly critical of the way in which Kfor had conducted itself that day. "It was like the Serbian police," said the Kosovo Albanian man who ran the centre. To add insult to injury, the Kfor troops came with a Serbian – not Albanian - translator, thus reinforcing the impression that Kfor was behaving like the Yugoslav authorities before 1999.

As with the raids on the other organisations, Kfor insisted on breaking down the doors even though a porter was present in the building who was happy to let them in. They took away a video camera and 11 computers from the class room. No official explanation was given by Kfor as to why the computers were taken, and when BHHRG interviewed the man in early February, they still had not been returned. (Like the EU citizen's school the computers at Al-Haramain had no internet access and so could not have been used to communicate with the outside world, let alone Afghan-based terrorists).

It is perhaps also worth adding that the men said to BHHRG representatives that no one had been to see them "in a kindly way" as BHHRG did. BHHRG is based in the United Kingdom and came all the way to Kosovo to see them; but why did none of the legion of human rights organisations based in Priština bother to make the short journey down to Djakova? What are human rights organisations for if not to study apparent cases of abuse of the rule of law?

Muslim fundamentalism in the Balkans?

The events which started on 14th December were the result of an operation conducted by the FBI in Chicago. There, the Global Relief Foundation was accused by the federal authorities of being a covert terrorist organisation. Its assets were seized in December 2001 on an order of the federal authorities and the office was closed down although GRF's Brussels offices remain open. The citizen of a European Union country who was kidnapped together with the two men from the Global Relief Foundation was, in effect, rounded up by mistake. But it is a very illuminating mistake. It implies that anyone involved in a Muslim humanitarian organisation is, by definition, suspect. The simultaneous raid on the Al-Haramain Foundation confirms this impression.

These raids coincide with suggestions made by Slobodan Milošević and by some of his supporters that Osama bin Laden paid visits to Bosnia and Albania. For defenders of the former Yugoslav president, this is a way of justifying the actions taken by Serb forces in Bosnia and Kosovo. To be sure, BHHRG cannot say whether there may be this or that terrorist cell operating in the Balkans. However, the notion that Kosovo is seething with Muslim fundamentalism can be sustained only by people who have never been to the province. It is also not clear why *mujahadin* would side with the Kosovo Albanians, who generally are very supportive of the United States: it is very common to see Albanian and United States flags flying together. Why would the Kosovo Liberation Army, for instance, which was supported by the Western powers (especially the USA and Germany) and whose leader, Hashim Thaci, was exceedingly and publicly close to former US Secretary of State,

Madeleine Albright receive help from people fanatically devoted to the destruction of America?

To put it bluntly, there is no evidence whatever of Muslim fundamentalism in Kosovo. Although it is true that fundamentalist Wahhabi construction workers from Saudi Arabia destroyed some very important Ottoman Muslim buildings³ – whose destruction had earlier been attributed to the Serbs⁴ – there is precious little evidence of Wahhabism taking hold in the Balkans, with the exception of a few Wahhabi mosques. Certainly there is very little sign of indigenous religious fervour. BHHRG has visited numerous mosques in Kosovo and in neighbouring Macedonia over the past 3 years and the picture is uniform: the imams are kind and devout, the faithful almost entirely men of retirement age. An imam in Djakova, for instance, was insistently ecumenical, saying that Christians and Muslims worshipped the same God. Although the men BHHRG met in his mosque claimed that they had a lot of faithful, only a handful were present for evening prayers on the day (a Sunday) of the Group's visit. The vast majority of young men in the street are unresponsive to the muezzins' calls.

Indeed, it seems typical of Kfor's ability to destroy whatever it touches that it should have targeted the Al-Haramain Foundation. While one might question whether the extraordinary generosity of the Global Relief Foundation and COF, which hand out regular cash payments to families even though there is precious little sign of want in Kosovo, the Al-Haramain Foundation clearly provided an important community service by giving the young men of Djakova a youth centre where they can spend the day and, hopefully, keep out of trouble.

It should also be mentioned that there was another, troubling aspect to these events. On 12th December two days before the arrests leaflets were distributed in Kosovo signed by a group calling itself "The Students Movement for an Open Democratic Society". Written in Albanian and decorated with a skull and crossbones, the leaflet warned fellow-citizens that Islamic extremists were at work in the province supporting terrorism by masquerading as charitable organizations. "Once more" it said "we remind our brothers and sisters that Al Qaeda cells have infiltrated these institutions – the so-called Islamic charities - and are trying to recruit sympathetic Kosovars ... Therefore step back from contact with criminals and pull your children out of there". As if to press the message home another leaflet appeared on 19th December when the men were already in Bondsteel.

The leaflets were obviously inflammatory in content and should have been investigated if only because of their tendency to encourage hate-crimes in the province. The more intriguing aspect is the timing of their distribution. Were there people close to the centres of power in Kosovo who wanted to attract attention to the forthcoming arrests and, then later, to smear the 3 suspects in the eyes of the local population?

Judicial control over Kfor

The main lesson to draw from the events of 14th December is that Kfor is above the law. Worse, those events merely illuminate something which has been wrong with the UN administration of Kosovo ever since 1999: there was nothing special about these arrests - except that they were conducted within the framework of the high-profile so-called "war on terrorism" – for they happen all the time in Kosovo.

The absence of legal restraint on the UN - Kfor regime is dealt with by the OSCE's own documents. The October 2001 "Review of the Criminal Justice System" by the OSCE⁵ claims that, "In terms of human rights protection and promotion, the enactment of UNMiK regulation 2001/09 on a Constitutional Framework for Provisional Self-Government in Kosovo

³ "Yugoslavia: Saudi Wahhabi Aid Workers Bulldoze Balkan Monuments" by Jolyon Naegele, 4th August 2000, <http://www.rferl.org/nca/features/2000/08/F.RU.000804130919.html>

⁴ Kosovo Cultural Heritage Survey and Exhibition, http://hul.harvard.edu/publications/library_notes/1295/articles/kosovo.html

⁵ http://www.osce.org/kosovo/documents/reports/justice/criminal_justice3.pdf

(signed on 15 May 2001) is a recognition at highest level of the direct applicability of human rights instruments within the legal framework of Kosovo. Any breach of these basic standards by any authority should be thoroughly scrutinised and immediately addressed, as it may create adverse precedents on the future development of the judicial system and the society as a whole.”

In reality, however, the report shows that Kfor acts above the law. Since mid-2000, indeed, the number of people detained at Camp Bondsteel has been around one hundred, reaching two hundred at times (see Section 4. III. “Detention by Kfor”, p. 37). “The vast majority of the detainees at Bondsteel are held outside the judicial system.” (p. 38)

As the report says in its Introduction, “The prohibition of arbitrary arrest and detention is a fundamental part of international human rights law ... The supposed conflict between security and justice cannot be used as a justification for interference by the executive in the judicial sphere, particularly in the detention of persons outside the law and without judicial review ... However, extra-judicial detention has continued in Kosovo, with the Special Representative to the Secretary General ordering executive detention outside judicial scrutiny and Kfor still detaining over a hundred persons extra-judicially under the authority of the Commander of the Nato-led Kosovo Force.”

It is clear from Section 3.III of the report, “Extra-Judicial Detention and Access to Counsel”, page 30, that Kfor is certainly *de facto* and probably also *de jure* above the law. Section 4 details how *Habeas Corpus*, which is probably the single most important principle of the rule of law, is simply ignored by Kfor: *when Kfor or the Secretary-General’s Special Representative decide to lock someone up, there is nothing anyone can do about it.* This is a deeply preoccupying fact, considering that Nato is only in Kosovo at all because it invoked the principle that no one (in particular, the Yugoslav state and its then president) is above the law. It is a rich irony, indeed, that at one point in the report, the OSCE tries to remind Kfor that it is obliged to respect the human rights obligations of the Federal Republic of Yugoslavia, which is evidently not doing (p. 39). This implies that, in this respect at least, that the human rights situation in Kosovo is now worse than it was when Yugoslav law was applied.

While the positive interest of the OSCE in what are clear violations of human rights is to be welcomed, it is a sad condemnation of the realities of international rule in Kosovo that recommendations for change are simply ignored by Kfor. As BHHRG has reported, a similar situation obtains in Bosnia & Herzegovina, where the Office of the High Representative effectively decides what the law is. Indeed, in Bosnia recently, six Algerians were in effect kidnapped and transported to Guantanamo Bay after a ruling by the Bosnian Supreme Court that they should be released from custody because the US authorities had failed to provide evidence to hold them. (Apparently some of the evidence was acquired by illegal wiretaps which Washington was unwilling to share with the Bosnian authorities and which were supposed to show one of the Algerians in direct communication by mobile phone with Afghanistan.) By overriding the very legal system which the United States had played a central role in establishing in Bosnia, Washington undermines the notion that the West’s interventions in the Balkans were really undertaken on behalf of human rights, as they have resulted in regimes which flout them with impunity when it suits the interests of the dominant Western powers.

The Kosovo Ombudsperson

One possible way in which those who allege abuse of their human rights in Kosovo might seek redress is through the office of the Ombudsperson, established under UN regulation 2000/38 on 11th July, 2000 and opened in November that year in Pristina. However, the regulation makes no mention of the Ombudsperson’s jurisdiction vis-à-vis Kfor other than the somewhat gnostic paragraph 3.4, under the heading “Jurisdiction,” which reads: “In order to deal with cases involving the international security presence, the Ombudsperson may enter into any agreement with the Commander of the Kosovo forces

(COMKFOR).⁶ This lacuna in the ombudsperson's sphere of activity has been criticized from the start – even before the office opened. In August 2000, the UN's Special Rapporteur on Human Rights, Jiří Dienstbier, commended the establishment of the Ombudsperson's office but wanted also to “express concern that Kfor was not expressly included under the Ombudsperson's jurisdiction, particularly since Kfor engages in extensive policing duties, including the arrest, detention and questioning of subjects”⁷ However, some commentators have suggested that although relations between Kfor and the Ombudsperson have not been established “it is envisaged by the Rules of Procedure of this body”⁸

Other human rights groups have also criticized Kfor's immunity before the law.⁹ And, the Ombudsperson himself, Marek Antoni Nowicki, noted that “both the international and domestic administrations operate in many respects outside the usual control mechanisms typical of democratic systems,” and pointed to “the negative effects on the people of Kosovo of the immunity of international institutions who, in fact are acting as a surrogate state.... the immunity of UNMiK and Kfor against any form of legal process means that these actors can act with impunity. The people feel totally hopeless and eventually just give up.” He goes on, “These issues are even more important given that the immune institutions took up their responsibilities in Kosovo under the banner of promoting and protecting human rights”.¹⁰ It seems that the majority of the cases taken up by the Ombudsperson so far have concerned things like unemployment, which he can do little about. Meanwhile, tougher issues concerning matters such as property rights which naturally arise after war and ethnic cleansing, are beyond his mandate involving, as they do, some kind of cooperation with the international administration in the province.

It is also the case (as pointed out above) that, in addition to the lack of any jurisdiction over Kfor, the Ombudsperson has limited powers when it comes to the UN civilian administration in Kosovo, (UNMiK) which has also been criticized for abuse of its powers in the form of arbitrary executive orders issued by the province's civilian administrator.

In July 2001 a row broke out over the continuing detention of 3 Albanians in Camp Bondsteel. They were held in spite of the fact that a judicial tribunal consisting of 3 international judges had ordered their release which was prevented by UNMiK's then administrator, Hans Haekkerup, who ordered the continued detention of the 3 for 30 days – an order that was renewed on 4 further occasions. On 29th June, the Ombudsperson, Nowicki declared the executive order illegal and demanded that it not be used again.

Thereafter the UN authorities established a commission in August 2001 to examine the question of extra-judicial detentions made by executive order. The results of its work have been deemed unsatisfactory, again by Mr. Nowicki, in his November presentation to the OSCE.¹¹ He said, “There is no legal basis for the Orders themselves and no judicial supervision or control over their implementation.” However, the actions of the UN administrator in Kosovo are uncannily similar to those of the High Representative in Bosnia-Herzegovina who has issued a raft of executive orders which override local legislation, particularly over the past 18 months. In that case, too, the BiH Ombudsperson has no authority to challenge the international administrators. However, there is strong evidence to suggest that those who set up the Ombudsperson's office in Kosovo intended it to cover UNMiK personnel. “By founding the institution of Ombudsman, Civil Administrator for Kosovo,

⁶ UNMiK/REG/ 2000/38

⁷ Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia & Herzegovina, Croatia & FRY, 9/8/2000

⁸ “Ombudsman in Kosovo As Well” , 7/1/2001, www.aimpress.org

⁹ Report on the Judicial System, Freedom of the Media and the Situation of Minorities in Kosovo, IHF Mission to Kosovo, 13th-17th February 2001, www.ihf-hr.org/reports

¹⁰ “Ombudsperson Institution in Kosovo” Presentation to the Informal Meeting of the Permanent Council of the OSCE, 7/11/ 01 www.osce.org

¹¹ OSCE, 7/11/01 (ibid)

Bernard Kouchner has placed *all his*, [*italics* .BHHRG] as well as all other authorities, including the local ones, under the control and possible influence of the ombudsman”¹²

BHHRG approached the Ombudsperson’s office in Pristina to seek clarification over the rules under which the three men were detained on 14th December. The answer came back: “You will not find any rules governing this kind of detention in laws or UNMIK Regulations. Basically, the Commander of KFOR decides when a person should be detained, that is when that person is a threat, and when he should be released, that is when he is no longer a threat. This is, I am afraid, pretty much the rules that regulate KFOR-detentions. There are of course “normal” rules for detention, set out in the Criminal Procedure Code and in UNMIK Regulations, but they are not applicable here.”

While the positive interest of the OSCE and the Ombudsperson in these clear violations of human rights is to be welcomed, it is a sad condemnation of the realities of international rule in Kosovo that Kfor is above the law. It should also be pointed out that some officials working with the Ombudsperson’s office seem apprehensive of making any comments whatsoever about Kfor, even something as innocuous as the above quotation setting out the factual position. BHHRG was requested not to name the official in question (which as a courtesy it has not done) but sees no reason not to mention the office of the Ombudsperson which is a UN appointment and whose activities are open to public scrutiny. Added to which, the comments made to BHHRG seem, sadly, to be an open and accurate description of the status quo in Kosovo under Kfor. If international officials of the Ombudsman’s office are afraid of stepping into the public domain with information on matters of fact, then the anxieties of ordinary residents in Kosovo about appearing to challenge Kfor or UNMIK authority must be much greater.

¹² “Ombudsman in Kosovo Alive As Well” (ibid)