

Agreement
between the
United Nations Interim Administration Mission in Kosovo
and the
Council of Europe
on
technical arrangements related to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The United Nations Interim Administration Mission in Kosovo (“UNMIK”) and the Council of Europe, collectively referred to as the “Parties”,

Recalling the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the Convention”) of 26 November 1987,

Noting that the Convention has been ratified by 45 States, including Serbia and Montenegro,

Considering United Nations Security Council resolution 1244 (1999) of 10 June 1999, which, recognising the sovereignty and territorial integrity of the Federal Republic of Yugoslavia (now Serbia and Montenegro), establishes the authority of UNMIK, as the international civil presence, to provide an interim administration for Kosovo,

Taking account of UNMIK Regulation No. 2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo, which provides for the responsibilities of the Provisional Institutions of Self-Government,

Having regard to the decision adopted on 30 June 2004 by the Committee of Ministers of the Council of Europe,

Emphasising that the present Agreement does not make UNMIK a Party to the Convention and that it is without prejudice to the future status of Kosovo to be determined in accordance with Security Council resolution 1244 (1999),

With a view to promoting technical cooperation between the Parties and facilitating the functions of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the Committee”), including providing access to any place within Kosovo where persons are deprived of their liberty by UNMIK,

Have agreed as follows:

Article 1
Visits by the Committee to Kosovo

1.1 The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty in Kosovo with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

1.2 UNMIK shall permit visits, in accordance with the present Agreement, to any place in Kosovo where persons are deprived of their liberty by an authority of UNMIK.

1.3 The Committee shall not visit places which representatives or delegates of Protecting Powers or the International Committee of the Red Cross effectively visit on a regular basis by virtue of the Geneva Conventions of 12 August 1949 and the Additional Protocols of 8 June 1977 thereto.

Article 2
Co-operation

In the application of the present Agreement, the Committee and UNMIK shall co-operate with each other.

Article 3
Organisation of Visits of the Committee

3.1 The Committee shall organise visits to places referred to in Article 1.2. Apart from periodic visits, the Committee may organise such other visits as appear to it to be required in the circumstances.

3.2 As a general rule, the visits shall be carried out by at least two members of the Committee. The Committee may, if it considers it necessary, be assisted by experts and interpreters.

Article 4
Notification and Modalities of Visits

4.1 The Committee shall notify UNMIK of its intention to carry out a visit and forward a copy of this notification to the Chairperson of the Committee of Ministers of the Council of Europe. After such notification, it may at any time visit any place referred to in Article 1.2.

4.2 UNMIK shall provide the Committee with the following facilities to carry out its task:

- (a) Access to Kosovo and the right to travel without restriction;
- (b) Full information on the places where persons deprived of their liberty are being held by an authority of UNMIK;
- (c) Unlimited access to any place where persons are deprived of their liberty by an authority of UNMIK, including the right to move inside such places without restriction;
- (d) Other information available to UNMIK which is necessary for the Committee to carry out its task. In seeking such information, the Committee shall have regard to applicable rules of law and professional ethics.

4.3 The Committee may interview in private persons deprived of their liberty.

4.4 The Committee may communicate freely with any person whom it believes can supply relevant information.

4.5 If necessary, the Committee may immediately communicate observations to the competent authorities of UNMIK.

Article 5
Representations against Visits

5.1 In exceptional circumstances, UNMIK may make representations to the Committee against a visit at the time or to the particular place proposed by the Committee. Such representations may only be made on grounds of security in Kosovo, public safety, serious disorder in places where persons are deprived of their liberty, the medical condition of a person or that an urgent interrogation relating to a serious crime is in progress.

5.2 Following such representations, the Committee and UNMIK shall immediately enter into consultations in order to clarify the situation and seek agreement on arrangements to enable the Committee to exercise its functions expeditiously. Such arrangements may include the transfer to another place of any person whom the Committee proposed to visit. Until the visit takes place, UNMIK shall provide information to the Committee about any person concerned.

Article 6
Visit Reports

6.1 After each visit, the Committee shall draw up a report on the facts found during the visit, taking account of any observations which may have been submitted by UNMIK. It shall transmit to the latter its report containing any recommendations it considers necessary and shall forward a copy of the report to the Chairperson of the Committee of Ministers of the Council of Europe. The Committee may consult with UNMIK with a view to suggesting, if necessary, improvements in the protection of persons deprived of their liberty.

6.2 If UNMIK fail to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after UNMIK has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter.

Article 7
Confidentiality

7.1 The information gathered by the Committee in relation to a visit, its report and its consultations with UNMIK shall be confidential.

7.2 The Committee shall publish its report, together with any comments of UNMIK, whenever requested to do so by UNMIK.

7.3 However, no personal data shall be published without the express consent of the person concerned.

Article 8
Experts and Other Persons Assisting the Committee

8.1 The names of persons assisting the Committee shall be specified in the notification under Article 4.1.

8.2 Experts shall act on the instructions and under the authority of the Committee. They shall have particular knowledge and experience in the areas covered by this Agreement and shall be bound by the same duties of independence, impartiality and availability as the members of the Committee.

8.3 UNMIK may exceptionally declare that an expert or other person assisting the Committee may not be allowed to take part in a visit to a place where persons are deprived of their liberty by an authority of UNMIK.

Article 9
Appointment of Points of Contact

UNMIK shall inform the Committee of the name and address of the authority competent to receive notifications, and of any liaison officer they may appoint.

Article 10
Privileges and Immunities

The Committee, its members and experts referred to in Articles 3.2 and 8 shall enjoy the privileges and immunities set out in the Annex to the present Agreement.

Article 11
Amendment

The present Agreement may only be amended by written agreement of the Parties.

Article 12
Settlement of disputes

Any disputes or disagreements with respect to the interpretation or implementation of the present Agreement shall be resolved amicably through co-operation between the Committee and UNMIK and, if necessary, by good faith negotiations between the Parties.

Article 13
Entry into force

The present Agreement shall enter into force upon signature by the duly authorised representatives of the Parties and shall remain in force for the duration of UNMIK's mandate as interim administration in Kosovo under the authority of the United Nations, unless terminated in accordance with Article 14.

Article 14
Termination

Either Party may at any time terminate the present Agreement by means of a notification addressed to the other Party. The termination shall become effective on the first day of the month following the expiration of a period of twelve months after the date of receipt of the notification, unless otherwise agreed to by the Parties in writing.

IN WITNESS WHEREOF, the undersigned, being fully authorised thereto, have on behalf of the Parties signed the present Agreement.

Done at Pristina, this 23 August 2004, in English and in French, the English text being authentic, in two copies, one of which shall be deposited in the archives of the Council of Europe and the other transmitted to UNMIK.

FOR THE UNITED NATIONS
INTERIM ADMINISTRATION
MISSION IN KOSOVO

FOR THE COUNCIL OF EUROPE

Special Representative of the Secretary-General

Secretary General

Annex: Privileges and Immunities

Annex to the Agreement: Privileges and Immunities

1. For the purpose of this annex, references to members of the Committee shall be deemed to include references to experts mentioned in Articles 3, paragraph 2, and 8 of the present Agreement.
2. The members of the Committee shall, while exercising their functions and during journeys made in the exercise of their functions, enjoy the following privileges and immunities:
 - (a) Immunity from personal arrest or detention and from seizure of their personal baggage and, in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;
 - (b) Exemption from any restrictions on their freedom of movement in Kosovo and on entry into and exit from Kosovo and from related registration requirements in Kosovo.
3. In the course of journeys undertaken in the exercise of their functions, the members of the Committee shall, in the matter of customs and exchange control, be accorded by UNMIK the same facilities as those accorded to representatives of foreign Governments on temporary official duty in Kosovo.
4. Documents and papers of the Committee, in so far as they relate to the business of the Committee, shall be inviolable. The official correspondence and other official communications of the Committee may not be held up or subjected to censorship.
5. In order to secure for the members of the Committee complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.
6. Privileges and immunities are accorded to the members of the Committee, not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions. The Committee alone shall be competent to waive the immunity of its members; it has not only the right, but is under a duty, to waive the immunity of one of its members in any case where, in its opinion, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.