



OMBUDSPERSON INSTITUTION in KOSOVO

FIFTH ANNUAL REPORT

2004 – 2005

addressed to

**the Special Representative of the Secretary-General
of the United Nations**

11 July 2005

Telephone: ++381 38 545 303

Telefax: ++381 38 545 302

e-mail: ombudspersonkosovo@ombudspersonkosovo.org

web site: www.ombudspersonkosovo.org

FOREWORD

This is the fifth annual report that I am submitting to the Special Representative of the Secretary-General (SRSG) of the United Nations.

According to all indications this is the last such report that I have the pleasure to present. The next edition will be the momentous task of my successor.

It is clear for everyone in Kosovo and outside that the period covered by this report should be and is of the utmost importance for Kosovo. Still there are many problems and unanswered questions. Notwithstanding the political solutions adopted, the future of Kosovo should be in Europe following European standards of democracy, the rule of law, human rights and, especially in the context of Kosovo, the protection of the rights of minorities. There is a lot of work in front of Kosovo's communities and their leaders in the process of making the province a home for all who live here or intend to return after long years of exile.

This recent period of Standards assessment, some of the priority standards and related issues, particularly from a human rights standpoint, are, at the same time, very much present on the agenda of the Ombudsperson Institution in Kosovo and fall within the Ombudsperson's jurisdiction. In such a situation, even if the Ombudsperson is not formally involved in standards' evaluation on the ground, my duty should be to share with the SRSG and the general public my thoughts and conclusions of at least some selected aspects of the situation and recent achievements, or the lack thereof, as well as the persisting serious problems, as seen from the particular perspective of the Ombudsperson.

It is very much in the nature of the work of the Ombudsperson to make a daily evaluation of the real standards in Kosovo- not the political 'Standards for Kosovo,' often referred to as 'Benchmarks' by the international community. Those political Standards are the criteria outlined by international actors for the people and government of Kosovo to fulfil or demonstrate marked progress, thereby paving the way for the start of "status" talks aimed at determining the future of the province.

Rather, the Ombudsperson's standards are somehow autonomous from the campaign of political Standards. They are standards in the most basic sense. The level of their success or failure is very much apparent in the daily experiences of ordinary people through their personal interactions with public institutions and within their neighbourhoods. In other words, we are talking about daily life and how it looks in Kosovo.

Ethnic tensions still contribute, even if to a lesser extent than before, to a very real security risk in Kosovo that is aggravated by political uncertainties and the perceived lack of adequate safety, especially among vulnerable non-Albanians. Over the past six years, Kosovo Serbs and other non-Albanians have relied heavily on the military protection of KFOR to feel safe. Coming to terms with why and how they have reached this point is crucial. It is of particular importance when one is reminded that peacekeepers will remain in the province only for a finite period. What then?

The persisting feeling of insecurity among Kosovo Serbs and other non-Albanians is based on past negative experiences of violence. How secure can people be expected to feel in their village enclaves when over the last six years, or even long before, they have suffered a series of violent acts? In addition to random killings, there have been assaults, bombings, thefts and incidents of arson and stoning. Seldom have perpetrators been identified or brought to justice, contributing to a perception that these acts can be committed with impunity.

Much attention has been focused on the government's efforts and apparent successes in making noteworthy progress in the political Standards process. One often talked about example is the reconstruction of houses following the March 2004 violence that forced some 4000 non-Albanians from their homes. More than one year later, approximately 1500 people are still displaced. But the question that begs asking: Does this mean the reconstruction of these houses guarantees the reconstruction of these communities?

If the basic conditions for the "reconstruction of life"-- and not just the reconstruction of houses-- are not created, then it is clear that the reconstruction efforts will not serve the declared purpose: to assure that the communities touched by the March violence are welcome and that there is a place for them, indefinitely.

Given these circumstances, it is of the utmost importance to have a multi-lateral approach to the reconstruction of life by guaranteeing everyone the basic conditions for a free and undisturbed future in Kosovo. Life cannot be relegated to mere survival.

Although the human rights situation in Kosovo has, to a degree, improved in certain sectors, I must reiterate from the previous annual report that *the general level of human rights protection is still below minimum international standards*. A great deal must be done to strengthen the mechanisms for such protection. The parliamentarians of the Council of Europe proposed and later adopted an extensive list of recommendations to strengthen human rights mechanisms here which I have tried to share with many of Kosovo's leaders. The proposals will, in fact, help to build a sturdy human rights infrastructure - something which nearly all players in Kosovo acknowledge is badly needed and has not succeeded during the years of UN administration in Kosovo.

The Ombudsperson Institution responds to the needs of a situation and strengthening its capacity is essential in order to act on these needs. During this year, the Ombudsperson created new entities addressing discrimination, children's rights, and gender-related issues. Additionally, the field offices of the Institution have been expanded in order to better serve Kosovo's communities throughout the region.

Keeping in step with the process of the gradual transition of authority in Kosovo, the Ombudsperson Institution deals more and more with cases related to local governmental entities. Nevertheless, as a part of developing democratic precepts these difficult and sometimes strained relations between the Ombudsperson and local government bodies are to be, at this stage, expected.

The proper understanding of such bodies like the Ombudsperson Institution by political leaders, government and people in the modern democratic landscape is to be considered a

precondition for maintaining or developing the role of the Institution — that is, understanding the prerogatives of the Institution and its importance as a special, powerful resource available to the general public for the oversight of the executive authority. I still consider, however, that for a certain period of time only an international Ombudsperson would be able to guarantee the efficient functioning covering both the international and local governmental structures, while at the same time taking into proper consideration the interests of all ethnic communities in Kosovo.

This report is, in fact, the beginning of my farewell to Kosovo. In the upcoming period my efforts will be very much concentrated on preparing the framework for another new stage of the Institution “without me.”

The past five years as Ombudsperson have cemented my relationship to this land and people. I have been privy to its intimate secrets and obvious troubles while having the distinct privilege of having met a great many who live here and also those who have been forced elsewhere.

My work here has always been intended to benefit the general population and be helpful to the governing structures. Even if my conclusions have been rather severe, one should remember however that these conclusions are nevertheless from a long-standing friend of Kosovo and its people.

Marek Antoni Nowicki
Ombudsperson in Kosovo

July 2005

INTRODUCTION

This Annual Report is issued in accordance with Section 17.1 of United Nations Mission in Kosovo (UNMIK) Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rule 22.1 of the Rules of Procedure of the Ombudsperson Institution.

The Fifth Annual Report covers the fourth full year of operations of the Institution, from 1 July 2004 to 30 June 2005. It has three main sections. The first section is an introduction to the Ombudsperson Institution, its staff and its work. The second section comprises a brief analysis of certain aspects of the human rights situation in Kosovo as seen from the perspective of the Ombudsperson and the third informs about the activities and operations of the Ombudsperson Institution during the reporting period.

FACTS ON THE OMBUDSPERSON INSTITUTION

Introduction to the Ombudsperson Institution

Established by UNMIK Regulation No. 2000/38, the Ombudsperson Institution is an independent institution which has the role of addressing issues concerning alleged human rights violations or abuse of authority by the Interim Civil Administration or any emerging central or local institution in Kosovo. It officially opened on 21 November 2000 in Pristina and consists of the international Ombudsperson himself, his two local deputies, human rights lawyers and supporting administrative staff. Since the very beginning, the staff of the Ombudsperson Institution has been multiethnic – the majority is of Albanian ethnicity, other staff members are of Serbian, Turkish and Roma origin.

The Ombudsperson Institution accepts complaints from anyone who believes that he or she has been the victim of a human rights violation or an abuse of authority and conducts investigations into these complaints. The official working languages of the Institution are Albanian, Serbian and English. It will make an effort to provide a complainant with service in his/her/their language even if it is not one of the three languages mentioned above. Through its work, the Institution helps to promote human rights and good governance in Kosovo and contributes towards making the administration transparent and open to the public. The work of the Ombudsperson Institution is provided free of charge.

If informed about a situation or action that may involve a human rights violation, the Ombudsperson may also open investigations in the absence of an individual complaint (so-called *ex-officio* investigations). The Ombudsperson's competences also involve the monitoring of policies and laws adopted by the authorities to ensure that they respect human rights standards and the requirements of good governance. Upon receiving a complaint or if convinced that a certain situation requires immediate action, the Ombudsperson engages in correspondence with the respective public authority that is the object of the complaint or the information obtained. If the problem in question does not warrant mediation or cannot be solved amicably, the Ombudsperson will, following

investigations, issue a report, in which he analyses whether or not there has been a violation of the respective persons' human rights. In case this question is answered in the affirmative, the report also contains the Ombudsperson's recommendations to the Special Representative of the Secretary-General (SRSG) as the highest civil authority in Kosovo or representatives of the PISG on how to ensure that there is a compliance with human rights in future. In cases where the Ombudsperson considers that a general practice or situation affecting not only one person or a group of persons, but the public as a whole, is not compatible with international human rights' standards, he will issue a so-called Special Report, which will also include recommendations to the SRSG or parts of the PISG.

The Ombudsperson's jurisdiction is limited to Kosovo, which means that he may only open investigations, issue reports or take other steps regarding the conduct of public authorities in Kosovo. In cases involving complaints of Kosovans against any public authorities outside Kosovo, the Ombudsperson may offer his good offices and/or may forward the case to the competent domestic Ombudsman or similar institution of the State in question.

The Ombudsperson is also not a substitute for courts and cannot directly investigate crimes, change court decisions, or issue binding decisions. The Ombudsperson does not deal with disputes between the international administration and its staff, nor does he deal with disputes between private individuals. He has no jurisdiction over the Kosovo Force (KFOR).

Cases calling for an immediate reaction by the Ombudsperson are termed "cases for reaction" (CR-cases) and are usually filed separately from the regular investigation files. In such cases, it is more important to intervene than to open investigations according to the usual procedure, although these cases may, at a later stage, become regular investigation cases subject to the usual treatment.

Considering the vulnerability of certain groups of people, in particular children, as well as persons suffering from discriminatory treatment in general and discrimination based on gender in particular, the Ombudsperson, already in the last reporting period, initiated special projects to help these people, namely the Children's Rights Team (CRT), the Non-Discrimination Team (NDT) and the Gender Equality Unit (GEU), within the Investigations Department of the Ombudsperson Institution. The lawyers working for these units are specialised in the above-mentioned subject matters.

The Ombudsperson

The current international Ombudsperson, Mr. Marek Antoni Nowicki, was appointed as Ombudsperson in Kosovo on 11 July 2000 by the then SRSG Mr. Bernhard Kouchner, upon the recommendation of the Chairman in Office of the Organisation for Security and Cooperation in Europe (OSCE). On 11 July 2002, the former SRSG Mr. Michael Steiner extended Mr. Nowicki's mandate as Ombudsperson in Kosovo for another two years until 10 July 2004. On 26 May 2004, the then SRSG Harri Holkeri prolonged the

Ombudsperson's mandate for another year until 10 July 2005. On 4 May 2005, the current SRSG Søren Jessen-Petersen decided to extend Mr. Nowicki's mandate until the end of the year 2005.

Mr. Nowicki was born in 1953 and is of Polish nationality. Since 1987, he is a member of the Polish Bar. He has a long record of human rights activism that began in 1982 when, during a period of martial law in Poland, he acted as columnist of the underground press and collaborator of the "Solidarity"-movement. It was also in this time that Mr. Nowicki co-founded the Helsinki Watch Committee in Poland. In the period of 1990-1993, he was a member of the Executive Committee of the International Helsinki Federation of Human Rights (IHF) in Vienna, while between 1992-1993, he was Acting President of the IHF.

From 1993 to 1999, Mr. Nowicki was a member of the European Commission of Human Rights in Strasbourg. Next to his current position as Ombudsperson in Kosovo, he is the President of the Helsinki Foundation of Human Rights in Warsaw and the Polish member of the European Union Network of Independent Experts on Fundamental Rights.

The Deputy Ombudspersons

The Ombudsperson has two local deputies, who assist him in successfully directing the work of the Ombudsperson Institution and who replace him in times of absence. They are Mr. Ljubinko Todorović and Mr. Hilmi Jashari.

Mr. Ljubinko Todorović was born in 1951 in Gračanica/Graçanicë. He was appointed Deputy Ombudsperson by the former SRSG Mr. Bernard Kouchner on 15 September 2000 and his term as Deputy Ombudsperson was prolonged several times, the last time on 14 March 2004 by the then SRSG Mr. Harri Holkeri.

Mr. Todorović graduated from the Law Faculty in Pristina in 1981. In 1991, he passed the bar examination. He has already worked in many different professions. *Inter alia*, Mr. Todorović has been the legal representative of a corporation, a labour inspector, and a public attorney of self-management for Pristina municipality. He also used to be Secretary of the Executive Board of the Municipal Assembly of Pristina, as well as a Secretary of the Municipal Assembly of Pristina.

Before the installation of the UNMIK International Administration in Kosovo, Mr. Todorović worked as a Manager for the "Geriatrics Center" in Pristina.

Mr. Hilmi Jashari was born in 1969 in Mazgit. He was appointed Deputy Ombudsperson on 14 March 2004 by the then SRSG Mr. Harri Holkeri.

Mr. Jashari graduated from the Law Faculty in Pristina in 1993 and then began working as Secretary of the Council for the Defence of Human Rights and Freedoms in Obiliq/Obilić. After 1994, he was involved in activities of various Albanian associations abroad. From 1996 to 1998, Mr. Jashari worked as a legal assistant at an attorney's office in Pristina. He has been working for the Ombudsperson Institution since it took up its work in October 2000 and was Director of Investigations as of July 2001.

Access to the Ombudsperson Institution

Access to the Ombudsperson Institution is provided through its main office in Pristina and the field offices in Gjilan/Gnjilane, Pejë/Peć, Mitrovica, Prizren and, as of February 2005, also in Gračanica/Gračanicë. The field offices are generally manned by one or two lawyers and one legal assistant/translator. The field office in Mitrovica has a sub-office in the northern part of the city.

As mentioned above, February 2005 saw the opening of a new field office in Gračanica/Gračanicë, which aims at providing many persons of minority communities with easier access to the services of the Ombudsperson Institution. This office became operational on 1 March 2005 and could only be established thanks to a generous donation from the Austrian Development Agency of the Ministry of Foreign Affairs of Austria.

While the Ombudsperson Institution used to be generally open to the public during working hours on weekdays, the growing number of applicants has forced it to streamline its work in order to maintain the productivity of the Institution. As of April 2005, visiting hours were introduced, which now allow the lawyers to effectively divide their time between receiving applicants and processing cases.

The main office in Pristina is now open to the public four days a week, namely Mondays to Thursdays between 10:00 and 14:00. The field offices receive applicants twice a week between 10:00 and 14:00, namely on Mondays and Thursdays in Gjilan/Gnjilane, Pejë/Peć, Mitrovica and Gračanica/Gračanicë. The Field Office in Prizren receives applicants on Mondays and Wednesdays. In urgent cases, applicants are of course welcome to come outside visiting hours.

The lawyers of the main office and those working in the field offices visit municipalities, enclaves, areas with substantial non-Albanian ethnicities, as well as prisons and detention centres in the municipalities of their respective regions on a regular basis. Their schedule provides that every such place should be visited at least once a month, while prisons and detention centres should be visited every two weeks.

On a regular basis, the Institution's Headquarters and Field Offices offer so-called "Open Days" which allow complainants to personally meet the Ombudsperson or his deputy. At the Headquarters in Pristina, such Open Days take place every second Thursday. The Field Offices in Gjilan/Gnjilane, Pejë/Peć, Mitrovica and Prizren offer them once a month for their respective regions and in Gjakovë/Đakovica. After the establishment of the new Field Office in Gračanica/Gračanicë, the first Open Day was held there in June 2005.

In the regions covered by the Institution's Field Offices, the inhabitants are informed about the dates of these open days by lists that are made accessible to the public in the buildings of the various municipalities, as well as through announcements in the local media and a list of dates published on the Ombudsperson Institution's website.

The Ombudsperson and his deputies also visit various places in Kosovo personally on other occasions. At the same time, lawyers from the main office pay regular visits to

certain municipalities near Pristina such as Lipjan/Lipljan, Glogovac/Glogovac or Podujevë/Podujevo in order to meet the inhabitants of these places and collect complaints.

The communication between the Ombudsperson and Kosovans staying temporarily in Serbia proper or, to a lesser extent, in Montenegro continues to be enhanced through cooperation with the Serbian Commissioner for Refugees on the one hand and the Spanish humanitarian organisation Movimiento por la Paz, el Desarme y la Libertad (Movement for Peace, Disarmament and Freedom - MPDL) on the other. The Institution and the MPDL recently extended an agreement signed in the previous reporting period, in which the MPDL agreed to assist applicants in filling out application forms and in contacting the Ombudsperson Institution. Other Ombuds Institutions and Organisations of Internally Displaced Persons (IDPs) also help the Ombudsperson maintain contact with the above group of people.

Taking into account the limitations of access imposed on prisoners and detainees throughout Kosovo, representatives of the Ombudsperson Institution also visit prisons and detention centres all over Kosovo on a regular basis. During the reporting period, the Ombudsperson Institution has, with the cooperation of the competent prison authorities, continued the process of directly communicating with detainees and prisoners through special mailboxes standing in all prisons and detention centres in Kosovo. Only staff members of the Ombudsperson Institution have access to these mailboxes and come to empty them every two or three weeks. It is through such mailboxes that detainees and prisoners often engage in first contact with the lawyers of the Institution – letters posted in the mailboxes usually lead to a first meeting, during which the detainees and prisoners in question can inform the lawyers about their situation and about any complaints or requests they might have. The Ombudsperson Institution is also informed about detainees' or prisoners' requests to see a lawyer from the Institution through forms distributed by the administrations of the respective detention centres and prisons. Once a detainee or prisoner has filled out such a form and expressed his wish to contact the Ombudsperson Institution, the competent administration forwards these forms to the Institution and a lawyer is sent to the detention centre or prison to meet the respective detainee or prisoner.

Once a month, a lawyer of the Ombudsperson Institution also visits the Social Care Facility in Shtime/Štimlje, where a special mailbox was also established to improve access to the Institution.

Following the launching of the CRT and of the NDT in the last reporting period and the launching of the GEU in this reporting period, efforts to increase the public awareness of these teams have been stepped up, in particular as regards the CRT and the GEU.

In order to spread knowledge about the work of these teams throughout Kosovo, both the CRT and the GEU cooperate with NGOs, schools (in the case of the CRT) and other organisations working in the field of children's rights and gender equality and attend many seminars and conferences organised in and outside Kosovo on these and related issues. Leaflets have been published and distributed at such events and both teams plan to publish posters as well. Raising-awareness campaigns have begun in both cases to inform

the public about the work of the CRT and the GEU. Two organisations who have cooperated closely with these teams and given much valuable support and assistance are the United Nations Children's Fund (UNICEF) and the United Nations Development Fund for Women (UNIFEM) respectively.

In the case of the GEU, due to the often sensitive subject matters involved, the campaign is planned to go through NGO's working in this field. Budget permitting, the Institution also plans to employ a psychologist in future to assist complainants and lawyers in such cases.

The raising-awareness campaign of the CRT, announced in several daily newspapers in Kosovo in June 2005, is directed mainly at schools, asking them for certain details concerning their facilities and number of students. After having received this information, the CRT plans to visit schools or to invite classes to come to the Institution to inform children directly about their rights. A part of the Institution's homepage will be devoted to children's rights and there are plans to include information on the CRT in television programmes on related subjects.

During the reporting period, there have been increased efforts to inform the public about the work of the Ombudsperson Institution. The "Quarterly Information Sheet", which was introduced towards the end of the previous reporting period in order to inform about the most important events and case before the Ombudsperson Institution, continues to be published every three months in all official languages of Kosovo, as well as in the Turkish language. It has significantly contributed to a wider public knowledge about the work of the Ombudsperson Institution in Kosovo and especially abroad.

The Ombudsperson Institution's website is also constantly improving and expanding. It includes general information on the Institution, as well as online versions of all reports, important letters and press releases, as well as information on the Ombudsperson's other activities.

The hotline for urgent cases in the Ombudsperson Institution's headquarters that became operational in the last reporting period has also greatly improved access to the Ombudsperson Institution. This hotline leads directly into the main lawyers' office without passing through the Ombudsperson Institution's switchboard. Over the last year, it has been used more and more frequently. The Ombudsperson Institution is also receiving more and more complaints by e-mail from inhabitants of Kosovo and Kosovans living abroad.

In the beginning of 2005, the Ombudsperson Institution was able to inform the public about its work on television spots for the first time. These spots were relaunched in the last quarter of the reporting period. With the assistance of UNMIK, short spots giving a brief description of the work and contact information of the Institution and including a short introduction by the Ombudsperson himself were shown at prime times every evening for approximately a month on the main television stations in Kosovo and Serbia proper. This was accompanied by radio spots that continued to be transmitted by many radio stations in Kosovo on a regular basis throughout the reporting period.

CERTAIN ASPECTS OF THE HUMAN RIGHTS SITUATION IN KOSOVO

General aspects

Any discussions on the human rights situation in Kosovo would not be complete without bearing in mind the special circumstances of the society here, which is still suffering from the aftermath of an armed inter-ethnic conflict that ended only six years ago.

One of the main effects of this conflict is the fact that the relationship between the ethnic Albanian majority and certain minority groups, primarily Serbs and Roma, which had already deteriorated significantly shortly before, during and after the end of fighting, has still not improved much since 1999.

There are many reasons for this. One of them is the fact that many persons on both sides, but predominantly on the Albanian side, are still missing and that many perpetrators of criminal acts committed during and after the armed conflict have still not been brought to justice. The problem that many of the traumas experienced in the past have not been dealt with either privately or in public is often forgotten by the international community in its attempts to rebuild a multi-ethnic Kosovo.

Other reasons are less emotional, but may be seen as typical side-effects of a post-conflict, post-communist situation – a general lack of strong executive and judicial powers, wide-spread corruption and organised crime appear to emerge in many transitional societies. The fledgling Kosovo police force is not in a position to counter such a pervasive and strong criminality and disregard for the existing laws. As a result, Kosovo suffers from a wide-spread lawlessness which affects many different areas.

But there are also general aspects to the Kosovo context that apply specifically to the situation here. The fact that Kosovo's status is still not resolved has so far had many repercussions, both legal and economical, which lead to a practically non-existent economy and thus to a huge level of unemployment. While Kosovo has one of the youngest populations in Europe, most of these young people have no perspectives, not only because the economy is stagnating but also because nobody knows when the political limbo in which Kosovo finds itself will end. Poverty abounds – according to a report issued by the World Bank in 2004, 37% of the population are considered to live in poverty, while 15% of the population is considered to live in extreme poverty.

As the situation of human rights in a certain society are naturally linked to the situation of the society in general, the following aspects of the human rights situation in Kosovo should be read bearing in mind the social and political background in Kosovo today. At the same time, the following selection of human rights issues does not pretend to be complete, but rather focuses on those human rights aspects most present in the daily life of many people in Kosovo, as well as those that are the subject of complaints made to the Ombudsperson Institution.

Developments in the legal sector

In the public discussions on standards implementation, the questions of minority rights, freedom of movement and returns are constantly being looked at from various different angles. Most of these discussions, however, appear to overlook the main point – namely that a coherent and effective system of laws and their correct and full application is the basis of any functioning state. If Kosovo's legal system continues to lag behind international standards the way this has been happening for the last six years, thereby depriving the entire population of some of their most basic rights, then any serious discussion about accommodating minorities as part of this society and about sustainable returns becomes redundant.

So far, UNMIK and the competent representatives of the Provisional Institutions of Self-Government (PISG) have not paid enough attention to the criticism referring to the still existent "legal chaos" described in the last Annual Report, preferring instead to focus on subjects enjoying more public debate such as the ones mentioned above. As UNMIK has transferred more and more of its administrative power to the relevant parts of the PISG, it has also transferred many unresolved problems and legal deficiencies. If this practice continues, it will cause trouble in the years to come, as the legal foundation on which Kosovo will then be based will look very much like a Swiss cheese.

The main issue in this context is the fact that now, six years after UNMIK assumed power over Kosovo, neither the competent judges, nor the executive, be it international or Kosovan, are sure which of the old Yugoslav laws are still applicable or not. UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo, as amended by UNMIK Regulation No. 2000/59, provides that any court of competent jurisdiction, body or person required to implement a provision of the law may determine that a subject matter or situation is not covered by UNMIK Regulations or the law in force in Kosovo on 22 March 1989 but is covered by another law in force in Kosovo after 22 March 1989, which is not discriminatory and which complies with international human rights instruments, and shall, as an exception, apply that law. There is, however, no information in the above Regulation as to which body shall determine whether such a law is discriminatory or compatible with applicable human rights instruments. As there is no independent judicial organ that could be addressed in such matters, those organs applying the laws are at liberty to decide for themselves which law to follow, a situation that paves the way to a considerable and widespread level of arbitrariness.

At the same time, the laws currently applicable in Serbia proper are also being applied in those areas covered by the parallel court systems. This creates considerable confusion in particular among the Serbian and Roma minorities, for many of whom the Serbian parallel system is the legal one and not the system established by UNMIK.

While all laws passed by the Kosovo Assembly and all UNMIK Regulations contain omnibus provisions stating that the respective law supersedes all previous laws on the same subject matter, there is no mention of exactly which laws will cease to apply. This lack of precision contributes substantially to the above-mentioned chaos and confusion in the legal system. In the context of Kosovo, where the population is being introduced to a wave of new and unknown legal principles in an incredibly short period of time, such

vague provisions create many additional problems, as the people “on the ground” and those meant to implement new laws are often at loss on how to go about this. This problem prompted the Parliamentary Assembly of the Council of Europe to raise it in its Resolution 1417 issued in January 2005, in which it *inter alia* recommended that UNMIK Regulations state clearly which, if any, previous instruments they revoke or amend and if amended, how so.

At the same time, UNMIK continues to contribute to a problematic legal situation by attempting, for example, to change certain provisions of the Yugoslav Law on Obligations pertaining to the use of public utilities through provisions contained in Administrative Directions. UNMIK Regulation No. 2000/49 on the Establishment of the Administrative Department of Public Utilities merely announces the establishment of this department and empowers it to regulate rates, charges and services of public utility service providers in Kosovo, but does not amend the prescription periods contained in the Yugoslav law, in particular a certain provision which provides that after the expiry of one year, the right to oblige consumers to pay for public utility debts is prescribed. This task of creating new law has instead been assigned to Administrative Direction No. 2002/19 on the Payment of Debts for Electricity Services implementing UNMIK Regulation No. 2000/49, which provides that consumers of electricity services are obliged to pay the full amount owed for such services during the debt period, ranging from 1 October 1999 to 20 September 2002.

While UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo, as amended by UNMIK Regulation 2000/59, provides UNMIK Regulations with the same legal standing as such Yugoslav laws as were in force on 22 March 1989, Administrative Directions constitute “subsidiary instruments issued thereunder” and are by definition secondary laws. Legally speaking, they thus do not have the power to amend or replace existing laws, which means that in the instant case, the relevant provisions of the Yugoslav Law on Obligations are still in force. The fact that in such a case, consumers of electricity are currently asked to pay much more than they actually need to by law raises serious issues with regard to basic rule of law principles. Although this problem was broached with UNMIK in November 2004, the SRSG did not agree with this argument, declaring instead that Administrative Direction No. 2002/19 only implemented UNMIK Regulation No. 2000/49, so that the new provisions contained in it had the power to replace the relevant provisions of the Yugoslav Law on Obligations.

One should welcome the fact that on 12 May 2005, a Law on the Official Gazette, passed by the Assembly, was finally promulgated by the SRSG. At the same time, the Kosovo Assembly has begun displaying the adopted laws on its website in all three of Kosovo’s official languages. In May 2004, a database established by the then Prime Minister’s Office and containing a large number of laws applicable in Kosovo in their English, Albanian and Serbian versions, was launched, but did not receive much publicity. Access to it is still only possible for certain insiders who know what to look for, which is unfortunate given that this database would greatly enhance the knowledge of certain parts of the public with regard to the laws applicable in Kosovo and the rights and obligations they contain. According to information received in June 2005, the database would be relaunched as soon as a new IT office within the Prime Minister’s Office would be

established, since so far, the lack of an IT expert had not permitted the staff in that office to maintain the database programme and improve public access to it.

Despite all of the above improvements brought about by modern technologies, it will probably take a considerable amount of time until applicable laws will be made accessible to all parts of the public to a sufficient degree, in particular to those persons with no access to the internet. As qualitatively acceptable translation into all three working languages of Kosovo, namely English, Albanian and Serbian, is still quite sluggish (in certain cases, UNMIK Regulations dating from as far back as 2001 have only recently become accessible in proper versions of Serbian and Albanian), large parts of the population of Kosovo remain unaware of the contents of the applicable laws. The above problem was recognised by the Parliamentary Assembly of the Council of Europe in Resolution 1417, in which it inter alia recommended that UNMIK ensure that all legal instruments be published and disseminated to all concerned parties promptly and effectively, including by efficient use of information technology, with simultaneous high-quality translation into all official languages.

One problem that unfortunately, apart from certain exceptions during the last reporting period, has not changed is the persistent lack of *vacatio legis* in all of the Assembly's laws or UNMIK Regulations issued during this reporting period. *Vacatio legis* is a certain delay between the promulgation of a law and its implementation intending to give the public and those institutions applying the law the chance to adjust and prepare for the new legal situation. The necessity of providing laws with a proper *vacatio legis* is one of the key principles of a law-abiding state.

While in the last reporting period, a limited number of laws did allow a certain period of transition, the laws passed throughout the last year all enter into effect immediately. In some cases, these new laws have direct practical effects on the rights of affected groups of persons, such as in the case of the new Law on Rights and Responsibilities of Kosovo Residents in the Health Care System adopted by the Assembly of Kosovo on 8 September 2004 and promulgated by the SRSG on 19 November 2004. The Parliamentary Assembly of the Council of Europe also recognized the importance of *vacatio legis* and requested UNMIK to allow for an appropriate *vacatio legis* following the promulgation of all legal instruments in its recent Resolution 1417.

In certain situations, old Yugoslav laws are still applicable as no new laws have been passed in the meantime, but are completely ignored. One example for this is a law granting invalidity pensions to World War II invalids. Although this law is still in force, invalids from World War II are complaining that since 1999, they have not been receiving pensions. This issue was raised with the Prime Minister in the beginning of June 2005.

Another example where at least part of an applicable law is not being applied is Article 180 of the Yugoslav Law on Obligations, which grants state compensation for harm caused by death, body injuries or damage, respectively destruction of property belonging to physical persons as a result of violent acts or terrorism, as well as in case of demonstrations and public manifestations. Although still applicable, as only certain parts of the law were replaced by UNMIK Regulations, there have been no attempts to apply

this Article. A short but intense correspondence with UNMIK on this subject clearly demonstrated an unwillingness to take this legal provision into consideration. This is not surprising considering the fact that it would open a Pandora's Box filled to the brim with compensation claims, many of them related to the violent events of March 2004. On a practical note, however, the procedural immunity of UNMIK and its staff would prevent a large number of these claims from being processed anyway.

Other applicable laws are not so much ignored as they are applied in a selective manner. On example for this are the laws on construction. There are many complaints regarding the arbitrary manner in which the competent authorities apply these laws. The general building boom all over Kosovo – to date 45 000 examples of illegal construction - is unfortunately often conducted in a completely lawless way, displaying a worrisome indifference to existing laws. Municipalities and courts appear to support this phenomenon by letting many constructors of illegal buildings get away and randomly punishing others who have neither the money nor the power to defend themselves.

In some areas, there are no laws at all to regulate certain situations. For example, there is still no general law granting compensation to victims of violent crimes. This subject was broached during the last reporting period with the then Prime Minister of Kosovo, who never answered. It was recently taken up again in the case of an individual of Ashkali ethnicity whose house had been destroyed by masked intruders well after the 1999 conflict and who had no means to reconstruct it because he was still paying back the bank loan that had helped him almost completely rebuild his home in 1989. A letter sent to the new Prime Minister and the SRSG with regard to this issue on 27 April 2005 so far also did not meet with any response.

Another example for this lack of laws is the fact that there is still no law providing any form of legal remedy for excessively long court proceedings. This issue was raised in all reports in which the Ombudsperson came to the conclusion that certain court proceedings had been so long as to violate a person's right to have his case decided on within a reasonable time. Although UNMIK constantly answers that this issue is under its "active consideration", no steps appear to have been taken to prepare such a law.

Although the drafting and implementing of a law on the protection of the cultural, historical and natural legacy of Kosovo is one of the standards imposed on Kosovo by the international community and despite attempts in the previous reporting period to draw the attention of the former Prime Minister of Kosovo to this problem, such a law still does not exist. It will remain to be seen whether Government plans to implement standards speedily will resolve this issue in an expeditious and at the same time satisfactory manner.

During the last reporting period, UNMIK, in cooperation with the responsible local structures, had promised to draft certain mental health laws and to enhance facilities to accommodate persons with mental disabilities. To the date of this report, the promised laws have still not been drafted, let alone passed. This means that this group of persons is still not protected in such a way as to meet international human rights standards. The Ombudsperson has raised this issue in two reports issued in October 2004 and May 2005 and in a letter addressed to the Deputy SRSG for Police and Justice in April 2005. In the

beginning of June 2005, the Deputy SRSG for Civil Administration replied to one of the Ombudsperson's reports and informed him that the Ministry of Health remained engaged with UNMIK in developing a draft mental health law that, once in force, would comprehensively address many of the Ombudsperson's concerns in this respect.

While a law on public assembly has been in force since Yugoslav times, it does not adequately deal with the question of guaranteeing the right to freedom of assembly. This law does not lay down any principles governing the exercise of effective control over public meetings and lacks any form of remedy enabling a person to contest the manner or scope of a measure limiting the right to freedom of assembly, thus falling short of the quality of such laws required by the applicable international human rights standards. This problem was raised in a report issued by the Ombudsperson in June 2004. In his answer, the then Deputy SRSG for Police and Justice did not share the above point of view, so that there are no current plans to amend the above law.

At the same time, those new laws that have been passed over the last year or so have still to be implemented properly. Examples for these laws that so far have, to a considerable extent, existed only on paper are the Law on Access to Official Documents promulgated on 6 November 2003, the Law on Gender Equality promulgated on 7 June 2004 and the Anti-Discrimination Law promulgated on 20 August 2004.

Even in cases where laws were implemented, technical difficulties prevented certain parts of these laws from acquiring the desired practical effect. One example of this is UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, promulgated on 22 December 2001, which states that appeals against decisions taken by public employing authorities regarding civil servants may be taken to an Independent Oversight Board. The board was officially inaugurated in November 2004, three years after it was established. Unfortunately, however, it is still not operational. According to the Civil Service Law, the Ministry of Public Services is responsible for preparing Rules of Procedure for the Oversight Board. The Ministry did not prepare the first draft for such Rules of Procedure before the beginning of March 2005, following which these Rules were forwarded to the SRSG. In the beginning of June 2005, the office of the SRSG sent the Rules of Procedure back to the Ministry with certain corrections. One can only hope that now, the drafting procedure will continue in this vein, so that the Independent Oversight Board will finally be able to begin with its work.

In the last Annual Report, one problem raised was the fact that the new criminal codes passed in mid-2004 had not covered all aspects of certain fields formerly covered by the Yugoslav criminal laws, in particular with regard to the placement of mentally incompetent criminal offenders and criminal offenders of diminished mental capacity in mandatory psychiatric treatment. This problem has now been solved following the promulgation of UNMIK Regulation No. 2004/34 on Criminal Proceedings Involving Perpetrators with a Mental Disorder. In general, judges throughout Kosovo, following initial difficulties, have now adapted to the new criminal codes and necessary amendments are under discussion, so that at least with regard to criminal matters, there is more legal certainty than in the rest of the legal system.

As mentioned before, in many respects the legal situation in Kosovo remains confusing and inconsistent with basic rule of law principles. UNMIK and the PISG have so far contented themselves with focussing on certain select issues, without adequately dealing with other basic problems.

The judiciary in Kosovo

Unfortunately, the problematic situation of the Kosovo judiciary has not improved much since the issuance of the Fourth Annual Report in July 2004, even if the competent structures within UNMIK have grown more and more aware of the existing problems and are seeking additional ways to enhance the efficiency of the administration of justice.

The judiciary is still not completely independent in the usual sense of the word, in particular as regards the administration of the courts, which continues to be undertaken by the Department of Judicial Administration within the Ministry of Public Services, an executive body. Important questions involving court facilities and remuneration, not only of court staff, but also to some extent of judges, are thus decided by the executive, which in this way continues to exert a considerable influence on the practical aspects of the courts' work.

At the same time, while the Kosovo Judicial and Prosecutorial Council (KJPC) advises on matters related to the appointment and removal of judges, prosecutors and lay-judges, it is still the SRSG who has the final word on whom to appoint and remove. At the same time, UNMIK Regulation No. 1999/7 on the Appointment and Removal from Office of Judges and Prosecutors, as amended by UNMIK Regulation No. 2000/57, does not provide any fixed term of office for judges, which objectively also raises certain questions with regard to the independence of the judges.

Another problem that continues to jeopardise the independence and efficiency of the Kosovo judicial system is the very low level of salaries received by the local judges and prosecutors, as it makes it difficult for them to resist various forms of pressure exercised by parties to the proceedings and others interested in the outcome of certain cases. The frequency with which people now complain about corrupt judges in Kosovo is alarming enough to consider this matter as a serious problem.

In the case of international judges and prosecutors, on the other hand, there are not many complaints regarding corruption or partiality. Nevertheless, the absence of oversight of the KJPC and the Judicial Inspection Unit of the UNMIK Department of Justice does appear to be cause for some concern, as this means that citizens of Kosovo have no right of recourse to a regulatory body that would investigate and adjudicate upon allegations of professional misconduct in relation to international judges and prosecutors. While UNMIK Regulation No. 2000/6 on the Appointment and Removal from Office of International Judges and International Prosecutors, as amended by UNMIK Regulation No. 2000/34, expressly provides that international judges and prosecutors shall be removed from office on grounds of serious misconduct, failure in the due execution of office and/or having been placed in a position incompatible with the due execution of office by virtue of their personal conduct or otherwise, there is no body to conduct

investigations into allegations of such misconduct and consequently no body that would be able to decide if the requirements for removing an international judge or prosecutor from office have been met. This is just another example of the lack of legal mechanisms in Kosovo with regard to the conduct of international staff members working for UNMIK and related bodies. In a letter sent to the Ombudsperson in February 2005, the Director of the UNMIK Department of Justice assured the Ombudsperson that his department was currently considering the establishment of such a regulatory body. Hopefully, such a body will be established soon to fill the existing accountability gap.

Many courts all over Kosovo continue to suffer from a constantly growing caseload while the number of judges still appears to be disproportionately low. This is not true for all courts – during discussions with the Presidents of Municipal Courts and District Courts in Kosovo, some were stressing that certain courts did not have enough cases to keep them busy, while others seemed to suffer from the opposite problem. One positive aspect of this issue is the fact that during this reporting period, the processing of administrative cases before the Supreme Court of Kosovo improved significantly compared to the past.

One of the consequences of the lack of judges in certain courts is the fact that when a District Court remits a case for reconsideration to a Municipal Court, the case is often still reconsidered by the same panel of judges that issued the disputed decision in the first place. This raises problems of objective partiality of the judges and often leads to a constant back and forth of cases between the two instances, as the Municipal Court judges will then not see why they should decide differently than the first time.

Many courts continue to complain that they do not have enough judges or court bailiffs to ensure that judgments are executed without delays, despite a recent increase in their numbers. While the collaboration with private banks in order to execute into bank accounts has improved, certain municipalities have in some cases chosen to completely ignore court judgments or interim measures ordering them to perform or abstain from performing a certain action. In many cases, the delays in executing judgments also hampers the effectiveness of the execution, as it gives certain individuals the necessary time to find ways of eluding justice. The temporary situation in Kosovo also proves problematic in this respect, as many persons do not have fixed places of residence.

Another deficiency that often leads to lengthy court proceedings is the lack of experts in multiple fields in Kosovo. This situation is most critical with regard to forensic experts. Even if such experts exist, they often do not possess the necessary equipment to prepare appropriate expert opinions. As a result of this, expert opinions need to be procured from outside Kosovo. At the same time, however, there are no financial means to pay for such experts. In certain cases, judges have been known to provisionally pay for such services from their own pockets in order to avoid delays in proceedings. In some criminal cases conducted *ex officio*, this problem went so far that, despite the fact that no laws applicable in Kosovo support such a step, crime victims were asked to pay for such forensic experts. After the Ombudsperson had raised this issue regarding a specific complaint submitted to him, the Director of the UNMIK Department of Justice informed him that he had contacted the Department of Judicial Administration as the competent authority in matters involving the reimbursement of expertise costs in criminal

proceedings and had requested the latter department to find a solution to this problem as soon as practicable.

Judges in general also complain about a lack of adequate facilities, making it impossible for the courts to perform their tasks in an appropriate manner. During a meeting with judges from the Municipal and District Courts in Kosovo, a President of a District Court told the Ombudsperson “We know that we are constantly violating the fair trial principles contained in Article 6 of the European Convention on Human Rights”. But it is impossible to adhere to international human rights standards if, for example, there are simply not enough hearing rooms to conduct proper hearings in all cases before the courts. Often, judges are obliged to hold hearings in their offices.

As far as criminal proceedings are concerned, another problem is the fact that witnesses, in particular those involved in cases related to events that occurred shortly before, during or after the 1999 conflict, often do not feel secure enough to assist the judges and prosecutors in solving cases. In particular in Kosovo, where society is built on far-reaching and tight-knit family ties and organised crime flourishes, many people have little hope that law-enforcement agencies will be able to protect them in case their testimonies before court will lead to a clear and imminent danger for their lives and the lives of their families. Witness protection programmes in Kosovo, on the other hand, unfortunately exist more on paper than in actual life and would anyhow not be the appropriate manner to deal with such a wide-spread problem.

The execution of less severe criminal sentences is still in many cases not effected due to the lack of prison space. A similar problem exists with regard to detainees on remand, who are often not placed in detention centres close to the competent court, but are distributed to detention centres all over Kosovo. As a consequence, organising transport for these detainees to attend hearings often turns into a problem. There are also still too many complaints that juvenile perpetrators, mentally incapacitated prisoners and “normal” prisoners and detainees continue to be detained in the same facilities.

Over the last months, the KJPC, together with the UNMIK Department of Justice, have begun examining the question of what could be done in order to improve and expedite the handling of cases. These bodies have identified that the excessive length of proceedings before courts in Kosovo is dependent on a series of issues, *inter alia* the number and character of the cases dealt with, the staffing situation, not only of judges but also of prosecutors and support staff, the procedures guiding the work of the courts as established by law and the actual capacity of the involved judges to manage the cases efficiently (not only in terms of solving the cases but also in terms of prioritizing them as needed). Both the KJPC and the Department of Justice recently appear to have worked on improving the capacity of judges and prosecutors to solve and manage the case loads efficiently and began working on new staffing plans that, based on objective and comprehensive criteria, would better reflect both the number and the character of the caseloads faced by courts. In order to accomplish this, the Department of Justice started several projects and reviews which will then be discussed by legislative working groups. In the beginning of 2005, a team of European and US specialists also prepared an assessment of the judiciary and prosecutorial system of Kosovo which provides a new

staffing plan for the entire court system of Kosovo. Work on updating the present staffing plan appears to be ongoing.

One problem that has so far still not been addressed by the competent international structures is, however, the continuous lack of an effective legal remedy to obtain compensation or other forms of redress for excessively long court proceedings.

Another issue that has not changed much since the last annual report is the fact that, for various reasons, members of minority communities are still not sufficiently represented in the judiciary. In a Report submitted by UNMIK to the Council of Europe on 2 June 2005 in fulfillment of UNMIK's obligations under the European Framework Convention for the Protection of National Minorities, the total number of ethnic non-majority communities serving in the judiciary was noted to be 10.5%, among prosecutors it is 9.4%. Only 5.2% of judges and 2.3% of prosecutors are Kosovo Serbs. According to the above report, the recruitment of judges and prosecutors from minority groups is seriously compromised by poor salaries, benefits and working conditions, along with a very limited pool of eligible candidates. With regard to Kosovo Serb judges and prosecutors, accrued pensions and benefit rights in Serbia proper appear to discourage them from applying for posts in courts established by UNMIK. Among court staff, the above-mentioned under-representation of minority communities is described as being even worse, with only 4.4% of all court staff in Kosovo being from minority groups.

At the same time, Serbian parallel courts, administrated and remunerated by the Serbian Ministry of Justice and located in Serbia proper or in Serbian enclaves on the territory of Kosovo, continue to operate as if UNMIK did not exist. Just as their decisions and judgments are not accepted by UNMIK structures, Kosovo courts established by UNMIK are in turn not accepted by the parallel courts and administrative offices, or by the regular courts or administrative offices in Serbia proper. The victims of such a situation are, as usual, the inhabitants of Kosovo, in particular those belonging to the Serbian and Roma minority communities.

According to the above UNMIK Report of 2 June 2005, access to justice for members of non-majority communities in Kosovo is impeded by tangible barriers arising from lack of security, physical safety, transportation, language, poverty and court fees. It is also obstructed by intangibles like delay, uncertainty in the law, lack of confidence in the fair application of the law, and the non-majority communities' limited knowledge of law and legal rights. Other factors such as a lack of legal representation, mostly due to insufficient funds on the side of the clients and a reluctance to represent minority claimants, place minority groups at a serious disadvantage, discouraging their participation and undermining their faith in the justice system. These findings reflect very much the conclusions reached by the Ombudsperson following complaints and discussions with members of minority communities.

The above problems and obstacles, coupled with more general doubt as to the legitimacy of UNMIK as a whole, causes many members of minority communities, in particular those of Serbian and Roma origin, to favour parallel courts. There are also practical aspects to this, such as an easier accessibility and the fact that the judges all speak Serbian.

As the Director of the UNMIK Department of Justice put it in an interview for a local newspaper in June 2005 – the better UNMIK and the Kosovo judicial system work, the smaller the need for a parallel system. But unfortunately, we are not there yet. A recent example in which UNMIK tried to improve this situation was the opening of a branch of the Municipal Court in Pristina in the Serbian enclave of Gračanica/Graçanicë in December 2004. In the end of May 2005, following delays occasioned by irregularities in the staffing procedures, institutional conflict between the Municipal Court and the Department of Judicial Administration and the death of a senior judge of minority ethnicity at the Municipal Court, this department of the Municipal Court eventually took up its work, complete with administrative staff and an on-call judge and public prosecutor. At the end of the reporting period, however, there was still no telephone line and the only way to reach the court was by calling the mobile telephone of one of the security guards.

The biggest problem faced by this branch of the Pristina Municipal Court in Gračanica/Graçanicë is the fact that it may not issue decisions and may not execute judgments. Its only function so far is to accept cases, collect them and then send them on the Municipal Court in Pristina.

It does, however, help certain members of the Serbian community access the Municipal Court in Pristina. In general, access to courts is most difficult for members of the Serbian and Roma community, which are considered the least-integrated parts of Kosovan society. The accessibility of courts varies from municipality to municipality – according to information received from UNMIK in May 2005, members of the Serbian and Roma minority communities living in mainly Albanian-dominated areas only access courts if they are accompanied by members of the local Court Liaison Office. In the municipalities of Skenderaj/Srbica and Malishevë/Mališevo in central Kosovo and in the municipality of Kaçanik/Kaçanik in south-eastern Kosovo, areas where the 1999 conflict raged relentlessly and memories of it are still fresh, they only access courts with international escorts. The same applies to some extent to ethnic Albanians wishing to access the Mitrovica courts located in the northern, Serbian-dominated part of town, who can only reach this court through a shuttle bus organised by UNMIK that drives back and forth between the northern and southern parts of this divided town. In areas where a minority ethnic group lives surrounded by a majority of another ethnic group, such as Serbs in a number of areas throughout Kosovo and Albanians in and around Northern Mitrovica, members of the minority community also do not dare to bring cases to court regarding members of the majority community for fear of retaliation.

But even if people of minority groups are able to access courts, there are sometimes other obstacles to an efficient administration of justice in their cases. With regard to certain compensation claims submitted to courts in Kosovo by mostly Serbian claimants with regard to damages caused after KFOR entered Kosovo in 1999 or during the violent events that took place in March 2004, the respective courts were prevented from processing these cases by the UNMIK Department of Justice which, on 26 August 2004, issued a circular to all courts in Kosovo asking the judges not to schedule civil claims related to property damages after 1999 lodged by Serbian claimants until both the Department of Justice and the courts in Kosovo had determined how best to effect the

processing of these cases. This request was apparently made due to the large amount of civil claims – over 14,000 – that had been lodged by ethnic Serbian claimants with regard to property damages that had taken place after NATO had entered Kosovo in 1999. Such a huge influx of claims would, according to the Department of Justice, pose problems for the courts, also from a logistical point of view, as claimants would require escorts to travel to the courts, which by itself would already necessitate significant planning and coordination. This practice was apparently also applied to claimants of Roma and Ashkali ethnicity.

At the same time, however, there appear to be plans on the side of UNMIK to suspend the prescription periods for claims submitted to courts by members of certain minority ethnicities immediately after the armed conflict in 1999, which could not be processed due to the fact that first, certain courts were not yet operational at the time and later, the claimants continued to have problems accessing courts. A regulation has been drafted to this end, which has been sent to the UN headquarters in New York for approval.

While there is the possibility that a large amount of lawsuits filed within a short time and the other circumstantial obstacles mentioned in the circular could hamper the administration of justice, such a situation does not dispense the competent authorities from the obligation to provide access to court and to court decisions. At the same time, there does not appear to be any merit in treating all of the above cases in the same manner. Certain judges complained that if it had not been for the above circular, some cases, in particular those involving what happened in March 2004, where due to the availability of witnesses and the fact that not much time had passed since would make it easier to undertake an accurate assessment of the damages, would already have been resolved. The fact that the normal processing of such cases has now been suspended for such a long time by a circular issued by the Department of Justice, leaving no room for the judges' individual assessment of each case, raises serious concerns regarding the claimants' right of access to court.

In two letters sent in February and June 2005 respectively, the Director of the Department of Justice was asked whether a solution had been found concerning how to deal with this group of cases, so far with no reply.

Despite the fact that certain initiatives are underway to improve the overall functioning of the administration of Justice in Kosovo, a lot still needs to be done in this respect. It will remain to be seen how soon the seeds sown now will have a positive effect on the continuing problems of the judiciary.

The inadequacy of human rights protection mechanisms in Kosovo and the role of the Ombudsperson

Judging by the amount of human rights laws passed in the last years and the fact that most important international human rights instruments are declared directly applicable in the province, it would appear, at least on paper, that Kosovo enjoys one of the most compact and complete human rights protection systems.

Unfortunately, as already mentioned in the last Annual Report, the actual practice often does not correspond in the least to what is required by the above laws and international treaties. Instead, the inhabitants of Kosovo continue to be deprived of the effective human rights protection that their counterparts living in other parts of Europe have long taken for granted.

One of the main problems in this respect is the general inadequacy of the existing human rights protection system in place in Kosovo. As already criticised in the last Annual Report, the Ombudsperson continues to be the only human rights body that has the competence to review decisions and actions taken by both PISG and UNMIK structures. Courts mandated to apply and protect the rule of law and thus also, to a certain extent, human rights law, are only competent to review actions taken by the local structures, but not by UNMIK.

It was of increasing concern during the reporting period that the PISG lacked the capacities and resources to ensure effective implementation of measures to protect and promote human rights. The Advisory Office on Good Governance, Human Rights, Equal Opportunity and Gender within the Office of the Prime Minister is charged with advising the government, reviewing and developing policies relating to human rights. However, the office appears to have small resources and capacities as well as limited authority over the government ministries and local-government structures, with the result that little consistency is seen in the government's approach to human rights. The newly-created Ministry of Communities and Returns commenced work early in 2005. However, in its first months the new ministry appeared to focus entirely on projects for the return of internally displaced persons involving only the reconstruction of houses. It did not work actively to promote the rights and interests of all communities, despite emphasis on this obligation within its terms of reference.

Considering the special circumstances in Kosovo, the laws regulating the Ombudsperson's jurisdiction and competences should be stronger. The Ombudsperson should, like a number of other Ombudsmen around the world, be allowed to initiate or take part in court or other legal proceedings. At the same time, UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution should oblige public authorities to respond to the Ombudsperson's interventions within a certain period of time. The public authorities should also be obliged to justify any delays in responding to the Ombudsperson's letters or reports. The Council of Europe's Parliamentary Assembly, in its Resolution 1417 on the Protection of human rights in Kosovo of January 2005, supported this idea when it urged UNMIK to maintain and strengthen the authority of the Ombudsperson Institution, *inter alia* by requiring the SRSG and the PISG to give final responses to the Ombudsperson's recommendations within a reasonable time or to properly justify any refusal to accept them.

Following the transfer of certain powers to the PISG, the too often indifferent attitude shown by UNMIK towards the work of the Ombudsperson Institution has been replaced by an ambiguous attitude depending on which Ministry or Municipality was contacted by the Ombudsperson. In some cases, the respective PISG structures expressed a distinct wish to cooperate, even if they often appeared to be at loss as to how to respond to the Ombudsperson's requests in an adequate manner. At the same time, other parts of the

PISG have behaved in a dismissive, sometimes blatantly uncooperative manner. In a recent case involving investigations into the practice of granting financial assistance for damages suffered by certain inhabitants of Gjilan/Gnjilane in an earthquake in 2002, the Ombudsperson was eventually obliged to ask the SRSG to intervene following the Municipality of Gjilan/Gnjilane's refusal to grant him access to the relevant files. At the same time, the Municipality of Pristina has almost never responded to any of the Ombudsperson's intervention letters sent there throughout the reporting period.

One special problem with regard to the new relationship between the Ombudsperson and the local structures became apparent with regard to the question of interim measure requests: Previously, the Ombudsperson had always sent such requests to the SRSGs, most of who reacted in some way or another to these requests. In a case involving the illegal construction of an apartment building that was damaging the neighbouring premises, the Ombudsperson sent two interim measure requests to the SRSG in August and September 2004, but did not receive any reply. Eventually, the Deputy SRSG for Civil Administration informed the Ombudsperson that following the transfer of powers, the refusal of municipal civil servants to take the necessary action required of their office would now be dealt with by the PISG, more specifically by the Ministry of Public Services. The Ombudsperson thereupon sent the following interim measure requests to the Minister of Public Services, who did not react to any of them. He then took to sending interim measure requests to both the SRSG and the Minister of Public Services, at the same time asking the SRSG to inform him which organ he should send such requests to in future. To this date, he has received no response to this question. Several interim measure requests sent out during this reporting period were thus not dealt with at all, as apparently neither the SRSG nor the Ministry of Public Services considered themselves to be responsible.

The above criticism of UNMIK should not, however, give the impression that UNMIK in general does not cooperate with the Ombudsperson. On the contrary, the past months have shown that certain parts of the UNMIK structure have greatly improved their cooperation with the Ombudsperson Institution. One example for this is UNMIK Police, which have undergone an immeasurable improvement since the current SRSG came to power in August 2004 and a new UNMIK Police Commissioner was appointed in October 2004. Now, approaching UNMIK Police about alleged human rights violations or abuses of authority is no longer a problem and letters sent to the UNMIK Police Commissioner are usually responded to within a reasonable amount of time, while there are regular meetings between the representatives of the Ombudsperson Institution and a contact person within UNMIK Police. At the same time, access to files is not denied anymore and in certain cases even offered by UNMIK Police themselves in letters sent to the Ombudsperson. This cooperative relationship with UNMIK Police allows the staff of the Ombudsperson to process and resolve such cases in a more expeditious fashion than before.

At the same time, there are many individuals working for UNMIK who assist the Ombudsperson in many different fields of work. However, the continuing transfer of powers is creating confusion, not only with regard to interim measure requests, but also in other fields. The international administration is now seeking to place the responsibilities for certain transferred areas on the shoulders of the local structures with

considerable speed. In doing this, UNMIK overlooks, however, that the responsibilities imposed on it by Security Resolution 1244 have remained the same, except that now, the institutions helping UNMIK fulfill these responsibilities are run by Kosovans instead of internationals. UNMIK's responsibility to ensure respect for human rights on the territory of Kosovo thus also remains unchanged and applies both with regard to UNMIK itself and to the local structures. In case the PISG are at loss regarding how to follow or respond to the Ombudsperson's recommendations, UNMIK thus remains under the obligation to guide them to comply with the obligations inherent in the human rights treaties applicable in Kosovo. Unfortunately, as more and more fields of work are transferred to the PISG, this aspect of its mandate is often disregarded by UNMIK.

Another dead-end street in this context is the attempt of protecting human rights in a state-like entity that is governed by an international organisation enjoying almost full immunity for itself and its staff members. While the Ombudsperson may raise certain problems with UNMIK regarding the actions of its staff members, the only body competent to respond to his complaints is UNMIK itself. In case the complaints involve allegations of criminal acts, they cannot be passed on to either local or international prosecutors within Kosovo and it is again up to UNMIK to decide whether to waive immunity in such cases or whether the respective staff member will be sent back to his or her country of origin to await trial there. At the same time, immunity can only be waived if the judicial system allows cases to be brought to the point where immunity has to be asserted or, as the case may be, waived. In Kosovo, the competent courts prefer to declare themselves incompetent to decide on issues involving the immunity of UNMIK from the very start, so that the question of whether to waive immunity or not in a certain case cannot even be discussed.

Another example that demonstrated the general problem of immunity involved UNMIK Railway's dismissal of a number of local employees, who now have no possibility of contesting this decision before any court in Kosovo. The UNMIK Railways case is only one example of the lack of direct legal protection afforded in particular to local staff working for UNMIK. The problems posed by the immunity of UNMIK were also raised in Resolution 1417, in which the Council of Europe's Parliamentary Assembly recommended that UNMIK review the state of immunities, in particular by revising UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo so as to ensure that the immunities of UNMIK and KFOR do not hinder the effective implementation of the Parliamentary Assembly's recommendations. The Parliamentary Assembly also recommended UNMIK to ensure that all international officials, including police officers, always be subject to an effective criminal and civil jurisdiction, either local or in their country of origin.

The local employees of UNMIK are not the only group of people who are deprived of taking legal measures in employment matters. On paper, civil servants may raise such questions before an Internal Oversight Board, which was established by UNMIK Regulation No. 2001/36 on the Kosovo Civil Service. In practice, however, this board is still not operative, so that for the last four years, civil servants are deprived of the rights granted to other employees in Kosovo. Permanent secretaries of ministries, chief executive officers of executive agencies and similar senior posts currently suffer the same

fate as long as the Public Appointments Committee provided for in the same UNMIK Regulation is not operational.

Both the immunity of UNMIK and the partial lack of cooperation of UNMIK and the PISG, coupled with a weak supporting legislation, make it very difficult for the Ombudsperson to perform his work in an adequate and effective fashion. This fact taken by itself would not have such a serious impact on the general human rights situation in Kosovo if there were other structures also dealing with the protection of human rights. While since 1999, many supplementary human rights organs have been thought up and discussed, none of them have yet been established. One example of this is the Special Chamber for Constitutional Framework Matters provided for by the Constitutional Framework that was promulgated in 2001. Four years later, the lack of such a chamber is again being criticised by the Parliamentary Assembly of the Council of Europe in its Resolution 1417, but the competent UNMIK authorities are no closer to establishing it than in 2001. In its resolution, the Parliamentary Assembly also supported the idea of establishing a Human Rights Court, an idea which has already been much discussed in the past, *inter alia* in the last Annual Report of the Ombudsperson. The Parliamentary Assembly also recommended that an advisory panel/human rights commission nominated by the President of the European Court of Human Rights and appointed by the SRSG be established. Such a panel/commission would be charged with scrutinising draft UNMIK Regulations and subsidiary instruments for compliance with international human rights standards. While there is the danger that the activities of such an advisory panel/human rights commission would overlap with the work of the Ombudsperson Institution and thus create a certain confusion, establishing a Special Chamber to deal with constitutional framework matters and a Human Rights Court would greatly help to protect human rights in Kosovo by reinforcing and complementing the work of the Ombudsperson Institution. Unfortunately, so far no steps have been taken to implement the recommendations of the Parliamentary Assembly, which do not appear to have found their way onto UNMIK's list of priorities.

At the same time, those whose human rights are meant to be protected often do not even know that they have these rights. Although directly applicable in Kosovo since 2001, the texts of such important human rights documents as the Universal Declaration on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the International Covenant on Civil and Political Rights and the Protocols thereto and the Convention on the Elimination of All Forms of Racial Discrimination, to only name a few, become meaningless in the face of wide-spread ignorance as to their contents and effects by the majority of the population and large parts of the governing authorities, both on a central and on a municipal level. Now and then, seminars are organised on the importance of these human rights treaties in Kosovo, but go unnoticed by the majority of the population. In the absence of concerted efforts by the international and local authorities to inform all inhabitants of Kosovo about the rights granted to them by these legal rights instruments, both the Ombudsperson and certain NGOs and other institutions do their best to fill this gap, but have neither the means nor the competences to do so on a wider level.

In August 2004, agreements regarding two human rights instruments were signed by UNMIK and the Council of Europe, namely the Framework Convention on the Protection

of National Minorities and the Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment.

In the case of the Framework Convention on the Protection of National Minorities, the competent authorities in Kosovo were asked to issue a first report on the implementation of the Convention in February 2005. Following the prolongation of this deadline, the report was eventually submitted to the Council of Europe on 8 June 2005.

With regard to the implementation of the Convention against Torture, there are still certain practical problems delaying the implementation of the agreement between UNMIK and the Council of Europe. While this Convention grants the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment the right to visit any prison or detention centre in Kosovo at any given time, KFOR has so far refused to permit this Committee unlimited access to the detention centre located at the US KFOR Camp "Bondsteel". Negotiations are underway between Council of Europe and NATO in order to find a solution to this dilemma.

In October 2004, the UN Human Rights Committee asked UNMIK to compile a report on the human rights situation in Kosovo. According to recent information, this report has not been prepared yet.

The protection of human rights in Kosovo thus continues to lack the effectiveness existing in other parts of Europe, mainly due to the fact that a proper human rights protection system does not exist yet. In such a situation, the Council of Europe's Parliamentary Assembly, in its recent Resolution 1453 on the current situation in Kosovo that was adopted on 21 June 2005, has called on UNMIK to maintain the Ombudsperson Institution's jurisdiction over international authorities for as long as they remain in Kosovo and to ensure that supplementary bodies offer real improvements in terms of independence and effectiveness.

The situation of minority communities in Kosovo

In Kosovo, the definition of certain ethnic groups as minorities sometimes depends very much on the area. In most municipalities, the ethnic Albanian community is in the definite majority and all non-Albanians are in the minority. This picture is reversed, however, in certain places in north Kosovo such as Northern Mitrovica, the municipalities of Zvečan/Zveqan, Zubin Potok and Leposavič/Leposaviq as well as Štrpce/Shtërpce municipality in the south. In these last-mentioned municipalities, the majority of the inhabitants are of Serbian ethnicity, so that all other communities, including ethnic Albanians, are in the minority.

Then, there are certain significant communities such as the Ashkali, Bosniak, Egyptian, Gorani, Roma and Turkish ethnic groups that are in a minority position in all parts of Kosovo.

The political role played by Serbia in the context of certain problems faced by the Kosovo Serbian community is the one mostly invoked in public when talking about minority communities in Kosovo. The interesting thing about this group is the fact that as

most Kosovo Serbs still consider Kosovo to be an integrated, albeit occupied, part of Serbia and Montenegro, they do not consider themselves to be a minority and thus frequently still argue from the point of view of a majority group living in a minority populated area.

When talking about Serbs and Roma living in Albanian-dominated areas today, there are still many reminders of the riots that took place there in March 2004, resulting in the deaths of 11 Albanians and 8 Serbs and over 1 000 injured. In the course of these violent events, 36 orthodox churches, monasteries and other cultural and religious sites were damaged or destroyed, as well as some 730 houses belonging to Serbs and members of other minority communities in the area. As a consequence, approximately 4 100 people lost their homes.

After the riots, there were many public reactions, both international and local, although many local Albanian politicians only spoke out against the violence after having been prodded to do so. Unfortunately, many problems that resulted from the violent events of March 2004 still have not been resolved entirely. Approximately one-fourth of the persons driven out of their homes are still displaced. While before the so-called “March events”, the relationship between ethnic Albanians and certain minority groups, in particular Serbs and Roma, was very tense, last year’s violence increased the mistrust and tension between these groups even more. In particular the Serbian and Roma communities experience a heightened sense of insecurity, as the riots last March showed them that such events could happen in a matter of days and that if they ever happened again, their ethnic groups would be primary targets.

In his report on UNMIK to the UN Security Council of 14 February 2005, the UN Secretary-General noted that the Government of Kosovo had made the enhancement of minority rights a priority in its programme and that the Prime Minister had reached out to Kosovo Serbs in many public statements. He also stated that there had been no serious inter-ethnic crime – and no murder of a Kosovo Serb – in Kosovo since June 2004 and that UNMIK and KFOR continued to address minority communities’ fears regarding safety and freedom of movement, in particular through cooperation with authorities at the municipal level and community policing initiatives. According to the UN Secretary-General, security for minorities had improved since the violence in March 2004, allowing checkpoints to be removed from most major roads and police escorts minimised. Nevertheless, freedom of movement remained precarious. While Kosovo Serbs on the one hand considered themselves at risk and were thus reluctant to leave their communities or interact with the majority community (and vice versa), the PISG had not yet fully engaged in initiatives for inter-community dialogue. The employment of members of minority communities in the public sector remained at half the stipulated level and the need for an ethnically integrated transport system had not been addressed.

The UN Secretary General also confirmed that the fear of certain minority groups was fed by isolated incidents that were not always condemned or addressed by local leaders involving the stoning of transport services for minorities, hate graffiti on municipal buildings, the looting of unoccupied minority houses and no respect for minority language rights. Signs outside buildings and official documents were often only in the language of the dominant ethnic group. This and other factors led to a situation in which

minority communities' trust in Kosovo's political and administrative systems remained low and their involvement in political process and in senior levels of the civil service remained marginal.

Since February 2005, not much has changed. The overall freedom of movement for Serbs and Roma in many Albanian-dominated areas continues to improve slowly, but is still far from satisfactory. There are still many areas where isolated villages inhabited by Serbs and Roma are only accessible through KFOR checkpoints.

While a train commuting between central Kosovo and Leshak in northern Kosovo is being used both by members of the minority communities and by ethnic Albanians, only special buses travel between the various enclaves or between enclaves and Northern Mitrovica, sometimes with Police or KFOR escorts, sometimes not, as public buses pass through enclaves but do not stop there. In some areas in western Kosovo, KFOR buses taking persons outside enclaves only drive once a week. School buses for Serbian and Roma children still drive through certain areas inhabited mainly by Albanians with Kosovo Police Service (KPS) or UNMIK Police escorts. While in central Kosovo, Serbs are commuting freely in their own vehicles with Kosovo license plates, the situation is different for certain Serbian villages in western Kosovo where the local inhabitants do not dare to move outside their villages without KPS or KFOR escorts. In such areas, the freedom of movement of the inhabitants depends very much on the respective KFOR units. According to the ICRC and other institutions, attacks against Serbs and Roma are no longer as grave, but at the same time such incidents have increased in number, so that the victims of such actions are subjected to a regular pattern of harassment and heckling.

The question of whether limits to the above persons' ability to move freely in the whole of Kosovo are real or merely perceived by the respective Serbian and Roma communities is still the subject of many discussions and can thus not be answered in a clear and unambiguous manner. A number of circumstances including the continuing presence of KFOR checkpoints in certain areas and harassment of members of these minority communities on a regular basis show that there is a continuing and mutual lack of trust between the Albanian majority and the Serbian and Roma minority groups. The fact that many perpetrators of criminal acts committed during and after the armed conflict in 1999 have still not been brought to justice and the considerable number of missing on both sides, but predominantly the Albanian one, only enhances this mistrust, while Albanian leaders are not always very outspoken when it comes to condemning attacks against members of minority groups. While for the moment, it has generally become easier for members of the last-mentioned communities to move around more freely, the reality, in particular in certain parts of central and in western Kosovo is still different. In general, due to different factors, the general situation on the ground, as admitted by UNMIK and KFOR, continues to be volatile.

At the same time, Serbian and Roma villages in particular are mainly closed off to the local markets and trade. Often, the people living in these villages are not able to work their land if it is not located in the immediate vicinity of their houses due to security concerns or because it is now occupied and being worked by Albanian neighbours. Even if they are able to work, these people are rarely able to sell their agricultural products on the local market. Theft of livestock and agricultural equipment is a common occurrence,

while in forested areas trees are cut down on a massive scale and the soil of pastures is dug up by often heavily armed individuals in search of sand. Most of the victims are helpless to stop such actions and often do not dare to call the police. Even if they do, the chances of such cases being processed and resolved are very low, which only enhances the heightened sense of insecurity of certain parts of the local minority population.

With regard to most cases where ethnic Albanian enclaves are situated in areas dominated by Serbs, freedom of movement on a daily basis is not so much of an issue. The situation changes drastically when looking at Mitrovica town, which since the armed conflict in 1999 has been split into a Serbian-dominated north and an Albanian-dominated south. In particular after violent attacks against Albanians in February 2000, many of these people have left the northern half, while the Serbian population of this part of town has swelled following the influx of Serbian IDPs from all over Kosovo. Ethnic Albanians wishing to go to Northern Mitrovica or needing to attend hearings in the courts located there are forced to rely on UN transport to get there and back.

In the first half of June 2005, UNMIK decided, for the first time in over a year, to open the bridge over the Ibar River linking both parts of Mitrovica for civilian traffic. The idea was to open the bridge first for one hour a day and then to increase the number of opening hours by one hour each following week. Due to mass protests on the side of the Serbian population of Northern Mitrovica and the stoning of Albanian cars trying to drive into North Mitrovica, as well as of Serbian cars trying to enter Southern Mitrovica, the opening of the bridge for civilian traffic has so far not been able to proceed as planned.

When looking at other practical aspects of daily life, it might appear surprising that certain Serbian enclaves such as Gračanica/Gračanicë in central Kosovo, Štrpce/Shtërpce in south-eastern Kosovo and Serbian villages in Gjilan/Gnjilane municipality, as well as Northern Mitrovica and surrounding areas are still using the Serbian postal service and telephone lines that have continued to operate in those areas throughout the armed conflict to this day, while the Post and Telecommunications Service of Kosovo (PTK) does not work in such areas yet. Absurdly, it is thus possible to telephone to nearby Pristina from Gračanica/Gračanicë, but not vice versa. Sending letters overseas is easier than sending mail to other parts of Kosovo.

With regard to the supply of electricity, however, Serbian enclaves and villages are provided with such services by the Kosovo Electric Corporation (KEK). In December 2004 and January 2005, when following a drop in the temperature it had become extremely cold, many Serbian villages complained that they had been cut off from the electricity supply because KEK was refusing to repair damages in the electric system if people refused to pay for electricity. This was a general problem that affected not only Serbian villages, but many areas of Kosovo including certain neighbourhoods of Pristina – the failure of a number of inhabitants of these places to pay for electricity services resulted in a very questionable strategy of imposing “collective punishment” in certain areas. In the case of the Serbian villages, the situation was, however, acerbated by the fact that fears for their own security prevented the inhabitants of the villages from straying too far from their villages to find fire wood to warm themselves and their families. At the same time, an extremely high unemployment rate and an increased dependence on humanitarian aid makes it impossible for many of these people to pay for

electricity or other services. The Ombudsperson raised the above issue with the SRSG, noting in particular that it was difficult for the affected individuals to pay for electricity services in the absence of an appropriate metering system in the villages and also noting that according to him, the old Yugoslav Law on Obligations was still applicable, which foresaw that after one year, the right to oblige consumers to pay for public utility debts is prescribed. The SRSG answered that KEK had many times attempted to install such metering systems, but that in several Serbian villages, the respective KEK technicians had not been permitted to enter the villages. With regard to the applicability of the Law on Obligations, he noted that this law had been replaced by UNMIK Regulations and Administrative Directions dealing with public utilities.

The fact that many members of certain minority communities are afraid to move freely around Kosovo also seriously affects their ability to access various forms of health service. A number of villages have their own medical centres providing basic medical treatment. With regard to secondary health services, however, many members of minority communities, in particular Serbs and Roma, rarely visit those hospitals located in areas inhabited predominantly by the ethnic Albanian majority population. Another reason for these persons' reluctance to go to these hospitals is the above-mentioned lack of trust between the above ethnic groups, which causes Serbs and Roma living in the vicinity of Pristina to shun the local hospital there, while certain Albanian detainees in Northern Mitrovica refuse to be treated by Serbian doctors and nurses. If possible, members of the Serbian and Roma groups prefer to use the health care systems in enclaves supported in some cases by both UNMIK and the Serbian Ministry of Health, in some cases only by the Serbian Ministry of Health, which supervises the primary health care facilities in enclaves, pays salaries and provides all related operational costs.

In central Kosovo, there is one hospital in the enclave of Gračanica/Graçanicë close to Pristina, which provides basic medical services including a maternity ward. Due to lack of space, however, mothers are usually sent back home immediately after having given birth. For complicated matters such as blood transfusions, patients are still taken to the hospital in Northern Mitrovica in cars with Kosovo license plates, or to clinics in Belgrade or Niš in Serbia proper. Villages still under KFOR protection rely on KFOR escorts to take serious cases to the hospital in Northern Mitrovica, but the availability and flexibility of such escorts depends very much on the different KFOR units. There is also an internal medicine clinic in Laplje Selo village close to Gračanica/Graçanicë, complete with a pediatric ward for urgent cases, where patients are offered basic health services and then sent on to either the hospital in Gračanica/Graçanicë or the one in Northern Mitrovica. In urgent cases, the clinic in Laplje Selo can also accommodate a few people at a time.

Many members of the Roma communities live in dwellings with non-existent or very basic sanitary facilities that often do not even include running water, so that these people are particularly in danger of catching certain diseases and infections. In certain Roma camps situated in Northern Kosovo, the situation is worse than in Plemetina/Plemetin in central Kosovo, in particular as the proximity to the Trepča/Trepça lead mines appears to pose a grave risk to the health of the inhabitants of these camps. Although there have been many plans on how best to evacuate the camps, there are still no concrete evacuation plans. One positive aspect of this matter is the fact that for the first time since

1999, there appears to be a concrete project to rebuild the former houses of a majority of these people in the Roma Mahalla district in Southern Mitrovica.

Roma are usually only able to access the most basic health services, as the vast majority of them are not covered by any form of health insurance and do not have the money to pay for medical treatment in hospitals. Members of the Albanian-speaking Ashkali and Egyptian communities have fewer problems, but complain that they are often insulted or treated badly when going to health centres or hospitals.

Members of the Gorani and Bosniak groups have no problems accessing health services, but also complain about an unwillingness to help them on the side of the mostly Albanian staff of medical centres and that often, they cannot read what is written on doctor's recipes, as they are only written in Albanian. At the same time, this situation appears to have improved to a certain extent lately.

The difficult economical situation in Kosovo causes vulnerable groups such as minorities in general, but also poor families without any support from relatives or friends, to suffer even more than the rest of the population. One negative result of the vulnerable situation in which many members of minority groups find themselves is the high rate of unemployment, which tops the already very high level of unemployment all over Kosovo. Serbs are practically not even part of the normal job market of Kosovo and thus suffer from an unemployment rate of 80% or more. In some returnee settlements, unemployment even reaches 100%. Often, such areas survive only on humanitarian aid received from international donors and Serbia proper or social aid received from Serbia proper. Members of minority groups, in particular Serbs, Roma, Ashkali and Egyptians are underrepresented in the civil service.

In situations where there are attempts to inform members of certain minority communities about job vacancies or their right to participate in the privatisation process of their former socially-owned companies, this is often not done through written media distributed among, for instance, Kosovo Serbs. Many such announcements are published in the weekly "Jedinstvo", which is distributed in Serbian enclaves and villages throughout Kosovo. In a number of cases, however, announcements were only published either in the Albanian-speaking dailies or in such Serbian newspapers as "Danas" or "Blic", which, except in Gračanica/Graçanicë, some parts of Gjilan/Gnjilane, Štrpce/Shtërpce and Rahovec/Orahovac municipalities and Northern Mitrovica, are not available in other Serbian areas or IDP settlements in Montenegro. Serbian villages in western Kosovo receive practically no Serbian newspapers at all and are only informed about current events if they have satellite dishes linking them to Serbia proper or are able to understand the Albanian news.

But freedom of movement, health access and unemployment are not the only problematic issues faced by minorities in majority-populated areas. Although next to English, Albanian and Serbian are considered to be official languages of Kosovo, the Ombudsperson has received complaints stating that this is often not reflected in public documents or in the correspondence between the central government and municipalities, municipalities amongst each other, or between different organs within municipalities. According to the information received, certain Ministries or municipalities lack necessary

translation units and the respective budget does not foresee any such positions. Letters sent from areas where Albanian is the most frequently used language are allegedly often not translated into Serbian, even if the addressee municipality is one where mostly Serbian is spoken and vice versa. The same apparently applies to municipal documents, which in some cases, regardless of the language spoken by the addressee, issue travel documents, vehicle registration and other important documents only in the language spoken by the majority population. Certain bills and notices, depending on the municipality, seem to be issued only in Albanian. Although according to law, public signs all over Kosovo are obliged to sport the names of towns and villages in English, Albanian and Serbian, there are still areas where signs are only put up in the language spoken by the majority of the area. Often, there does not appear to be a sufficient reaction on the side of certain municipalities to replace signs where names in the minority language have been painted over or scratched out. The Turkish community also complains that in Prizren Municipality in southern Kosovo, where many members of this community live, signs are not written in Turkish. Members of almost all minority groups living in areas inhabited by a majority speaking a different language complain that in public documents, their names are spelled according to the spelling of the majority language. The Ombudsperson is currently conducting investigations into some of the above aspects of the use of official languages throughout Kosovo and will issue a report on this subject matter in the near future.

On television, the amount of time allocated to programmes in minority languages has increased. The local television channel Radio Television Kosovo (RTK) offers news programmes in different languages several times a day. However, such programmes often still do not represent a method whereby representatives of the various communities can inform the minority public about important events or other community-related issues. This does not apply so much to radio stations, which are frequently used for this purpose. On 1 June 2005, four new radio stations in Mitrovica region began producing and broadcasting daily news programmes in the Roma, Bosnian and Turkish languages with the financial support of the OSCE Mission in Kosovo. The news programmes are produced and anchored by journalists from the respective communities, which hopefully will enhance the circulation of information within these communities.

At the same time, mainly the Turkish and the Roma communities complain that there are no newspapers in their languages.

Another problem very much linked to the above is the problem of education for children of minority communities in their own languages. While those Serbian children with schools nearby usually attend parallel schools funded and operated by the Serbian Ministry of Education and Sports and Turkish children can visit Turkish-speaking schools, other communities do not have such support and backing.

Roma have the biggest problems in this respect, as there are no schools or even schoolbooks through which their children could be taught in Roma. As with other matters, the Roma community in Kosovo is neither strong enough nor powerful enough to obtain sufficient funding or other support for at least one class in primary school, or books. At the same time, regardless of whether they visit Albanian-speaking schools or Serbian-speaking schools in Kosovo, many Roma pupils complain that they are harassed

and insulted by their class mates or teachers, which causes some of them to stop going to school altogether. Roma also often have no financial means to send their children to school or to equip them with basic materials to this end.

While the Albanian-speaking Ashkali and Egyptians attend Albanian-speaking schools, the members of these communities complain that their ethnic groups are not identified as such, nor mentioned at all in lessons at school.

There are some Bosniak language schools following the Kosovo curricular and two branches of Pristina University specifically for Bosniak students located in Pejë/Peć and Prizren. While there were plans to let Bosniak students follow other university courses in Albanian and then let them do their exams in the Bosnian language, this was not pursued by the university, so that it still remains difficult for Bosniak students to pursue their studies in other countries in the region. There is also a lack of school books – while the Ministry of Education, Science and Technology issued some, these have so far not been sufficient.

Gorani pupils continue to have great problems with regard to education in their language. While it would be possible for Gorani children to follow courses in Serbian due to its similarity with the Gorani language, most of the Serbian schools located in central or northern Kosovo are too far away for many members of the Gorani community, who mostly live in Dragash/Dragaš municipality in the southernmost tip of Kosovo. Whereas some Gorani children attend Albanian-speaking schools nearby, others still hope to find a way to educate their children in a language close to Gorani.

The main problem in this respect is the fact that, over the last few years, the Kosovan Ministry of Education, Science and Technology began implementing educational reforms aimed at adapting the school system in Kosovo to the educational standards of most other European countries, reforms which other countries in the region were slower to endorse. Following the Kosovo curricular would thus make it difficult for Gorani pupils to continue their higher education in Slavic language schools and universities in such places as Serbia proper, Montenegro, Bosnia and Herzegovina and the FYROM.

In recent years, the Minister of Education, Science and Technology had agreed to exempt Gorani pupils from following the new curricular as of the ninth grade. Some representatives of the Gorani community ask that this exemption be extended until educational reforms are implemented in some of the surrounding Slavic-speaking countries of the region in 2006. The Ministry of Education, Science and Technology refused to do this and the SRSG apparently also refused to become involved.

The situation of displaced persons inside and outside Kosovo and perspectives for their return

Following the end of the armed conflict in Kosovo in 1999 and the subsequent withdrawal of the Yugoslav army and Serbian police, thousands of persons, predominantly Serbs and other persons of non-Albanian ethnicity, left their homes for fear of reprisals. Some of them went to Serbian enclaves and villages on the territory of

Kosovo, to Northern Mitrovica or to live in collective centres. Many went to Serbia proper and a significant number of people to Montenegro and the FYROM. As of 2000, a considerable number of ethnic Albanians previously living in the Northern part of Mitrovica fled to Southern Mitrovica and other areas mainly inhabited by Albanians.

After the violent events in March 2004, another 4 100 non-Albanians became homeless and in need of refuge and accommodation, of which, according to the UNHCR statistics, 1 467 persons still remained displaced at the end of May 2005. Many of them still stay in makeshift settlements in schools or containers, while around a dozen displaced Serbs from Prizren are still living in the German KFOR camp in Prizren.

In late August 2004, the difficult situation of a number of persons of the Ashkali community from Vushtrri/Vucitrn staying in a French KFOR base in Novo Selo at the time was resolved thanks to a coordinated effort of different institutions and structures, *inter alia* the Ombudsperson, UNMIK, French KFOR and the Serbian Coordination Centre for Kosovo and Metohija. Several months ago, some Ashkali returned to Vushtrri/Vucitrn, where they are now living under the constant protection of the Kosovo Protection Corps (KPC). Some have dispersed to live in other parts of Kosovo, while a limited number has been accommodated in a motel close to Vushtrri/Vucitrn, the facilities of which have been converted into a *de facto* collection centre. Many of these people have also left for other parts of Europe.

A considerable number of Roma IDPs still living on the territory of Kosovo continue to stay in Plemetina/Plemetin camp close to Obiliq/Obilić and in four camps in the northern part of Kosovo. Two of these camps, Kablare and Česmin Lug, are in Northern Mitrovica, one is in Leposavić/Leposaviq and another one in Žitkovac in the municipality of Zvečan/Zveqan. The conditions in these camps are appalling and are marked by poverty, malnutrition and a lack of the most basic hygiene and health services. All of the camps were at first intended to be temporary solutions for the many Kosovo Roma who had fled their homes in 1999, but now, six years later, they are still there.

As regards the camp in Plemetina/Plemetin close to KEK, the Municipality of Obiliq/Obilić recently announced its plan to tear down the settlement and to build social accommodation for the former camp inhabitants in the same place. The inhabitants of Plemetina/Plemetin have so far rejected this plan as they do not want to continue to live so close to KEK and fear that they will be further marginalised if the inhabitants of the camp are simply moved to other accommodation without mixing with the rest of the population. Many of these people are forced to remain in the camp for lack of any possibility to rebuild their houses destroyed in 1999. A few persons from other municipalities in Kosovo have been offered alternative accommodation in the respective municipalities and have thus already left the camp. As regards the camps in Northern Kosovo, however, despite continuing efforts in this direction, there are so far no concrete plans to close them down.

Most of the displaced persons living in the camps in Northern Kosovo are from the Roma Mahalla district in the southern part of Mitrovica, which was completely destroyed in June 1999. For the last few years, there have been many efforts to rebuild the Roma Mahalla, mainly on the side of the Danish Refugee Council and UNMIK, but these

attempts were blocked by the apparent lack of cooperation on the side of the municipal authorities of Mitrovica. It is only recently that there has been any real progress in this direction, as demonstrated on 18 April 2005, when an Agreement on Return to the Roma Mahalla was signed by the competent UNMIK Regional Representative and the President of the Mitrovica Municipal Assembly and co-signed by international stake-holders, intending to commence the process of construction of the first of the houses in the Roma Mahalla in 2005. On 5 May 2005, UNMIK and the PISG organised a donor's briefing and appeal for funds to support the reconstruction of the Fabricka Mahalla, which was attended by government representatives of various countries as well as representatives of the European Commission/EU and the US Agency for International Development (USAID). Numerous other meetings of the parties involved have been held in the meantime in order to coordinate the work of different institutions and, at least on paper, there appears to be a strong commitment to involving representatives of the Roma community in these efforts. In practice, a few governments, together with UNMIK and the PISG have agreed to provide financial assistance to the project, but considering the scope of the project, these contributions so far only cover a part of the costs involved.

However, the rebuilding of the Roma Mahalla, which has already been described as the largest returns project hitherto undertaken in Kosovo, will take time. Even after the details of organising, funding and eventually rebuilding it have been resolved, there are also certain practical issues that will need to be taken care of, for instance, the question of what will happen to those inhabitants of the camps who are not from the Roma Mahalla and who form 30% of the camps' population. Another question that begs asking is whether the return of people to a reconstructed Mahalla would actually work, namely whether it would be possible for the returnees to live a peaceful and normal life in the midst of a majority of ethnic Albanians.

But, returning to the here and now, the laudable attempts to rebuild the Mahalla do not help the plight of those persons who still live in the camps on a day to day basis.

The inhabitants of the Žitkovac camp, as well as those persons living in the Kablare and Česmin Lug camps in Northern Mitrovica, are worse off than their counterparts in Leposavić/Leposaviq, mainly because they are situated dangerously close to waste dumps belonging to the remnants of the Trepča/Trepça mining complex which used to be part of the largest lead and zinc producer in Yugoslavia.

Regarding the Žitkovac camp, the last months have seen an increase in media coverage on the conditions there, in particular the fact that the proximity to the Trepča/Trepça waste dumps leads to severe health problems for the inhabitants of the camp. Strangely enough, the media reports have almost exclusively been focused on this camp, although the camps in Northern Mitrovica suffer from the same problems. Even if many voices, some of them from inside UNMIK itself, have been complaining about the bad health conditions in these camps, there has so far not been any concrete and workable plan to evacuate the people living there.

In 2004, the World Health Organisation (WHO) described the situation in Žitkovac as "urgent" and the ICRC called for the immediate evacuation of the camp, but both calls were so far to no avail. In the middle of last year, the WHO examined twelve children

living in the camp and found exceptionally high levels of lead in their blood. Six of these cases were considered to be medical emergencies. These findings only added to a general and growing suspicion that the inhabitants of this camp, but also of the camps in Northern Mitrovica, are being poisoned by toxic waste, which according to many is contaminating the very soil on which the camp is built.

In February 2005, a so-called Risk Management Plan intending to decrease the lead exposure for the inhabitants of the Žitkovac, Kablare and Česmin Lug camps, was proposed. This plan was eventually implemented in April 2005 and by the beginning of May, mainly the Danish Refugee Council and municipalities had begun distributing hygiene packs, wood stoves and increasing access to clean water, as well as low fat fortified milk and nutritional supplements. This led to a significant improvement of sanitation in and around the camp. Twelve children were taken to Belgrade to be tested and treated, with the aim of relocating them somewhere else permanently. These measures, however, do not do much to take care of the real problem faced by all inhabitants of this camp and the camps in Northern Mitrovica— namely that as long as they continue to live in these camps, their health will keep on deteriorating.

Given the fact that the reconstruction of the Roma Mahalla may take years, it is important that the urgent question of evacuating the people from the Žitkovac, Kablare and Česmin Lug camps be treated separately. Leaving aside the question of why these camps were built in such a high-risk area in the first place, it is paramount that UNMIK, together with the local authorities and other entities involved take concerted and immediate steps to move these people. According to recent information, the international and local authorities and institutions involved are shuttling back and forth in an attempt to resolve this issue as soon as possible.

The above paragraphs have dealt with those displaced persons still living in Kosovo. At the same time, thousands of displaced persons, mostly of Serbian or Roma ethnicity, continue to live in settlements in neighbouring areas, mainly in Serbia proper, Montenegro and the FYROM. The Ombudsperson is in constant contact with the representatives of these groups of people and raised their problems with the Prime Ministers of Serbia and Montenegro respectively in the last reporting phase, unfortunately to no avail at the time.

According to a report issued by the ICRC on IDPs in Serbia and Montenegro in May 2005, there are currently almost 230,000 IDPs from Kosovo still staying there. One of the main problems that both IDPs in Serbia proper and IDPs in Montenegro share is the fact that under international law, they are not considered refugees and thus do not enjoy the same rights or support as people originally from Croatia or Bosnia, while suffering from similar problems. At the same time, they do not have the same rights as the citizens of the places where they are staying, although they are in need of additional protection because of their increased vulnerability – according to the ICRC report, it is more difficult for IDPs to obtain personal documentation, exercise property rights or access health care or social welfare.

It appears that the collective centres where many of these IDPs are still staying – according to recent information, almost 7,000 people still live in collective centres in

Serbia proper - are now left with little or not support from the international community. The conditions there are very difficult and the buildings, which have often not been maintained for years, hardly offer acceptable living conditions. The situation of Roma IDPs is even worse, as they are frequently not covered by any form of social security.

In September 2004, the Ombudsperson again raised the issue of the status and rights of IDPs in Serbia proper in a letter written to the Prime Minister of Serbia. He also informed the Prime Minister of Serbia of the plight of displaced Roma from Kosovo who were threatened with expulsion from certain barracks in Belgrade. This letter met with no response.

Also in September 2004, the Ombudsperson sent a similar letter to the Prime Minister of Montenegro asking him to grant the displaced persons from Kosovo staying in Montenegro the same rights as those granted to refugees. In October 2004, the Prime Minister of Montenegro sent an answer in which he informed the Ombudsperson that those 18, 196 IDPs from Kosovo still staying in Montenegro were receiving maximum protection and support from his Government. According to him, refugees and IDPs were being treated the same and received adequate protection in terms of health and education, as well as social assistance for the most vulnerable groups of people. At the same time, the Prime Minister of Montenegro complained that many international organisations and NGOs previously assisting these people had left Montenegro, so that now, it was only up to the Government to help them.

The positive picture painted by the Prime Minister of Montenegro is in stark contrast to the situation of IDPs from Kosovo living in Montenegro as described by the International Committee of the Red Cross (ICRC) in its report of May 2005. According to the ICRC, the Montenegrin authorities have different policies concerning refugees and IDPs from Kosovo. Because the latter are considered to be residents of Serbia, assistance for them is considered to be Serbia's responsibility. The Government of Serbia, on the other hand, considers that the needs of IDPs living in Montenegro fall under the mandate of Montenegro, due to the union existing between Serbia and Montenegro. In such a situation where neither government considers itself responsible, IDPs in Montenegro cannot register properly, nor can they receive unemployment assistance. Certain vulnerable groups such as the elderly, the disabled, orphans or single mothers, also receive no additional benefits. One should, however, welcome the fact that recently, the government of Montenegro has adopted a new strategy for refugees and IDPs which *inter alia* also foresees the integration of such persons in Montenegro. If properly implemented, this strategy could help these people gain a new perspective for their future lives.

The above issues were raised by the Ombudsperson several times on an international level, *inter alia* with the Council of Europe.

As regards displaced persons from Kosovo staying in the FYROM, the Ombudsperson notes that these persons are mostly of Roma origin. The majority of these people have requested asylum from the Macedonian authorities, but were either rejected outright or have still not received answers to these requests. The settlements in the FYROM appear to lack adequate health protection and other basic needs, which is mostly due to the fact

that the FYROM faces severe economic and structural problems and thus often appears unable to help even its own displaced persons.

The question of whether, if and when all displaced persons inside and outside Kosovo will be able to return to their homes depends on a variety of factors, but most of all on the question of whether these people will feel that they can again lead a decent life under normal circumstances. For the moment, this is not always possible. One of the reasons for this is the fact that Kosovo has been living in political limbo for six years now. At the same time, an ever worsening economic situation leading to an increase in poverty and unemployment and a heightened sense of vulnerability of the entire population causes many people to think twice about whether it is actually a place worth returning to.

With regard to those who have still decided to return, it is difficult to speak of sustainable returns in the real sense of the word, especially in some areas in Western Kosovo. Even if houses have been reconstructed, in particular after the events of March 2004, the actual reconstruction of life cannot be achieved as easily.

In general, where persons of Serbian or Roma ethnicity return to locations surrounded by areas inhabited by the majority population, their situation is everything but sustainable. Often, land that formerly belonged to them is occupied, there is only a limited freedom of movement and the already quite serious level of unemployment contributes to the difficulties of sustaining oneself. Some returnee villages like Belo Polje/Bellopoje still rely exclusively on humanitarian assistance, including food deliveries. This lack of basic needs, along with a lack of elementary educational facilities and teachers causes many women and children to stay in Serbia proper or in Montenegro even if their husbands now live in returnee villages in Kosovo.

Fortunately, UNMIK has, over the last months, changed its attitude regarding the repatriation of returnees. While before, returns programmes focussed on returning persons to their original home communities, there is now more focus on the wishes of the returnees – they now appear to have more of a choice on whether to return to their old home communities, provided they still exist, or to other places in Kosovo inhabited by members of their ethnic group.

For the most part, the number of IDPs from Kosovo who are willing or able to return to areas populated mainly by a different ethnic group continues to be very low. Between July 2004 and May 2005, according to monthly surveys conducted by the UNHCR, approximately 1882 persons of minority ethnicity returned from internal and external displacement. This includes displaced persons of Albanian ethnicity returning to areas, mostly in northern Kosovo, where they are in the minority. Over the above-mentioned period, however, only four persons belonging to this group have returned.

At the same time, it is difficult to say how far such statistics can be trusted, as rumours circulate that a certain number of Serbian displaced persons only return for a few days to register in Kosovo in order to become eligible for certain benefits, for instance pensions. After having registered, they then return to their various settlements in Serbia proper.

More focus than before should be placed on improving the lot of IDPs staying outside Kosovo. Unfortunately, UNMIK still concentrates mainly on returns, as can be seen by recent talks between UNMIK and the PISG on one side and the FYROM and Montenegro on the other regarding the establishment of proper mechanisms to facilitate the voluntary return of refugees and displaced persons to Kosovo. Protocols of Cooperation between UNMIK and both of the above governments, under constant involvement and consultation with the PISG, are currently under preparation.

Instead of being moved around like pawns on a chess board in an endless attempt to reach the high standards set by UNMIK for Kosovo, IDPs need to have a free choice in any respect of whether to return or to stay where they are currently residing. If they receive a certain amount of assistance from UNMIK and the Kosovo government for returning, there is no reason why they should not receive similar support if they decide not to, so as to enable them to rebuild their lives somewhere else outside Kosovo. It appears inconceivable that there is no support for the many people who are forced to live in inhuman conditions in IDP settlements while millions are spent rebuilding houses that may be sold a short time later.

Such an approach would give more consideration to the reality in Kosovo today, which is that emigration, even if to a relatively modest extent, continues on a regular basis. For the year 2004 alone, the Serbian Commissioner for Refugees officially registered 277 persons who had left Kosovo for Serbia proper. Although this number is half of the number that left Kosovo for Serbia proper in the year 2003, a recent survey conducted by the Riinvest Company showed that the wish of people to remain in Kosovo in general was not very high, regardless of the ethnicity of the persons asked. Interestingly enough, however, proportionally more ethnic Albanians were ready to emigrate from Kosovo than persons of Serbian ethnicity. While the former usually based their willingness to leave on economic reasons, the latter did not want to stay for political reasons.

When talking about granting IDPs from Kosovo the free choice of whether to return or to stay where they are, it is important that this choice is based on adequate knowledge about the situation in Kosovo today and about their future prospects there. It is doubtful whether the information campaigns initiated by UNMIK describe the situation of returnees in Kosovo in its entirety. In particular, there appears to be only very limited information about the future place of returnees in Kosovo society once the final status is resolved. When discussing with IDPs currently residing outside Kosovo, it must be made very clear to them that the Kosovo that they are asked to return to, as well as the role that they will play in its society, will apparently be very different from the Kosovo they left in 1999.

In general, the approach to IDPs and to the prospects for their return to Kosovo should become more flexible. Instead of devising new ways of persuading people to return, UNMIK, the PISG and the governments of areas in the region currently hosting IDPs from Kosovo should realise that many Serbian and Roma IDPs may never want to or be able to return. In such a situation, all of governments and other entities involved should think of ways to improve the lives of these people so that one day, they might be able to live a normal and sustainable life in a place of their choice.

Missing persons

The problem of those persons still missing from the time shortly before, during and after the 1999 conflict continues to occupy the minds of the inhabitants of Kosovo, regardless of their ethnicity or background.

Currently, based on information received from the ICRC in mid-June 2005, 2 716 people are still reported missing. There are about 1 000 cases where remains have been found and are still waiting to be identified, while in the remaining 1 700 cases, there is as yet no trace of those reported missing. While there remains some hope that more grave sites are still waiting to be discovered, the probability that the remains of many of these people were destroyed at some point is quite high.

The question of bodies of Kosovo Albanians that were first buried in Kosovo and then, shortly before the end of the conflict in 1999, exhumed and brought to Serbia, continues to remain an emotional issue. Currently, this number is at around 300 bodies, so that these remains only cover a small part of the entire number of persons still missing. This shows that the anger and frustration felt by the Kosovo public in this respect do not concern mere numbers but mostly have to do with the fact that the return of these bodies to their families has been unnecessarily delayed for such a long time, mainly due to a lack of cooperation on the side of the Serbian authorities in the past.

After several years of the issue of missing persons being side-lined, it was first taken up again in October 2003, at the first meeting between the Kosovo government and representatives from the Government of Serbia in Vienna, Austria. At this meeting, both parties decided to establish working groups to deal with this and other “technical issues”.

The first meeting of the Working Group on the Missing, chaired by the ICRC and consisting of representatives of Kosovo Albanians, representatives of the Serbian Government, forensic specialists from both sides and UNMIK, took place in March 2004, two weeks before the riots of 17 – 19 March 2004 temporarily put an end to any further contacts until March 2005, when the Working Group met for the second time. Since then, it has been meeting on a more regular basis – the next meeting took place in June 2005 and following that another meeting has already been scheduled for the end of September 2005.

The meeting of the above Working Group broke many taboos at the same time – first of all, it was the first time that the subject missing persons was publicly raised in such dimension, both as regards the mostly ethnic Albanian human remains still in Serbia proper and as regards the issue of missing persons of non-Albanian ethnicity. At the same time, it was also the first time that Kosovo Albanians became involved in this issue on a public political level, as it had hitherto been regarded very much as a reserved power of UNMIK due to its links with criminal investigations. Finally, it was during these meetings that, apparently for the first time, both parties involved began to recognise their own responsibility in assisting UNMIK and the other actors involved in finding the remains of those reported missing.

This mutual sense of responsibility is, however, only just beginning to appear. For the moment, most initiatives originate from the international actors involved. Information continues to arrive by default due to the ongoing process of forensic investigations, rather than from the former parties to the Kosovo conflict.

In general, however, cooperation has increased and led to more tangible results in a much shorter time than before, mainly because the necessity of achieving real progress in this haunting issue has been understood by more and more parties involved. One can only hope that the progress made so far will continue, so that an increasing number of people in Kosovo, regardless of their ethnicity, will finally know the whereabouts of their missing family members.

Forced Returns

One problem that has gained more and more importance in this reporting period is the dire situation of those Kosovans who have lived for many years in countries of Western Europe, where many of them initially arrived as refugees, and who have been forced to return to Kosovo following the end of the 1999 conflict and the ensuing stabilisation of the situation in Kosovo.

While persons who return voluntarily usually have the opportunity to prepare their return before actually arriving in Kosovo, forced returnees mostly arrive here totally unprepared, often with no money and no accommodation. The majority of them have problems adapting to the new Kosovo, which is fundamentally different from the place they left behind ten, often twenty years ago.

Having arrived in Kosovo, these people soon learn that, contrary to promises made to them in their former host countries, there are no institutions to help them ease back into Kosovan society, no information centres, no social assistance, no accommodation, no medical or psychological treatment and no language classes for their children, who often speak only the language of the former host country. The biggest problem of all is that although informed well in advance about the various host countries' desire to send back as many former refugees as possible in the shortest possible time, there have so far not been adequate efforts to deal with the problem of forced returnees on the side of the Kosovan authorities, international and local. This failure to acknowledge the problem of forced returns has many practical implications, the most important one being the lack of budget to develop an adequate infrastructure to help these people.

Although guidelines of the International Organisation for Migration (IOM) stipulate that returnees are meant to return to their "home community", many such "home communities" often no longer exist. In such cases, people are left on the street and forced to go to such shelters as may exist. While in the past, UNHCR has stepped outside its mandate to pay for the accommodation of particularly vulnerable individuals, it has recently discontinued this practice, mainly for budgetary reasons.

But this problem does not only have humanitarian implications. Another very important consequence of the lack of assistance to forced returnees in Kosovo is the fact that many of them will attempt to return to their former host countries, thereby creating a never-

ending “revolving-door” situation in which they are again arrested and sent back, only to seek new ways to return. Leaving an ever-growing number of persons with no support or accommodation could also help create a large destabilising force in Kosovo, which is already struggling with the problems created by a poor economy, ensuing unemployment and a very young population.

These implications are, however, ignored by certain European countries, which over the last months have been sending back Kosovans, sometimes with little to no regard for human rights standards. While Norway and Germany in a few cases insist on expelling persons back to Kosovo regardless of whether these persons are in the middle of medical or psychological treatment, Finland in one case returned a family by plane despite the fact that the mother of the family was eight months pregnant and in another expelled a woman who, one month after she had undergone a complicated birth involving surgery, was still suffering from haemorrhages. In the former case, UNMIK had not been informed in time, but since Finland refused to take the family back, the international administration could do little more than take the matter up with the Finnish authorities retrospectively.

With regard to the return of persons who are in the middle of such medical or psychological treatment, the respective countries ease their conscience by arguing that the same treatment can also be provided in Kosovo. Although such information is being submitted to courts in certain host countries, these reports do not contain the entire truth. A note prepared by the UNMIK Office of Returns and Communities and the Ministry of Health in January 2005 and intended as advice to governments and NGOs stated that the prevailing problems compromising Kosovo’s ability to effectively treat post-traumatic stress disorder are the general lack of mental health professionals in Kosovo, in particular of such professionals who can assess people with special needs, insufficient financial resources and the inaccessibility of services for those living in rural areas. While the mental health needs of the population were very high, the human and institutional resources in this field were very low, so that persons in asylum countries suffering from post-traumatic stress disorder should conclude that treatment before returning to Kosovo, where such disorders could not be treated using psychotherapy or socio-therapy treatment. Potentially, in the absence of such treatment, the health status of persons forcibly returned to Kosovo before the termination of their treatment in host countries would deteriorate even if they are lucky enough to have the money to buy medication.

Until recently, mainly persons of Albanian, Gorani and Bosniak ethnicity were being returned. This changed following a position paper issued by the UNHCR in March 2005, in which it stated inter alia that people of Ashkali and Egyptian ethnicity now appeared to be better tolerated in Kosovo and that while these groups could have individual claims for continued international protection, they no longer needed international protection in general. This was a signal to many European countries that, following certain agreements with UNMIK to send back members of the Ashkali and Egyptian community, had suspended the return of members of such minority communities after the riots in March 2004, but then again started making preparations to send back Ashkali and Egyptians as soon as possible. Already in April 2005, Germany and UNMIK signed a so-called “Agreed Note” to this purpose, in which Germany proposed approximately 300 persons of Ashkali and Egyptian ethnicity per month for forced return, starting in May 2005. As

of July 2005, this number would increase to 500 and as of the beginning of 2006, the number of persons proposed for forced returns would no longer be limited in any way. According to the parties signing this “Agreed Note”, following an individual screening, no more than 20% of the proposed returnees would realistically be expected to return to Kosovo, but this estimation did not include over one hundred Ashkali and Egyptians who had already been singled out for expulsion quite some time ago, but who, for different reasons, had so far not been returned.

Perhaps the most worrisome part of this “Agreed Note” concerns the return of certain Roma to Kosovo. As UNMIK apparently expects considerable improvements in the situation of Roma in Kosovo, it agreed to the possibility of allowing the return of an albeit small amount of criminal offenders of the Roma community who had been sentenced to at least two years’ imprisonment in Germany and who were not in need of protection. Leaving aside the question of whether these Roma are not in need of protection merely because they are criminal offenders, it is quite surprising and not very reassuring given the volatile situation in Kosovo that the return of a community which, according to the UNHCR, is in continued need of international protection, is initiated by those Roma who are proven serious criminals.

On 1 June 2005, this issue was raised with the SRSG. By letter of 15 June 2005, he responded by confirming the above facts and by stating that the first flight carrying 5 Ashkali back to Kosovo from Germany had taken place on 19 May 2005, while scheduled flights bringing returnees to Kosovo in May and early June had contained 14 Ashkali and Egyptians. The SRSG noted that while incorrect media reports had denounced the mass return of Roma to Kosovo, he did not expect such expulsions in the near future from Germany or any other host countries in Europe, nor had UNMIK agreed to this.

The SRSG admitted that while Kosovo did have the capacity to absorb limited numbers of the Ashkali and Egyptian communities, it was not yet in a position to absorb very high numbers, a fact that UNMIK was constantly pointing out to governments. He promised to do so again during a high-level meeting with host country governments on 16 June 2005.

The SRSG further agreed that joint efforts were needed to develop the integration capacity in Kosovo. While pointing out that the ultimate responsibility to socially assist and integrate returnees lay with the PISG central and local administration, he stated that UNMIK – hopefully supported by specialised agencies and donors – would assist with the development of a scheme to address the immediate needs of returnees including forced returnees. Such a scheme could include temporary shelter pending reconstruction of houses, reception facilities or access to social housing and services. As a first step, the IOM had agreed to support UNMIK in the reception and processing of forced returnees from Western European countries upon their arrival in Kosovo and initial talks on this subject had already been held. According to the SRSG, the IOM was currently preparing a project proposal to be submitted to host governments for funding support in this area. One of the aims of this project was to build sustainable capacity in the PISG, particularly in the municipalities, to receive and absorb such returnees.

Finally, the SRSG was looking into hosting a meeting soon on these questions which would involve relevant ministries and municipalities as well as representatives of the international community in Kosovo, in order to inform the stakeholders about the needs of returnees and clarify the roles and responsibilities regarding their social integration at the municipal level.

This letter of the SRSG shows that UNMIK is aware of the problem and that, together with the PISG and other international organisations, it is trying to find a solution to the issue.

Property rights

As in many other fields, the lack of a strong and constant implementation of laws in Kosovo leads to a situation where property owners are only protected if they are able to protect themselves. In circumstances where even municipalities frequently do not feel obliged to follow the laws on property and construction, illegal construction continues to run rampant. Complaints against inactivity or corruption on the side of the competent municipal organs are either ignored or dismissed, while the existing judicial system too frequently issues certain decisions on paper that in the end it is not strong enough to execute properly.

Those parts of the population that are most vulnerable as they have little backing or political or other connections, for instance poor people or members of certain minority communities, are the first to suffer in such a situation. While they are restricted by the applicable laws, these same laws practically do not afford them the protection they are entitled to on paper. In cases involving illegal construction, where neighbours' properties are damaged or development schemes are simply ignored, to name a few examples, the municipalities often remain inactive and interim measure requests sent by the Ombudsperson to UNMIK or competent Ministries of the PISG are left unanswered. Interim measure decisions issued by courts often meet the same fate.

Those members of the Serbian and Roma minority communities living in rural areas are literally not protected at all. While it is often difficult for owners to access their properties for security or other reasons, persons illegally occupying these properties refuse to leave and even threaten the rightful owners when they try to repossess these properties, while fields in the countryside are often worked or exploited by Albanian neighbours with virtual impunity.

With regard to the illegal occupation of apartments and houses, it must be noted that the HPD is the responsible organ for treating claims of persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who lost these rights as a result of discrimination. Such claims have since 1999 been outside the jurisdiction of the local courts. HPD now plans to terminate its work in the end of 2005. While there continue to be many complaints against the HPD regarding delays in issuing or executing decisions on the repossession of property, it appears that by the end of the year, most cases will be resolved. In any event, such problems are now overshadowed by the question of what will happen after the end of the HPD's mandate. While the question of repossession of apartments and houses is expected to be turned

over to the local courts, there are plans to establish some form of agency to deal with the administration of certain premises belonging to persons who, for different reasons, have not yet returned to repossess their properties. The exact nature of this agency does not appear to have been determined yet.

Those houses belonging to members of Non-Albanian communities which were destroyed during the violent events of March 2004 have by now been mostly reconstructed, but unfortunately this reconstruction was often not undertaken in a diligent and proper manner. At the same time, subsidiary buildings such as stables or barns have only begun to be reconstructed recently. Compensation claims regarding the destruction of property, both moveable and immovable, are currently still pending before the courts of Kosovo and due to a summary suspension of such cases ordered by the UNMIK Department of Justice, it still remains unclear when they will continue to be processed and what the outcome will be.

Finally, damages inflicted on properties after the end of the armed conflict in 1999 and which were not caused during the violent events of March 2004 are currently not being compensated at all. Persons wishing to rebuild houses destroyed outside these events, but lacking the money to pay for this themselves, often find themselves going from one administrative office to the next without receiving any answers to their requests for help.

Negative effects of the still insufficient level of cooperation between UNMIK and the Government of Serbia

Despite certain improvements over the last few years, the cooperation between UNMIK and the authorities in Serbia proper is still not at an adequate level.

One of the main consequences of this problem is the fact that many persons suspected of having committed criminal acts in Kosovo and allegedly hiding in Serbia proper are not being brought to justice. In the beginning of the reporting period, the Ombudsperson raised this issue with the Minister of Justice of Serbia regarding one such case, but never received a response to his letter.

The political dispute between UNMIK and Serbia also leads to practical problems for many inhabitants in Kosovo. One of these has repercussions for all citizens of Kosovo – many documents issued by UNMIK are still not fully acknowledged in Serbia proper and in some other countries. Administrative offices in foreign countries often ask for the old Yugoslav documents, which creates problems for many inhabitants of Kosovo since the majority of these documents are archived in Serbia proper and thus relatively unreachable. In individual cases, usually involving very persistent lawyers or other institutions such as, for instance, the Ombudsperson Institution, people have been able to obtain civil documents, but this is more the exception than the rule.

In order to travel to Serbia proper or some other countries in the region, the inhabitants of Kosovo still need to go to parallel institutions that operate in enclaves or in Serbia proper to ask for passports or driving licenses. The KS license plates issued by UNMIK are also not recognised in Serbia proper and some countries in the region and persons wishing to

go to Northern Kosovo are forced to change the license plates after having passed the KFOR checkpoints, or take off license plates altogether. The same procedure can often be witnessed at the administrative borders between Kosovo and Serbia proper.

On the other hand, the problem of license plates issued by parallel institutions in the rest of Kosovo now appears to have been resolved. UNMIK has issued a regulation stating in clear terms that license plates issued by institutions unrecognised by UNMIK could be exchanged for Kosovo license plates issued by UNMIK until 1 July 2005 free of charge. Recently, this date was extended until the end of December 2005. Persons wishing to travel to Serbia proper and other countries not accepting license plates and car documents issued by UNMIK will, however, be able to keep the now illegal license plates for further use in those places outside Kosovo. Unfortunately, the contents of this law were not made entirely clear to the officers of the KPS, many of whom began prematurely confiscating license plates and car documents issued by parallel institutions before 1 July 2005. In some cases, they also confiscated license plates legally issued by the normal non-parallel civil administration in Serbia proper, which are still permitted to circulate in Kosovo.

Next to the KPS, certain Serbian-speaking parts of the population also had difficulties understanding the new regulation as by the beginning of June 2005, it had still not been translated into Serbian.

Another problem posed by the difficult relations between the authorities in Kosovo and those of Serbia proper is the fact that so far, it has not been possible for Kosovo Albanians to dissolve their savings accounts in the former Jugobank. The Ombudsperson has written several letters on this to the competent Serbian authorities in this reporting period. Unfortunately, there have as yet been no results in this question. The last information from the Serbian side was that following the Law on the Settlement of Public Debt of the Federal Republic of Yugoslavia through Citizens' Foreign Exchange Savings and ensuing government regulations, only persons paying taxes to the Serbian Tax Administration were permitted to receive back their savings. As the inhabitants of Kosovo, following Security Council Resolution 1244, no longer paid taxes to the Serbian state, the applicable law did not provide for any other way in which they could not get their money back. Considering the amount of people in Kosovo affected by this problem, the Ombudsperson discussed this issue with the SRSG and asked him to raise it during his next meetings with the Serbian authorities.

In some cases where the local police arrest people for possessing driving licences or vehicle registration documents issued by Serbian parallel structures, public prosecutors have initiated criminal proceedings against such persons for use of falsified documents. Unfortunately, in such cases they do not appear to make any distinction between forged documents and documents issued by authorities not recognised by UNMIK. Following a report issued by the Ombudsperson in this matter in the end of 2003, the situation had slightly improved. Lately, however, the Ombudsperson has again been receiving complaints related to this problem.

ACTIVITIES AND OPERATIONS OF THE OMBUDSPERSON INSTITUTION

Main activities

During the reporting period, the Ombudsperson was active in a number of different fields. In many instances, he attempted to enhance the existing human rights protection system in Kosovo by proposing the adoption or amendment of laws or an improved implementation of applicable laws to this effect. Complaints brought by individuals or groups of individuals were raised with the competent international or local authorities, in particular, but not limited to the situation of minority communities, returnees, pensioners or other vulnerable groups within Kosovo society. The Ombudsperson often acted as an intermediary between affected individuals and public authorities. To this effect, he traveled around Kosovo and other areas in the region and had many meetings and discussions with different persons involved in different fields touching upon human rights issues, inside and outside Kosovo.

Cooperation with different offices within UNMIK continued throughout the reporting period, in particular with the SRSB himself, the persons working in his office, his Principal Deputy and the Deputies responsible for Civil Administration, Police and Justice, Democratization and Institution Building and Reconstruction and Economic Development to discuss certain questions falling within their respective mandates. There were also frequent contacts between the Ombudsperson Institution and the UNMIK Police Commissioner, as well as between the Institution and the Executive Director of the HPD. The Ombudsperson maintained cooperation with the UNMIK Standards Coordinator, mainly by informing her about all significant interventions, reports or letters addressed to UNMIK and the PISG. Recently, a representative of the Ombudsperson Institution, together with OSCE, the Pristina Office of the UN High Commissioner for Human Rights and the Assembly of Kosovo became involved in a working group following up on the idea of the SRSB to kosovanise the Ombudsperson Institution.

Throughout the reporting period, the Ombudsperson also had meetings with many representatives of the PISG on a central level including the President of Kosovo, the Prime Minister of Kosovo, the President of the Kosovo Assembly and the leaders of the main opposition parties in the Assembly, to discuss different human rights questions and the future of the Ombudsperson Institution. He kept contacts with many different Ministers of the present Kosovo government, as well as with a number of municipality leaders.

The Ombudsperson also established cooperation with the Kosovo Assembly's Committee for Judicial, Legislative Matters and Constitutional Framework with sub-committees for Gender Equality, Petitions and Public Complaints and Missing Persons, in the course of which, as of May 2005, this Committee regularly sent complaints received by it to the Ombudsperson.

As in previous reporting periods, the Ombudsperson maintained regular contacts with the diplomatic missions of different countries both in Pristina and in Belgrade. He had mutual regular consultations with several bodies within the Council of Europe and its secretariat, as well as with the OSCE.

Although the Ombudsperson Institution does not have jurisdiction over KFOR, the collaboration with KFOR in certain cases was continued during this period. The Ombudsperson and staff of the Ombudsperson Institution had several meetings and other forms of contact with the KFOR Commander, the KFOR Legal Advisor and different KFOR Regional Commanders. There was also a considerable amount of cooperation with different national KFOR units regarding various issues related mostly to security and humanitarian assistance, in particular with regard to Ashkali and Serbs still displaced after the riots of 17 – 20 March 2004.

For the purpose of obtaining research on certain legal aspects related to the violent events in Kosovo during March 2004, the Ombudsperson established relations with the International Centre for the Legal Protection of Human Rights (INTERIGHTS) in London, which prepared a research paper on case law of international decision-making bodies on certain human rights problems that came up during and after the March events.

The Ombudsperson also continued to be in contact with the Head of the Coordinating Centre for Kosovo and Metohija of the Serbian Government, in particular with regard to providing documents for the Ashkali staying in the French KFOR camp after the violent events in March 2004. The Ombudsperson further continued the fruitful cooperation with the Offices of the High Commissioner for Human Rights in Belgrade and Pristina that had already begun in the previous reporting periods.

Two times during the reporting period, a delegation from the Ombudsperson Institution met with political leaders from the Ashkali, Roma, Bosniak, Gorani, and Turkish minorities in order to evaluate the situation of these minorities. These meetings took place at the main office of the Institution in Pristina. Apart from such meetings, the Ombudsperson maintained daily contacts with representatives of different minority groups and visited them regularly.

In the first half of the reporting period, the Ombudsperson visited two camps of Roma IDPs in Northern Kosovo several times and has since had regular contacts with NGOs involved in helping to improve these Roma's living conditions, such as, for instance, the Danish Refugee Council and the IDP Information Centre in Mitrovica. He raised this issue with many persons outside Kosovo, including representatives of the Council of Europe and members of the United Kingdom's House of Lords, which responded by discussing and requesting a government report on the matter.

Regarding the situation of Kosovo IDPs staying in Serbia proper, the Ombudsperson maintained contacts with the Serbian Commissioner for Refugees. He also raised the question of the rights and status of IDPs residing in Serbia proper and Montenegro with the Prime Ministers of these countries.

Throughout the reporting period, the Ombudsperson has moreover been actively engaged in the question of forced returnees, in particular those of certain minority ethnicities, raising the problems faced by these people in Kosovo with the host countries and the SRSG, as well as with different international organisations.

As in the last reporting periods, the Ombudsperson visited all District Courts and Prosecutors' Offices in Kosovo, as well as the Kosovo Supreme Court, in order to evaluate the current situation of the judiciary and prosecutors in Kosovo.

The Ombudsperson continued to cooperate and communicate with certain international NGOs working in Kosovo, in particular Human Rights Watch and the Spanish Humanitarian Organization "Movement for Peace, Disarmament and Freedom". Representatives of the Ombudsperson Institution also met regularly with members of the EU Monitoring Mission to discuss and inform them about the human rights situation in Kosovo and the implementation of standards in this respect.

Moreover, the Ombudsperson greatly enhanced his contacts with the Humanitarian Law Centre in Belgrade and its Pristina Office, with both of which the Ombudsperson Institution conducted a regular exchange of information. He met with the Head of the ICRC Office in Pristina, as well as with the Head of the UNHCR in Pristina and representatives of the WHO, and kept international organisations operating in Kosovo and governments of Western Europe and the Balkans region informed on many of the actions of the Ombudsperson Institution.

The Ombudsperson Institution also established contacts with the Swedish Helsinki Committee for Human Rights in Stockholm and with its Belgrade office.

Also in this reporting period, the Ombudsperson continued to be concerned with the problems encountered by persons of Albanian ethnicity who wished to dissolve their savings account in the Serbian Jugobank. He engaged in correspondence in this matter with the Serbian National Bank and the Serbian Tax Administration and also asked the SRSG to intervene, having in mind the large number of Kosovo Albanians affected by this issue.

At the same time, the question of NATO's recognition and possibly compensation for the casualties that had occurred when NATO accidentally bombed a passenger bus on a bridge close to Luzhan/Luzane and similar cases remained an important issue on the Ombudsperson's agenda. In order to pursue this question, he met with the families of the victims and the Chief of the Outreach Programme of the UNMIK Department of Justice's Office on Missing Persons and Forensics.

With regard to the Law on Access to Official Documents (No. 2003/12) that was promulgated by the SRSG in the last reporting period, the lawyers of the Ombudsperson participated in initiatives to promote this law. In one case, a lawyer of the Ombudsperson Institution was a speaker at two workshops organized by the Advocacy Training and Resource Centre and the Institute for Non-for-profit Law (IKDO) in Pristina, at which he spoke about the role of the Ombudsperson Institution in requesting official documents

according to the above law, in particular with regard to the appeals proceedings initiated after a request for access to official documents was refused by a public entity.

In January 2005, the Council of Europe's Parliamentary Assembly adopted a resolution and recommendations to improve the protection of human rights in Kosovo following a report prepared by its Committee on Legal Affairs and Human Rights. This report was the result of many contacts and exchange of information between the Rapporteur of the above Committee and the Ombudsperson, who was asked to comment the draft report before it was submitted to the Parliamentary Assembly. The Ombudsperson was also invited to give a statement during the debate preceding the adoption of the above resolution and recommendations.

During the months of May and June 2005, students from the Law Faculty of Pristina University did monthly internships at the Ombudsperson Institution. An internship at the Ombudsperson Institution was also a reward granted to the winner of the Kosovo Case Challenge 2004, a mock trial during which the participants were asked to simulate proceedings before the International Court of Justice.

A student participating in the programme for a European Regional Master's Degree in Democracy and Human Rights in South East Europe coordinated by the Universities of Sarajevo and Bologna visited the Ombudsperson Institution for a short time period as well. As every year, a group of students participating in the EU's European Master's Degree in Human Rights and Democratisation also visited the Ombudsperson, while one student of this same programme undertook a short study visit to the Institution for research purposes.

Following the appointment of an International Media Advisor to the Ombudsperson in July 2004, the Ombudsperson's cooperation with and presence in the media in and outside Kosovo, in particular through television and radio spots on one of the main local television channels, was stepped up immensely. The Ombudsperson Institution's internet website was also enhanced and improved. Throughout the reporting period, the public was thus much better informed about each of the Ombudsperson's interventions and other activities, as well as about his various visits and meetings in and outside Kosovo.

The Ombudsperson Institution continued to publish the Quarterly Information Sheet, which informed about the main activities of the Institution every three months. This Information Sheet, published in English, Albanian, Serbian and Turkish, was widely distributed in and outside Kosovo – in English alone, 1500 copies were sent out to different persons and institutions in Kosovo and the world.

As of September 2004, the Ombudsperson began publishing columns titled "Off the Record" in the Albanian-speaking Kosovo daily "Koha Ditore", as well as in the Serbian daily "Danas". These columns appear every second Friday and cover different human rights problems existing in Kosovo today. Previous subjects of these columns were *inter alia* the problems of Roma IDP's in Northern Kosovo, the lack of adequate pensions, the problem of sustainable returns, the Kosovo judiciary, discrimination issues, the issue of communities forgiving each other for past wrongs, the problem of missing persons and the polluted environment in Kosovo. From the beginning, these columns have been

appearing regularly in English and French on many online news services dealing with Balkan issues such as Transitions Online and Le Courier des Balkans.

On those Fridays on which “Off the Record” does not appear, the Ombudsperson has, as of 15 June 2005, started publishing extensive summaries of selected case law of the European Court of Human Rights that could be relevant for Kosovo in “Koha Ditore”. These summaries are accompanied by a short analysis linking the subject matter to the situation in Kosovo.

A new edition of the Ombudsperson’s legal documents, namely containing the Institution’s legal basis and rules of procedure, was published in January 2005 in English, Albanian, Serbian and Turkish.

The Children’s Rights Team

Established on 8 March 2004 in order to improve the work of the Ombudsperson Institution in the field of children’s rights, the CRT was launched officially in May 2004. Its primary activities include investigations into general aspects of violations of children’s rights as well as dealing with individual complaints from children or from those who represent children, while always taking into account the best interests of the children involved.

During the reporting period, in addition to its investigation activities, the CRT concentrated its efforts in increasing its visibility among Kosovo society. These activities involved primarily the publishing of leaflets containing basic information on the role of the CRT and addressed to all potential applicants, in particular children, as well as to institutions and NGOs working in the field of children’s rights. The CRT also established contacts with international and local NGOs working in this field, while a lawyer working for the team regularly took part in meetings of the Children’s Rights Forum. The lawyer and the coordinator of the CRT participated in round tables, conferences and TV programmes on children’s rights related issues. At the same time, CRT staff participated in trainings, seminars, and study visits abroad.

Recently, the CRT launched the Children’s Rights Awareness Campaign, aimed at disseminating information regarding the CRT’s activities within the Ombudsperson Institution directly to children. As a first step, there are plans to enhance the cooperation with schools, so that representatives of the CRT will be able to visit schools to inform children directly about their rights and about the CRT’s work in this respect.

During the reporting period, the core staff of the CRT processed investigations on cases related to different aspects of children’s rights, such as child custody, health services and care, the reunification of family members, education, ill treatment of children and child security. In particular, the CRT began investigating issues related to the problems faced by many parents in the Kosovo region who are not able to buy school books for their children attending primary school, cases of alleged ill-treatment of children in schools and a case concerning so-called “Black Spot” traffic sites, namely dangerous traffic areas for children. The CRT also conducted investigations into the living and health conditions

of Roma children staying in camps in Northern Kosovo, as well as into the situation of numerous schools throughout Kosovo in which the tap water is not drinkable.

In August 2004, 27 children from Kosovo visited the city of Naples in Italy for a week. This trip was organised by the Ombudsperson Institution and the Municipality of Naples. The children, who were between 10 and 14 years old, were of Albanian, Serbian, Roma and Turkish ethnicities and were from Pristina and Gračanica/Gračanicë.

The Non-Discrimination Team

The NDT was established on 8 March 2004 in order to improve the work of the Ombudsperson Institution in the field of non-discrimination.

The NDT conducts investigations into all forms of discrimination, including, but not limited to discrimination based on religion, origin, political opinion or association with national minorities or age.

The Anti-Discrimination Law, promulgated on 20 August 2004 through UNMIK Regulation No. 32/2004, authorises the Ombudsperson to receive and investigate complaints concerning the violation of rights based on discrimination. According to Article 4 of the Anti-Discrimination Law, the Ombudsperson may also conduct investigations into complaints regarding discrimination in the private sector.

During the reporting period, the core staff of the NDT processed investigations on cases related to the use of official languages within the PISG as well as the use of official languages in court proceedings involving parties belonging to a community which does not speak the language spoken by the majority. The NDT also began examining whether the living conditions in Roma camps in Northern Kosovo were compatible with international human rights standards and allegedly discriminatory practices in proceedings involving the granting of assistance to victims of the earthquake that occurred close to Gjilan/Gnjilane in 2002. The NDT also dealt with a case involving complaints of discrimination with regard to the results of allocation proceedings conducted by the Municipality of Obiliq/Obilić. The NDT issued a report on age discrimination in advertisements for employment competitions in the public sector.

The NDT also monitored the process of the return of those Roma living in camps in Northern Kosovo to their ancestral homes located on the southern bank of the Ibar River in Mitrovica known as the Roma Mahalla.

In addition to this, the NDT was working on a case involving the allegedly discriminatory treatment of former workers of Albanian ethnicity of the Trepça/Trepça mining complex, who had complained that they had been excluded from an agreement signed by UNMIK and representatives of former Serbian workers of the Trepça/Trepça complex, according to which the latter would receive a stipend from the Kosovo Budget.

The NDT also examined complaints received from civilians injured during World War II who, since the end of the 1999 conflict, protested that they had not been receiving their

civilian invalidity pension or other forms of assistance to which they were entitled by law. Moreover, the NDT dealt with complaints received from persons with physical disabilities who had stated that the competent authorities were not issuing driving licenses to them.

At the same time, up to the establishment of the GEU, lawyers working for the NDT were engaged in finding solutions and procuring assistance for rape victims of the 1999 conflict.

The Gender Equality Unit

The GEU was established on 2 July 2004 in order to implement Section 6 of the Law on Gender Equality promulgated by UNMIK Regulation No. 2004/18 on 7 June 2004. According to Section 6, issues of discrimination related directly to gender “shall be addressed by the Gender Equality Unit within the Ombudsperson Institution [...], which also has the responsibility for reviewing draft legislation, commenting on the implementation of this Law and on existing legislation as it relates to gender issues”.

The above-mentioned provision extends the Ombudsperson’s mandate to the review of the draft and existing legislation as it related to gender issues and to comment on the implementation of the law on Gender Equality. Furthermore, according to the provision in question, the Ombudsperson Institution is the only institution in Kosovo mandated to receive claims of discrimination based on gender.

Due to insufficient funding from the Kosovo Consolidated Budget, the GEU only became operational as of 1 February 2005. One of the first cases taken over from the NDT involving a complaint from a group of rape victims of the 1999 conflict, who were not receiving any form of social support from the responsible authorities.

The GEU also initiated investigations into possibly gender-based discrimination in access to employment in public institutions, as well as into certain problems encountered by foreigners married to Kosovans in obtaining residence permits. At the same time, the GEU is monitoring a court case involving an allegedly gender-based dismissal of a woman from work. Other cases concerned the allegedly unlawful dismissal from work of a female teacher who refused to follow the school’s directive aimed at banning the wearing of headscarves in the school and in another case the ban of a female pupil from school for wearing a chador in class.

Mediation

One of the tasks of the Ombudsperson is mediation and the offering of good offices in cases where there is a chance to solve disputes or conflicts this way. This part of the work of the Ombudsperson Institution is considered to be a very important part of its activities as most of the cases, in particularly CR cases, have some mediation aspects.

The following cases are examples of successful mediation in which the Ombudsperson Institution helped resolve certain issues.

The Ombudsperson was involved in different stages regarding the problems faced by members of the Ashkali community from Vushtrri/Vucitrn. Following attacks against their houses during the violent events in March 2004, all Ashkali from Vushtrri/Vucitrn had been evacuated to a French KFOR base. There have been repeated attempts to organise the Ashkali's transfer to a motel close to Vushtrri/Vucitrn, but each time, they had refused this option. Following interventions of the Ombudsperson Institution, in cooperation with UNMIK, French KFOR and the Serbian Coordination Centre for Kosovo and Metohija, the Ashkali families received travel and identification documents from the Serbian government in September 2004 and were thus able to leave the camp. Many of them left Kosovo while others have dispersed to live in other parts of Kosovo. Several months ago, some moved back to their rebuilt houses, where they are now living under the constant protection of the Kosovo Protection Corps. A limited number has been accommodated in the above motel, the facilities of which have been converted into a *de facto* collection centre.

The Ombudsperson also engaged in discussion between inhabitants of Batuše/Batushe, a Serbian village, and different authorities regarding electricity problems the residents had faced for some three months during the winter. After his meeting with the Ombudsperson, the President of Fushë Kosovë/Kosovo Polje Municipality decided to sign a contract with KEK on behalf of the village and to pay a deposit for the debts in order for the village be reconnected to the electric power supply.

Representatives of the Ombudsperson Institution furthermore interfered in a case involving children without parents or guardians who did not receive social assistance. After the Ombudsperson had contacted the Director of the Centre for Social Welfare in Pristina, the children were given all necessary documentation in order to receive social assistance. Moreover, the Centre for Social Welfare visited the children regularly and one of them started attending school with the help of the above Centre.

Collaboration with other Ombudsperson Institutions and similar bodies

During this reporting period, the Ombudsperson Institution has continued to cooperate closely with similar institutions in other countries in cases where the engagement of the authorities of these countries was necessary to resolve problems faced by individuals from Kosovo. Collaboration for such purposes took place with, for example, the Ombudsmen of Bosnia and Herzegovina, the FYROM, Denmark, Norway and Sweden, the Mediateur in France, as well as the Petitions Committees of the German Bundestag

and of the Parliaments of certain German Länder. Some of the cases involved complaints of forced returnees or against national KFOR troops.

Throughout this last year, representatives of the Ombudsperson Institution gave presentations on the work of the Ombudsperson Institution at the “Ombudsman in South Eastern Europe – Enhancing Regional Cooperation Conference” in Serbia and Montenegro, at the European Ombudsman Round Table in Denmark as well as at a Seminar on the “Handling of Environmental Cases by the Ombudsman” in Greece, organised by the Greek Ombudsman and funded by Eunomia’s programme for the promotion of Ombudsman Institutions in South Eastern Europe.

In September 2004, a delegation from the Ombudsperson Institution paid a visit to the Ombudsman Institution in Slovenia to observe and share expertise, namely in the areas of IT, financial and administrative operations and with regard to children’s rights. This was followed by a visit of the Slovenian Deputy Ombudsman to the headquarters of the Ombudsperson Institution in Pristina. The Ombudsperson also received a visit from the Ombudsman of Luxemburg.

The Ombudsperson Institution also cooperated with Ombudsman Institutions in the Balkan region thanks to a Regional Exchange Programme based on a joint project of ODIHR (Office for Democratic Institutions and Human Rights) within the OSCE and the Ombudsperson Institution. This programme, established in October 2004, involves lawyer exchange programmes between the Ombudsperson Institution and Ombudsman Institutions in Albania, the FYROM and Montenegro. During the reporting period, such exchange programmes took place between the Institution and the Ombudsman Institutions in Albania, the FYROM and Montenegro. This programme, where the visiting lawyers are obliged to participate in the daily activities of the host institutions, in particular by working on cases allocated to the lawyer whom they are replacing, aims at allowing the staff members involved to increase their knowledge and to exchange information with the host institution. Moreover, a strong cooperation amongst the Ombuds Institutions in the region will help synergise and advance human rights advocacy in this part of Europe.

The Ombudsperson Institution established contacts with the Citizen’s Office (Narodna Kancelarija) in Belgrade within the Office of the President of Serbia. During the reporting period, the Institution sent some cases concerning problems related to the public administration in Serbia to the Citizen’s Office.

Furthermore, the Institution distributed its Quarterly Information Sheet among all Ombuds Institutions in Europe to inform them about its recent activities and share its experience in the protection of human rights.

Overview of cases

During the reporting period, approximately 4 000 people individually contacted the Ombudsperson Institution in Pristina and in the field offices to lodge formal complaints or to ask for advice and assistance.

During the 84 Open Days that were held during the reporting period, approximately 1 700 people met personally with the Ombudsperson or his deputy in Pristina or in the six field offices in different parts of Kosovo.

In the period between 1 July 2004 and 30 June 2005, the Ombudsperson provisionally registered 446 application cases. 136 cases were declared inadmissible because of non-exhaustion of the legal remedies, because the complaints were manifestly ill-founded or due to the fact that they were outside the Ombudsperson's jurisdiction. Another 216 cases were struck out of the list – 138 of them were positively solved and 78 were closed, *inter alia* due to the lack of interest of the applicant in continuing the investigation.

Most cases investigated by the Ombudsperson Institution concerned procedural issues, such as the length of proceedings before the civil courts and the HPD, administrative acts or omissions by the competent public authorities, property issues, complaints about abuses of authority, right to court issues, employment- related complaints or impunity issues (see Annex 1). Out of these applications, the Ombudsperson issued twenty-two final reports, of which seventeen were case reports and five were issued following *ex officio* investigations (see Annex 3 for summaries of these reports). Some of the above reports dealt with length of proceedings issues, while others were about the lawfulness of the detention of mentally ill persons in psychiatric wards, inadequate criminal investigations, age discrimination in advertisements for employments in the public sector, gender discrimination and alleged ill treatment by UNMIK Police.

During the reporting period, the Ombudsperson made six interim measure requests and sent six special urgent intervention letters to the SRSG or the Ministry of Public Services. Three of these requests were successful and nine were not successful (see Annex 2). Most of these requests concerned forceful evictions and the demolition of buildings, as well as the inaction of public authorities in the face of illegal actions or abuse of authority.

The Ombudsperson registered 573 CR cases, meaning cases that did not require a full formal investigation but rather certain intervention or mediation activities, from which 83 were successfully closed and another 166 were closed for various other reasons. Most CR cases dealt with by the Ombudsperson Institution concerned problems involving the reconstruction of houses, social welfare issues, complaints related to accommodation possibilities and employment- related issues.

Funding and in-kind support

During the reporting period, the Ombudsperson Institution used funding from the Kosovo Consolidated Budget, from the Permanent Council of the OSCE as well the following bilateral donors: Austria, Belgium, Denmark, Finland, Liechtenstein, Norway, Poland, Switzerland, Turkey and the United States. Special projects were financed by the Council of Europe, ODIHR, UNICEF and UNIFEM.

In June 2004, the Swedish International Development Cooperation (SIDA) approved a project aiming at providing the staff of the Ombudsperson Institution with advanced education in the field of human rights, good governance, general administration,

reconciliation and mediation. The methods to achieve this will include advanced trainings in different human rights or similar fields, English language courses, administration and office management trainings and study visits to different Ombuds Institutions. The implementing partner of SIDA in this project is meant to be the Council of Europe, which will sign an implementation agreement with SIDA in the near future.

Throughout the reporting period, the Council of Europe organised and funded, *inter-alia*, a study visit for 15 lawyers of the Institution to the European Court of Human Rights and the Council of Europe in Strasbourg, France, consultative visits undertaken by the Ombudsperson to Strasbourg in September 2004, January 2005 and May 2005 and the participation of the Deputy Ombudsperson in the European Ombudsman Round Table in Copenhagen, Denmark.

In September 2004, the Helsinki Foundation for Human Rights funded a study visit of three lawyers from the Ombudsperson Institution to the Helsinki Foundation for Human Rights' summer school in Warsaw, Poland.

In October 2004, the European Centre for Minority Issues organized and funded, with the support of the Royal Ministry of Foreign Affairs of Norway, the participation of two lawyers from the Ombudsperson Institution in a workshop on "Ombudsman Institutions and Minority Rights" in Ohrid, FYROM.

In November 2004, the European Centre for Minority Issues organised and funded the participation of two staff members from the Ombudsperson Institution in a "Border Region Study Tour through Schleswig-Holstein", in Flensburg, Germany, for an exchange of experiences amongst Ombudsman Institutions concerning minority issues and human rights. During the same month, the Albanian Centre for Human Rights organized and financially supported the participation of two employees from the Institution in a training course on "Documentalists and Library Managers" in Tirana, Albania.

In December 2004, the Albanian People's Advocate sponsored the participation of the Ombudsperson Institution's Director of Investigations in the National Conference for Labour Rights in Tirana, Albania.

In January 2005, the European Commission funded the participation of a lawyer from the Ombudsperson Institution in a "Seminar on Data Protection" in Brussels, Belgium.

In February 2005, the Ombudsperson Institution was able to open a new field office in Gračanica/Graçanicë thanks to a special grant from the Austrian Development Agency of the Ministry of Foreign Affairs of Austria.

In June 2005, the participation of the Deputy Director of Investigations for Special Programmes of the Ombudsperson Institution in an Ombudsperson meeting in Prespa, Greece, was financed by the Eunomia project, a joint project undertaken by the Council of Europe and the Greek Ombudsman.

During the reporting period, ODIHR funded the Regional Exchange Programme involving an exchange of lawyers of the Ombudsperson Institution and lawyers of the Ombudsman Institutions in Albania, the FYROM and Montenegro.

Thanks to the support of UNIFEM, the Gender Equality Unit within the Institution was able to print leaflets in Albanian, Serbian and Turkish to inform the public about gender-based discrimination in order to enable all persons who feel that they may have been victims of such discrimination to contact the Institution.

As a result of a project co-operation agreement between UNICEF and the Ombudsperson Institution, UNICEF funded the salary of a lawyer working for the Institution's Children's Rights Team, as well as other activities related to the implementation of the project, such as trainings, study visits and information material.

Future prospects for the Ombudsperson Institution

This reporting period has seen further progress in preparing the Institution for its complete kosovanisation.

Following his decision to prolong the mandate of the current Ombudsperson once more until the end of December 2005, the SRSG stressed in a letter to the Ombudsperson of 15 June 2005 that he expected the latter to use the remainder of the year 2005 to carry out all the steps needed, in close cooperation with UNMIK, the PISG and OSCE, to achieve a smooth transition to leadership of the Institution by a Kosovan, including the identification of a Kosovan successor to the Ombudsperson.

As mentioned in the previous Annual Report, as well as in many conversations with the SRSG, the heads of diplomatic missions in Pristina and Belgrade, the Head of the OSCE Mission in Kosovo and different representatives of the Council of Europe, the Ombudsperson still considers that it is too soon to implement or complete such a step. However, given the determination of the SRSG, he has agreed to give whatever support is needed in the final stage of the kosovanisation process and intends to leave the Institution in a position to face new challenges and to continue to perform the special role expected of it by the people of Kosovo.

To this end, a representative of the Ombudsperson Institution was requested to participate in a working group established by OSCE and otherwise made up of representatives of OSCE, the Kosovo Assembly and the Office of the UN High Commissioner for Human Rights. The working group began to meet towards the end of May 2005 and adopted a time table foreseeing that, in order to allow the Institution to become a fully local institution by 1 January 2006, the identification of a pool of potential local candidates for leading positions within the Institution would need to begin by July 2005, while a draft law on the Institution would need to be prepared and submitted to the responsible bodies by September 2005.

At the same time, the Ombudsperson continued to send parts of the local staff to various trainings, conferences, seminars and study visits. At various international Ombuds meetings, the Ombudsperson Institution was represented by its local deputies or other

senior staff. Further advanced trainings are planned, in particular a special project funded by SIDA involving different programmes with the Council of Europe as an implementing partner.

However, all of the above efforts to ensure that the Ombudsperson Institution and its staff will be ready to become part of the local structures in Kosovo leave aside the main question in this context – namely whether Kosovo itself is ready for such a transition.

One of the biggest problems in this respect is the fact that it is not very likely that the international administration in Kosovo will let a local Ombudsperson examine its work from a human rights perspective, so that citizens complaining against certain UNMIK or similar future international structures will no longer be able to take these complaints to the Ombudsperson Institution. For the moment, the Ombudsperson Institution with an international Ombudsperson at its helm is the only independent human rights oversight institution competent to deal with complaints concerning the international presence in Kosovo. Following the end of the mandate of an international Ombudsperson, it is not clear which entity, if any, will be in a position to fill this vacuum.

Finding one or many appropriate candidates will also pose a great challenge. The Kosovo Ombudsperson must be an individual who was not implicated in the Kosovo conflict and who must stand clearly above the inter-political squabbles dominating the political landscape in Kosovo. He or she would need to have personal authority, a high level of education and experience in the field of human rights. Most importantly, a local Ombudsperson will need to be someone who would be able to enjoy the trust of the inhabitants of Kosovo, regardless of their ethnicity, as well as the confidence of the international community.

At the same time, any plans to kosovanise the Ombudsperson Institution entirely will have to take into account the special role played by the Institution. Certain parts of the Institution such as the field office in Gračanica/Graçanicë and the Gender Equality Unit, which are currently being funded by international donors, will in such a case need future funding from the Kosovo Consolidated Budget, while those projects that were begun before the kosovanisation should be allowed to continue or develop. The salaries of the Institution's staff will need to be fixed in a sustainable manner and must be of a level that will ensure a solid professional future for the Ombudsperson Institution. At the same time, in order to maintain a constant level of training and education in different fields of human rights protection and capacity to develop further, the Institution should not be left devoid of sufficient international support.

These doubts were shared by many in, for instance, the Council of Europe, whose Parliamentary Assembly included the future of the Ombudsperson in two of its resolutions issued in January and June 2005 respectively. In both resolutions, the Parliamentary Assembly urged UNMIK to maintain the “international” status of the Ombudsperson Institution, or at least the Ombudsperson's jurisdiction over international authorities for as long as they remain in Kosovo.

It will be a great challenge to all of the entities involved to overcome all of these difficulties in order to ensure that also in the future, the Ombudsperson and the staff of

the Institution will be in a position to help those coming to the Ombudsperson as a last resort seeking assistance in their struggle against human rights violations and abuse of authority. At least in this in many respects transitional period of time, the Ombudsperson fears that all of this cannot be guaranteed by an Institution which does not have any international “anchor”, while being an integral part of the local structures in Kosovo. Nevertheless, in the face of the international administration’s determination to kosovanise the Institution soon, he is committed to trying to secure, as far as possible, appropriate circumstances to this end and hopes, albeit with not much idealism, that his doubts in this respect will prove to have been in vain.

Marek Antoni Nowicki
Ombudsperson

Annex 1: Statistical overview of cases

(1 July 2004 to 30 June 2005)

<u>PROVISIONALLY REGISTERED CASES (APPLICATIONS):</u>	446
<u>ETHNICITY OF APPLICANTS:</u>	
Albanian:.....	323
Serbian:.....	104
Other:.....	23
<u>RESPONDENT PARTIES:</u>	
UNMIK:.....	297
PISG:.....	103
HPD:.....	42
KFOR:.....	1
Other:.....	7
<u>CASES DECLARED INADMISSIBLE:</u>	136
<u>CASES STRUCK OUT OF LIST:</u>	216
POSITIVELY SOLVED ISSUES:	138
CASES DISCONTINUED FOR OTHER REASONS:	78
<u>INVESTIGATIONS OPENED:</u>	20
APPLICATION-BASED INVESTIGATIONS:	12
<i>EX OFFICIO</i> INVESTIGATIONS:	8
<u>FINAL REPORTS ISSUED:</u>	22

CASE REPORTS:	22
SPECIAL REPORTS:	0
<u>INTERIM MEASURE REQUESTS:</u>	<u>6</u>
<u>CASES FOR REACTION (TOTAL):</u>	<u>573</u>
POSITIVELY SOLVED CASES:	83
CASES DISCONTINUED FOR OTHER REASONS:	166
<u>INCOMING CORRESPONDENCE:</u>	<u>1840</u>
<u>OUTGOING CORRESPONDENCE:</u>	<u>1876</u>

**Subject matter of formal applications
(1 July 2004 – 30 June 2005)**

The length of civil court proceedings:.....	131
Property and related issues (HPD):.....	144
Property and related issues (other):.....	66
No effective investigations into criminal acts:.....	4
Abuse of authority:.....	28
Administrative silence and related issues:.....	51
Issues involving the right to court:.....	84
Employment-related issues:.....	27
Economic, social and cultural rights:.....	20
The right to liberty:.....	4
The length of criminal court proceedings:.....	14
Miscellaneous:.....	10

Annex 2: Overview of requests for interim measures and other requests for urgent action

(1 July 2004 – 30 June 2005)

The failure to execute a decision suspending illegal construction in Pejë/Peć

On 13 May 2004, the Ombudsperson received an application in which the applicant complained that a decision issued on 13 April 2004 by the Directorate for Urban and Rural Planning in the Municipality of Pejë/Peć and ordering third persons to stop the illegal construction of an apartment building ten meters from the applicant's house had still not been executed. The excavation for the foundation of the apartment building was dug so close to the applicant's garage that the garage had slid into the excavation, entailing a certain risk for the applicant's house as well. On 11 June 2004, the Ombudsperson sent an urgent request for interim measures to the Acting SRSG, asking him to ensure that the Municipality of Pejë/Peć put an end to the illegal construction which was damaging the applicant's nearby property.

20 July 2004: The Ombudsperson received a letter from the UNMIK Municipal Representative of Pejë/Peć informing him that he had written to the Municipality of Pejë/Peć to ask what it planned to do to resolve the issue. The UNMIK Municipal Representative wrote that although in a letter dated 2 July 2004, the Municipality's Director of Urbanisation had listed a series of actions undertaken by the Municipality, the UNMIK Municipal Representative had visited the site in question and had found that although work appeared to have been stopped, the excavator was still on the site. The UNMIK Municipal Representative assured the Ombudsperson that he would continue to monitor the situation and, if necessary, keep the Ombudsperson updated. He also informed the Ombudsperson that, under his authority, staff had compiled a dossier of maladministration dating back to September 2003 and handed it over to the Regional Police Commander on 7 July 2004 and informed the Municipal Assembly of Pejë/Peć. The UNMIK Municipal Representative concluded that there was a long list of cases, fifteen of which had been the focal point of his office, where the Chief Executive Officer had exceeded his authority, not complied with due process and spent municipal funds without conforming to correct procedures. The UNMIK Municipal Representative closed his letter by writing that the Regional Police Commander had informed him that the dossier had been submitted to the international prosecutor in Pejë/Peć and that he sincerely hoped that a specific enquiry would be mounted and charges brought against different officials of the Municipality.

The inaction of the Municipality of Gjakovë/Đakovica in the face of illegal construction work

On 24 August 2004, the Ombudsperson received an application from which it appeared that the applicant and others complained that the Municipality of Gjakovë/Đakovica had not taken any action following numerous complaints about the alleged illegal construction of an apartment building close to the applicant's house.

26 August 2004: The Ombudsperson sent an interim measure request to the SRSB asking him to react to the lack of intervention by the Municipality of Gjakovë/Đakovica. The Ombudsperson described how, as the construction work continued, the applicant and his neighbors had sustained damages to their houses. The Ombudsperson added that the applicant, on a number of occasions, had formally addressed the municipal authorities requesting them to assess and verify the damage caused to his property and the risks the construction work posed for neighboring properties. However, his requests to the Municipality to put an end to the construction work had not met with any response. The Ombudsperson requested that the SRSB take urgent action to ensure that construction of the apartment building in question be stopped, pending the Ombudsperson's further investigation into the case and asked that the SRSB inform him of any action taken in the matter.

10 September 2004: The Ombudsperson wrote a second interim measure request to the SRSB indicating that he had not been informed about any action taken in this urgent matter, nor had he received any response to his letter sent two weeks earlier. The Ombudsperson reiterated his request to take immediate action to ensure that the construction of the apartment building in Gjakovë/Đakovica be stopped and that he be informed of any measure taken or planned in this respect.

17 September 2004: The Ombudsperson received a response from the SRSB indicating that the matter had first been brought to his attention by His Grace Bishop Artemije of Raska and Prizren during a meeting on 25 August 2004. The SRSB wrote that he had subsequently discussed the matter with Kosovo's Prime Minister as well as the Mayor of Gjakovë/Đakovica, the President of the Alliance for the Future of Kosovo (AAK), the Head of Pillar II and the UNMIK Regional Representative for the South-West Region. The SRSB added that he considered the matter to be under investigation, but felt a need to visit the site personally after 27 September 2004 to be better informed on the situation.

29 September 2004: The Ombudsperson replied to the SRSB informing him that UNMIK may have misunderstood the circumstances of his case. The Ombudsperson enclosed a letter written by the applicant in which he expressed his surprise at the response received by the SRSB, as the personalities mentioned by the latter in his last letter were never involved in the case. At the same time, according to the applicant, the illegal construction work continued and posed a risk of new damages to his property. The Ombudsperson urged the SRSB to stop the construction work in the vicinity of the applicant's property pending his further investigations in the case.

3 December 2004: The Ombudsperson received a letter from the Deputy SRSB for Civil Administration, informing him that the refusal of municipal civil servants to take the necessary action required of their office would now be dealt with by the PISG, more specifically by the Ministry of Public Services. The Deputy SRSB informed the Ombudsperson that his requests had been forwarded to the Ministry of Public Services.

10 December 2004: The Ombudsperson wrote an interim measure request to the Minister of Public Services asking her to take urgent action to ensure that the construction of the apartment building in question be stopped, pending the Ombudsperson's further investigation into the case. The Ombudspersons also asked to be informed on any action taken in the matter.

There has been no response to this request.

The allegedly unlawful expropriation of land in favour of Pristina Airport

On 26 October 2004, the Ombudsperson received an application from which it appeared that the applicant complained against a decision taken by the SRSG by which 490, 70 hectares of his land were allegedly expropriated for the building of a new civil airport without a proper basis. Six days before, the applicant had sent a letter to the SRSG in which he had requested a review of the decision, claiming that it didn't correspond with the expropriation request made by Pristina Airport involving the expropriation of only 24,28 hectares of the applicant's land. The applicant had not received any answer to his request.

27 October 2004: The Ombudsperson sent an urgent request for interim measures to the SRSG, asking the SRSG to stop all construction work for the Pristina Civil Airport involving the applicant's land until a decision had been issued on the applicant's request to review the earlier court decision to expropriate 490,70 hectares of his land.

29 April 2005: The Ombudsperson sent a reminding letter to the SRSG informing him that meanwhile, the applicant had received the decision from the Municipal Court in Lipjan/Lipljan ordering that all construction work on the applicant's land be stopped. Furthermore, the Ombudsperson has asked for information about any action taken or planned by the SRSG regarding this case.

10 June 2005: The Ombudsperson received a letter from the applicant in which he stated that the case had been resolved positively for both sides. The applicant thanked the Ombudsperson for his help and the intervention in this case.

The destruction of a house on a piece of land allegedly owned by the Municipality of Prizren

On 20 October 2004, the Ombudsperson received an application in which the applicant complained about a notification regarding the execution of a final decision issued by the Directorate for Property and Judicial Issues within the Municipality in Prizren ordering the destruction of his house located on a piece of land allegedly owned by the Municipality of Prizren. The applicant, who had been living on this land since 1975, had filed a lawsuit with the Municipal Court in Prizren in April 2004, asking for the confirmation of his right to ownership regarding this land. In September 2004, he had requested that the Municipal Court issue an interim measure decision.

5 November 2004: The Ombudsperson sent an interim measure request to the SRSG asking him to ensure that the execution ordering the applicant to demolish his house be suspended pending his further investigation into this case and until a final judgment concerning the confirmation of the applicant's right to ownership of the above-mentioned plot of land would be passed.

There has been no response to this request.

The forceful eviction from the Kablar barracks

On 22 November 2004, the representatives of over one hundred persons who had been living in barracks formerly belonging to the Serbian “Kablar” company in Pristina came to the Ombudsperson to inform him that the next day, they would be evicted from these barracks, where they had been accommodated after they had lost their homes during the 1999 conflict. The evictions were based on a decision of the Municipal Court of Pristina that had been confirmed by the District Court of Pristina despite doubts expressed as to the legality of the evictions by the applicants and third persons. The matter was then brought before the Supreme Court, where it was still pending.

22 November 2004: The Ombudsperson sent a request for interim measures to the SRSB and asked him to make use of his powers to ensure that eviction proceedings be suspended pending the Ombudsperson’s further investigations in this matter and the outcome of the proceedings before the Supreme Court. A copy of this letter was sent to the President of the Municipality of Pristina.

23 November 2004: Representatives of the applicants came to the Ombudsperson Institution and informed the Ombudsperson that the police had arrived in order to evict them from the barracks. Although the applicants had showed a copy of the Ombudsperson’s interim measure request to the police, their moveable property was at that very moment being carried out by workers and left on the street. The applicants complained that some items of worth had been stolen in the process and that, although temperatures were below zero, they had nowhere to go.

In the afternoon of the same day, representatives of the Ombudsperson Institution visited the barracks and saw that the applicants’ furniture was still standing on the street. While the security guards guarding the doors to the barracks said that almost all of the people had been housed, the applicants informed the representatives of the Ombudsperson that so far, no measures had been taken on the side of the Municipality to provide accommodation for them.

Later on the same day, the Ombudsperson thereupon sent a second request for interim measures to the SRSB in which he informed him about the situation and asked what the responsible international and local authorities intended to do to prevent a humanitarian crisis from taking place in the middle of Pristina. He again urged the SRSB to ensure that appropriate action be taken without any further delay to resolve this issue. This letter was also sent to the President of the Municipality of Pristina.

Also on 23 November 2004, the Ombudsperson sent a letter to the Coordinator of the Judicial Inspection Unit within the UNMIK Department of Justice responsible for dealing with misconduct on the side of judges and prosecutors, in which he asked this unit to open disciplinary proceedings against the judges involved in the court decisions leading to the evictions. The Ombudsperson asked the Coordinator of the Judicial Inspection Unit to give this case priority.

Despite repeated efforts on the side of representatives of the Ombudsperson Institution and representatives of the ICRC, who even offered to pay for hotel rooms to house the women and children for the night, the evicted persons spent the night of 23 November 2004 in surrounding cafes and restaurants, which the owners had left open for that purpose.

Throughout the following days, the Ombudsperson had many meetings with the applicants and with representatives of the Municipality. Eventually, the Municipality

offered accommodation which the applicants considered to be insufficient to house them and all of their belongings.

3 December 2004: The Ombudsperson received a letter from Coordinator of the Judicial Inspection Unit within the UNMIK Department of Justice dated 2 December 2004, in which she informed him that her unit had opened an investigation in the above case and that this case would be given priority.

6 December 2004: The Ombudsperson received a letter from the Principal Deputy SRSG, dated 2 December 2004, in which he responded to the Ombudsperson's interim measure requests. In his letter, the Principal Deputy SRSG informed the Ombudsperson that the facts of the situation did not support the assertions contained in the Ombudsperson's letters, as the affected families had never approached the Municipality for assistance throughout the five months that eviction proceedings had been pending. Nevertheless, he considered that the municipal authorities, in cooperation with UNMIK staff, had immediately engaged in this matter as soon as it had been brought to their attention. On 25 November 2004, accommodation had been offered which had been turned down by the evicted families. The Principal Deputy SRSG closed his letter with the consideration that the Ombudsperson's assertion that no action had been taken to address the circumstances at issue was thus "both wrong and unworthy". He suggested that in future, the Ombudsperson contact the competent PISG and UNMIK offices before "impugning the efforts of the hard-working women and men engaged in serving Kosovo and its people". According to him, "the credibility of the Ombudsperson Institution and its effectiveness on behalf of those who seek its assistance, w[ould] be enhanced by serious preliminary inquiry and by measured dialogue".

10 December 2004: The Ombudsperson replied to the Principle Deputy SRSG's letter by informing him that according to the information available to him, the applicants had contacted the Municipality, in particular the President of the Municipality, the District Court in Pristina and the Supreme Court several times upon receiving information that eviction proceedings had been initiated against them. Each time, the respective persons had told them not to worry, as an eviction would not be possible in the foreseeable future. The Municipality's allegations that it had not had any information about the case thus did not appear to be accurate. The Ombudsperson noted that it also did not correspond to fact that the municipal authorities had immediately engaged in the above matter as soon as it had been brought to their attention, as the urgent letters sent by the Ombudsperson to the SRSG on 22 and 23 November 2004 had been sent in copy to the Municipality, but had not met with any response. It was only after the UNMIK Municipal Representative in Pristina had sent a letter to the Deputy President of the Municipal Assembly and the Chief Executive Officer of the Municipality and after representatives of the Ombudsperson Institution had called the Deputy President of the Municipal Assembly several times that the Municipality had eventually become involved in the matter. Concerning the accommodation offered by the Municipality, the Ombudsperson informed the Principle Deputy SRSG that the applicants had considered it too small to house all of the people and their belongings and added that he could understand that they were extremely unwilling to part with their furniture and belongings, which was all that was left to them now. Finally, the Ombudsperson strongly rejected the Principal Deputy SRSG's criticism of the work of the Ombudsperson Institution in this case, in particular his comment that the Ombudsperson's intervention in this matter was wrong and unworthy. In such a situation as this, the Ombudsperson considered it his duty to inform UNMIK and to ask the SRSG to ensure that the competent municipal authorities put an

end to such grave human rights violations. The Ombudsperson found that it was very unfortunate that instead of ensuring that the Ombudsperson Institution and UNMIK pursue a fruitful and necessary cooperation, his intervention to protect human rights in Kosovo had been misinterpreted as an attack against “hard-working women and men engaged in serving Kosovo and its people”. With regard to the Principal Deputy SRSG’s remark on the credibility of the Ombudsperson Institution, he believed that, contrary to the position voiced in the Principal Deputy SRSG’s letter, the credibility of the Ombudsperson Institution would have suffered had he not intervened in this matter.

In the meantime, the applicants have found accommodation with friends and relatives. To this day, they have not been provided with any alternative accommodation by the Municipality of Pristina.

24 February 2005: The Ombudsperson received a letter from the Director of the Department of Justice stressing *inter alia* that no objection had been lodged against the decision to evict the applicants. Furthermore, he noted that it was not within the mandate of the Judicial Inspection Unit to assess the merits of court decisions or to assess factual or legal errors that may have been committed by courts. He closed his letter by stating that the Judicial Inspection Unit had not found any evidence of misconduct with regard to the judges dealing with this case

The construction of a Centre for Social Work on graves in Podujevë/Podujevo

On 2 December 2004, the Ombudsperson received an application from which it appeared that the applicant and others complained against a decision of the Municipal Assembly in Podujevë/ Podujevo to construct a Centre for Social Work on a plot of land containing the graves of the applicant’s family members. In 1946, this land was confiscated by the former Yugoslav regime.

13 December 2004: The Ombudsperson sent an urgent request for interim measures to the Vice President of the Municipal Assembly in Podujevë/Podujevo asking him to ensure that the construction of the Centre for Social Work be suspended immediately and to inform the Ombudsperson about any action taken with regard to this case.

1 March 2005: The Ombudsperson, having received no response from the Municipality Assembly, sent a reminding letter.

18 March 2005: The Ombudsperson received a letter from the Municipal Assembly in Podujevë/Podujevo informing him that, as the plot of land was confiscated by the former communist regime, the applicant would receive some compensation in the future. Regarding the construction of the Centre for Social Work, the Municipality enclosed in its letter a contract signed by the Municipality and the Centre for Social Work, in which the Centre was only permitted to use the respective plot of land temporarily and thus only allowed to build a temporary construction on it.

Hatixhe Rexhaj Avdyli against the HPD

On 11 February 2005, the Ombudsperson received an application from which it appeared that the applicant complained against a decision of the HPD ordering her to abandon an apartment in Pristina that had been allocated to her by the Amortization Factory (“Fabrika e Amortizerave”) in 1987. In 1990, following a confirmation from the

Workers Council of the factory that the apartment had been allocated to the applicant, she signed a contract and moved into it. In September 1990, following the enforcement of certain discriminatory measures by the public authorities, the applicant was dismissed from her working place. In 1994, she was eventually evicted from her apartment without a prior court decision. Her former factory allocated the apartment to a Serbian colleague, who moved in. Following the conflict in 1999, the apartment was left vacant, so that the applicant and her family moved back in. After the applicant as well as the prior occupant had lodged claims for repossession of the apartment with the HPD, the HPD Claims Commission issued a decision in 2003 in which it decided that the apartment belonged to the person who had lived there until 1999 and ordered the applicant to abandon the property. On 21 June 2004, the applicant requested the Claims Commission to reconsider its decision. In February 2005, she received a decision ordering her eviction, which was confirmed following her appeal.

15 February 2005: The Ombudsperson sent an extremely urgent request to the SRSB asking him to make use of his special and extraordinary powers in order to suspend the execution of the possibly unlawful eviction proceedings until all doubts concerning the validity of these actions had been removed.

25 February 2005: The Ombudsperson sent a second letter to the SRSB regarding this and other similar cases against the HPD, in which he *inter alia* notified the SRSB that according to the applicant, eviction proceedings had been stayed.

Osman Kozmaqi, Avni Kumnova, Fatmir Dragaj, Hamdi Zenelaj and Asim Rragoni against the HPD

On 14 February 2005, the Ombudsperson received several applications, from which it appeared that the applicants complained against decisions of the HPD ordering them to abandon apartments in Pristina that had been allocated to them by their former employer, the "Iber Lepenci" enterprise, in 1986. In February 1991, after the loss of Kosovo's autonomy, the newly appointed competent board within the enterprise decided to annul the allocation decision. In a judgment issued in November 1991, the Labour Court in Pristina confirmed the validity of the allocation decision and ordered the enterprise to return the apartments to the applicants. The "Iber Lepenci" enterprise lodged an appeal against this decision, which was rejected by the competent second-instance court in 1992. A request made by "Iber Lepenci" to the Prosecutor of the Republic of Serbia asking him to lodge extraordinary remedies against the court decision was rejected. In October 1996, the Municipal Court in Pristina ordered the persons living in the apartment at the time to abandon the property. Due to the ensuing conflict in Kosovo, this court decision was never executed. After the conflict in 1999, the apartments were left vacant as the former occupants had fled and the applicants moved back in. After the applicants as well as the prior occupants had lodged claims for repossession of the properties with the HPD, the HPD Claims Commission issued two joint decisions in 2003 in which it decided that the apartments belonged to the persons who had lived there until 1999 and ordered the applicants to abandon the properties. The applicants requested the Claim Commission to reconsider its decisions. Following these requests, some of them received negative decisions, in which they were ordered to abandon the properties by 21 February 2005, respectively 10 March 2005.

17 February 2005: The Ombudsperson sent an extremely urgent request to the SRSG, asking him to make use of his special and extraordinary powers in order to suspend the execution of possibly unlawful eviction proceedings until all doubts concerning the validity of these actions had been removed. Moreover, the Ombudsperson enclosed in his letter a list with similar cases and asked the SRSG to also suspend the eviction proceedings in these cases.

25 February 2005: The Ombudsperson sent a second letter to the SRSG concerning the rising number of complaints against eviction proceedings initiated by the HPD. In his letter, he stated that he had received many similar complaints in the last week and, after contacting the HPD, had found out that over 500 such cases were pending before the HPD. The Ombudsperson recommended that all pending eviction proceedings involving allocation decisions that were taken in the eighties and that were later revoked under the Milošević regime be suspended and that these cases be reconsidered.

7 June 2005: The Ombudsperson received a letter from the Deputy SRSG for Civil Administration informing him that the complaints derived from some misunderstanding of the nature of the mandate of the HPD and the HPD Claims Commission and a lack of familiarity with the applicable law. He indicated that according to UNMIK Regulation No. 1999/23 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission, the HPD had been established to receive and register “claims by natural persons whose ownership, possession or occupancy rights to residential real property ha[d] been revoked subsequent to 23 March 1989 on the basis of legislation which [wa]s discriminatory in its application”. The Deputy SRSG stressed that the legal definition of occupancy rights implied an allocation decision and physical occupation of the property. Moreover, he noted that according to Article 11 of the Yugoslav Law on Housing Relations of 1986, a “the citizen shall acquire occupancy rights as of the day of lawfully moving into the apartment”. Although the above-mentioned claimants had allocation decisions, they did not obtain occupancy rights as they had never moved into the properties. Therefore, their claims fell outside HPD jurisdiction. The Deputy SRSG noted that the applicants had used their right to file requests for reconsideration of HPD decisions, which had been refused. The Deputy SRSG closed his letter by informing the Ombudsperson that with 11 000 decisions implemented by 31 December 2004, only 800 reconsideration requests had been filed with the HPD. Therefore, the rate of acceptance of HPD decisions was high.

The forceful removal of business premises in Glogovac/Glogovac

On 29 December 2004, the Ombudsperson received an application in which the applicants complained about a decision issued by the Municipal Inspection Directorate within the Municipality of Glogovac/Glogovac concerning the execution of decisions involving the destruction and removal of their business premises located on “Skënderbeu” Street in Glogovac/Glogovac.

1 March 2005: The Ombudsperson sent an urgent request for interim measures to the Minister of Public Services asking her to ensure that the Municipality of Glogovac/Glogovac suspend the impending destruction and removal of the applicants’ business premises. The Ombudsperson considered that such action would be contrary to an earlier court decision prohibiting, as an interim measure, the Municipality to demolish

the properties concerned until a final court decision had been issued on an alleged obstruction of their possessions through the Municipality of Glllogovc/Glogovac

2 March 2005: The Ombudsperson, having received no response from the Ministry of Public Services, sent a similar request for interim measures to the SRSG. In his letter, the Ombudsperson doubted whether the Minister of Public Services had taken any action in the matter, as ten businesses had already been destroyed and the demolition of all businesses was set to continue. According to the Ombudsperson, it was for this reason that he had decided to address the matter directly to the SRSG, asking him to make use of the extraordinary powers vested in him to ensure that, at least until a final court decision would be issued by the Municipal Court in Glllogovc/Glogovac, no further buildings would be destroyed. In his letter, the Ombudsperson also stressed that he considered such behavior on the side of the Municipality of Glllogovc/Glogovac to be unacceptable and in blatant disregard of the rule of law and asked the SRSG to take due notice of the social impact of the case, which could cause the reputation of the local government institutions to suffer irreparable harm if such illegal actions were allowed to continue in this way.

5 May 2005: The Ombudsperson sent a reminding letter to the SRSG asking for information about any action taken or planned by UNMIK or the competent local authorities regarding this case.

There has been no response to this request.

The forceful eviction of displaced families from apartments in Prizren Municipality

On 9 September 2003, the Ombudsperson received an application from which it appeared that the applicant, representing the citizens of the village Milaj, complained about the lack of access to their properties. Since this village was almost completely bombed in 1999, it has not been reconstructed as 80% of the village is mined and the Municipality does not have a sufficient budget to pay for the de-mining. When the Ombudsperson received the application, 43 families were still displaced.

15 April 2005: The Ombudsperson sent a letter to the President of the Municipal Assembly in Prizren asking them to find a solution.

29 April 2005: The Ombudsperson received a response from the Director of the Directorate for Construction, Reconstruction, Development and Public Investments, informing him that due to the fact that the ground in and around the village had so far not been de-mined, no donors had been found to finance the reconstruction of the village. In the meantime, most of the families had received or bought parcels of land in the Arabana district in Prizren and were requesting assistance in building houses or apartments, as most of them were still living in collective centres or illegally occupied houses or apartments. Furthermore, the Director stressed that the Municipal Council had allocated 100 000 Euro for the reconstruction, which would begin soon

29 April 2005: The Ombudsperson sent an urgent request for interim measures to the SRSG asking him to ensure that the execution of a decision issued by the HPD Claims Commission to evict 43 families originally from Milaj from apartments in Prizren Municipality be suspended or alternative shelter should be found for them until

circumstances would allow them to return to Milaj village. Moreover, the Ombudsperson recommended that an HPD Commission be established for the purpose of finding a long-term solution for these families.

There has been no response to this request.

The destruction of business premises on a piece of land allegedly owned by the Municipality of Prizren

On 14 September 2004, the Ombudsperson received an application in which the applicant complained about a decision of June 2001 issued by the Directorate for Property and Legal Affairs within the Municipality in Prizren ordering the destruction of the applicant's business premises located in Prizren. The business premises in dispute were built by the applicant on his property, which was de jure expropriated by the Municipal Assembly of Prizren in 1983. The applicant had lodged a claim with the Municipal Court in Prizren in June 2001, asking for the confirmation of his right to ownership regarding this land. In December 2004, the Municipal Court had issued a decision ordering all activities related to the parcel to be suspended, pending the completion of the civil procedure initiated by the applicant. On 14 April 2005, the applicant received a notice issued by the Directorate of the Inspections Unit of the Municipal Council in Prizren informing him that the decision involving the destruction of the buildings on the premises would be forcibly executed on 21 April 2005 in compliance with an execution order of 13 April 2005.

20 April 2005: The Ombudsperson sent an interim measure request to the Minister of Public Services informing her about the case and asking her to ensure that the execution order be suspended pending the Ombudsperson's further investigation into this case.

On the same day, the Ombudsperson sent a letter to the SRSG informing him about the interim measure request addressed to the Minister of Public Services. The Ombudsperson took this opportunity to seek clarification regarding the question of which organ to send interim measure requests to in the future, considering that the Ministry of Public Services had never answered to any such requests sent to her previously.

There has been no response to this request from the Ministry or the SRSG. According to information received from the applicant, the destruction of the premises had been suspended.

The destruction of houses located on a piece of land belonging to the Municipality of Pristina

On 25 April 2005, the Ombudsperson received an application from which it appeared that the applicants complained about a decision of the Municipal Inspection Directorate within the Municipality of Pristina to demolish the applicants' homes previously built on land belonging to the Municipality without the necessary building permits. After issuing the decision on 18 April 2005, the Municipality had begun demolishing the houses on 23 April 2005. The applicants alleged that when the destruction had begun, two children

were still sleeping in one of the houses and could only be saved with the help of a neighbour.

25 April 2005: The Ombudsperson sent an urgent request for interim measures to the SRSG and the Minister of Public Services, asking them to ensure that the demolition of the applicant's houses be suspended at least until the concerned families had been given the time to vacate the houses and seek alternative accommodation. As the Ombudsperson had so far not received any reply regarding his request for clarification on which body to send such requests to in future, he had decided to address it to both international and local structures to avoid any unnecessary loss of time.

26 April 2004: The Acting UNMIK Municipal Representative sent a letter to the Chief Executive Officer in Pristina asking him to suspend the execution of the demolition in order to allow the relocation of the families concerned.

18 May 2005: The Ombudsperson, having received no response from the Chief Executive Officer in Pristina, sent a similar request for interim measures to the Prime Minister of Kosovo. In his letter, the Ombudsperson agreed with the fact that the Municipality had begun taking action against illegal constructions but not with the manner in which this was done. The Ombudsperson stressed that although the decision ordering the demolition of the houses foresaw the possibility of lodging an appeal within 30 days, the Municipality had begun destroying the houses only five days after issuing its decision, so that the people thus had not had time to look for alternative accommodation

There has been no response to this request.

The forceful evacuation of the inhabitants of Hade village

On 29 March 2004, the SRSG issued an executive decision to evacuate the inhabitants of Hade village, which was located on a coal mine and, due to excavations conducted in the past, was in danger of sliding down the hill on which it had been built. In this decision, he also ordered the competent parts of the PISG to prepare and submit a report on the action taken to implement the evacuation plan no later than 2 April 2004. Even if the competent Ministry of Environment and Spatial Planning had concluded compensation agreements with some of the inhabitants of Hade village, no such report was ever submitted. On 3 June 2005, after the Ministry had decided to forcibly evacuate the remaining families, it began with the destruction of the houses in Hade, in spite of the fact that at the time, alternative accommodations had only been provided to some of the families.

6 June 2005: The Ombudsperson sent an urgent request for interim measures to the SRSG, asking him to suspend the implementation of the decision of the Ministry of Environment and Spatial Planning, pending the Ombudsperson's further investigations into the case.

14 June 2005: The Ombudsperson received a response from the SRSG reminding him that the Executive Decision of 29 March 2004 concerning the evacuation plan had been based on professional technical evaluation that had concluded that there was an immediate threat to the lives of inhabitants of a certain area of Hade village. He stressed that in order to facilitate the evacuation, a second Executive Decision was issued on 13 May 2004, by which a plot of land was placed under UNMIK authority and at the same time allocated for the relocation of the inhabitants of Hade village. Moreover, this

Executive Decision also provided the persons concerned with reasonable compensation. The SRSG informed the Ombudsperson that a further Executive Decision had been issued on 18 November 2004, in which the Government of Kosovo had declared *inter alia* the village of Hade to be a zone of special economic interest. These executive decisions recalled once again the imminent danger to the inhabitants of this village. The SRSG stressed that periodic technical evaluations had indicated continuing signs of potential slippage of the village and therefore the evacuation and relocation plan had had a valid basis. According to the SRSG, after innumerable efforts by the Government to achieve a settlement with the residents of Hade village, over 120 families had moved voluntarily since November 2004, while 29 families refused to be relocated. Nevertheless, the involuntary relocation of the latter families on 2 June 2005 had reflected intensive planning during a long period of time and was well organised and carried out carefully. For the arisen property losses or damages, compensation payments were already underway. At the same time, the relocation offers for these families continued to remain in place. The SRSG closed his letter by stressing the full support of UNMIK to the Government's work on this matter.

Annex 3: Summaries of reports

SUMMARY

Registration No. 1112/03

GANI THACI against the Supreme Court of Kosovo

On **17 September 2004**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

This case dealt with one of the issues raised in an earlier case involving the same applicant, namely the applicant's complaint that he had not been able to appeal against his dismissal from work by the Kosovo Protection Corps (KPC). The examination of this case had culminated in the publication of a report by the Ombudsperson on 17 April 2003. In this report, the Ombudsperson had found that the KPC, KPC disciplinary bodies and the SRSG (in his capacity as the final administrative authority over KPC matters) had all failed either to respond to the repeated requests of the applicant to be provided with a written reasoned decision on his dismissal from the KPC or to review his appeal against his suspension. The court competent to adjudicate on the substance of these matters had stated that it was unable to review the applicant's case pending his exhaustion of all channels for administrative review, up to and including a decision of the SRSG. The Supreme Court, which has the jurisdiction to order the SRSG to issue the written decision required by law, had also failed to take the requisite action. This constituted a violation of the applicant's right to a court under Article 6 of the European Convention on Human Rights.

In the instant case, the applicant had complained that despite the Ombudsperson's earlier report of 17 April 2003, the Supreme Court of Kosovo had still not decided on his request to take a decision in his case or to order the SRSG to take such a decision. The Ombudsperson considered that due to the Supreme Court's failure to decide on the applicant's request, the violation of the applicant's right to a court as guaranteed under Article 6 of the European Convention on Human Rights was still ongoing.

The Ombudsperson recommended that the Supreme Court of Kosovo should ensure that, given the previous delays, a decision on the applicant's request be issued without any further delay.

On 29 October 2004, the Ombudsperson received a letter from the Deputy SRSG for Police and Justice, replying that he had forwarded the letter to the Judicial Inspection Unit within the Department of Justice, which had opened an investigation into the above-mentioned case. The Judicial Inspection Unit would then inform the Ombudsperson of the result of its investigation.

SUMMARY

Registration No. 497/02

Regarding the failure of the HPD to serve its decisions on claimants in the cases of

NAZIM KORQA AND OTHERS

On **29 September 2004**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

The Ombudsperson considered that the failure of the Claims Commission of the HPD to decide on and to serve decisions on the applicants within a reasonable time constituted a violation of the applicants' right to respect for their homes as guaranteed by Article 8 of the European Convention on Human Rights.

The Ombudsperson recommended that the SRSG should secure, through appropriate legal measures and administrative practices, that the decisions of the Claims Commission involving the rights to home and property of the applicants, as well as of other persons in a similar situation, be served on the applicants and all other claimants in an expeditious manner compatible with the applicable human rights standards.

On 20 December 2004, the Ombudsperson received a letter from the SRSG informing him that the matter raised in the report was under active consideration by UNMIK. The SRSG indicated that due to significant progress made over the past two years, 80% of the HPD's caseload was expected to be completed by the end of 2005. He also noted that at the outset, HPD operations had suffered due to financial constraints before it had become fully operational; however, currently HPD claims were processed at an acceptable rate. Recalling earlier correspondence between the Ombudsperson and the independent judicial organ of the HPD in April 2004, in which issues involving mass claim procedures had been explained to the Ombudsperson, but which had not been mentioned in the report, the SRSG remained in doubt whether this factor had been duly considered by the Ombudsperson. The SRSG also wrote that the resolution of claims concerning residential property was still suffering from the disruptive effects of the 1999 conflict and that this should also be taken into consideration when determining whether there had been compliance with Article 8 of the European Convention on Human Rights. According to the SRSG, completing the task of processing claims in a post-conflict environment within a period of five years could not objectively be considered as a violation of the Convention on Human Rights. Moreover, a delay in processing might not be in breach of the Convention, especially when a caseload was unexpected and temporary. The SRSG closed his letter by informing the Ombudsperson that the core issues raised in his report were being closely monitored by the SRSG's office and other concerned parties.

SUMMARY

Ex officio Registration No. 28/04

Concerning the lawfulness of the detention of persons with mental disabilities in the psychiatric ward of the Pristina University Clinic

On **7 October 2004**, pursuant to his authority under Sections 4.3 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 22, paras. 3 and 4 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

In this report, the Ombudsperson examined the lawfulness of the detention of mentally ill individuals in the psychiatric ward of the Pristina University Clinic. The report was the result of an *ex officio* investigation prompted by earlier visits to the facility and other information received by the Ombudsperson.

In the report, the Ombudsperson noted that, although required by the relevant provisions of the applicable Yugoslav Law on Non-Contentious Proceedings, the placement of the above persons in the psychiatric ward was not based on any administrative or judicial proceedings. Moreover, the Ombudsman noted that the patients were left uninformed about any existing proceedings by which the lawfulness of their detention could be examined. The Ombudsperson thus reached the conclusion that the placement of these persons constituted a complete negation of the rights and guarantees contained in Article 5 of the Convention, which protects each person's right to liberty. Therefore, the Ombudsperson recommended that the SRSG should ensure that the existing laws concerning the placement of persons with mental disabilities in health institutions be implemented without any further delay.

On 15 June 2005, the Ombudsperson received a letter from the Deputy SRSG for Civil Administration regarding the above-mentioned report. The Deputy SRSG notified the Ombudsperson that he had provided information on the medical matters involved to the Office of the UNMIK Legal Advisor so that "the correct legal position could be communicated to [the Ombudsperson]". Further, the Deputy SRSG stated that the report raised some matters of public security and safety which did not fall within the jurisdiction of the Ministry of Health. He also wrote that some steps had already been taken by the Ministry of Health to address certain issues raised in the report, such as the development of administrative instructions on mental health and related mental health care institutions. The Deputy SRSG closed his letter by informing the Ombudsperson that the Ministry of Health had been working with the clinicians in the Pristina University Clinic to improve the handling of patients. As a result, there were significant improvements regarding the placing of patients in mental health clinics throughout Kosovo.

On 27 June 2005, the Ombudsperson received another letter from the Deputy SRSG for Civil Administration. In his letter, the Deputy SRSG informed the Ombudsperson that he had written to the Minister of Health requesting that the

Minister inform the Director of the Pristina University Clinic of the importance of adhering to the appropriate laws and regulations ensuring the rights of the mentally ill.

SUMMARY

Registration No. 598/02

FADIL RAMADANI AND OTHERS

against UNMIK

On **8 October 2004**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

In this case, the Ombudsperson considered that in two of the five cases under examination for ill-treatment contrary to the right to be free from ill-treatment stipulated in Article 3 of the European Convention on Human Rights, the treatment complained about by the applicants had not been grave enough to fall under the protection of Article 3. In two more cases, the applicants had not submitted any evidence in support of their claims. It was only in one case that the applicant's allegations, supported by a medical report, a doctor's prescription and photographs, had appeared to fall under Article 3. The Ombudsperson consequently found that a violation of this applicant's right to be free from torture or inhuman and degrading treatment, as postulated in Article 3 of the Convention, had occurred. In four cases, the Ombudsperson concluded that following arguable complaints of ill-treatment, there had been a breach of Article 3 of the Convention on account of the inability of the competent UNMIK authorities to conduct proper investigations into these complaints following the procedural requirements contained in this Article. The Ombudsperson also found that the orders to detain two of the applicants had not been served on the applicants according to the procedure required by law in the sense of para.1 of Article 5 of the Convention, which constituted a violation of this Article. The Ombudsperson recommended that the SRSG should ensure that effective and adequate investigations be conducted into the complaints of the applicants concerning ill-treatment by UNMIK police officers. The Ombudsperson further recommended that the SRSG should ensure that the Deputy SRSG for Police and Justice take appropriate steps to integrate the points raised in this report into the training programmes for the KPS.

16 November 2004: The Ombudsperson received a letter from the SRSG in which he informed the Ombudsperson that a review of UNMIK Police Internal Affairs had revealed that effective and adequate investigations were being conducted by Deputy Police Commissioners, the Police Commissioner and the Deputy SRSG for Police and Justice. The SRSG noted that he had provided copies of the report to UNMIK Police to determine how the points raised could be covered in trainings.

SUMMARY

Registration No. 1063/04

Regarding the length of proceedings in the case of

ZENË ZAHITI

On **28 October 2004**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

In this case, the Ombudsperson found that the failure of the Municipal Court in Pristina to take the necessary action to ensure the resolution of the applicant's case within an adequate time constituted a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed under para. 1 of Article 6 of the European Convention on Human Rights. In the instant case in which the applicant had introduced a lawsuit requesting the Municipal Court to evict illegal occupants from his apartment, the Ombudsperson noted that the Municipal Court had not taken any action in the case from 16 September 2002, when the applicant had initiated the lawsuit, until a first hearing was held on 23 October 2003. There does not appear to have been any justification for this delay.

The Ombudsperson also observed that the absence of a legal remedy for the violation of the right to a fair hearing within a reasonable time constituted a violation of the right to an effective remedy under Article 13 of the European Convention on Human Rights.

The Ombudsperson recommended that the SRSG should appoint a sufficient number of judges to the Municipal Court in Pristina or take other necessary means to guarantee the review of cases and delivery of judgments to all parties within a reasonable time. Finally, the Ombudsperson recommended that the SRSG promulgate a Regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human Rights providing both preventive and compensatory relief with respect to complaints about excessive length in civil cases.

27 January 2005: The Ombudsperson received a letter from a Judicial Inspector working for the Judicial Inspection Unit within the Department of Justice in which the latter informed the Ombudsperson that after having received the report, the Judicial Inspection Unit had opened an investigation into this matter to determine whether there had been professional misconduct by a member of the judiciary.

SUMMARY

Registration No. 636/02

Regarding the length of the proceedings before the HPD Claims Commission in the cases
of
ISMET UKQA AND OTHERS

On **12 November 2004**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

The Ombudsperson found that the failure of the HPD Claims Commission to decide on the applicants' cases within a reasonable time constituted a violation of the applicants' right to respect for their homes as guaranteed by Article 8 of the European Convention on Human Rights. Noting that the HPD was the only avenue through which the applicants could attempt to regain possession of their homes, the Ombudsperson concluded that the steps taken by the HPD to solve the applicants' cases were not sufficiently expeditious to satisfy the requirements of Article 8 of the Convention. The problem of insufficient funding leading to an inadequate number of staff members to deal with the considerable load of cases could only serve to justify such delays in proceedings if this caseload was unexpected and temporary. In the instant case, however, the competent UNMIK authorities had been aware of the excessive backlog of cases before the HPD Claims Commission for a considerable amount of time, but had not done enough to reorganise the HPD and to improve its operations in such a way as to permit it to cope with its large caseload in a more expeditious manner.

The Ombudsperson recommended that the SRSG should secure, through appropriate legal measures and administrative practices, that the rights to home and property of the applicants, as well as of other persons in a similar situation, be implemented in an expeditious manner compatible with the human rights standards set up by Article 8 of the Convention and Article 1 of Protocol No. 1 thereto.

After the publication of the report in the case of Milena Ristic against the HPD, issued on 28 June 2004, this was the second report issued with regard to the length of the proceedings before the HPD Claims Commission.

On 29 December 2004, the Ombudsperson received a letter from the SRSG regarding this report. This response was identical to the one received on 20 December 2004 regarding the above-mentioned report in the case of Nazim Korqa and others.

SUMMARY

Registration No. 1082/03

Regarding the length of proceedings in the case of

KADRI SEFEDINI

On **12 November 2004**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

In this case, the Ombudsperson found that the failure of the Municipal Court in Mitrovica and of the competent monitoring UNMIK bodies to take the necessary action to ensure the resolution of the applicant's case within an adequate time constituted a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed under para. 1 of Article 6 of the European Convention on Human Rights. In the instant case in which the applicant had sought permission to return to his previous place of employment, from which he had been dismissed in 1991, the Ombudsperson noted that the violation did not arise out of any court inactivity; indeed, four court decisions had been delivered during the period of proceedings. Rather, delays were caused by the repeated re-examination of the case, reflecting a serious deficiency in the functioning hierarchical structure of the local judicial system.

The Ombudsperson also observed that the absence of a legal remedy for the violation of the right to a fair hearing within a reasonable time constituted a violation of the right to an effective remedy under Article 13 of the European Convention on Human Rights. He noted that although he had raised this issue in many previous reports, there was no evidence that UNMIK had taken any steps to create such a remedy.

The Ombudsperson recommended that the SRSG should ensure that, given the previous delays, the Municipal Court in Mitrovica issue a judgment in the applicant's case without any further delay. The Ombudsperson further recommended that the SRSG should appoint a sufficient number of judges to the Municipal Court in Mitrovica or take other necessary means to guarantee the review of cases and delivery of judgments to all parties within a reasonable time. The SRSG should also ensure that the Judicial Inspection Unit within the UNMIK Department of Justice receive enough staff members to ensure that this unit will be able to take care of cases without causing excessive delays. Finally, the Ombudsperson recommended that the SRSG promulgate a Regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human Rights involving both preventive and compensatory relief with respect to complaints about excessive length in civil cases.

There has been no response to this report.

SUMMARY

Registration No. 1167/03

Regarding the failure of the HPD to serve its decisions on claimants in the cases of
JUSUF GASHI AND OTHERS

On **16 November 2004**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

In ten cases, the Ombudsperson examined whether delays in the taking of decisions and serving of the decisions of the Claims Commission of the HPD on the respective complainants raised certain issues under Article 8 of the European Convention on Human Rights. With regard to the complaint involving the length of proceedings before the HPD Claims Commission, the Ombudsperson referred to his previous report on an identical subject matter in the case of Milena Ristić against the HPD, issued on 28 June 2004, in which he had found that such delays in taking decisions constituted a violation of the applicants' rights to respect for their home. With regard to the complaint concerning the delays in serving the decisions on the applicants, the Ombudsperson concluded that the competent UN authorities had failed to reorganise the HPD and to improve its operations in such a way as to permit it to serve decisions on claimants in a more expeditious manner.

The Ombudsperson recommended that the SRSG should secure, through appropriate legal measures and administrative practices, that the decisions of the Claims Commission involving the rights to home and property of the applicants, as well as of other persons in a similar situation, be served on all claimants before the HPD in an expeditious manner compatible with the human rights standards set up by Article 8 of the Convention and Article 1 of Protocol No. 1.

After the publication of a similar report in the case of Nazim Korqa against the HPD, issued on 29 September 2004, this is the second report issued with regard to delays in the serving of decisions of the HPD Claims Commission on claimants.

On 23 December 2004, the Ombudsperson received a response to this report from the SRSG. This response was identical to the one received on 20 December 2004 regarding the above-mentioned report in the case of Nazim Korqa and others.

SUMMARY

Registration No. 1082/03

Regarding the length of proceedings in the case of

DOBRIVOJE MICIĆ

On **17 December 2004**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

In this case, the Ombudsperson found that the failure of the District Court in Pristina to resolve the applicant's case within a reasonable time constituted a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed under para. 1 of Article 6 of the European Convention on Human Rights. In the instant case involving the occupation and illegal use of the applicant's property through third persons, the Ombudsperson noted that, following the defendant's appeal to the District Court in 17 December 2003, no action had been taken by this court with regard to the applicant's case. Recognising the case to be relatively non-complex and of great importance to the applicant, who only received a small monthly pension, the Ombudsperson concluded that the delays could not be justified by a lack of judicial manpower. They thus represented a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed by Article 6 of the European Convention on Human Rights.

The Ombudsperson finally referred to UNMIK's response to an earlier report, by which the Ombudsperson had been informed that fourteen of the fifteen judicial positions allocated to the District Court had been filled and that in mid-May 2004, an additional judge had been transferred from the Municipal Court in Podujevë/Podujevo to the District Court in order to alleviate the backlog of cases. While commending the attempts of the responsible authorities to augment the number of judges working for the District Court in order to reduce the backlog of pending cases, the Ombudsperson noted that, as far as the applicant's case was concerned, these measures had so far not managed to expedite the issuance of a decision.

The Ombudsperson also observed that the absence of a legal remedy for the violation of the right to a fair hearing within a reasonable time constituted a violation of the right to an effective remedy under Article 13 of the European Convention on Human Rights. He noted that although this lack of a legal remedy in such cases had been raised many times in several of the Ombudsperson's reports to various SRSGs, there had so far been no visible action to change this on the side of the responsible lawmaking authorities, despite continuous assurances that the matter was under "active consideration".

The Ombudsperson recommended that the SRSG should, no later than 2 February 2005, ensure that, given the previous delays, the District Court issue a decision in the applicant's case without any further delay. The Ombudsperson further recommended that

the SRSG should appoint a sufficient number of judges to the District Court in Prishtinë/Priština or take other necessary means to guarantee the review of cases and delivery of judgments to all parties within a reasonable time. Finally, the Ombudsperson recommended that the SRSG promulgate a Regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human Rights granting both preventive and compensatory relief with respect to complaints about excessive length in civil cases.

There has been no response to this report.

SUMMARY

Registration No. 792/03

Regarding the length of proceedings in the case of

MARK GOJANI

On **28 February 2005**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

The Ombudsperson found that the failure of the Municipal Court in Klinë/Klina to resolve the applicant's case approximately three years after civil proceedings involving the question of ownership of a property before this court had begun did not constitute a violation of the applicant's right to a fair hearing within a reasonable time, as guaranteed under Article 6 para. 1 of the European Convention of Human Rights. The Ombudsperson noted that Article 6 para. 1 is only applicable to proceedings involving the determination of civil rights and obligations that were in dispute. As the Municipal Court in Klinë/Klina had already decided on the question of the ownership of the respective property in 1996, this issue was no longer in dispute. The proceedings initiated by the applicant in 2002 thus no longer involved "the determination of a civil right or obligation". According to the case law of the Convention's organs, Article 6 was therefore not applicable to the proceedings under consideration.

SUMMARY

Registration No. 1170/03

Regarding the length of proceedings in the case of

RAMADAN MAMUSHA

On **7 March 2005**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

In this case, the Ombudsperson found that the Municipal Court in Gjakovë/Đakovica's delays in resolving the applicant's case, in particular the court's failure to serve its judgment issued on 26 June 2003 before 12 December 2003, did not constitute a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed under para. 1 of Article 6 of the European Convention on Human Rights. The Ombudsperson based his conclusion on the fact that, despite the five and a half months' delay in serving the judgment on the applicant, proceedings in general were conducted expeditiously. Moreover, the entire length of court proceedings did not last longer than two and a half years over two instances.

SUMMARY

Registration No. 953/03

Regarding the length of proceedings in the case of

EMINE BUZA AND OTHERS

On **22 March 2005**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

The Ombudsperson found that the Municipal Court in Prizren's delays in resolving the applicants' case involving land expropriated in 1946 constituted a violation of their right to a fair hearing within a reasonable time as guaranteed under para. 1 of Article 6 of the European Convention on Human Rights. In the instant case, the Ombudsperson noted that there had been two long delays in proceedings until September 2004, when the Municipal Court had declared itself incompetent to decide on the case following the creation of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters. While recognising that the case could have been somewhat complex and that the first delay could still be attributed to the lack of judges following

the 1999 conflict in Kosovo, the Ombudsperson noted that after the creation of the above Special Chamber in June 2002, the relatively simple priority issue of whether the case still fell into the Municipal Court's competences could have been resolved in a more expeditious manner. Stating that it was up to UNMIK to ensure that cases were resolved in an expeditious manner, but also that the court management system of the Municipal Court could be improved, the Ombudsperson noted that recently, UNMIK and the responsible Kosovo Judicial and Prosecutorial Council (KJPC), a body responsible *inter alia* for appointing judges, appeared to have given priority to the problem of the length of proceedings before Kosovo courts. It would, however, remain to be seen whether and how the initiatives taken by these two bodies would provide the courts in Kosovo with permanent long-term and provisional short-term solutions on how to deal with the ever-growing case load in a manner that would be more adapted to the requirements of Article 6 para. 1 of the Convention.

The Ombudsperson also observed that the absence of a legal remedy for the violation of the right to a fair hearing within a reasonable time constituted a violation of the right to an effective remedy under Article 13 of the European Convention on Human Rights. He noted that although this lack of a legal remedy in such cases had been raised many times in several of the Ombudsperson's reports to various SRSGs, there had so far been no visible action to change this on the side of the responsible lawmaking authorities, despite continuous assurances that the matter was under "active consideration". While the initiatives of the KJPC and the UNMIK Department of Justice to resolve the issue of lengthy court proceedings could be considered as a positive development, the Ombudsperson noted that again, the question of an adequate compensatory response to violations suffered by applicants due to such long court proceedings was being left aside.

The Ombudsperson recommended that the SRSG should ensure that the Municipal Court proceed with the applicants' case without any further delay and that it assess and possibly revise its internal organisation system. The Ombudsperson further recommended that the SRSG should ensure that the initiatives taken by the KJPC and the Department of Justice be pursued in an expeditious manner so that the problem of lengthy court proceedings all over Kosovo could be resolved as soon as possible. Finally, the Ombudsperson recommended that the SRSG promulgate a Regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human Rights providing both preventive and compensatory relief with respect to complaints about excessive length in civil cases.

On 20 April 2005, the Ombudsperson received a letter from the Director of the Department of Justice replying that UNMIK was not able to accept these findings and recommendations without further study. He noted that upon review of the report, it was not clear that there had been an unreasonable delay in this case, nor were the causes of any delay adequately investigated. While commending a court that had been re-established after a military conflict for hearing what appeared to be a relatively complicated, non-urgent case, the Director of the Department of Justice noted that it would be important to determine whether the applicants themselves had been responsible for any delays. Moreover, the reassignment of the Municipal Court judge to the District Court should also be taken into consideration. The Director of the Department of Justice also stated that his department was

unable to find any decision of the European Court of Human Rights stating that a similar delay in comparable circumstances constituted a violation of the European Convention of Human Rights and that the cases cited by the Ombudsperson in his report were of a different nature. If further investigation supported the Ombudsperson's findings, consideration could then be given to his remedial recommendations. Regarding the Ombudsperson's recommendation that it be ensured that the Municipal Court proceed with the case without further delay, the Director of the Department of Justice noted that UNMIK's powers to do so were limited, as any other approach would risk compromising judicial independence and could only follow a complaint to the Judicial Inspection Unit and an ensuing investigation. The Director of the Department of Justice assured the Ombudsperson that the initiatives undertaken by the KJPC and the Department of Justice were still being pursued and that both bodies, after having received recommendations for the redistribution of judges within each level of court, would begin acting on these recommendations through the summer and fall of 2005. At the same time, he considered it premature to ask the Municipal Court to change its procedure prior to understanding the reasons why delays occurred. Currently, the Municipal Court's organisational system favoured urgent matters, such as criminal proceedings and labour issues and it remained a challenge to implement a system that would expedite simple matters in a way that did not delay those matters requiring urgency. The Director of the Department of Justice trusted that the reviews initiated would provide some guidance to the KJPC on how to meet this challenge.

SUMMARY

Registration No. 752/02

Regarding UNMIK investigations into the allegations of grievous body harm raised by

JUSUF AND SABRIE BEKA

On **13 April 2005**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure for the Ombudsperson Institution, the Ombudsperson issued the above report.

In this case, the Ombudsperson found that inadequate investigations into the allegations of grievous bodily harm raised by the applicants in March 2001 constituted violations of the applicants' right to be free from torture or inhuman or degrading treatment under Article 3 of the European Convention on Human Rights. The Ombudsman noted that Article 3 inherently requires an effective investigation into the allegations of grievous bodily harm and that this investigation should be capable of leading to the identification and punishment of those responsible for these criminal acts.

In this case, the police authorities exercised proper diligence in their initial investigations, but two long delays in the following investigation proceedings conducted by the District

Court in Mitrovica and the competent prosecutor, taking into account the difficulties of finding certain suspects and the prosecutor's misunderstanding of the new criminal legislation promulgated in April 2004, failed to satisfy the guarantees of the Convention inherent in Article 3 of the Convention.

The Ombudsperson recommended that the SRSG should ensure that the competent authorities resume their investigations into the allegations of grievous bodily harm raised by Jusuf and Sabrie Beka, with a view to indicting and prosecuting those responsible for these criminal acts. The Ombudsperson further recommended that the SRSG should ensure that the judges and prosecutors in Kosovo undergo further training on the practical effects of the new criminal legislation.

By letter of 17 May 2005, the Acting Deputy SRSG for Police and Justice informed the Ombudsperson that the Judicial Inspection Unit of the Department of Justice would open an investigation into the case. Furthermore, he added that the Kosovo Judicial Institute had held a large number of trainings with a main focus on the substantive and procedural aspects of the new criminal law system and would continue holding training sessions to improve the standards of professionalism of the currently serving judges and prosecutors and of candidates applying for such posts.

SUMMARY

Registration No. 1130/03

Regarding the length of proceedings in the case of

RAMË DRESHAJ

On **15 April 2005**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure for the Ombudsperson Institution, the Ombudsperson issued the above report.

In this case, the Ombudsperson found that the failure of the Supreme Court to decide on the applicant's case involving his complaint against a decision taken by the Ministry of Education, Science and Technology within a reasonable time constituted a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed under Article 6 para. 1 of the European Convention on Human Rights. While recognising that the applicant's failure to inform the Supreme Court about his change of residence had delayed the serving of the decision on him, the Ombudsperson found that the lack of judges working for the Supreme Court and the large amount of cases pending before this court did not justify a one and the half year's delay in deciding on the question of whether the Supreme Court was competent to deal with the case or not. The Ombudsperson also observed that the absence of a legal remedy for the violation of the right to a fair hearing within a reasonable time constituted a violation of the right to an effective remedy under Article 13 of the European Convention on Human Rights.

The Ombudsperson recommended that the SRSG should ensure that the Municipal Court in Pejë/Peć, after having received the case from the Supreme Court, proceed with the applicant's case without any further delay. The Ombudsperson also recommended that the SRSG ensure that the initiatives taken by the KJPC and the Department of Justice to improve proceedings before courts in Kosovo be pursued in an expeditious manner to resolve the problem of lengthy court proceedings. He further suggested that the SRSG promulgate a regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human Rights providing both preventive and compensatory relief with the respect to complaints about the excessive length of proceedings in civil cases.

There has been no response to this report.

SUMMARY

Ex officio Registration No. 29/04

Regarding the lawfulness of the confinement of persons with mental disabilities in the Social Care Facility in Shtime/Štimlje

On **5 May 2005**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure for the Ombudsperson Institution, the Ombudsperson issued the above report.

This report examined whether the practice of confining persons with mental disabilities in the Social Care Facility in Shtime/Štimlje was in conformity with the relevant international human rights standards established under Article 5 of the European Convention on the Protection of Human Rights and Fundamental Freedoms.

The Ombudsperson first asserted that due to its mandatory character, the placement of these individuals in the Social Care Facility constituted a deprivation of liberty within the meaning of Article 5 of the European Convention on Human Rights, an article that protects every person's right to liberty. While the open question of whether there was a persistent medical necessity of depriving these persons of their liberty already gave rise to certain doubts as to the lawfulness of their confinement, the Ombudsperson came to the conclusion that in any case, this deprivation of liberty was not compatible with the basic principles of Article 5. According to him, the Law on Social Protection regulating *inter alia* the placement of persons with mental disabilities in the Social Care Facility lacked fixed procedural rules determining exactly under which circumstances and how long such a placement could be effected and thus did not contain adequate procedural safeguards to protect the respective individuals against arbitrary deprivations of liberty. Moreover, the Ombudsman concluded that the provisions of the Social Protection Law on the possibility of lodging an appeal were too vague to afford appropriate protection to the persons concerned and did not directly foresee the possibility of having the case reviewed by a court or similar judicial body, nor did they foresee any form of judicial or similar procedure. They thus did not constitute appropriate legal remedies to examine the

lawfulness of the above persons' detention within the meaning of Article 5 para. 4 of the European Convention of Human Rights.

The Ombudsperson recommended that the SRSG and the Minister of Labour and Social Welfare should, as soon as possible, ensure that the Law on Social Protection be amended so that the procedure for placing persons with mental disabilities in the Social Care Facility and the possibilities of a judicial review of the confinement of such persons would be compatible with international human rights standards.

There has been no response to this report.

SUMMARY

Registration No. 1450/04

Regarding the length of proceedings in the case of

SHEFKI RAMADANI

On **1 June 2005**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

In this case, the Ombudsperson found that the failure of the Municipal Court in Pristina to take the necessary action to ensure the resolution of the applicant's case within an adequate time constituted a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed under para. 1 of Article 6 of the European Convention on Human Rights. In the instant case involving the applicant's claim that his neighbours were obstructing him in the access to and use of his property, the Ombudsperson noted that between July 2000 and April 2001, two court decisions were issued, so that during this period, the courts appeared to have treated the case with the required due diligence. However, after the case was remitted back to the Municipal Court in April 2001, this court did not issue a new decision until April 2004. The Ombudsperson concluded that this long delay demonstrated a serious malfunctioning in the organisation and case-management of the Municipal Court. At the same time, the fact that the District Court in Pristina needed to remit the case back to the Municipal Court twice disclosed a serious qualitative deficiency in the local judicial system. The Ombudsperson also observed that the absence of a legal remedy for the violation of the right to a fair hearing within a reasonable time constituted a violation of the right to an effective remedy under Article 13 of the European Convention on Human Rights. He noted that although he had raised this issue in many previous reports, there was no evidence that UNMIK had taken any steps to create such a remedy.

The Ombudsperson recommended that the SRSG should ensure that, given the previous delays, the Municipal Court in Pristina conduct an adequate assessment of the facts and

issue a judgment in the applicant's case without any further delay. The Ombudsperson further recommended that the Municipal Court in Pristina take adequate measures to improve the organisation of its case management. Finally, the Ombudsperson recommended that the SRSG promulgate a Regulation providing for an effective remedy within the meaning of Article 13 of the European Convention on Human Rights granting both preventive and compensatory relief with respect to complaints about the excessive length of proceedings in civil cases.

There has been no response to this report.

SUMMARY

Ex officio Registration No. 15/01

Concerning the alleged ill-treatment of

REXHEP KURTAJ

On **16 June 2005**, pursuant to his authority under Sections 4.3 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 22, paras. 3 and 4 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

In this case, the Ombudsperson first examined whether the complainant's allegations that he had been beaten by an UNMIK Police Officer were credible. Due to such supporting evidence as medical reports and a newspaper article complete with a picture taken of the event, the Ombudsperson considered that these allegations were credible and that a violation of the complainant's right to be free from torture or inhuman and degrading treatment, as postulated in Article 3 of the Convention, had occurred. The Ombudsperson further found that the competent police authorities' failure to initiate proper investigations into the complainant's allegations of ill-treatment, despite having been informed about them several times, *inter alia* through the Ombudsperson Institution, also constituted a breach of Article 3, as this Article also required an effective investigation into allegations of grievous bodily harm that should be capable of leading to the identification and punishment of those responsible for such criminal acts.

The Ombudsperson also observed that the absence of an effective remedy in respect of the applicant's claim of a breach of Article 3 constituted a violation of the right to an effective remedy under Article 13 of the European Convention on Human Rights.

The Ombudsperson recommended that the SRSG should ensure that in future, UNMIK Police investigate immediately following allegations of ill-treatment through police officers. The Ombudsperson further recommended that the SRSG should ensure that all international officials always be subjected to an effective criminal and civil jurisdiction.

There has been no response to this report.

SUMMARY

Ex officio Registration No. 41/05

Concerning the issue of age discrimination in advertisements for employment in the public sector

On **20 June 2005**, pursuant to his authority under Sections 4.3 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 22, paras. 3 and 4 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

This report examined whether the use of age as a mandatory requisite for candidates taking part in employment competitions in the public sector was discriminatory within the meaning of Article 26 of the International Covenant on Civil and Political Rights, which according to UNMIK Regulation No. 2001/9 on the Constitutional Framework for Provisional Self-Government in Kosovo was directly applicable in Kosovo. The review conducted in this report was restricted to public competitions for such posts in the public sector falling under the UNMIK Regulation No. 2001/27 of 8 October 2001 on the Essential Labour Law in Kosovo, and/or the UNMIK Regulation No. 2001/36 of 22 December 2001 on the Kosovo Civil Service. The report dealt with certain job vacancy notices and advertised competitions in the public sector published in the daily newspaper “Koha Ditore” during the period between 1 January 2004 and 31 August 2004, which set age limitations for potential candidates.

The Ombudsperson first emphasised that the Kosovo Anti-Discrimination Law could not be applied to the cases analysed in the report, as they had all been published before the entry into force of this law. The Ombudsperson observed that Article 26 of the International Covenant on Civil and Political Rights provides that all people are equal before the law, are entitled to equal protection of the law without discrimination, and that the law shall guarantee equal and effective protection against discrimination. Based on these principles, the Ombudsperson concluded that the age limitations in the cases under review were in contrast with Article 26 of the Covenant, as they were not justified by any reasonable and objective grounds. In some cases, the public authorities in question admitted this; in others the justifications given were simply not objective or reasonable. In still other cases, the Ombudsperson noted that a lower age limit could be justified if it was consistent with the education and the working experience required in order to perform the essential functions of the respective post, especially when, due to the importance or the characteristics of the job, it necessitated a person with a certain grade of experience and maturity. Nevertheless, in the cases under examination the job requirements contained in the announcements did not permit any reasonable distinction based on age. The Ombudsperson also concluded that the above age limitations constituted a violation of Section 2 paras. 1 and 2 of UNMIK Regulation No. 2001/27 on the Essential Labour Law in Kosovo, as well as, in most of the cases, Section 2.1 lett. (f) (g) of the UNMIK Regulation No. 2001/36 of 22 December 2001 on the Kosovo Civil Service.

The Ombudsperson recommended that the SRSG should, by 1 September 2005 at the latest, ensure that the public institutions concerned respect the relevant legal provisions prohibiting age-based discrimination in access to employment.

SUMMARY

Registration No. 1176/04

FLORIJE BISLIMI RATKOCERI against the Municipality of Lipjan/Lipljan

On **28 June 2005**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

In this case involving the applicant's complaint against recruitment proceedings for the post of Municipal Officer for Gender Issues within the Municipality of Lipjan/Lipljan, the Ombudsperson examined whether the applicant was deprived of her right of access to court as postulated in Article 6 of the Convention. According to UNMIK Regulation No. 2001/36 on the Kosovo Civil Service and the Administrative Direction implementing this Regulation, all civil servants complaining against their employers, as well as candidates complaining about recruitment proceedings for posts within the civil service, are to direct their appeals to a so-called Independent Oversight Board. However, to the date of this report, this Board was still not operative, as the rules of procedure governing its work had still not been finalised. This procedure, however, was the only legal remedy open to the applicant according to the Ombudsperson, as UNMIK Regulation No. 2001/36 constituted a *lex specialis* over general administrative law. The applicant, who was apparently not informed about the correct appeals procedure, appealed to the competent Chief Executive Officer within the Municipality of Lipjan/Lipljan and, following his dismissal of her appeal, was then referred to the UNMIK Directorate for Administrative Affairs, which in turn forwarded the appeal to the Legal Office of the Ministry of Public Service. As the Municipality refused to follow this Office's recommendation to repeat the recruitment proceedings, the applicant took the case to the Municipal Court in Lipjan/Lipljan, which rejected the claim for being outside the statutory time limit, instead of declaring itself incompetent to decide on employment matters involving civil servants, which belonged to the field of administrative law, not civil law. The Ombudsperson noted that the Chief Executive Officer, the UNMIK Directorate for Administrative Affairs, the Ministry of Public Services and the Municipal Court had thus failed to direct the applicant to the proper legal proceedings to take in her case. At the same time, he noted that even if the claimant had been adequately informed, the fact that the competent body in the form of the Independent Oversight Board was still not operative would have prevented her from pursuing proceedings before the Supreme Court in Kosovo which was competent to decide on administrative disputes. Assuming, for the purposes of the instant report, that the proceedings before this court fulfilled the requirements set by Article 6 of

the Convention, the Ombudsperson concluded that the present case constituted a violation of the claimant's right of access to court under Article 6 of the Conventions. The Ombudsperson recommended that the SRSG should, by 1 September 2005 at the latest, ensure that the Independent Oversight Board be able to take up its work without further delay. The Ombudsperson further recommended that the SRSG should ensure that all institutions covered by UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, as well as all judges in Kosovo, be informed about the correct appeals proceedings to be followed in cases of complaints against recruitment proceedings for the civil service.

SUMMARY

Registration No. 1469/04 and 1470/04

SELVIJE QERIMI AND OTHERS AND XHEZIDE ZOGIANI

against UNMIK Railways

On **29 June 2005**, pursuant to his authority under Sections 1.1 and 4.1 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rule 22, paras. 3 and 4 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

In this case, the applicants complained about their allegedly discriminatory dismissal from work by UNMIK Railways and that the immunity of UNMIK prevented them from complaining to a court. The Ombudsperson recalled in this report that the main purpose of granting immunity to international organizations was to protect them against unilateral interference by the government of the state in which they were located, which constituted a legitimate objective to ensure the effective operation and work of such organizations. However, in Kosovo, this rationale did not apply as the functions exercised by UNMIK were those of a surrogate state and there was no need for a government to be protected against itself. The Ombudsperson noted that no democratic state operating under the rule of law accorded itself total immunity from any administrative, civil or criminal responsibility, which paved the way for impunity of a state, or, in the case of UNMIK, an entity exercising state powers. Therefore, the Ombudsperson found that the aim of UNMIK's immunity was not legitimate and thus did not justify any bar to the applicants' right of access to court, thereby constituting a violation of the applicants' right of access to court as guaranteed under Article 6 of the European Convention on Human Rights. The Ombudsperson recommended that the SRSG should, by 1 September 2005 at the latest, ensure that all local employees of UNMIK- managed enterprises/companies be able to take their employer to court.

SUMMARY

Registration No. 732/02

RRUSTEM IBISHI against the Municipal Court in Pristina

On **30 June 2005**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

In this case involving the applicant's complaint against the continuing failure of the Municipal Court to execute a judgment issued on 27 January 1997, the Ombudsperson examined whether the applicant was deprived of his right of access to court as postulated in Article 6 of the Convention. In the above judgment, the Municipal Court had ordered the defendant party, the Serbian Fund for Pensions and Invalidity Insurance, to permit the applicant to return to his work place. The Ombudsperson noted that since 2001, the main legal question preventing the Municipal Court from executing the judgment had been the issue of whether the Kosovo Social Insurance Fund was the legal successor to the Serbian Fund for Pensions and Invalidity Insurance. While admitting that the question of legal succession could raise complicated issues of law, the Ombudsperson considered that this did not justify a delay of over three and a half years following the Kosovo Social Insurance Fund's objection to execution proceedings. The Municipal Court had thus violated the applicant's right to a court as guaranteed under Article 6 of the European Convention on Human Rights. The Ombudsperson recommended that the President of the Municipal Court in Pristina should, no later than 21 July 2005, ensure that the Municipal Court issue a new decision regarding the execution of its judgment without further delay. The Ombudsperson also recommended that the SRSG should, by 1 August at the latest, initiate disciplinary proceedings before the Kosovo Judicial and Prosecutorial Council against those judges in the Municipal Court who were involved in the applicant's case.

SUMMARY

Ex Officio Registration No. 46/05

Regarding the allocation of apartments in the "Gj" building in the Municipality of Obiliq/Obilić

On **30 June 2005**, pursuant to his authority under Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

In this report, the Ombudsperson examined the lawfulness of the decisions and the procedure concerning the allocation of apartments in the "Gj" building belonging to the

Municipality of Obiliq/Obilić to employees of the Municipality. The report was the result of an *ex officio* investigation prompted by earlier complaints about irregularities in the allocation proceedings received from certain individuals and other information submitted to the Ombudsperson.

In the report, the Ombudsperson noted that a commission appointed by the Municipal Assembly to conduct the allocation proceedings had not followed the provisions on allocation proceedings in the applicable Law on Housing Relations of 1983, nor any other legal principles, nor indeed the criteria established by itself. It was also not held to report back to the Municipal Assembly or any other body, nor were there any provisions regulating its composition and how large of a quorum would be permitted to take certain decisions. This commission had thus operated with near to complete impunity and was not obliged to answer to any laws, procedures or supervisory bodies. Therefore, the allocation proceedings did not contain sufficient safeguards to prevent arbitrary behaviour on the side of the Commission. The Ombudsperson concluded that the rights of the persons applying to receive apartments by allocation decision were left without sufficient protection against discriminatory behavior in violation of Article 14 in conjunction with Article 8 of the European Convention of Human Rights. The Ombudsperson recommended that the SRSG should, in cooperation with the Ministry of Public Services and the Ministry of Local Self-Government and by 1 September 2005 at the latest, ensure that the allocation proceedings in dispute be conducted anew, taking into consideration the international standards mentioned in the report. He also recommended that the SRSG and the above Ministries respond in an adequate manner to the allegations concerning irregularities in the allocation proceedings related to the “Gj” building in Obiliq/Obilić.

Annex 4: Summaries of selected intervention letters (1 July 2004 – 30 June 2005)

The return of refugees of Roma, Ashkali and Egyptian ethnicity to Kosovo

In May 2004, the Ombudsperson received information that Belgium, Denmark, Germany, Norway, Sweden, the Netherlands and several central European countries were planning to forcibly return refugees of Roma, Ashkali and Egyptian ethnicity to Kosovo. On 18 May 2004, the Ombudsperson wrote an open letter to the competent Ministers of these countries stating that the situation for ethnic minorities in Kosovo had gotten worse, as evidenced by the widespread violence in March 2004. Neither UNMIK nor the local police had been able to control the situation, nor guarantee the security of persons belonging to minority communities. The Ombudsperson sent a copy of the letter to over a dozen human rights organisations and heads of international organisations including the Secretary-General of the United Nations, the Secretary-General of the OSCE, and the President of the European Parliament. In the previous reporting period, the Ombudsperson had received responses to his appeal from representatives of the Danish, Swedish and Belgian Parliaments. During this reporting period, the Ombudsperson received the following responses.

21 July 2004: The Ombudsperson received a letter from the Minister of Local Government and Regional Development of Norway indicating that Norwegian law stipulated that neither she nor any other Cabinet Minister could intervene in the processing of cases in pursuance of the Norwegian Immigration Act. Neither could any Cabinet Ministers interfere with decisions to return persons not meeting the requirements for residence in Norway. However, the Minister informed the Ombudsperson that the Norwegian authorities were following the situation in Kosovo closely and that, after the violence in March, Norwegian immigration authorities had temporarily suspended the processing of applications from Ashkali, Bosniak, and Gorani asylum seekers.

26 July 2004: The Ombudsperson received a letter from the Belgian Minister of Interior assuring him that the Belgian Department of Immigration only sent back people of Albanian ethnicity to Pristina and that each case was submitted to UNMIK for prior approval including the declared ethnicity, the place of birth and the latest address in Kosovo of the respective person. He informed the Ombudsperson that as UNMIK only accepted the return of ethnic Albanians, it was clear that the Belgian Immigration Office had not forcibly returned persons of any other ethnicities. The Minister ended his letter writing that the return of persons of non-Albanian ethnicities had only happened on a voluntary basis and never under the coercion of the Department of Immigration.

26 July 2004: The Ombudsperson received a letter from the Head of the Department of Migration, Refugees, Integration, and European Harmonisation in the German Ministry of Interior informing him that German officials had been following the situation in Kosovo closely and were in regular contact with UNMIK regarding whether or not minorities could be returned to Kosovo. He added that according to a Memorandum of Understanding signed by the SRSG and by the German Federal Minister of Interior in 2003, members of Roma and Serb minorities were exempt from returns until further notice. The Head of Department also wrote that immediately following the March violence, UNMIK, in consultation with Germany, had discontinued all returns of Kosovo refugees until 15 April 2004 and that since then, only ethnic Albanians were being

returned. In ensuing conversations between the German Government and UNMIK analysing the situation in Kosovo during June 2004, officials had concluded that members of the Turk, Bosniak, Gorani and Torbesh communities could now be returned to Kosovo. The Head of the above Department closed the letter by writing that UNMIK and the German government had agreed to regularly re-examine the situation and further develop the return process for members of minorities from Kosovo.

11 August 2004: The Ombudsperson received a letter from the Director of the UNMIK Office of Returns and Communities, who informed him that it was UNMIK's consistent policy to reject the return of persons without guarantees of security and adequate access to shelter and other humanitarian needs; based on that policy no members of the Roma community had been forcibly repatriated to Kosovo. According to the Director of the Office of Returns and Communities, until there was a marked improvement in the security situation, it was UNMIK's policy that no member of the Ashkali, Roma, or Egyptian communities could be forcibly returned. The Director of the Office of Returns and Communities indicated that host countries had been keen to return members of all communities to Kosovo, but that UNMIK had continued to stress to these host governments the importance of protecting minority communities from forced returns if their safety and security could not be guaranteed. In closing, she expressed her appreciation for the Ombudsperson's appraisal of the situation, which supported her office's position in this important work.

The legality of actions of public authorities aimed at banning the wearing of religious symbols by pupils in public schools throughout Kosovo

On 4 June 2004, the Ombudsperson had issued a Special Report finding inter alia that Section 4.7 of the Law on Primary and Secondary Education could not serve as a legal basis for public authorities' actions interfering with the freedom of pupils to wear religious symbols in schools. He recommended that in the absence of any adequate legal provision, public authorities should thus refrain from any such actions.

30 July 2004: The Ombudsperson received a response from the SRSG, who wrote that there were other possible legal bases under the applicable law for such a prohibition, suggesting that rules issued by municipalities could constitute adequate legal bases since they were issued by a delegated rule-making authority. He therefore considered it inappropriate to take the action proposed by the Ombudsperson.

17 September 2004: The Ombudsperson replied to the SRSG's letter indicating that he had considered other possible legal bases, namely the 'school rules' issued by municipalities according to Section 3.1 of the Law on Education, but that he did not agree with the SRSG's assessment that this provision could serve as a legal basis for limiting the right to freedom of religion. The Ombudsperson referred to Section 3.1 of the Law on Education detailing that 'school rules' issued by municipalities were aimed at regulating "good conduct and discipline of pupils in each educational institution". The Ombudsperson pointed out that Article 9 para. 2 of the European Convention on Human Rights guaranteed the freedom of manifesting one's religion as a basic human right that could only be limited by a law specifically issued for this purpose, which, in his opinion, 'school rules' regulating good conduct and discipline were not. He added that laws regulating good conduct and laws regulating the wearing of religious symbols were two completely different things, so that public authorities could not limit the freedom of

religion by banning the wearing of religious symbols in public institutions in the name of good conduct and discipline of pupils. The Ombudsperson argued that even if the municipality were to issue 'schools rules' introducing limits to the freedom of manifesting one's religion, such rules would not have the "quality of law" within the meaning of the European Court of Human Rights' case law. The Ombudsperson closed his letter by reiterating his recommendations made in Special Report No. 8.

Regarding the failure to effectively execute a decision of the HPD

On 5 May 2004, the Ombudsperson had issued a report in which he had found that the failure of the HPD and UNMIK Police to effectively execute a decision of the HPD of 26 October 2001 permitting the applicant to regain possession of his property constituted a violation of the applicant's right to respect for his home and property as guaranteed by the European Convention on Human Rights and the Protocols thereto. The Ombudsperson concluded that UNMIK Regulation No. 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission did not contain appropriate answers to such a dilemma.

11 August 2004: The Deputy SRSG for Civil Administration responded to the above report. He asserted that the HPD had effectively executed and re-executed its decision, but that the events in the applicant's case, which had prevented him from occupying his property, had occurred after the HPD's enforcement of the decision. The Deputy SRSG added that existing Criminal Codes authorised the police to remove anyone from a property who unlawfully broke an HPD seal without an additional judicial order and also prescribed criminal sanctions on those who violated the seal placed on a property by the HPD. According to him, the Ombudsperson was not right in his assessment that the applicable UNMIK Regulation "did not foresee any further reaction if illegal occupants returned following their eviction". The Deputy SRSG asserted that the relevant legal provisions obliged the police to remove the seal-breaker from the property and noted that the competent public prosecutor should then follow up by pressing criminal charges. He argued that the HPD could not assume the responsibilities of protecting the property after eviction nor could it assume the role of public prosecutor to charge and try criminals who illegally entered the property after the HPD had executed a decision. He concluded by acknowledging the Ombudsperson's recommendation to the applicant to go to the public prosecutor as being "evidently the correct approach".

14 September 2004: The Ombudsperson responded to the Deputy SRSG by first acknowledging that the HPD could not take on the functions of a public prosecutor or a court to charge and try criminals who entered properties after the HPD had implemented a decision. However, the Ombudsperson asserted that once the HPD had sealed a property and implemented a decision in favour of an owner, it had assumed a certain responsibility obliging it to make sure that the breaking of its public seal be investigated by police and public prosecutors. The Ombudsperson emphasised that often the position of property owners after 1999 was weak compared to that of illegal occupants and urged the HPD to demonstrate a strong support for the legal position of property owners.

The alleged lack of proper investigation into a murder case that happened in April 1999

On 4 May 2004, the Ombudsperson wrote a letter to then SRSG to inquire after the case of an applicant who had complained that the District Prosecutor's office and UNMIK Police had not made adequate progress in arresting and prosecuting the individuals responsible for the murder of six of the applicant's relatives. These persons were murdered in the village of Upper Bernice located in the Municipality of Pristina on 18 April 1999. In the letter of 4 May 2004 and in an earlier letter dated 9 December 2003, the Ombudsperson had also asked the SRSG to order UNMIK Police to forward to him the police files and other relevant documents related to the case.

16 August 2004: The Ombudsperson received a letter from the Deputy SRSG for Police and Justice informing him that the judicial investigation against twenty-three suspects had been suspended for the time being, as all suspects were still at large. He indicated that arrest warrants had been issued and that the judicial investigation would proceed upon the arrest of any of the suspects, who were believed to be in Serbia proper. The Deputy SRSG explained that the transfer of suspects was delayed because the transfer of criminal subjects between Kosovo and Serbia proper, in general, remained problematic. The Deputy SRSG wrote that UNMIK would continue to attempt to resolve this issue at a political level and within the framework of the Police Cooperation Agreement that had been signed with Serbia proper. The Deputy SRSG closed the letter by denying the access to the files requested by the Ombudsperson, writing that it was not possible to grant access to the files of this particular case while it was still under investigation or subject to judicial proceedings.

17 September 2004: The Ombudsperson sent a letter to the Minister of Justice of the Republic of Serbia informing him about his investigation in the above-mentioned case. He wrote that it would be difficult to accept that a State like Serbia, which had recently become a Member of the Council of Europe, could at the same time be considered a "safe haven" for person suspected of having committed serious criminal offences such as murder in Kosovo. Such conduct prevented any investigations into such crimes from being concluded in a successful manner so that the respective perpetrators could be brought before a criminal court. The Ombudsperson closed his letter to the Serbian Minister of Justice expressing his hope that the latter would give this matter the consideration it deserved.

Copies of the letter were sent to the Deputy SRSG for Police and Justice, the Secretary-General of the Council of Europe, the President of the Parliamentary Assembly of the Council of Europe and the Director of Legal Affairs of the Council of Europe.

There has been no response to this letter.

The right of education of the Bosniak community

Throughout the last few years, the Kosovo Ministry of Education, Science and Technology has begun implementing educational reforms with a view to adapting the school system in Kosovo to the educational standards of most other European countries. Unfortunately, these reforms did not take into account the specific interests of those non-Albanian communities that speak Slavic languages. There has also been a complete dis-

regard of the stage of the reform processes in neighbouring areas such as Serbia proper, Montenegro, Bosnia and Herzegovina and the FYROM respectively. Due to this situation, the children of some of these communities, in particular a number of children of the Bosniak and Gorani community, lost almost the entire 2003/2004 school year and have only been able to make up for this by following certain “catch-up courses” during their summer vacations. It was only in the middle of 2004 and very much due to the insistence of both the Ombudsperson and UNMIK that the Ministry of Education, Science and Technology began to contact similar ministries in neighbouring countries with a view to reaching agreements in this matter. On a number of occasions during the last reporting period, the Ombudsperson met with representatives of the Bosniak community to advocate on their behalf before UNMIK officials. The Ombudsperson brought together Bosniak families and UNMIK authorities after having offered the good offices of the Institution in order to allow the Bosniak family representatives to voice their concerns directly to UNMIK authorities. The following letters reflect the progress made on the above issue during this reporting period.

18 August 2004: The Ombudsperson wrote a letter to the Kosovo Minister of Education, Science and Technology to urge him to consider suspending the implementation of the 9th grade for members of the Bosniak community for the running school year. The Ombudsperson also stressed that the continuation of general medical schooling in the Bosniak language in the Medical school in Pristina was essential in order to offer more opportunities to these students to choose a profession as well as continue with their further education in other countries belonging to the same language group. The Ombudsperson appealed to the Minister to make a decision in the matter before the new school year started.

2 September 2004: The Ombudsperson received a letter from the Kosovo Minister of Education, Science and Technology promising to ensure that the teaching staff of the former Medical School would be a part of the new secondary school in the Bosniak language in Pristina. The Kosovo Minister of Education, Science and Technology wrote that all Bosniak children living in Kosovo were enrolled in the new reformed educational system, meaning 9th and 10th grades which would bring them in line with European Standards. He continued that it would be unnecessary to extend the exemption from the new 9th grade for two Bosniak students in Pristina, while all other Bosniak children were already attending the new grade 9 and 10 classes. The Kosovo Minister of Education, Science and Technology closed his letter by informing the Ombudsperson about his ongoing efforts to arrange a network of bilateral agreements with governments in the region in order to achieve mutual recognition of school diplomas and certificates.

The alleged lack of proper investigation with regard to the bombing of the “Niš Express” bus

On 8 August 2003, the Ombudsperson received an application concerning the lack of proper investigation into the bombing of the “Niš Express” bus on 16 February 2001, near the administrative border of Merdare between Kosovo and Serbia proper. The applicant complained that he had not received any official documents about the results of the police investigation. On 1 September 2003, the Ombudsperson wrote a letter to the UNMIK Police Commissioner asking for information about the stage of the investigations and requesting copies of any official documents related to the case. On 22 September

2003, the Ombudsperson received a letter from UNMIK Police Commissioner. According to this information, the investigation related to the "Nis Express" bombing was still ongoing but some progress had been made. The UNMIK Police Commissioner refused to provide the Ombudsperson with the requested documents, as the case was still under investigation. On 5 December 2003, the Ombudsperson wrote a letter to the SRSG reiterating his request for access to the above documents. In case of denial, he asked to receive a written statement from the SRSG with reasons for such a refusal. On 26 January 2004, the Ombudsperson wrote a reminding letter to the SRSG, in which he renewed the requests contained in his previous letter.

19 August 2004: The Ombudsperson received a letter from the Deputy SRSG for Police and Justice explaining that the investigation was highly sensitive and ongoing. Even so, the Deputy SRSG assured the Ombudsperson that progress was being made in the case, as demonstrated by arrests made in June 2004 in Albania and the transfer to Kosovo of prime suspects. On behalf of the SRSG, the Deputy SRSG denied the Ombudsperson access to any information contained in the police investigation, asserting that it would jeopardise the judicial process of the case and have an adverse impact on the safety of the witnesses.

UNMIK Police's rejection of a request to organise a peaceful protest

On 28 June 2004, the Ombudsperson had issued a report in which he had found that UNMIK Police had wrongfully invoked the Law on Public Peace and Order to deny the party People's Movement in Kosovo permission to hold a peaceful protest, as this law regulated the behaviour of citizens in public, but did not specifically cover the requirements for obtaining permission to assemble in public. Instead, the Ombudsperson noted that such matters were covered by the existing Law on Public Assembly which, however, did not meet the requirements of Article 11 of the European Convention on Human Rights, which protected the right to freedom of peaceful assembly. He found that the above law was not sufficiently precise and did not contain foreseeable consequences for certain behaviour, as required by Article 11. The Ombudsperson recommended that the SRSG adopt and promulgate a new law on the right to public and peaceful assembly.

20 August 2004: The Ombudsperson received a letter from the Deputy SRSG for Police and Justice stating that he did not agree with the Ombudsperson's interpretation of the Law on Public Assembly. He noted that the European Court of Human Rights case law cited in the Ombudsperson's report concerned the opening of correspondence of detainees and thus did not justify the Ombudsperson's findings that the qualitative requirements of the law had not been met in the very different context of the authorisation of a demonstration. On such grounds, the Deputy SRSG wrote that he did not accept the Ombudsperson's recommendation that new legislation on the right to public and peaceful assembly should be adopted and promulgated. He did note that the Ombudsperson's findings with regard to the failure to act upon the applicable Law on Public Assembly would be brought to the attention of UNMIK Police.

14 September 2004: The Ombudsperson informed the Deputy SRSG that he disagreed with these conclusions and reiterated the main points of the legal analysis conducted in his report, stressing that the Law on Public Assembly did not indicate with reasonable clarity the scope and exercise of discretion conferred to public authorities with respect to

the freedom of assembly. The Ombudsperson stressed the necessity of clear legislation in such issues in order to ensure to individuals the minimum degree of protection to which they were entitled under the rule of law in a democracy. This principle was of a general nature and could be found in many other cases before the European Court of Human Rights. Based on such examples, the Ombudsperson repeated that he considered it necessary to adopt and promulgate new legislation on the right to public and peaceful assembly.

KFOR escorts for convoys between Štrpce/Shtërpce and Merdare and North Mitrovica

24 August 2004: The Ombudsperson wrote a letter to the Commander of the KFOR Multinational Brigade East expressing his concern regarding a decision made recently to cancel escorts for convoys enabling Serbs to commute between the Municipality of Štrpce/Shtërpce and Merdare and North Mitrovica. The Ombudsperson explained that it was still risky for Serbs to travel around Kosovo without an escort and that for the Serbian population of the enclave of Štrpce/Shtërpce, such escorts had so far been one of the key conditions for survival. The Ombudsperson also pointed to the violent events of last March and asked the Commander of the above KFOR Brigade to provide him with convincing arguments and information on the security assessment that had led to KFOR's decision to stop providing escorts.

There has been no response to this letter.

The general problem of illegal constructions

30 August 2004: The Ombudsperson wrote to the Prime Minister of Kosovo reiterating the content of an earlier letter raising the general issue of illegal constructions in Kosovo. The Ombudsperson noted with regret that there had never been a response to his earlier letter and that there did not appear to have been any substantial or visible efforts on the side of the Government or the municipalities to address the widespread disregard for construction laws currently existing throughout Kosovo. The Ombudsperson explained that the persistent lack of an adequate reaction to such illegal practices could lead the public to believe that violations of the domestic law would go unpunished and that persons who do not follow the law would end up being privileged. The Ombudsperson closed his letter repeating his request that the Prime Minister take appropriate measures to put an end to illegal construction.

There has been no response to this letter.

The abuse of narcotics

30 August 2004: The Ombudsperson wrote to Kosovo's Prime Minister drawing his attention to the fact that the abuse of dangerous narcotics in Kosovo had increased and that notably the younger population had succumbed to using hard drugs at an alarming

rate. The Ombudsperson urged the Government to develop a strategy to deal with this growing problem. The Ombudsperson wrote that appropriate laws banning the use and distribution of dangerous narcotics, centers where addicts could be cured of their malady and a public information campaign informing the population about the risks and types of drugs involved were very much needed. He recommended that the Government take action as soon as possible, as this was in the interest of the entire population.

15 April 2005: The Ombudsperson received a letter from the Director of the UNMIK Department of Justice in which the Director agreed with the Ombudsperson regarding the inadequacy of facilities in Kosovo for persons addicted to drugs, regardless of whether these persons were convicted of criminal offences or not. The Director of the Department of Justice suggested that this issue be addressed to the Ministry of Health, as the Department of Justice was not in a position to raise such problems.

The inability of Serbian claimants to safely travel to courts

31 August 2004: The Ombudsperson wrote to the SRSG expressing his concern that although proceedings before the local courts concerning compensation for property damaged or destroyed during the violent events in March 2004 had now begun, claimants of Serbian origin were often not able to attend proceedings due to a lack of escorts from UNMIK and KFOR. The Ombudsperson reminded the SRSG that it was still risky for Serbs to travel around Kosovo without escorts and urged him to find an adequate solution to this issue as soon as possible.

10 November 2004: The Ombudsperson received a letter from the Deputy SRSG for Police and Justice. In his letter, the Deputy SRSG stated that the UNMIK Department of Justice shared the Ombudsperson's concerns and had been working with the relevant structures to provide access to justice for these claimants. The Department of Justice had begun organising escorts for those Serbs and the UNMIK liaison office in Gračanica/Graçanicë had been running shuttle buses to the courts in Pristina. The Department of Justice had also asked the presidents of all courts in Kosovo that no cases be scheduled until this issue had been resolved in a satisfactory manner.

IDPs from Kosovo in Serbia proper

On 5 May 2004, the Ombudsperson wrote a letter to the Prime Minister of the Republic of Serbia in order to draw his attention to the situation of IDPs from Kosovo currently staying in Serbia proper. These people had not fled to Serbia proper from a foreign country and therefore did not hold the status of refugees. The Ombudsperson urged the Prime Minister of Serbia to see whether it could be possible to grant IDPs some of the rights and benefits that were today enjoyed by refugees, as it was impossible to determine when these IDPs would be able to return to Kosovo. The Ombudsperson also stated the importance of giving these internally displaced people the right, as citizens of Serbia and Montenegro, to choose whether or not to return to Kosovo or build a new life in Serbia proper.

1 September 2004: The Ombudsperson wrote another letter to the Prime Minister of Serbia, reiterating the message of his first letter, pointing out that a large number of displaced persons from Kosovo had now been living in Serbia proper in very poor

conditions for almost five years. The Ombudsperson added that a developing situation concerning Roma from Kosovo housed in barracks in Novi Beograd called for urgent action. The Ombudsperson informed the Prime Minister of Serbia that these Roma were facing expulsion from these barracks and urged him to resolve the legal status and improve the living conditions of long-term IDPs, regardless of their ethnic origins. The Ombudsperson also appealed to the Prime Minister of Serbia to put a stop to the pending expulsion of the Roma from Kosovo staying in the above barracks at Novi Beograd until an alternate solution was found.

The Ombudsperson also raised this issue on a number of occasions during meetings with various organs of the Council of Europe while in Strasbourg.

There has been no response to this letter

The length of the proceedings before the HPD Claims Commission

On 29 June 2004, the Ombudsperson issued a report in which he found that the failure of the HPD Claims Commission to decide on the applicants' cases within a reasonable time constituted a violation of the applicants' right to respect for their homes and property. The Ombudsperson recommended that the SRSG, through appropriate legal measures and administrative practices, secure the right to home and property of the applicants, as well as of other persons in a similar situation.

2 September 2004: The Ombudsperson received a letter from the Deputy SRSG for Civil Administration, who wrote that the general content of the Ombudsperson's report was continuously under active consideration by UNMIK. He added that the HPD had decided more than 60% of the caseload over the last two years and that the HPD mandate envisaged for the examination of cases to be completed by the end of 2005. The Deputy SRSG expressed regret for the situation of many thousands who had submitted claims to the HPD, but explained that completing such a monumental task in a turbulent post-conflict environment within a period of five years did not constitute a violation of the European Convention of Human Rights. As indicated by the Ombudsperson in his report, a delay in processing might not be in breach of the ECHR, provided that visible remedial action was taken with requisite promptness to deal with exceptional situations of this kind. He informed the Ombudsperson that the core issue raised in the report was being closely monitored by UNMIK and believed that the Ombudsperson's recommendation of securing fundamental rights through appropriate legal measures and administrative practices was met by the legal framework in place. In closing, the Deputy SRSG wrote that an Advisory Board had been established to advise the SRSG on the mandate of the HPD and that this board would meet on a quarterly basis.

14 September 2004: The Ombudsperson responded to the Deputy SRSG's letter writing that contrary to his implications, the report did not criticise the system underlying the processing of cases before the HPD. Instead, the report focused on the practical implementation of this system, in particular on the fact that due to a lack of manpower, the HPD was not resolving cases as quickly as could be expected of such a body. The Ombudsperson repeated that the HPD had been forced to deal with problems deriving from a lack of finances and adequate staffing for years and restated that this problem had not been resolved by the competent UNMIK authorities. However, the Ombudsperson welcomed the creation of an Advisory Board that would advise the SRSG on the mandate

of the HPD and noted that he would be grateful for regular updates about the issues brought before this entity.

IDPs from Kosovo in Montenegro

The Ombudsperson continues to be active with regard to the fate of internally displaced persons (IDPs) from Kosovo staying in Montenegro. During the last reporting period, he had a meeting in Podgorica with the representatives of displaced persons staying in Montenegro. On 19 May 2004, the Ombudsperson wrote a letter to the Prime Minister of the Republic of Montenegro, noting that as the displaced persons from Kosovo had not fled there from a foreign country, they were not refugees in the technical sense of the word. Nevertheless, the Ombudsperson thus asked the Prime Minister of Montenegro to extend to the internally displaced people from Kosovo some rights and benefits enjoyed by refugees. The Ombudsperson again stated the importance of giving these internally displaced people the right, as citizens of Serbia and Montenegro, to choose whether or not to return to Kosovo or build a new life in Montenegro.

10 September 2004: The Ombudsperson wrote a second letter to the Prime Minister of the Republic of Montenegro, in which he repeated the message of his earlier letter asking to extend to the internally displaced people from Kosovo some of the rights and benefits enjoyed by refugees. The Ombudsperson added that a long period of time had passed since these IDPs from Kosovo were forced to leave their homes, thereby losing many of the rights that were taken for granted by people living under normal conditions. He thus urged the Prime Minister of the Republic of Montenegro to prioritise this issue.

The Ombudsperson also raised this issue on a number of occasions during meetings with various organs of the Council of Europe while in Strasbourg.

18 October 2004: The Ombudsperson received an answer from the Prime Minister of Montenegro in which he informed the Ombudsperson *inter alia* that those 18, 196 IDPs from Kosovo still staying in Montenegro were receiving maximum protection and support from his Government. According to him, refugees and IDPs were being treated the same and received adequate protection in terms of health and education, as well as social assistance for the most vulnerable groups of people. At the same time, the Prime Minister of Montenegro complained that many international organisations and NGOs previously assisting these people had left Montenegro, so that now, it was only up to the Government to help them.

The problem of access to public buildings for people with physical disabilities

15 September 2004: The Ombudsperson wrote to the Prime Minister of Kosovo, calling his attention to the fact that people with physical disabilities were for the most part not able to access public buildings in Kosovo. The Ombudsperson explained that over the last ten years, governments and governmental organisations in many areas of the world, including the European Union and the rest of the European countries, had begun to realise that persons with physical disabilities needed to be integrated into society and were entitled to the same rights and opportunities as other residents of a certain area. The Ombudsperson highlighted that the core right of equality was at stake, which should be extended to all aspects of public life. In Kosovo, the question of the treatment of disabled

persons had so far not been given the attention it deserved. The Ombudsperson considered that it was high time that the Government of Kosovo join the majority of European countries in their attempts to create societies that would give the same rights to all persons.

There has been no response to this letter.

The fair trial rights of twelve suspended members of the Kosovo Protection Corps

On 30 June 2004, the Ombudsperson had issued a report in which he had found that twelve members of the Kosovo Protection Corps, who had been suspended for six months from their work places by a decision of the then SRSG, had not been informed in detail about the factual and legal basis of the charges against them. As a consequence, they were not able to adequately defend themselves against these accusations. The Ombudsperson concluded that these persons' fair trial rights under Article 6 of the Convention had been violated.

24 September 2004: The Ombudsperson received a reply from the Deputy SRSG in which the latter stated that the report had been "duly noted". The Ombudsperson regrets that the Deputy SRSG considered this an adequate reply to this report covering such important and basic human rights matters.

The problem of deforestation in Kosovo due to the illegal cutting of wood

30 September 2004: The Ombudsperson wrote to Kosovo's Minister of Agriculture, Forestry and Rural Development, alerting him to the general problem of deforestation in Kosovo. The Ombudsperson explained that the problem was largely based on the widespread practice of the illegal cutting of wood throughout Kosovo and the lack of adequate response of the police and KFOR when informed of such actions. The Ombudsperson noted that if this practice were to continue unchecked, Kosovo would be virtually treeless. He noted that the root of the problem was *inter alia* the lack of energy sources in rural areas, where wood was needed to heat the homes of thousands of families. While acknowledging that certain action had been taken by the SRSG in the past, the Ombudsperson observed that there had not been any visible improvement in this area. The Ombudsperson closed his letter by saying that the matter was now within the competence of the PISG and urged the Minister to ensure that the matter would be given appropriate attention by the Government of Kosovo.

17 November 2004: The Ombudsperson received a response from the Minister of Agriculture, Forestry and Rural Development, in which he informed the Ombudsperson that the letter of 30 September 2004 had been examined by all competent and reasonable persons within the Ministry of Agriculture, Forestry and Rural Development. The Minister assured the Ombudsperson of the Ministry's commitment to the need to protect the forests of Kosovo. He also acknowledged the problems that had emerged as a result of deforestation in the region. Additionally, the Minister of Agriculture, Forestry and Rural Development detailed some of the activities of the Ministry aimed at curbing deforestation and identifying the problems which had led to certain practices resulting in

deforestation in the first place. Continuous disciplinary measures were being taken against employees at the Forestry Agency of Kosovo, responsible for the protection of forests, for misconduct and abuse of authority. The Ministry of Agriculture, Forestry and Rural Development had taken concrete steps towards creating a Forestry Inspection Service.

The execution of court decisions into bank accounts

4 October 2004: The Ombudsperson sent a letter to the SRSG with regard to the problems that courts in Kosovo were encountering when attempting to execute court decisions into bank accounts of private individuals. The Ombudsperson indicated that the laws applicable in Kosovo, while allowing for the execution of court judgments into bank accounts belonging to former socially-owned enterprises, did not contain any provisions on how to execute into bank accounts belonging to private companies and individuals. As a consequence, he added, private banks often did not follow execution orders issued by local courts, simply because there was no existing law or regulatory system clearly obliging them to do so. The Ombudsperson closed his letter asking the SRSG to use his authority to eradicate this legal vacuum.

There has been no response to this letter.

The educational problems faced by children of Gorani ethnicity

The Ombudsperson continues to be active with regard to the fate of Gorani pupils and the problems they have regarding their high school education. During the last reporting period, he wrote several letters, noting that without the possibility of continuing their education in other places in the region, members of the Gorani (and Bosniak) community would not receive any form of higher education in their mother tongue, as Kosovan educational institutions did not provide for such courses. On 21 June 2004, the Ombudsperson received a letter from the UNMIK Legal Advisor to the Minister of Education, Science and Technology, informing him that the Minister of Education, Science and Technology had initiated a protocol for cooperation in all areas of education, signed between UNMIK on behalf of the Ministry of Education, Science and Technology and the FYROM. One of the subjects treated in this protocol was the acceptability of Kosovo school certificates in the FYROM, which would soon adopt school reforms similar to those in Kosovo. The Legal Advisor further informed the Ombudsperson that the modern educational system currently offered to these Serbian-speaking children would give them access to all forms of higher education both in neighbouring countries where Slavic languages are spoken and in other European countries.

8 October 2004: The Ombudsperson wrote a letter to the Deputy SRSG for Civil Administration. In his letter, he reiterated his request for the suspension of the implementation of the 9th grade for members of the Gorani community until school reforms had been implemented in the region. Only this suspension would allow the Gorani pupils to receive a higher education in their mother tongue, as Kosovo education institutions did not provide such courses, while certain other countries in the region had

not implemented the school reform yet. If no solution were found, these persons would not be able to make proper use of their right to education and would eventually be forced to leave Kosovo.

29 October 2004: The Ombudsperson received a letter from the Deputy SRSG for Civil Administration informing him that he had received assurances from the FYROM and Bosnia Herzegovina that the new Kosovo diplomas would be accepted there. The Deputy SRSG also stated that the faculties of education and business of the University of Pristina had Bosnian/Serbian language branches in Prizren and Pejë/Peć.

25 April 2005: The Ombudsperson received a letter from the SRSG enclosing a detailed brief outlining recent and planned action on behalf of the UNMIK Civil Administration with regard to education in Dragash/Dragaš Municipality. According to this brief, UNMIK and the Ministry of Education, Science and Technology would continue to work together with the Municipal Education Department and the community leaders on full implementation of the educational reform in Kosovo. During meetings, parents of children already attending the eighth grade had agreed to send their children to attend the mandatory ninth grade according to the new system in September 2005. For those children who were absent from the ninth grade in the 2004/2005 school year, catch-up classes would be offered in order to enable them to attend grade nine classes starting in September 2005, so that they would be able to attain a diploma certifying that they had completed the nine mandatory years of school.

Investigations into incidents that occurred during the violent events in March 2004

8 October 2004: The Ombudsperson wrote a letter to the SRSG asking for information on the state of investigations into incidents that had occurred during the violent events in March 2004 involving the death of a number of persons, in some cases presumably as a result of UNMIK and KFOR operations.

Although these events had taken place almost seven months earlier, the Ombudsperson noted that no official information had been issued on whether these serious incidents had been the subject of any investigations. If investigations had been conducted, then there were no public statements regarding their nature or results.

In cases involving the death of individuals where there was even the slightest indication that public agents could be involved, international human rights standards required that effective and independent investigations be conducted upon the own motion of the public authorities.

22 November 2004: The Ombudsperson sent a reminding letter to the SRSG stating that he had not received a response to his earlier letter.

30 November 2004: The Ombudsperson received a letter from the Deputy SRSG for Police and Justice informing him that there were three cases dating from the March events and involving the deaths of four Kosovo Albanians. One case in Belo Polje/Bellopoljë had already been closed by an international prosecutor who had considered that the international police officer involved had acted appropriately and in self-defense in the face of a violent attack. Two other cases, one involving the deaths of two Kosovo Albanians due to KFOR actions in Čaglavica/Çagllavica and another in which a Kosovo Albanian had fallen beneath an armoured personnel carrier in Ferizaj/Uroševac, were still under investigation. The Deputy SRSG declared that he took issue with the Ombudsperson's statement that no public statements had been made regarding ongoing

investigations and their results. He pointed out that the Department of Public Information had regularly provided the media and public with the status and conclusions of investigations. The Deputy SRSG addressed the Ombudsperson's concern regarding the need for independent investigations by writing that the highly skilled international prosecutors, who, assisted by a core group of international police investigators, were undertaking the investigations, were professional and had no personal "axe to grind in determining anything other than the truth behind these incidents and bringing the perpetrators to justice".

The problem of the accountability of international judges and prosecutors in Kosovo

11 October 2004: The Ombudsperson wrote a letter to the Deputy SRSG for Police and Justice to raise the problem of the accountability of international judges and prosecutors in Kosovo. In his letter, the Ombudsperson highlighted a case that was brought to him concerning the alleged misconduct of an international prosecutor. In this context, the Acting Chairperson of the Kosovo Judicial and Prosecutorial Council had confirmed the Ombudsperson's assessment that the Judicial and Prosecutorial Council only had the competence to deal with allegations of misconduct with regard to the local judiciary and not with regard to international judges and prosecutors. The Ombudsperson added that when he had asked the Director of the UNMIK Department of Justice which body was responsible for investigating into any alleged misconduct of international prosecutors and judges, the latter had also not been able to offer a satisfying answer. The Ombudsperson noted that after these discussions, he could only reach the conclusion that there was no body responsible for such a task, which seemed to imply that while local judges and prosecutors could be the subject of disciplinary investigations in case of misconduct, international judges and prosecutors were under no such supervision. Such double standards greatly undermined the efforts of UNMIK to build a legal system that was in accordance with European principles and values. The Ombudsperson closed his letter asking the SRSG to inform him whether UNMIK planned to take any steps to put an end to this intolerable situation.

1 March 2005 The Ombudsperson received a response from the Director of the UNMIK Department of Justice, informing him that the Department of Justice had subsequently carried out an analysis of the legislative framework concerning the appointment and removal from office of international judges and prosecutors. The Director of the Department of Justice highlighted that the Ombudsperson had been correct in his assessment in that neither the Kosovo Judicial and Prosecutorial Council, nor the Judicial Inspection Unit of the Department of Justice possessed any oversight or investigatory functions in relation to international judges and prosecutors, as they did with Kosovan judges and prosecutors. The Director of the Department of Justice noted that international judges and prosecutors performed their functions under a different mandate and institutional arrangement as those governing the work of Kosovan judges and prosecutor. He cited parts of the relevant UNMIK Regulation, stressing that it expressly provided for the removal from office of international judges and prosecutors on the grounds of serious misconduct, failure in the due execution of office by virtue of their personal conduct or otherwise. The Director of the Department of Justice indicated that regarding their professional performance and personal conduct, international judges and

prosecutors were subject to UN rules and regulations. Most of them retained their appointments in their national jurisdictions whilst being employed by UNMIK, so that those jurisdictions retained ultimate control over these persons' appointment and practicing certificates. While acknowledging that the citizens of Kosovo deserved a right of recourse to a regulatory body that would investigate and adjudicate upon allegations of professional misconduct in relation to international judges and prosecutors, the Director of the Department of Justice also noted that the system whereby international judges and prosecutors were integrated into the Kosovan justice system was unique and unprecedented in UN peacekeeping operations. Even so, he wrote that the Department of Justice was currently considering establishing an appropriate regulatory body that would be tasked to submit its recommendations to an authority that was competent to take appropriate disciplinary action against the international judges and prosecutors, such as the SRSJ, the UN administration, or the national jurisdiction of their home countries.

The situation of detainees in the Detention Centre in Mitrovica

5 November 2004: The Ombudsperson wrote a letter to the Director of the Detention Centre in Mitrovica to alert him to the situation of two detainees in particular, who had complained that so far, no PTK telephone lines had been set up in the Detention Centre, thereby making it very difficult for them and other detainees to maintain contact with their families and lawyers. Furthermore, the two detainees, who were of Albanian ethnicity, stated that they did not have enough light and air because the windows were closed with metal plates, which was apparently not the case in cells housing Serbian detainees. The two applicants stressed that the windows were also not very clean and could cause illness. They also complained that they had no access to Albanian doctors or medical staff, despite the fact that in a post-conflict environment such as the one in Kosovo, it was very necessary that all detainees have access to medical staff that they feel they could trust to give the appropriate medical treatment. Moreover, the two applicants complained that they were not able to receive family visits on weekends, which would ensure that their children did not lose any school days. At the same time, Serbian detainees were apparently permitted to receive visits on weekends. In addition, the applicants complained that visits from their lawyers had been restricted. The Ombudsperson urged the Director to take adequate steps to ensure that the problems raised by the detainees be properly taken into consideration, particularly bearing in mind the number of Albanian detainees currently detained in the Detention Centre in Mitrovica.

20 December 2004: The Ombudsperson received a letter from the Director of the UNMIK Department of Justice informing him that according to senior officials of the Penal Management Division within the Department of Justice, the Detention Centre in Mitrovica had recently been experiencing difficulties with regard to its telephone lines which had been beyond their control, but which they had lately managed to overcome. Apparently, a new connection had recently been installed that should remedy the earlier problems. The Director of the Department of Justice also informed the Ombudsperson that metal objects which had obstructed windows preventing light and air from entering the cells had been removed. Regarding the medical personnel, he wrote that the Department of Justice selected its staff on the basis of merit alone and not by nationality and that it would continue to do so. In closing, the Director of the Department of Justice

indicated that of all detention centres in Kosovo, only Dubrava Prison had the facilities to offer weekend visits and denied that the Mitrovica Detention Centre offered such visits to Serbian prisoners. In addition, legal visits were completely unrestricted- the Penal Management Division merely required prior notice that a lawyer wished to see a client, such as a phone call a few hours ahead of the desired time.

11 February 2005: The Ombudsperson sent a letter in response in which he highlighted that in a society in which there were no major problems between persons of different ethnicities, he agreed that recruiting doctors and nurses only on the basis of expertise and professionalism was a valid and proper approach. However, with regard to Kosovan society, which was still recovering from an armed conflict that had been largely based on hostilities between ethnic groups, the Ombudsperson was not convinced whether such an approach took the reality of the life in Kosovo properly into account. He also highlighted that the relationship between doctor and patient relied on confidence, which was especially true in the case of detainees who were not at liberty to choose their own doctors. In such circumstances, the Ombudsperson found it understandable that prisoners would only trust a doctor originating from their own ethnicity and speaking their own language and that this not only applied with regard to Albanian detainees in North Mitrovica, but also to Serbian or Roma detainees in central Kosovo. Bearing in mind such realities, the Ombudsperson urged the Director of the Department of Justice to ensure that the medical service provided to Albanian prisoners in the Mitrovica Detention Centre include a sufficient number of Albanian doctors and nurses that these persons would be able to place their trust in.

14 March 2005: The Ombudsperson received a response from the Director of the UNMIK Department of Justice indicating that he had conferred with the relevant authorities in the Penal Management Division/ Kosovo Correctional Services, including the head of this unit, and the Head of the Medical Service regarding this issue. The results of these inquiries had confirmed that the medical and nursing staff at the North Mitrovica facility did not comprise members of the Kosovo-Albanian community, due to security concerns relevant to the Municipality of Mitrovica. He stressed that the Penal Management Division/ Kosovo Correctional Services were exemplarily committed to the representation of all communities in its mainly Kosovan staff and detailed the staff breakdown by community. The Director of the Department of Justice added that the Penal Management Division/ Kosovo Correctional Services had specifically confirmed that the medical and nursing staff of the North Mitrovica facility was dispensing excellent care, in a professional manner, to all prisoners and detainees regardless of ethnic origin, in full compliance with the Hippocratic Oath and codes of ethics. He also acknowledged that the trauma caused by the recent conflict could justify the refusal by a prisoner or detainee to be treated by a doctor belonging to a particular community and concurred with the Penal Management Division/ Kosovo Correctional Services that such trauma needed, as a prerequisite, to be diagnosed by another doctor with the relevant expertise, called by the director of the facility upon notification by the physician on duty that a prisoner or detainee refused treatment. Following such a diagnosis, he wrote that he agreed with the Ombudsperson that the patient should be offered treatment by a doctor whom he or she could trust, or if necessary be transferred to a Penal Management Division/ Kosovo Correctional Services facility where such a doctor was available, as had always been the policy of this unit. However, the Director of the Department of Justice disagreed with the general policy suggested by the Ombudsperson, indicating that such a practice or policy ran the risk of defeating the purpose of the Ombudsperson's

recommendation, while also running counter to the democratic principles on which the Penal Management Division/ Kosovo Correctional Services was run: the rehabilitation of all prisoners and the continuance of social peace in and outside detention facilities, during and after a person's detention in a such a facility. He added that such a policy would generate endless complaints from detainees of various backgrounds asking to be treated by a doctor or nurse of their choice, thus placing the prisons and detention centres throughout Kosovo under serious threat of social unrest. He concluded that in the absence of a diagnosis of a post-traumatic stress disorder, or of any other valid reason to refuse treatment by the available Penal Management Division/ Kosovo Correctional Services doctor, a prisoner or detainee could still, like any other prisoner or detainee, waive his or her right to free medical treatment by the services offered by the detention facility and choose to call upon the services of a physician of his or her own choice, provided that he or she bore the related costs.

The payment of electricity debts

11 November 2004: The Ombudsperson wrote a letter to the SRSG concerning certain billing practices of the Kosovo Electric Corporation (KEK). The Ombudsperson highlighted that according to Section 3 of Administrative Direction No. 2002/19 on the Payments of Debt for Electricity Services implementing UNMIK Regulation No. 2000/49 on the Establishment of the Administrative Department of Public Utilities, KEK should deliver to each customer or consumer of electric services a bill setting out the full amount owed for such services within the debt period ranging from 1 October 1999 to 20 September 2002. It thereby covered the field of public utility obligations, which was hitherto regulated by the Yugoslav Law on Obligations which provided that after the expiry of one year, the right to oblige consumers to pay for public utility debts was prescribed. The Ombudsperson noted that, contrary to other Administrative Directions, the instant one not only dealt with the implementation of provisions contained in UNMIK Regulation No. 2000/49, but contained new substantial provisions not covered in or based on the already mentioned Regulation. This raised serious issues with regard to the basic principles of the rule of law. The Ombudsperson did not consider that in such cases, the new legal provisions mentioned above could supersede the previously existing law, which in this case was the Yugoslav Law on Obligations. If a person was still in debt for electricity services received, that individual should thus not be obliged to pay for more than one year's use of electricity, in conformity with the relevant provisions of the Yugoslav Law on Obligations, which the Ombudsperson regarded as still being applicable in this particular matter.

17 December 2004: The Ombudsperson received a response from the SRSG indicating that he had completed an exhaustive investigation of the electricity situation in Kosovo. The SRSG noted that UNMIK had hired a "turnaround management team" which was expected to raise bill collection rates for power supplies from the current low collection level to the much higher levels of power supplied elsewhere in the region, and to take active steps to address non-payment of its customers. While KEK was not proactively conducting collective disconnections in Kosovo, it was, however, increasingly disconnecting non-paying individuals. Due to existing improvements, KEK's billing system, although incomplete, did provide adequate methods for billing and payment. The SRSG did not support any form of "amnesty" for past debt payments as this would be

irresponsible for KEK and Kosovo's future, noting that KEK had created a lenient debt repayment policy. He reiterated that Administrative Directions took precedence over the law in force in Kosovo on 22 March 1989 including the Yugoslav Law on Obligations. The SRSG repeated that Section 3 of UNMIK Administrative Direction No. 2002/19 did "not involve any breach of the basic principles of the rule of law and ha[d] full legal effect". Finally, he noted that while constraints as to the enforcement in judicial proceedings of debt obligations for electricity services under the former Yugoslav Law on Obligations could continue, such constraints through the courts did not constitute a basis for the termination of debt obligations. In such cases, debts legally remained 'natural obligations' that KEK could take into account when dealing with the customers in question while making legitimate efforts to recover these debts.

Problems related to electricity bills

11 November 2004: The Ombudsperson wrote a letter to the SRSG to alert him to problems related to RTK fees levied on KEK bills. The Ombudsperson noted that every household, business or other establishment in Kosovo was obliged to pay monthly broadcasting fees to RTK, regardless of whether the household, business or establishment concerned was in possession of a television or radio. The Ombudsperson pointed out that connecting the fees for RTK to electricity bills and collecting both at the same time implied that there was a connection between electricity bills and RTK fees. However, some households and similar entities in Kosovo, especially in rural areas, did not possess televisions or radios. Others, due to their location, were not able to receive RTK programming. According to information available to the Ombudsperson, only 80% of Kosovo was covered by RTK. The Ombudsperson concluded that obliging a considerable number of Kosovans to pay fees for services that they did not receive or benefit from constituted a discriminatory practice. He urged the SRSG to amend the regulation on RTK fees and to take into consideration the fact that persons in different situations required different treatment.

6 December 2004: The Ombudsperson received a letter from the UNMIK Legal Advisor, stating that UNMIK did not accept the Ombudsperson's assertion that RTK's billing practices were discriminatory. The Legal Advisor explained that RTK had been established as a public service broadcaster and that, as other public service providers in Kosovo, its funding was dependent on payments by members of the public. He concluded that because RTK was a public service provider directed at all communities in Kosovo, members of the public were required to contribute to its funding, even if in some instances they were not benefiting from it.

Fund for internally displaced persons from Northern Mitrovica

12 November 2004: The Ombudsperson wrote a letter to the SRSG to inform him about a letter sent on 5 May 2004 to the former Prime Minister of Kosovo, requesting support and the creation of a special fund by the Government of Kosovo for internally displaced persons from the northern part of Mitrovica. Following travels to certain areas of Kosovo and discussions with displaced persons, the Ombudsperson had come to the conclusion that not only displaced persons from Northern Mitrovica, but the majority of internally

displaced people living in Kosovo after the conflict in 1999 were still suffering from very difficult living conditions. The Ombudsperson appealed to the SRSG to ensure that these people receive adequate assistance.

17 December 2004: The Ombudsperson received a letter from the Deputy SRSG for Civil Administration indicating that UNMIK shared the Ombudsperson's concern and was doing everything in its power to address the needs of internally displaced persons. The Deputy SRSG stated that a well-functioning mechanism had been set up towards alleviating their situation and that this mechanism was addressing their immediate requirements. He indicated that it would be problematic to establish a fund exclusively supporting displaced persons from Northern Mitrovica, because he believed that such a fund should benefit internally displaced persons all over Kosovo, in order to avoid the appearance of unequal treatment. However, the Deputy SRSG did say that if such an initiative to establish a fund for all internally displaced persons would be undertaken by the Government of Kosovo, it would be strongly supported by UNMIK. In closing, he acknowledged that still many obstacles needed to be overcome and that financial constraints would always have an impact on progress. Even so, resolving the situation of internally displaced persons remained one of UNMIK's top priorities.

The issue of school books for children attending primary school

21 November 2004: The Ombudsperson wrote a letter to the Minister of Education, Science and Technology to alert him to the dire economic situation faced by many families in Kosovo that rendered many families whose children attended primary school, particularly those receiving social assistance, unable to purchase school books and supplies for their children. In such a situation, many pupils were forced to abandon their classes. In his letter, the Ombudsperson highlighted Article 3.2 of the Law on Primary and Secondary Education in Kosovo, which stipulated that children attending primary schools should be provided with schoolbooks free of charge. He urged the Minister of Education, Science and Technology to make sure that those children whose parents could not afford textbooks would also have the opportunity to profit effectively from their right to education. The Ombudsperson noted that providing all of Kosovo's children with the basic elementary conditions for their education was one of the government's obligations and reminded the Minister of Education, Science and Technology that the school year was already well underway.

1 December 2004: The Ombudsperson received a letter from the Permanent Secretary in the Ministry of Education, Science and Technology who stated that in compliance with Article 3.2 of the Law on Primary and Secondary Education in Kosovo, the Ministry had distributed free schoolbooks to orphans and poor pupils throughout Kosovo. Schoolbooks had been distributed to all Educational Institutions of the Municipalities in Kosovo. The Permanent Secretary added that the Ministry had paid a net sum of 157,350,70 Euro for schoolbooks designated for distribution. In closing, he stated that the Ministry had done everything within its power to implement the respective law.

The difficult living conditions of Roma IDPs in the northern part of Mitrovica

22 November 2004: The Ombudsperson wrote a letter to the SRSG detailing the difficult living conditions endured by the Roma IDPs in Northern Kosovo as observed during a visit. In his letter, the Ombudsperson added that the high rate of unemployment among the inhabitants of Roma camps in this area had led to a general feeling of frustration as well as a loss of trust in international and local authorities, who seemed to have forgotten these persons' problems. The Ombudsperson closed his letter by appealing to the SRSG to take immediate action to assist these people, as winter was approaching.

20 December 2004: The Ombudsperson received a response from the Deputy SRSG for Civil Administration written on behalf of the SRSG. The Deputy SRSG wrote that UNMIK shared the Ombudsperson's concern for the situation faced by Roma IDPs, particularly those living in collective centres where the WHO had found elevated blood lead levels especially hazardous to children. The Deputy SRSG wrote that the problem they faced had been ongoing and that there were no answers despite the efforts invested to break the cycle of poverty over the last few years. He added that efforts to return Roma to the site of their former homes located in a neighbourhood known as the "Mahala" in Southern Mitrovica had progressed, but had been significantly hampered by the violence in mid-March 2004. The Deputy SRSG pointed out that this work was being pursued and described a recent agreement between the Acting Regional Head of the Municipality of Mitrovica and the President of the Municipal Assembly on the return of Roma IDPs. The Deputy SRSG added that on 10 December 2004, the Municipal Assembly of Mitrovica had approved to allocate 1.5 hectares of land to Roma IDPs in the vicinity of the Mahala for temporary relocation pending the reconstruction of their houses. He noted that possibilities were being explored on how to find suitable alternative accommodation on uncontaminated land. The Deputy SRSG closed his letter by acknowledging that an acceptable solution had not been found and invited the Ombudsperson to liaise directly with the UNMIK regional office for further queries and updates.

IDPs in Gračanica/Graçanicë

24 November 2004: The Ombudsperson wrote a letter to the SRSG to express his concerns about the lack of adequate support for thirty-five people of Serbian ethnicity who had been forced from their homes during the March 2004 violence and who had since then been staying in 14 containers in the Serbian enclave Gračanica/Graçanicë. In the aftermath of the violence, these displaced persons had been evacuated to the KFOR camp "Slim Lines" and shortly after relocated to Gračanica/Graçanicë where they had first been sheltered in the local school, then in containers across from the hospital. The Ombudsperson indicated that the conditions in the containers had already been intolerable in the summer, when one inhabitant had died of a heart attack due to the high temperatures in her container. The situation had gotten desperate since the temperature had suddenly dropped in autumn. The Ombudsperson described how the persons staying in the containers were living in the same clothes that they had been wearing when they had been forced from their homes and that they lacked the necessary heating, clothing and supplies for the winter. He noted that although they had electric heaters, these heaters had not been working due to frequent electricity cuts. At the same time, a number of these people were already quite old and infirm, some were children, some were suffering

from mental illnesses and one woman had epilepsy. The Ombudsperson stressed that the containers did not constitute appropriate living quarters and that so far, nothing had been done by the competent authorities to prepare for the oncoming winter. The Ombudsperson urged the SRSG to ensure that this group of people would receive adequate means to survive the winter, considering that the return of displaced persons was one of the topmost priorities of UNMIK.

27 January 2005: The Ombudsperson received a response from a representative of the UNMIK Office of Returns and Communities answering on behalf of the SRSG and informing the Ombudsperson that since November 2004, UNMIK had begun to take measures to address the needs of two specific groups of displaced persons in Gračanica/Gračanicë: the group of individuals living in containers whose situation the Ombudsperson had highlighted and a group of individuals living temporarily in the gymnasium of the Krajl Milutin school. He wrote that, in coordination with the Municipality of Pristina and the Serbian and Montenegrin Red Cross, the Office of Returns and Communities and the Pristina Civil Administration had facilitated the implementation of a project to provide temporary accommodation and a sustainable winter solution for the persons concerned. The project had been completed and funded by the Kosovo Government as a part of the United Nations Development Programme's Government Assistance to Returns Programme. In December 2004, the 54 displaced persons had moved into 21 containers provided by the Serbian and Montenegrin Red Cross. All the containers were fully winterised and included wood burning stoves. Water, sewage, kitchen, laundry, common area facilities and connections to electricity were also provided. The representative had also been provided with three cubic meters of wood and essential non-food items and expected to receive winter clothes from the International Red Cross. The representative of the Office of Returns and Communities noted that a 10,000 Euro contribution from Pristina Municipality immediately following the March 2004 violence had specifically targeted urgent humanitarian needs of internally displaced persons.

The obligation to pay taxes to receive personal documents in the Municipality of Gjakovë/Đakovica

25 November 2004: The Ombudsperson wrote a letter to the SRSG to inform him about a practice in the Municipality of Gjakovë/Đakovica, following which officials of this municipality were not allowing citizens to take certain documentation, such as birth or marriage certificates, without first paying taxes on immovable property in Kosovo. The Ombudsperson noted that he had received similar information regarding such a practice from other municipalities. Apparently, the Gjakovë/Đakovica Municipal Assembly had based its action on Article 17.3 of UNMIK Regulation No. 2003/29 on Taxes on Immovable Property in Kosovo. However, the Ombudsperson pointed out that this article did not refer to any practice that would empower municipal administrative authorities to take such steps. The Ombudsperson urged the SRSG to prompt the competent UNMIK authorities to remedy this unlawful practice and to inform the Ombudsperson's office about the steps taken in this respect.

27 January 2005: The Ombudsperson received a letter from the Acting UNMIK Regional Representative of Pejë/Peć, in which the Representative informed him that the Acting Chief Executive Officer and the Director of General Administration of the

Municipality of Gjakovë/Đakovica had agreed that the municipality would stop making the payment of due property taxes a condition for issuing personal documents.

Electricity cuts for villages in debt

26 November 2004: The Ombudsperson wrote a letter to the SRSG to draw his attention to a recent complaint received from the Serbian villages of Donja Brnica, Gornja Brnica, Devet Jugovića and Slivovo regarding the fact that since 18 November 2004, their villages had been without electricity. According to information available to the Ombudsperson, the reasons advanced by KEK for switching off the electricity for these villages were that electric cables had been damaged. The inhabitants of the respective villages alleged, however, that when they had asked representatives of KEK to repair the damages, they were informed that such repairs would only take place if at least 60 % of the villagers would sign contracts obliging them to pay electricity debts for the last five years, albeit in monthly rates. The Ombudsperson informed the SRSG that to his knowledge, no legal provision permitted KEK to act in such a manner. Moreover, the villages concerned had never received any electricity bills or prior payment requests or warnings. According to the Law on Electricity No. 2004/10 recently promulgated on 30 June 2004 by UNMIK Regulation No. 2004/22, KEK was permitted to cut off customers who did not pay their electricity bills from electricity services. At the same time, however, vulnerable persons should be protected from electricity cuts in the winter season. The Ombudsperson highlighted the particularly dire economic situation of the above-mentioned villages and the obstacles they faced in generating an income due to the fact that their lands were illegally occupied by persons from neighbouring villages. These problems made it impossible for these villagers to pay the sums requested by KEK or to purchase generators as a substitute means of procuring electricity. The Ombudsperson also noted that especially rural areas were affected by KEK's practices, which concerned not only Serbian villages, but many persons throughout Kosovo regardless of their ethnic background. The Ombudsperson stated that due to the economic difficulties that large parts of the population suffered from, around half of Kosovo did not pay for electricity services. He considered that one of the main problems was the fact that KEK had so far not managed to create an organised system by which it could ask for electricity payments. In many areas, there was no proper metering system and when KEK staff members requested payments from individual households, the debtors had no way of knowing whether the requested sum was accurate or not. Considering that the entire system of receiving and paying for energy over the last five years had been arbitrary and chaotic, the Ombudsperson asked the SRSG to consider a sort of "amnesty" for persons whose debts against KEK were increasing, while the chances that they would be able to pay for these high debts were becoming less and less realistic. The Ombudsperson suggested that in order to improve the electricity service system it would be preferable to start with a "clean slate" in terms of managing energy services and payments once a new system would be installed that would allow KEK to issue bills and receive payments. He urged the SRSG to consider dissolving five years' worth of debts and added that he considered the Yugoslav Law on Obligations to still be applicable to such cases, as outlined in an earlier letter regarding the practices of KEK.

17 December 2004: The Ombudsperson received a response from the SRSG indicating that he had completed an exhaustive investigation of the electricity situation in Kosovo.

Noting that the power network had not been maintained for many years before 1999 and that all residents in Kosovo faced recurring breakdowns in the electric system, the SRSG stated that such breakdowns, given the current financial situation of KEK, were aggravated by the fact that the KEK management was unable to finance repairs or regular maintenance. Problems in this regard were almost entirely due to a commonplace pattern of electricity theft and the non-payment for such services since 1999. The SRSG added that, in order to carry out much-needed reforms at KEK, UNMIK had hired a “turnaround management team” which was expected to raise bill collection rates for power supplies from the current low collection level to the much higher levels of power supplied elsewhere in the region, and to take active steps to address non-payment of its customers. While KEK was not proactively conducting collective disconnections in Kosovo, it was, however, increasingly disconnecting non-paying individuals. With regard to the villages mentioned in the Ombudsperson’s letter, the SRSG noted that their inhabitants had not received any bills because KEK meter readers had been prevented from entering Kosovo Serbian villages. Due to existing improvements, KEK’s billing system, although incomplete, did provide adequate methods for billing and payment. The SRSG did not support any form of “amnesty” for past debt payments as this would be irresponsible for KEK and Kosovo’s future, noting that KEK had created a lenient debt repayment policy. He reiterated that Administrative Directions took precedence over the law in force in Kosovo on 22 March 1989 including the Yugoslav Law on Obligations. The SRSG repeated that Section 3 of UNMIK Administrative Direction No. 2002/19 highlighted by the Ombudsperson in an earlier letter did “not involve any breach of the basic principles of the rule of law and ha[d] full legal effect”. Finally, he noted that while constraints as to the enforcement in judicial proceedings of debt obligations for electricity services under the former Yugoslav Law on Obligations could continue to apply, such constraints through the courts did not constitute a basis for the termination of debt obligations. In such cases, debts legally remained ‘natural obligations’ that KEK could take into account when dealing with the customers in question while making legitimate efforts to recover these debts.

The process of exhuming and identifying the mortal remains of Serbs and other non-Albanians in Kosovo

1 December 2004: The Ombudsperson wrote a letter to the SRSG to inform him about a complaint that he had received from the Head of the Office for Exhumation and Identification of the Serbian Coordination Centre for Kosovo and Metohija, responsible for the exhumation and identification of Serbs and other non-Albanians murdered before, during and after the 1999 conflict. The Ombudsperson described how the Head of the above Office complained that the process of exhuming and identifying victims of Serbian ethnicity was being conducted in a very slow manner. The Ombudsperson asked the SRSG to review the matter and to take all necessary measures in order to find a proper solution. He also asked the SRSG to inform him about his reaction to the Head of the Office for Exhumation and Identification’s allegations and about any action he planned to take in this regard.

18 February 2005: The Ombudsperson received a letter from the SRSG informing him that the Office of Missing Persons and Forensics of the UNMIK Department of Justice had, since its creation in June 2002, conducted extensive exhumations in Kosovo.

According to the SRSB, 1170 exhumations had been conducted related to victims of all ethnicities, on a non-prejudicial basis. The SRSB noted that it was the responsibility of the International Commission of Missing Persons and not of the Office of Missing Persons and Forensics to carry out DNA testing. He pointed out that the latter Office's recent bi-annual report had indicated the number of samples of ethnic Albanian and non-Albanian victims sent for DNA testing to the International Commission of Missing Persons and the number of results received. The SRSB added that the Head of the Office for Exhumation and Identification and/or his representatives had participated personally in most exhumations and post-mortem exhumations carried out in Kosovo. Finally, the SRSB stated that he considered the issue of missing persons to be of the highest importance and would continue to do his utmost to resolve it.

The Law on the Settlement of Public Debt of the Federal Republic of Yugoslavia through Citizens' Foreign Exchange Savings

3 December 2004: The Ombudsperson sent a letter to the Governor of the National Bank of Serbia informing him about recent complaints received regarding the problems faced by Kosovo Albanians wishing to dissolve their savings accounts at former Jugobank. The Ombudsperson asked the Governor to provide him with information regarding the adequate procedure to follow.

12 January 2005: The Ombudsperson received a letter from the Governor of the National Bank of Serbia. In his letter, the Governor of the National Bank informed the Ombudsperson about the conditions of dealing with foreign exchange savings established in a regulation issued for this purpose by the Government of the Republic of Serbia in 2004, in accordance with the Law on the Settlement of Public Debt of the Federal Republic of Yugoslavia through Citizens' Foreign Exchange Savings. According to this regulation, only individuals paying taxes to the Republic of Serbia had the right to receive privileged payments from their savings accounts. The status of taxpayers could be proven through a certificate issued by the competent bodies in Serbia.

11 March 2005: The Ombudsperson sent a letter to the Minister of Finance of the Republic of Serbia referring to his above-mentioned correspondence with the Governor of the National Bank of Serbia. The Ombudsperson informed him that according to the applicants, the Serbian Ministry of Finance had forbidden the Tax Administration Offices in Gračanica/Graçanica and Mitrovica to issue the necessary certificates. The Ombudsperson asked the Minister of Finance to provide him with an explanation regarding these facts and to send him a list of places in Kosovo where the competent organizational units of tax administration were located.

25 April 2005: The Ombudsperson received a letter from the Director of the Tax Administrations Office within the Serbian Ministry of Finance. In this letter, the Director of the Tax Administrations Office stated that according to Article 161 of the applicable Law on General Administrative Procedure, state bodies were obliged to issue *inter alia* certificates on facts of which they kept official record. Following the implementation of Resolution 1244 of the UN Security Council in Kosovo in the year 1999, the Tax Administration of the Serbian Ministry of Finance of the Republic of Serbia no longer had any records regarding taxpayers from Kosovo and therefore could not issue any such certificates. He also pointed out that the Tax Administration had not issued any instructions forbidding the issuing of certificates to persons of Albanian nationality.

Regarding the request for a list of places in Kosovo where organisational units of the Tax Administration were located, the Director of the Tax Administrations Office informed the Ombudsperson that following Security Council Resolution 1244, persons of Albanian nationality with residence in Kosovo or Metohija were not obliged to pay taxes or other tributes to the Republic of Serbia.

5 May 2005: The Ombudsperson sent a letter to the SRSG to which he attached all relevant correspondence concerning the case. In his letter, he asked the SRSG to raise this issue during his next meeting with Serbian authorities.

The length of criminal proceedings before the District Court in Pristina

4 December 2004: The Ombudsperson received an application concerning the length of criminal proceedings against medical doctors for serious criminal offences against the public health before the District Court in Pristina, which had been pending since 14 November 2002. The applicant was involved in these proceedings as a victim and damaged party and complained that he had been asked to pay for a biopsy necessary for the proceedings.

7 December 2004: The Ombudsperson wrote a letter to the President of the District Court in Pristina asking if he had taken or planned to take any actions to resolve the case.

14 December 2004: The Ombudsperson received an answer from the Administrator of the District Court in Pristina informing him that the case had been put on hold pending the results and analysis of a biopsy of the applicant's liver, which could only be done in Skopje, FYROM.

24 March 2005: The Ombudsperson wrote a letter to the Director of the UNMIK Department of Justice expressing his concern about the fact that this case had been suspended due to the fact that the applicant was financially unable to cover the expenses of the biopsy. The fact that the applicant had been requested to pay for the biopsy constituted an infringement of the right to a fair trial. In the same letter, the Ombudsperson asked for information about any action the Director of the Department of Justice had taken or planned to take in order to ensure that the applicant's matter would be resolved without further delay.

7 June 2005: The Ombudsperson received a letter from the Director of the Department of Justice in which he informed him that the case had been the subject of an investigation by the Department of Justice's Judicial Inspection Unit. The Judicial Inspection Unit had found that the delay in proceedings was due to the fact that medical expertise needed for completing the investigation could not be obtained in Kosovo. At present, the case was inactive as the District Court was not able to resolve the problem of covering the expenses of another expertise that had to be prepared abroad. The Director of the Department of Justice also noted that his department had contacted the Department of Judicial Administration and requested a resolution to the problem of reimbursement of the costs paid for such an expertise.

Problems of the Serbian community in the Municipality of Obiliq/Obilić

17 December 2004: The Ombudsperson wrote to the Prime Minister of Kosovo to inform him about certain problems raised by a representative of the Serbian community

living in the Municipality of Obiliq/Obilić. According to him, there had been 6000 Serbs, 2000 Roma and 3000 Albanians living in the town before the 1999 war, but the majority of the Serbs had been expelled ever since the international community had entered the region. Until March 2004, a total of 400 Serbs had remained in Obiliq/Obilić Municipality, but were then expelled during the violent events. Four months later, approximately 100 Serbs returned to the Municipality of Obiliq/Obilić. The Serbs who had returned alleged that the reconstruction of houses as well as the return of other displaced persons had been very slow. They also complained about the overall general lack of security for their community in this municipality. According to these people, certain inhabitants who had been evacuated from nearby Hade village and who happened to be Albanian, had received compensation and were allegedly using this money to buy reconstructed Serbian houses in the Municipality of Obiliq/Obilić. The Ombudsperson indicated that such events could lead to a mono-ethnic municipality. He closed his letter with an appeal to the Prime Minister to help the minority community integrate socially into the municipality.

5 January 2005: The Ombudsperson received a letter from the President of the Municipality of Obiliq/Obilić, who provided him with a short overview of the situation in the Municipality. The President of the Municipality informed the Ombudsperson that the freedom of movement had reached the highest possible level, while the Serbian community had been included in all aspects of life, including in the municipal administration, where 24 members of minority communities worked. Albanians and Serbs attended school together in Plemetina/Plemetin, where Serbs were even being privileged because they attended classes on the school premises that had been built with contributions of all residents of Plemetina/Plemetin, while Albanians attended classes in containers. In Obiliq/Obilić itself, Serbian pupils attended classes under satisfactory conditions in only one shift, while Albanians attended classes in overcrowded facilities in two shifts. The President of the Municipality also noted that the Serbian community and all other communities living in Obiliq/Obilić Municipality enjoyed excellent health services, while a new health center in Plemetina/Plemetin was equipped only with Serbian staff and had only Serbian patients. He also described the Municipality's efforts to reach out to Serbian IDPs and the creation of a returns task force. According to the President of the Municipality, all efforts were being made in order to make the return and life of Serbs as good and sustainable as possible, while public information campaigns were being launched to discourage the Albanian community from buying or renting the houses of Serbs. The President of the Municipality stated that anyone who thought that Obiliq/Obilić was composed of only one ethnicity was deeply wrong due to the large number of Serbian families living in their houses and apartments. The President of the Municipality encouraged the Ombudsperson to verify the information contained in his letter and stated that he and his colleagues were ready to discuss any issue, especially those regarding the Serbian community. In closing, he indicated that the Municipality's cooperation with the Serbian community was strong and that he and his colleagues were continually increasing their efforts for the purpose of creating a brighter future for the citizens of Obiliq/Obilić Municipality.

A group of elementary and high school employees in Serbian language schools

23 December 2004: The Ombudsperson received a complaint from a group of employees working for the elementary and high school in Serbian language schools from other villages in the Municipality of Pristina, in which they complained about the failure of the Ministry of Education, Science and Technology to provide them with salaries since March 2004.

20 May 2005: The Ombudsperson wrote a letter to the Minister of Education, Science and Technology informing him about the above-mentioned complaint. He explained that the directors of all Serbian language schools in the Municipality of Pristina had signed a collective contract with the UNMIK Department of Education and Science for the period from 1 September 2000 to 31 August 2003, following which the teachers, administrative staff and support staff had received their salaries. After the responsibility for Serbian language schools had been transferred to the Ministry of Education, Science and Technology, more than 80 employees had been taken from the salary payment list as of March 2004. Following earlier unsuccessful requests by the applicants to the Ministry seeking information regarding their cases, the Ombudsperson asked the Minister to take the necessary steps to ensure that the applicants would obtain their salaries for the period after March 2004 and for the time to come without further delay.

31 May 2005: The Ombudsperson received a letter from the Minister of Education, Science and Technology in which he stated that since July 2003, the financial responsibilities for such matters had been transferred from the Ministry to the Municipal Directorates of Education, which were responsible for bringing into line the number of teachers with the number of pupils (1 Albanian teacher for 21 pupils, 1 Serbian teacher for 14 pupils).

Closure of the Mulla Idrizi road

11 January 2005: The Ombudsperson sent a letter to the UNMIK Police Commissioner informing him that a complaint had been raised regarding the fact that, since 1999, Mulla Idrizi Street in Gjilan/Gnjilane located opposite the police station, had been closed to public traffic. According to the complaint, the closing of this road, which constitutes one of the main streets in Gjilan/Gnjilane, seriously impeded the freedom of movement and the transaction of different forms of business. Prior to UNMIK's entering into Kosovo, the above-mentioned street was open to pedestrian and other kinds of traffic. According to the information available to the Ombudsperson, several requests had been addressed to UNMIK, the Kosovo Trust Agency and the Municipal Assembly in Gjilan/Gnjilane asking for this road to be reopened. So far, however, there had been no response to these requests. The Ombudsperson asked the UNMIK Police Commissioner to provide him with the reasons for closing Mulla Idrizi Street and inform him under what conditions it would be possible to reopen it in the foreseeable future.

15 March 2005: The Ombudsperson received a response from the UNMIK Police Commissioner who wrote that his office had spoken with the Director of Operations for UNMIK Police and the Deputy Commissioner of the KPS regarding the street closure. He indicated that the police station, as well as the entire region, would soon be transferred to the authority of the KPS and that UNMIK Police would cease operations with the exception of a monitoring force and a few specialised units. Furthermore, the UNMIK

Police Commissioner wrote that the authority for the building in which the police station was housed was in the process of being transferred to the KPS. The Deputy Commissioner of the KPS had informed him that the municipal authorities knew of the situation and were looking for an alternate location for the police station. Until then, the Director of Operations for UNMIK Police had determined that for the safety and security of all those using the building of the police station, the road would remain closed.

The right to vote of Serbian IDPs in Montenegro

On 2 June 2004, the Ombudsperson wrote a letter to the Head of the Republican Election Commission in Serbia proper, in which he noted that the election of a new Serbian President was coming up and that, according to the applicable Serbian law, every citizen of Serbia was eligible to vote. The Ombudsperson indicated that Serbs living abroad had had no problems delivering their votes in earlier elections. However, IDPs in Montenegro had not been able to take part in the Serbian parliamentary elections held in December 2003. The Ombudsperson asked the Head of the Republican Election Commission to inform him in what way the Central Election Commission intended to ensure that these people staying in Montenegro would be given the opportunity to make use of their right to vote. On 7 June 2004, the Ombudsperson received a letter from the Head of the Republican Election Commission in Serbia proper explaining that in practice, the Serbian authorities had no jurisdiction or competence in Montenegro that would enable them to organise the participation in Serbian elections of IDPs staying in Montenegro. On 8 June 2004, the Ombudsperson wrote an urgent fax to the then Secretary-General of the Council of Europe, informing him that by not being allowed to take part in Serbian elections, these IDPs from Kosovo were deprived of one of the basic fundamental rights in a functioning democracy. A copy of this letter was sent to the Ombudsperson of Montenegro. On 11 June 2004, the Ombudsperson received a response from the Secretary-General of the Council of Europe, informing him that he had written to the Foreign Minister of Serbia and Montenegro urging him to speedily ensure that all citizens of Serbia and Montenegro would be guaranteed their rightful participation in the democratic process.

20 January 2005: The Ombudsperson received a response from the Deputy Ombudsman of Montenegro informing him that he had not forgotten the letter of 8 June 2004 addressed to the Secretary-General of the Council of Europe. The Deputy Ombudsperson indicated that the Office of the Ombudsperson of Montenegro had addressed the issues by raising them with the President of the Assembly of the Republic of Montenegro and the Head of the Republican Election Commission, asking them to inform him whether they had been approached by the competent Serbian authorities with requests to make it possible for IDPs in Montenegro to participate in Serbian elections. The Head of the Republican Election Commission had in turn informed the Office of the Montenegrin Ombudsperson that this had not been the case. The Deputy Ombudsperson indicated that the Head of the Commission had also informed his offices that according to the legislation on elections, the Republican Election Commission had no competences regarding the organisation of elections in the Republic of Serbia. Finally, the Deputy Ombudsman apologised for not having informed the Ombudsperson immediately upon having received the above-mentioned information.

The creation of a Human Rights Committee in the Assembly of Kosovo

4 February 2005: The Ombudsperson wrote a letter to the President of the Kosovo Assembly to reiterate a position that he had expressed in a recent meeting with the latter with regard to the creation of a Human Rights Committee in the Assembly of Kosovo. While the Committee on the Rights and Interests of Communities and Return had existed within the Assembly for four years, there had so far been no initiative to create a committee responsible for raising other human rights issues of interest to the entire population of Kosovo. The Ombudsperson wrote that he considered the existence of such a committee to be a necessary requisite to ensure that the work of the Kosovo Assembly and the laws adopted by this body were in a position to meet international human rights standards. He added that he did not consider creating a new committee in the Assembly as useful, but rather suggested expanding the capacity of the competences of the Committee on the Rights and Interests of Communities and Return to include general human rights and to change the name of the committee accordingly. The Ombudsperson outlined that the new responsibilities of the Committee would additionally involve *inter alia* reviewing draft laws for their compatibility with common values of international human rights law. Bearing in mind the importance of such a step with regard to the fulfilment of standards, the Ombudsperson closed his letter noting that it would greatly strengthen and facilitate the much needed cooperation between the Ombudsperson Institution and the Assembly in the field of human rights protection.

Following this letter, the Ombudsperson and the President of the Committee for Judicial, Legislative Matters and the Constitutional Framework met and discussed the possibility of establishing such a committee under the constitutional framework. Furthermore, the Ombudsperson received information that the Assembly was planning to establish a Human Rights Sub-Committee within the above-mentioned Committee.

The length of court proceedings before Municipal Courts in Kosovo

11 February 2005: The Ombudsperson sent a letter to the Chairperson of the Kosovo Judicial and Prosecutorial Council (KJPC) to inform him that the Institution was dealing with a considerable number of cases involving complaints regarding the length of court proceedings before Municipal Courts in Kosovo, including the Municipal Courts in Ferizaj/Uroševac and Viti/Vitina. The Ombudsperson mentioned that he had issued one report concerning the situation in the Municipal Court of Pristina in December 2004, while similar reports were currently being prepared on the length of court proceedings in cases pending before the Municipal Courts in Pejë/Peć and in Prizren. The Ombudsperson noted that he had repeatedly asked the presidents of the respective municipal courts to give reasons for the delays in court proceedings, in particular in civil cases. Their answers were usually the same, namely that the main problem was a lack of sufficient judges to deal with a growing case load. The Ombudsperson indicated that according to the presidents of these municipal courts, they had addressed several requests to the KJPC and the UNMIK Department of Justice asking for an increase in the number of judges working for their courts. However, these requests had so far not led to an adequate response. The Ombudsperson urged the Chairperson of the KJPC to act upon

the above request by adjusting the number of judges in the respective municipal courts to the number of cases waiting to be resolved by these courts. In this way, the latter would finally be able to conduct court proceedings in compliance with the guarantees inherent in Article 6 of the European Convention on Human Rights, in particular the ones stipulating that court proceedings should be conducted within a reasonable time.

9 March 2005: The Ombudsperson received a response from the Chairperson of the KJPC, in which he addressed, among other things, the general problem of the length of proceedings before courts in Kosovo. In his letter dated 7 March 2005, he informed the Ombudsperson that in order to resolve the overall problem of the excessive length of court proceedings all over Kosovo, he supported an approach that aimed at identifying the factors determining the current length of court proceedings and at working on further improving the capacity of judges and prosecutors to solve and manage cases effectively. He also supported the idea of providing a new staffing plan that, based on objective and comprehensive criteria, would better reflect the number and character of the caseloads faced by the courts. The Chairperson of the KJPC further informed the Ombudsperson that the KJPC and the UNMIK Department of Justice had already instigated a series of relevant initiatives with regard to the length of court proceedings, such as the so-called Case Flow Management and Delay Reduction Project. These initiatives had focused on the court management process by tracking civil cases from filing to disposition and a review of delay-related procedural reforms recently undertaken in the Balkan region, in particular newly approved Bosnian law reforms geared towards increasing efficiency and reducing delay in civil proceedings. The Department of Justice would also be creating several legislative working groups with its local and international partners in order to propose amendments to current procedural laws aimed at reducing the length of court proceedings. A team of European and US specialists had recently prepared an assessment of the judiciary and prosecutorial system of Kosovo and, based on this assessment, had proposed a new staffing plan for the entire court system in Kosovo. This plan was expected to better reflect current and future actual personnel needs of the system and had been presented and discussed on 3 and 4 February 2005. Work on updating the proposed staffing plan was currently being undertaken by an international specialist and the final staffing proposal had yet to be agreed upon. Therefore, the KJPC had not been in a position to advertise posts for specific courts. Considering that the above broad-based exercises provided the best basis for efficiently addressing the issue of the length of court proceedings in Kosovo, the Chairman of the KJPC found it reasonable to await the completion of these exercises.

Requirements for submitting pleadings to the Special Chamber on Kosovo Trust Agency Related Matters within the Supreme Court of Kosovo

18 February 2005: The Ombudsperson wrote a letter to the Director of the UNMIK Department of Justice to alert him to a series of complaints the Ombudsperson had received regarding proceedings before the Special Chamber on Kosovo Trust Agency Related Matters within the Supreme Court of Kosovo. According to the Ombudsperson, the complaints mainly focused on the fact that pleadings and supporting documentation submitted to the Special Chamber of the Supreme Court in Albanian or Serbian language also needed to be accompanied by an English translation of all pleadings and supporting documents. At the same time, such translations had to be performed at the cost of the

respective party. Bearing in mind that the three official languages of Kosovo were Albanian, Serbian and English, the Ombudsperson considered that all three of these languages should be given the same importance. At the same time, obliging all persons submitting pleadings to the Special Chamber to translate all documents into English imposed a considerable financial burden on them, which in the Ombudsperson's opinion constituted an unnecessary obstacle to the exercise of these persons' right of access to court. The Ombudsperson urged the Department of Justice to examine Section 22.7 of the Administrative Direction implementing UNMIK Regulation 2002/13 on the Establishment of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Related Matters in order to find a solution that would be mutually beneficial to both the judges sitting on the Special Chamber and the parties involved in proceedings before the chamber.

9 March 2005: The Ombudsperson received a response from the Director of the UNMIK Department of Justice in which he noted that indeed, Section 22.7 of the UNMIK Administrative Direction mentioned by the Ombudsperson in his letter stipulated that pleadings should be translated into the English language. He then cited the subsequent sections 22.8 and 22.9 pointing out that a party could submit an application to the presiding judge for assistance in the translation of pleadings and supporting documents and that the presiding judge could also direct that such translations as be undertaken at the expense of the Special Chamber in cases where this was reasonable having regard to the means of the party. The Director of the Department of Justice wrote that the presiding judge of the Special Chamber had received a number of applications requesting assistance for translations, with each application being judged on its own merits. He concluded that as the legislation provided for assistance with translations for parties suffering proven financial hardship, there was no unnecessary obstacle to any persons' right of access to court, especially when taking into consideration the fact that access to the Special Chamber was, at the moment, free of charge.

The establishment of the Special Chamber of the Supreme Court on Constitutional Framework Matters

21 February 2005: The Ombudsperson sent a letter to the SRSG to draw his attention to a problem faced by a growing number of citizens who had been referred to the Special Chamber of the Supreme Court on Constitutional Framework Matters by ordinary courts in Kosovo. According to the law applicable in Kosovo, this Chamber was competent to evaluate the constitutionality of certain administrative decisions. The Ombudsperson indicated that, according to information available to him, in May 2003, the President of the Supreme Court of Kosovo had sent a draft Administrative Direction to the then SRSG. This Administrative Direction was meant to regulate the establishment and work of the above-mentioned body. According to the President of the Supreme Court, he had so far not received any feedback from either the former SRSG or the current SRSG on this draft. Considering the importance of the matter and the fact that more and more people were being directed to lodge complaints with a Special Chamber that was still not operative, the Ombudsperson urged the SRSG to inform him at which stage the preparations for the establishment of this Chamber were at that time.

There has been no response to this letter.

Street children

23 February 2005: The Ombudsperson wrote a letter to the Minister of Education, Science and Technology drawing his attention to the situation of children who were spending their days on the street, working or begging for money after dropping out or not attending school. Even if they were not “street children” in the strict sense of the word because they returned to their homes and families in the evenings, these children were still exposed to various dangers and could easily become victims of trafficking or child prostitution. Bearing in mind that children were among the most vulnerable groups of society, the Ombudsperson stressed that this situation was in need of immediate action. Therefore, he asked to be informed about any steps the Minister had been taken or intended to take in order to resolve this problem.

16 March 2005: The Ombudsperson wrote a similar letter to the Acting Prime Minister.

20 April 2005: The Ombudsperson wrote a similar letter to the current Prime Minister in order to reiterate to his earlier message.

There has been no answer to these letters.

The decriminalisation of defamation

28 February 2005: The Ombudsperson received a letter from the Executive Director of the NGO ARTICLE 19 (Global Campaign for Free Speech) on behalf of the Chairman of the Association of Professional Journalists in Kosovo and the Director of the NGO Advocacy, Training and Resource Centre regarding the fact that the offences of libel and insult were included in the Provisional Criminal Code of Kosovo currently in force as criminal offences. The Executive Director of ARTICLE 19 considered that this breached international standards of freedom of expression and urged the Ombudsperson to raise this issue, which had already been the subject of a letter sent by ARTICLE 19 to the former Deputy SRSG. In this letter, ARTICLE 19 had noted that in established democracies, no one had been imprisoned for defamation in several years and had urged the international authorities to remove criminal insult and libel from the then draft Criminal Code and replace them with appropriate civil law provisions. The Executive Director of ARTICLE 19 recalled that the Provisional Criminal Code of Kosovo provided for at least three months’ imprisonment for insult and libel and highlighted a recent case involving a Kosovo journalist who had been imprisoned for several months for libel, which demonstrated the readiness of Kosovo Courts to impose harsh penalties in such cases. The Executive Director of ARTICLE 19 considered that such sanctions were not in line with the proportionality requirement established by the European Court of Human Rights, so that ARTICLE 19 was calling for a complete abolition of criminal defamation provisions. Other countries were taking steps to begin decriminalising defamation and as Kosovo was embarking on reform in a number of areas in advance of possible status talks, the Executive Director of ARTICLE 19 believed that the time was right for authorities to revisit the balance which should be set between the right to freedom of expression and the right to reputation by using civil law remedies rather than criminal sanctions. A precedent in the region had already been established by the international community when it supported the abolition of criminal defamation provisions in Bosnia

in 2001 and replaced them with a civil defamation law. The Executive Director of ARTICLE 19 wrote that she saw no reason why the same standard should not be applied in Kosovo and urged the Ombudsperson to bring the matter to the attention of the relevant authorities.

2 March 2005: The Ombudsperson wrote to the SRSG alerting him to the contents of the letter summarised above and reiterating the points raised by the Executive Director of ARTICLE 19. The Ombudsperson wrote that he fully supported this request and asked the SRSG to use the powers vested in him to ensure that the respective provisions in the Provisional Criminal Code of Kosovo be amended, so that this part of the Kosovo criminal law would in future be in line with general international human rights standards.

The second attempt to raise the issue of the forced return of Roma, Ashkali and Egyptian refugees to Kosovo

4 March 2005: The Ombudsperson sent a letter to the Minister of Interior of Italy, the Minister of Interior of Germany and the Minister for Migration and Asylum Policy of Sweden to draw their attention to the situation of certain refugees from Kosovo of Roma, Ashkali and Egyptian ethnicity staying in the respective countries. The Ombudsperson wrote that he had been receiving information that these countries intended to return the above groups of people to Kosovo in the near future. Bearing in mind the situation in Kosovo, the Ombudsperson strongly advised the above Ministers to reconsider such a plan, noting that most Roma, Ashkali and Egyptians lived in very miserable conditions in Kosovo and that the high unemployment in Kosovo affected members of ethnic minorities even more than members of the Albanian majority. He added that Roma, Ashkali and Egyptians had very limited access to public services and justice and that their opportunities for a normal life and a sustainable livelihood were extremely restricted. The Ombudsperson wrote that during the riots in March 2004, attacks had occurred not only against members of the Serbian minority, but also against other persons of non-Albanian ethnicity and that at the time, neither UNMIK, nor KFOR, nor the local police were able to adequately guarantee these persons' safety. Although one year after these violent events, the general security situation had slightly improved, it nevertheless remained volatile and still did not allow persons of the above ethnicities to lead a peaceful and safe life. The Ombudsperson also cited the Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo S/2005/88 of 14 February 2005 which stated that "the Government ha[d] not taken sufficient action to punish ethnically targeted crime, to put in place a system to monitor and censure violations of the language laws, and to promote a culture of human rights and tolerance." Based on this information and on the Ombudsperson's day to day assessment of the situation in Kosovo, the Ombudsperson considered that returning Roma, Ashkali and Egyptian to Kosovo would involve considerable risks and hardships for these persons. He concluded his letter by reiterating his request that the respective countries re-evaluate their intention to send these persons back to Kosovo, at least for a certain period of time.

14 March 2005: The Ombudsperson sent a letter to the Home Secretary of the United Kingdom to alert the United Kingdom's government to his position regarding the above-mentioned countries' intention to implement their plans to send refugees of Roma, Ashkali and Egyptian ethnicity back to Kosovo in the near future. The Ombudsperson reiterated the issues raised in his letters to the competent Ministers of Italy, Germany, and

Sweden as summarised above and warned that returning Roma, Ashkali and Egyptian refugees would not be consistent with international human rights standards.

24 March 2005: The Ombudsperson received a response from the Head of the Department of Migration, Integration, Refugees, and European Harmonisation within the German Ministry of the Interior on behalf of the Minister of Interior of Germany. In his letter, the Head of the above Department wrote that following the rioting in March 2004, the return of Ashkali and Egyptians from Germany had remained suspended. Regarding the return of Roma, a Memorandum of Understanding signed by UNMIK and Germany on 31 March 2003 still applied. In this Memorandum, both parties had agreed that members of the Roma and Serb minorities would be exempt from returns until further notice. The Head of the Department of Migration, Integration, Refugees, and European Harmonisation added that the German government was still in regular contact with UNMIK regarding ongoing developments and that returns were only carried out in close consultation with the responsible UN administration in Kosovo.

12 April 2005: The Ombudsperson received a response from the Swedish Minister for Migration and Asylum Policy, who informed the Ombudsperson that in November 2004, Sweden and UNMIK had signed a Memorandum of Understanding excluding Roma, Ashkali and Egyptians from being returned to Kosovo. At the same time, however, the Minister noted that according to an UNHCR position paper issued in March 2005, Ashkali and Egyptians were not longer in continued need of international protection.

The use of official languages in public institutions in Kosovo

On 18 December 2002, the Ombudsperson had opened an ex officio investigation into certain aspects of the official use of Serbian and Albanian languages in Kosovo. Throughout the reporting period, the Ombudsperson pursued his investigations in this matter.

14 March 2005: The Ombudsperson sent letters to the Prime Minister of Kosovo and all Ministries in the Government of Kosovo asking them to provide him with information regarding the use of official languages in correspondence between the central and local organs of power in the municipalities of Pristina, Lipjan/Lipljan, Fushë Kosovë/Kosovo Polje, Obiliq/Obilić, Novobërdë/Novo Brdo, Štrpce/Shtërpce and Kamenicë/Kamenica, as well as the use of official languages within these municipalities.

16 March 2005: The Ombudsperson sent a letter to the above-mentioned municipalities requesting information regarding the use of official languages in correspondence between them and different organs of the central authorities. He also asked for information concerning the use of official languages in documents delivered to individuals by these municipalities, as well as on public signs within the municipalities.

21 March 2005: The Ombudsperson received an answer from the Minister of Education, Science and Technology informing him that the use of official languages in correspondence between the organs of central authority and local authorities was determined on the basis of which municipality the correspondence was addressed to.

21 March 2005: The Ombudsperson received a letter from the Minister of Trade and Industry in which he stated that his Ministry was using both official languages, Albanian and Serbian, in its correspondence with local institutions.

31 March 2005: The Ombudsperson received an answer from the Minister of Local Self-Government. In his letter, the Minister informed the Ombudsperson that all written

communication between the Ministry and other organs was conducted in the Albanian and Serbian languages. Translations into English and Turkish were provided when necessary or useful. The Minister also noted that by decision of 15 February 2005, the Government had decided that all communication between the central authorities and the municipalities should be coordinated through this Ministry.

31 March 2005: The Ombudsperson received a letter from the Minister of Health informing him that the use of official languages in the health care institutions had been regulated through Information Circular 6/2002 issued by the Ministry of Health. He also noted that in September 2004, the Ministry had established a special office for translation.

4 April 2005: The Ombudsperson received an answer from the President of Dragash/Dragaš Municipality in which the President of the Municipality mentioned that his Municipality was traditionally using both official languages in all correspondence. He also noted that his Municipality should be used as a model for a Municipality ensuring full respect of the two language system. The President of the Municipality's letter was, however, written only in Albanian.

4 April 2005: The Ombudsperson received a letter from the President of Štrpce/Shtërpce Municipality. In his letter, the President of the Municipality informed the Ombudsperson that although the Municipality was officially using both the Serbian and the Albanian language, it had problems with the local government and the central authorities, who had excluded the use of the Serbian language in correspondence.

14 April 2005: The Ombudsperson received a letter from the President of Novobërdë/Novo Brdo Municipality, in which the President of the Municipality noted that both official languages were used equally in his Municipality. He also mentioned that correspondence with the Ministries was conducted only in Albanian and English.

25 April 2005: The Ombudsperson sent a letter to the Minister of Local Self-Government, noting that he had obtained information according to which the Municipalities of Novobërdë/Novo Brdo and Štrpce/Shtërpce received letters from the central authorities only in Albanian or occasionally in English. Meetings with the Government, Ministries and other organs in which Serbian representatives took part were held in Albanian language without Serbian interpretation. The Ombudsperson asked the Minister to investigate into these allegations and inform him about the steps he intended to undertake.

10 May 2005: The Ombudsperson received a letter from the Minister of Local Self Government. In his letter, the Minister informed the Ombudsperson that all government meetings were conducted in both official languages with an interpretation from and into English. Regarding the central level meetings, the Minister noted that during the meetings which he hosted, translations from and into Albanian and Serbian were provided. Regarding written correspondence, he referred to his letter of 31 March 2005. The Minister closed his letter by stating that the Ministry had fulfilled the obligations related to the use of language in Kosovo.

Care and treatment for drug addicts in Kosovo

22 March 2005: The Ombudsperson sent a letter to the Director of the UNMIK Department of Justice to alert him to certain complaints that he had received regarding the inadequate care and treatment for drug addicts in Kosovo. According to the

Ombudsperson, these complaints were mainly submitted by parents or close relatives of persons consuming narcotics. The Ombudsperson added that he had received a petition from a number of citizens in which they had raised their concerns regarding the aggressive and unsocial behaviour of this category of individuals in the environment that they lived in. As the majority of such persons had not committed a criminal offence, the competent judiciary was not able to order protective measures such as compulsory treatment in health institutions. This situation was further exacerbated by the lack of institutional care in Kosovo and the fact that certain patients placed in health institutions apparently continued to take drugs there through dealers operating in the hospitals. The Ombudsperson closed his letter by asking the Director of the Department of Justice to inform him of any actions planned or taken to solve the matter.

15 April 2005: The Ombudsperson received a response from the Director of the UNMIK Department of Justice agreeing with the Ombudsperson's assessment that there were inadequate facilities in Kosovo to care for persons addicted to drugs, whether they were convicted of a criminal offence or not. He wrote that the Ombudsperson's concerns should rather be addressed to the PISG's Ministry of Health, as the Department of Justice was not in a position to resolve issues such as access to illicit drugs in hospitals or the behaviour of hospital patients.

The Law on Mental Health

25 April 2005: Following previous investigations and correspondence with UNMIK on potential draft laws for the mentally ill, the Ombudsperson wrote a letter to the Deputy SRSG for Police and Justice in which he updated him on the above past discussions on this topic. Bearing in mind that the planned laws on mental health, the drafting of which had already begun in 2001, had still not been finalised, the Ombudsperson urged the Deputy SRSG to consider the preparation of both laws as a high priority matter and asked for information on the stage of the drafting proceedings. Furthermore, the Ombudsperson reminded the Deputy SRSG of an ex officio report regarding the lawfulness of the detention of persons with mental disabilities in the University Psychiatric Ward in Pristina issued by the Ombudsperson on 7 October 2004 and informed him that a similar report concerning the lawfulness of placing people in the Social Care Facility in Shtime/Štimlje was in preparation.

10 June 2005: The Ombudsperson received a letter from the Deputy SRSG for Civil Administration in response to a report on the lawfulness of the detention of persons with mental disabilities in the psychiatric ward of the Pristina University Clinic issued by the Ombudsperson in October 2004. In his letter, the Deputy SRSG noted that some steps had already been taken by the Ministry of Health, such as the development of administrative instructions on mental health and related mental health care institutions. Moreover, together with UNMIK, the Ministry remained engaged in developing a "Draft Mental Health Law".

The lack of Albanian courses for persons of non-Albanian ethnicity

On 27 April 2005, the Ombudsperson sent a letter to the Prime Minister of Kosovo informing him about the difficult situation of a large number of inhabitants of

Kosovo, mostly from non-Albanians communities, who did not speak the Albanian language. In large parts of Kosovo, these persons were excluded from participating in public, social and political life, as they did not speak the language spoken by the majority of the population. The Ombudsperson stressed that this situation called for concrete action that would enable the above-mentioned individuals to communicate in the Albanian language.

9 May 2005: The Ombudsperson received a letter from the Minister of Education, Science and Technology indicating that he had carefully analysed the Ombudsperson's request and that he and the Ministry supported the Ombudsperson's initiative. According to the Minister of Education, Science and Technology, his Ministry was ready to organize courses, which would assist in the integration process. In order to reach the goal of the initiative, the Ministry would draft an operational plan and an Administrative Instruction regarding the attendance of courses. Even if there was an overall lack of space, the Ministry would also provide class rooms and the necessary educational staff to conduct courses. The Minister of Education, Science and Technology added that the Ministry would draft educational plans and programs. He noted that general support would be necessary, in particular financial support from public funds or donations, as financial means should be provided for educational staff and other costs. The Minister of Education, Science and Technology closed his letter by writing that he and Ministry were ready to discuss all details with the Ombudsperson.

Former Kosovo license plates

29 April 2005: The Ombudsperson wrote a letter to the Deputy SRSG for Police and Justice informing him about certain irregularities in applying the existing laws on car registration to vehicles with license plates formerly used in Kosovo before the arrival of the international civil administration. The Ombudsperson noted that he had received many complaints of individuals, mainly of Serbian origin, who had been stopped by the KPS for driving with such license plates. The KPS had then confiscated the license plates and car documents, allegedly because the owners of the vehicles had not paid the necessary customs tax. In the course of investigations conducted into these cases, KPS officers had informed a representative of the Ombudsperson Institution that owners of cars with former Kosovo license plates were exempted from the duty to pay customs taxes until 1 July 2005. At the same time, an UNMIK Police Officer in Fushë Kosovë/ Kosovo Polje had stated that all persons driving cars that did not have KS plates issued by UNMIK were obliged to pay customs taxes based on UNMIK Customs decision 2005/1. The Ombudsperson stressed that according to UNMIK Customs, such a decision did not exist, while persons driving cars with former Kosovo plates were exempted from paying customs taxes according to a provision of the Administrative Instruction No. 8/2004 Laying down Provisions for Customs Proceedings implementing UNMIK Regulation No. 2004/1 on the Customs Code of Kosovo. The Ombudsperson asked the Deputy SRSG to provide him with information regarding the confiscation of former Kosovo license plates.

There has been no answer to this letter.

The publication of the names of allegedly criminal members of the Kosovo government

10 May 2005: The Ombudsperson sent a letter to the Temporary Media Commissioner noting that the Democratic Party of Kosovo had been sending information on alleged criminal acts committed by members of the Kosovo government to UNMIK. The Ombudsperson informed the Temporary Media Commissioner that excerpts of these documents had been published in local newspapers such as “Express” and “Epoka e Re”. He expressed his concerns that the above-mentioned newspapers were publishing excerpts of documents accusing individuals of having committed serious criminal acts before any criminal investigations into these allegations had even begun. Such accusations created the impression that the accused had actually committed these crimes, in the absence of any court decision determining their guilt. Therefore, the Ombudsperson asked the Temporary Media Commissioner to ensure that the publishing of the names of persons accused of having committed crimes would not be repeated in future.

There has been no response to this letter.

The publication of a list of KEK debtors in the print media

13 May 2005: The Ombudsperson sent a letter to the Director General of KEK. In his letter, he expressed his concern regarding a list published on 15 April 2005 and 10 May 2005 in the newspaper “Koha Ditore”, containing the names of KEK consumers who would soon be disconnected from the Kosovo power supply following their failure to pay their electricity debts. The Ombudsperson noted that the public disclosure of private individuals’ names in such a context could raise serious issues regarding these persons’ right to private life and thus asked to know the legal basis for publishing the names of Kosovo citizens without their consent.

31 May 2005: The Ombudsperson received a letter from the Managing Director of KEK. In his letter, the Managing Director of KEK informed the Ombudsperson that the KEK management was currently engaged in an intensive Kosovo wide campaign to increase the levels of billings and collections from the low levels achieved in the previous years. Due to these low levels, KEK had been unable to meet many of its operating and financial obligations and had thus become the most important factor in the retardation of the development of the economy in Kosovo. The Managing Director of KEK stressed that one of the important reasons for publishing names in the local press was to ensure that those customers scheduled for disconnection be made aware of this in advance. He closed his letter by noting that in publishing the names of errant customers in the local press, no personal data such as addresses or the amounts of debts were published, so that the identity of these individuals was not divulged to anyone outside of KEK’s confidential records.

The translation of instructions regarding the use of medical products

17 May 2005: The Ombudsperson wrote a letter to the Minister of Health to draw his attention to the practice of selling imported medicines and medical products in pharmacies throughout the region without translations of the instructions, dosage, and/or package labelling into any of the official languages of Kosovo. The Ombudsperson wrote that individuals who bought the above-mentioned medicines usually did not understand the language in which the instructions were written, and were simply left to trust the instructions given to them orally by pharmacists or, even worse, from clerks working in pharmacies. The vast majority of imported medicines in Kosovo did not require a consumer to procure a physician's prescription in order to buy them, even if in other countries, such medicines required prior prescriptions. The Ombudsperson stressed that this situation entailed significant potential physical and/or mental harm to the consumers of such medicines. Moreover, Section 9.4 of the Law on Medicinal Products and Medical Devices, promulgated by UNMIK Regulation No. 2004/23, established that medical products should only obtain a marketing authorization if they were accompanied by *inter alia* an "accurate and validated presentation of labelling, summary of Product Characteristics and Package Leaflet (Patient Information Leaflet) of the medicinal product for usage in Kosovo". Bearing in mind that this situation had existed for a long time, the Ombudsperson expressed his concern that, as far as he knew, neither the Ministry of Health nor any other competent public authority had taken any effective steps to resolve this issue. Until an adequate solution of the problem was found, this situation would entail considerable risks for the health and well-being and even for the life of the inhabitants of Kosovo.

8 June 2005: The Ombudsperson received a response from the Minister of Health indicating that in order for a medical product to win the right of registration in Kosovo, one of the criteria was the submission of an "information leaflet" for patients in the two official languages of Kosovo, Albanian and Serbian. According to the Minister, the majority of pharmaceutical companies that applied for the registration of medical products were international companies and therefore had problems translating this leaflet from the English language to Albanian and Serbian in a timely fashion. Even after a delayed submission of the leaflet, there were many errors in the grammar, spelling and contents of the information leaflet which made it impossible to allow the product to be sold on the local market. In such situations, the Kosovo Agency for Medical Products was obliged to contract an institution that would correct the information leaflets. According to the Minister of Health, the Ministry had received three offers from different institutions to complete this task and was currently in the process of selecting one. Referring to Section 9.4 of the Law for Medicinal Products and Medical Devices, the Minister of Health noted that full marketing authorisation had yet to be applied in Kosovo, but that the Ministry had started temporarily authorising the marketing of medical products based on its Administrative Instruction 2003/09 as a transitional provision leading to the full authorization of medical products. The temporary authorisation of medical products could only be given for 18 months and would have to be renewed after that designated period of time.

Dangerous hedgeless walkways close to schools

25 May 2005: The Ombudsperson wrote a letter to the Minister of Education, Science and Technology and to the Minister of Transport and Communications informing them about a traffic accident that had occurred in Prelez i Jerlive village in the Municipality of Ferizaj/Uroševac. He noted that according to the public authorities of this Municipality, certain dangerous hedgeless walkways close to the elementary school had been the site of frequent accidents in which mainly children had been killed. Because of the lack of financial means, the Municipality was not able to improve the safety conditions. Furthermore, the Ombudsperson stated that the situation concerning safety in road traffic remained one of the main concerns of many municipalities. Therefore, he asked for information about any actions the Ministers had taken or planned to taken regarding this issue.

6 June 2005: The Ombudsperson received a letter from the Minister of Transport and Communications informing the Ombudsperson that the Traffic Safety Department, together with the Traffic Police, was currently working on the identification and improvement of so-called “Black Spot” traffic sites. After an on-site inspection of the situation in Prelez i Jerlive, this village had been included in a list of the ten most dangerous locations in Kosovo.

Forced returns to Kosovo

1 June 2005: The Ombudsperson sent a letter to the SRSB informing him about the large number of forced returns to Kosovo. He stated that while voluntary returnees usually had the opportunity to prepare their return before arriving in Kosovo, persons who were forced to return were usually expelled suddenly and therefore often had literally no place to go. As most of the forced returnees had been living abroad for six years or longer, the children often did not speak the local languages sufficiently to integrate in school and had lost their connection or link to Kosovo and its society. Often the homes of returnees had been destroyed during the 1998-99 armed conflict and due to the bad economic situation on Kosovo, it was difficult for them to find work. The Ombudsperson considered that UNMIK had not given sufficient attention to the issue. Apart from the fact that there was not enough sense of responsibility on the side of the international and local administration, there was also no budget to assist such returnees. While until recently, only ethnic Albanians had been returned, this had changed after UNHCR had issued a position paper in March 2005 in which it had stated *inter alia* that people of Ashkali, Egyptian, Gorani and Bosniak ethnicity appeared to be better tolerated now. Some countries had thereupon already begun sending back persons belonging to these ethnic groups. Germany for instance had concluded an “Agreed Note” with UNMIK to force approximately 300 persons of Ashkali and Egyptian ethnicity per month to return starting in May 2005. As of July 2005, this number was expected to increase to 500 and as of the beginning of 2006, the number of persons expelled would no longer be limited. Despite the fact that it would only be possible to forcibly return persons following an individual screening process and the parties of the “Agreed Note” did not expect that more than 20% of the proposed returnees would actually be expelled, there would still be a considerable amount of persons of minority community who would have no place to go. At the same time, the Ombudsperson noted that he had received information from the

Swedish Ministry of Foreign Affairs that following the UNHCR position paper, the Ministry no longer considered persons of Ashkali and Egyptian ethnicity to be in need of international protection. Therefore, the Ombudsperson assumed that Sweden and most probably many other Western European countries would begin sending back a large number of former refugees. Having in mind the dire situation of those forced returnees already back in Kosovo, the Ombudsperson expressed his fear that as more and more people of various ethnicities are forced to return to Kosovo, this group of persons could create a large destabilising force, which could in time become a threat to public security if nothing is done to help them. The Ombudsperson considered that only a concerted effort by UNMIK and the PISG could improve the lot of these returnees by, for example, opening an information office at the airport, where returnees could ask for information about assistance and support. Forced returnees should also be registered and provided with shelter and special programmes should be initiated to help them integrate. The Ombudsperson concluded his letter by stating that it was up to UNMIK and the PISG to take responsibility in this matter.

16 June 2005: The Ombudsperson received a letter from the SRSG regarding forced returns. In this letter, the SRSG recalled that the UNHCR's position paper would continue to provide the basis for UNMIK's policy regarding forced returns. After March 2005, UNMIK had therefore decided to allow a limited return of members of the Ashkali and Egyptian communities originating from locations where their return was deemed to be feasible and safe. To control these returns, UNMIK's Office of Returns and Communities was asked to decide on these cases on individual basis. Furthermore, the SRSG informed the Ombudsperson that on the basis of the "Agreed Note" with Germany, only 14 Ashkali were returned in May and June 2005. The SRSG stressed that he was not expecting immediate and massive force returns of Kosovo Roma from host countries in Europe, nor had UNMIK agreed to this. Regarding the limited reception capacity of Kosovo to receive members of such communities, he would again use a high level meeting in mid-June 2005 to outline this position to the governments of host countries. The SRSG agreed that joint efforts were needed to develop the integration capacity in Kosovo. Even if the responsibility for this lay with the PISG, UNMIK would assist in the development of a scheme to address the immediate needs of returnees. The SRSG had thus requested support from the Director General of the IOM, which was already preparing a project proposal for the management and proceedings of forced returnees. The SRSG closed his letter by informing the Ombudsperson that he had planned a meeting with the relevant Ministries of the PISG as well as the representatives of the international community in Kosovo on these questions and would also raise this matter with the Prime Minister.

The eviction of fifteen IDPs living in Fushë Kosovë/ Kosovo Polje Municipality

6 June 2005: The Ombudsperson wrote a letter to the President of the Municipality of Fushë Kosovë/ Kosovo Polje to inform him about a complaint that he had received from fifteen IDPs currently living in barracks in Fushë Kosovë/ Kosovo Polje. According to these IDPs, on 25 May 2005, two of the IDPs had received a letter from the Head of the Directorate for Health and Social Matters of the Fushë Kosovë/ Kosovo Polje Municipality notifying them that they would have to leave these barracks by 4 June 2005. The other applicants were informed orally about their impending eviction and told that

they had been accorded another ten days to find an alternative accommodation. The applicants complained that certain persons working for the Municipality had been abusing their positions by breaking into two rooms inhabited by the IDPs. Moreover, according to the applicants, the Head of the Directorate for Health and Social Matters and his deputy were threatening them almost every day that they would be expelled soon. Bearing in mind that these barracks were there to house IDPs that had lost their homes, the Ombudsperson asked the President of the Municipality for information on the reasons for this eviction and whether alternative accommodation would be provided.

8 June 2005: The Ombudsperson received a letter from the President of the Municipality of Fushë Kosovë/ Kosovo Polje informing him that the above IDP's did not face eviction and that only two persons would be evicted from the barracks. As President of the Municipality, he offered his personal guarantee that he and the municipal authorities were following up on the situation and would undertake all necessary measures to prevent discrimination of any kind.

The situation of civilians entitled to pension benefits for injuries sustained during World War II

10 June 2005: The Ombudsperson sent a letter to the Prime Minister of Kosovo expressing his concerns about the situation of civilians injured during World War II who, since the end of the 1999 conflict, had not been receiving their invalidity pension or other forms of assistance that they were entitled to by law. The Ombudsperson informed the Prime Minister that Law No. 32 of the Socialist Autonomous Province of Kosovo on "The protection of civilian war invalids" of 1976 was still in force in Kosovo. According to this law, civilians which were injured during World War II were entitled to some benefits such as, to name a few, financial contributions, free medical assistance and invalidity supplements. The Ombudsperson noted that no efforts had been made to resolve this issue and asked to be informed about any steps the Prime Minister intended to take in this respect.

There has been no response to this letter.

The Independent Oversight Board

20 June 2005: The Ombudsperson sent a letter to the SRSG drawing his attention to the problems faced by civil servants or persons taking part in recruitment proceedings for the civil service who, following first-level administrative proceedings, were advised to take their case before a so-called Independent Oversight Board. This Board, however, was still not operational despite the fact that it had been founded in the year 2001. According to the information available to the Ombudsperson, this delay was due to the fact that work on the necessary Rules of Procedure had not yet been finalised. The Ombudsperson asked the SRSG to inform him at which stage the work on these rules was at the time and whether there was any hope of these rules being finalised in the near future.

30 June 2005: The Ombudsperson received a letter from the Acting Deputy SRSG for Civil Administration. In her letter, the Deputy SRSG informed the Ombudsperson that the Independent Oversight Board, which had been established on 23 September 2004,

was already operational in two out of three functions. However, the Rules of Procedure had to be adopted before executing the third function of the Board. The Office of the UNMIK Legal Advisor had reviewed a first draft and the Ministry of Public Services was currently working on the comments received. Once the Ministry had finalised the new draft; the rules would be submitted to the SRSG for approval. The Acting Deputy SRSG closed her letter by stating that she was confident that the Independent Oversight Board would be able to execute its appeals function before the end of August 2005.

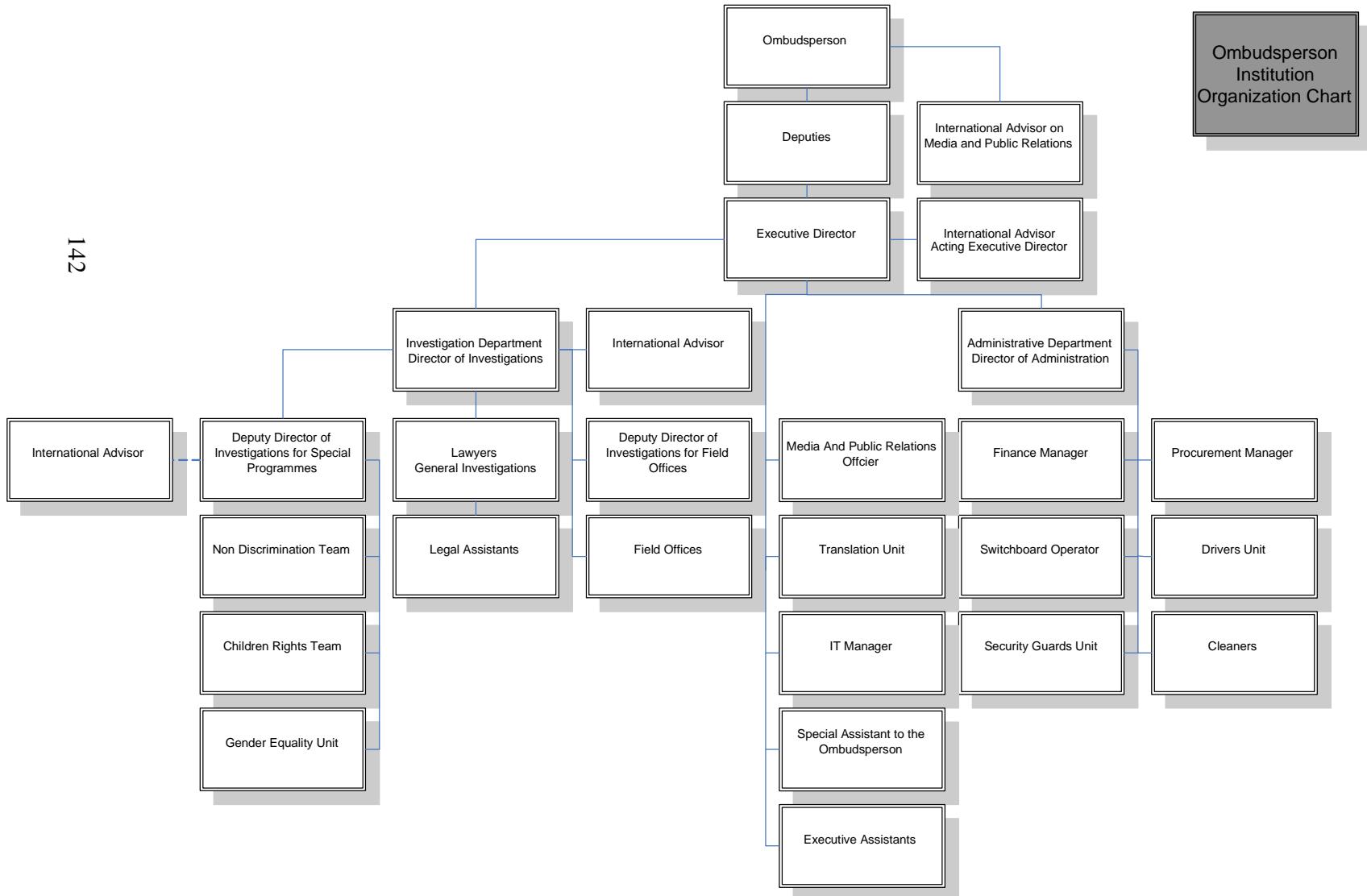
The lack of response from Pristina Municipality

Throughout the reporting period, the Ombudsperson had sent several intervention letters to the leading organs of the Municipality of Pristina, but never received a response to any of them. Although this issue was also raised with the Minister for Local Self-Government, who passed this complaint on to the respective municipality, the uncooperative behaviour of the Municipality of Pristina remained unchanged.

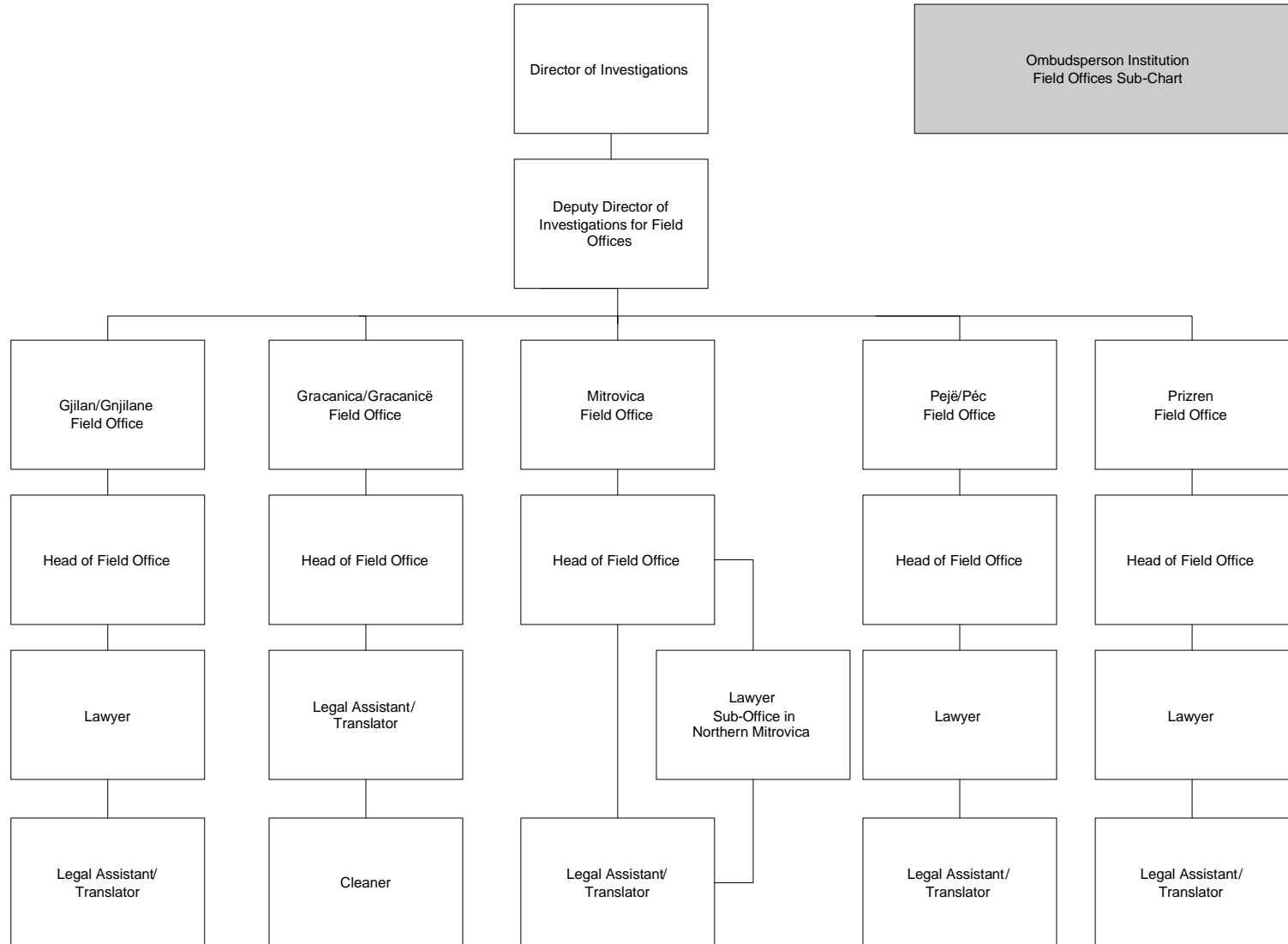
29 June 2005: The Ombudsperson received a letter from the Acting Municipal Representative of Pristina Municipality. In his letter, he stated that after a meeting with a representative of the Ombudsperson Institution concerning the lack of response from the Municipality to letters coming from the Institution, he had urged the Municipality to improve its response rate, as the utmost priority should be given to communications from the Ombudsperson's Institution.

Annex 5. Organisation Charts of the Ombudsperson Institution

142



Ombudsperson Institution Organization Chart



Ombudsperson Institution
Field Offices Sub-Chart

Staff members (update 30 June 2005)

Ombudsperson	Marek Antoni Nowicki
Deputy Ombudsperson	Ljubinko Todorović
Deputy Ombudsperson	Hilmi Jashari
Director of Investigations	Veton Vula
Deputy Director of Investigations for Field Offices	Sefadin Blakaj
Deputy Director of Investigations for Special Programs	Violeta Rexha
Senior Lawyer	Avni Hasani
Senior Lawyer	Gjylbehare Murati
Senior Lawyer	Dragana Ristić
Head of the Field Office in Gjilan/Gnjilane	Goroljub Pavić
Head of the Field Office in Gračanica/Gracanicë	Aleksandra Dimitrijević
Head of the Field Office in Mitrovica	Naim Krasniqi
Head of the Field Office in Pejë/Peć	Ilirjana Çollaku
Head of the Field Office in Prizren	Murlan Prizreni
Acting Head of the Field Office in Prizren	Hunaida Pasuli
Lawyer	Agron Kelmendi
Lawyer	Enis Shatri
Lawyer for CRT	Thëllënza Arifi
Lawyer for GEU	Luljeta Domaniku
Lawyer for NDT	Dragana Rodić
Lawyer for NDT	Merita Sylja
Lawyer, Gjilan/Gnjilane	Isuf Sadiku
Lawyer, Northern Mitrovica	Miljana Scekić
Lawyer, Pejë/Peć	Besim Tafa
Director of Administration	Përparim Vula
Media and Public Relations Officer	Ibrahim Arslan
IT-Manager	Flamur Gogolli
IT-Manager	Hekuran Latifi
Procurement Manager	Gëzim Latifi
Finance Manager	Beqir Musliu
Special Assistant to the Ombudsperson	Leonora Visoka
Chief of Translators	Branislava Stojilović
Senior Translator	Lirak Hamiti
Senior Translator	Alban Stafai
Translator	Safete Sadrija
Translator	Isak Skenderi
Translator/Legal Assistant, Gjilan/Gnjilane	Meliha Brestovci
Translator/Legal Assistant, Gračanica/Gracanicë	Milan Prljinićević
Translator/Legal Assistant, Mitrovica	Merita Gara
Translator/Legal Assistant, Pejë/Peć	Aida Nela
Translator/Legal Assistant, Prizren	Abdullah Kryeziu

Executive Assistant	Arta Ibrahim
Executive Assistant	Shqipe Paçarada
Legal Assistant	Venera Rizvanolli
Legal Assistant	Labinot Sheremeti
Legal Assistant	Xhafer Tahiri
Switchboard	Bedri Kamberi
Chief of Drivers	Shpëtim Reçica
Driver	Tamer Gas
Driver	Sami Kuqi
Driver	Goran Stević
Chief of Security Guards	Bekim Bunjaku
Security Guard	Hakif Imeri
Security Guard	Muhamet Jahiri
Security Guard	Mentor Myftari
Security Guard	Avni Osmani
Security Guard	Besim Osmani
Security Guard	Arben Plakaj
Cleaner	Nekibe Hoxha
Cleaner	Gëzime Lepaja
Cleaner, Gračanica/Gracanicë	Vesna Cvejić

International Advisors (update 30 June 2005)

Acting Executive Director	Antonella Ingravallo
International Advisor for Special Projects	Francesca Marzatico
International Advisor to the Ombudsperson on Media and Public Relations	Katalin Mester
International Advisor to the Director of Investigations	Alice Thomas

Persons who left the Ombudsperson Institution during the reporting period

Agron Berisha	Executive Director
Mahir Tutuli	Lawyer, Prizren
Sofije Sadiku	Translator/Legal Assistant, Gjilan/Gnjilane
Fatmir Pireva	Driver
Xhevat Cakolli	Security Guard
Skender Krasniqi	Security Guard
Gëzim Hadri	Security Guard

Annex 7: List of abbreviations

CR-cases	Cases for Reaction (special category of cases within the Ombudsperson Institution)
CRT	Children's Rights Team within the Ombudsperson Institution in Kosovo
FYROM	Former Yugoslav Republic of Macedonia
GEU	Gender Equality Unit within the Ombudsperson Institution in Kosovo
HPD	UN Housing and Property Directorate
ICRC	International Committee for the Red Cross
IDP	Internally displaced person
IOM	International Organisation for Migration
KEK	Kosovo Electric Corporation
KFOR	Kosovo Force [of NATO]
KJPC	Kosovo Judicial and Prosecutorial Council
KPS	Kosovo Police Service
NATO	North Atlantic Treaty Organisation
NDT	Non-Discrimination Team within the Ombudsperson Institution in Kosovo
NGO	Non-Governmental Organisation
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Cooperation in Europe
PISG	Provisional Institutions of Self-Government of Kosovo
RTK	Radio Television Kosovo
SIDA	Swedish International Development Cooperation
SRSB	Special Representative of the Secretary-General
UNHCR	UN High Commissioner for Refugees

UNICEF United Nations Children's Fund
UNIFEM United Nations Development Fund for Women
UNMIK United Nations Mission in Kosovo
WHO World Health Organisation