



OMBUDSPERSON INSTITUTION in KOSOVO

FOURTH ANNUAL REPORT

2003 – 2004

addressed to

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

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FOREWORD

This is the fourth annual report that I am submitting to the Special Representative of the Secretary-General of the United Nations.

My work as international Ombudsperson during the past four years, since July 2000, has been very challenging. At the request of Mr. Harri Holkeri, I have agreed to remain in Kosovo for a further year.

It is going to be a very important year. In 2005, the international community will make the first broad assessment of the progress achieved in Kosovo in the long process, full of serious obstacles, aimed at building up a modern, democratic society. This society should observe the rule of law where fundamental rights and freedoms, including the rights of national and ethnic minorities, are fully complied with.

The Ombudsperson Institution shall have a significant role to play as an independent observer and a strict controller of the actions taken by the Kosovo authorities. It should be stressed that a part of the "Standards for Kosovo" consists of areas and problems that are, at the same time, under the Ombudsperson's jurisdiction.

The Fourth Annual Report presents a concise assessment of the situation in certain fields that are of particular importance from the point of view of human rights as seen from the perspective of the Kosovo Ombudsperson.

The Report also provides information about the jurisdiction, the current structure and the activities of the Ombudsperson Institution and its perspectives for the future. The Institution is developing, its remit is increasing and a growing number of people address it with requests for help or complaints. The staff of the Institution makes every effort to respond in the best possible way to everyone approaching our office in Pristina or one of our regional offices. The Ombudsperson meets many people personally, either in Pristina or by travelling to different locations in Kosovo.

A growing number of complaints and problems relate to the provisional institutions of self-government. I hope that our co-operation with these institutions and their reaction to our comments and recommendations will improve. This also applies to our co-operation with UNMIK, despite some progress, especially following the events of March 2004.

Much effort is still required to achieve even a minimum level of protection of rights and freedoms in Kosovo.

Kosovo is still a long way from reaching these standards. The situation is especially, but not exclusively, difficult for the non-Albanian communities, in particular Serbs and Roma. Their situation with regard to the guarantees of their fundamental rights is very serious. The only hope is that the events of March 2004 and the conclusions drawn will help to bring about considerable change in this respect. Personally, however, I remain sceptical. It is not enough to rebuild destroyed houses. It is far more difficult to rebuild even the minimal trust that is essential for living together on the same territory.

We should all understand that it is of no use to speak about the level of human rights protection if a large part of the inhabitants of this region, so mistreated by history, still

do not enjoy the most basic conditions of normal life, primarily security. This is due to ethnic conflicts but also to the increasingly difficult economic situation and the lack of adequate social protection.

A large number of people cannot return to the houses that they had to abandon in 1999 and after. I meet them frequently. They live in various locations in Kosovo as well as in Serbia and Montenegro. They have the right to return, and adequate conditions for that must be created. Just like the families of hundreds of missing persons, regardless of their ethnic origin, have the right to enquire about what happened to their family members. Every day of waiting and hoping for their return is one day too many.

These and many other problems are at the core of the Kosovo Ombudsperson's interest and daily concern. Even if it is hard to be optimistic and changes for the better are difficult to be seen, our work and our role have been of great importance. The people in Kosovo need the Ombudsperson Institution because, as one of my first interlocutors stressed as early as 2000, thanks to our existence and actions they feel less abandoned and left to their own devices.

Marek Antoni Nowicki
Ombudsperson in Kosovo

July 2004

INTRODUCTION

This Annual Report is issued in accordance with Section 17.1 of United Nations Mission in Kosovo (UNMIK) Regulation 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 Fourth Annual Report covers the third full year of operations of the Institution, from 1 July 2003 to 30 June 2004. 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 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.

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.

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.

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, 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 has been provided through its main office in Pristina and the field offices in Gjilan/Gnjilane, Pejë/Peć, Mitrovica and Prizren, which are generally manned by two lawyers and one legal assistant/translator. The field office in Mitrovica has a sub-office in the northern part of the city. All offices are generally open to the public on weekdays between 8:30 and 17:30. The lawyers of 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, prisons and detention centres should be visited every two weeks.

Every month, there are Open Days in the municipalities of Pristina, Gjilan/Gnjilane, Pejë/Peć, Mitrovica, Prizren and Gjakovë/Đakovica. These Open Days allow complainants to personally meet the Ombudsperson, or in exceptional cases his deputy. At the main office in Pristina, the Open Day is on every second Thursday. In the other municipalities mentioned above, 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. 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 areas near Pristina that do not have their own field offices such as Lipjan/Lipljan, Glogovc/Glogovac or Gračanica/Graçanicë to meet the inhabitants of these places and to collect complaints.

The communication between the Ombudsperson and Kosovans staying temporarily in Serbia proper or to a lesser extent in Montenegro was enhanced by cooperation with the Norwegian Refugee Council, as well as by an agreement signed between the Ombudsperson and the Spanish humanitarian organisation Movimiento por la Paz, el Desarme y la Libertad (Movement for Peace, Disarmament and Freedom - MPDL) in which the MPDL agreed to assist applicants in filling out application forms and in contacting the Ombudsperson Institution.

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, also established special mailboxes in all prisons and detention centres in Kosovo, thus enabling the detainees to engage in direct contact with the Ombudsperson Institution. Only staff members of the Ombudsperson Institution have access to these mailboxes and come to empty them on a regular basis. The prisoners and detainees were informed about this possibility by a special letter that was sent by the Ombudsperson to detainees of all prisons and detention centres in Kosovo. The imposition of these mailboxes greatly improved the communication between the Ombudsperson Institution and the detainees.

A lawyer of the Ombudsperson Institution also visits the Social Care Facility in Shtime/Stimlje on a regular basis.

During the reporting period, there have been increased efforts to inform the public about the work of the Ombudsperson Institution. One method was the publishing of a quarterly report, which is now distributed all around Kosovo in all official languages of Kosovo, as well as in the Turkish language. This “Quarterly Information Sheet” will inform about the most important events and cases before the Ombudsperson Institution for a period of three months. The Ombudsperson Institution issued the first such publications for the months January to March 2004 and the months April to June 2004. There are plans to publish such reports even on a bi-monthly basis in future.

Another step in this direction was the improvement of the Ombudsperson Institution’s website, which includes general information on the Institution, as well as online versions of all reports and information on the Ombudsperson’s activities. During the reporting period, the Ombudsperson Institution also began operating a 24-hour hotline for urgent cases. Efforts are still underway to make this hotline free of charge.

CERTAIN ASPECTS OF THE HUMAN RIGHTS SITUATION IN KOSOVO

Democracy and governance

This reporting period has seen the further transfer of certain UNMIK competences and functions to the local central and municipal authorities in Kosovo. However, UNMIK still continues to control, *inter alia*, the judiciary, the police and the legislature. While there have been improvements in some sectors, parts of UNMIK still do not appear to take the obligation they are under to guarantee basic human rights and freedoms to the population of Kosovo seriously enough. According to the former SRSG Harri Holkeri “the UN mission in Kosovo has only one mandate: to ensure the realisation of human rights”. Given the continuing problems that arise with regard to this part of the UN mandate, it is difficult to take this statement at face-value.

Given the structure of UNMIK, this failure to act according to the human rights foundation on which its mandate is based does not seem too surprising. Although according to Section 11 of Resolution 1244 of the United Nations Security Council, the main responsibilities of the international civil presence in Kosovo include “establishing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement”, UNMIK itself is not structured according to democratic principles. As already criticised in the Ombudsperson’s Second Annual Report, when established as a surrogate state in 1999, UNMIK entirely ignored one of the basic principles of democracy, namely the division of powers. Almost immediately after his appointment, the SRSG issued an UNMIK Regulation vesting total executive and legislative powers in himself and according himself administrative authority over the judiciary. This disregard for democratic values continues to have negative ramifications for the functioning and above all the democratic legitimacy of the UN mission in Kosovo.

Neither UNMIK nor the Provisional Institutions of Self-Government (PISG) have so far been able to effectively combat the general lawlessness currently existing in Kosovo. The widespread and severe allegations of corruption in different sectors of public life including the judiciary are impossible to overlook. Another extremely serious obstacle to establishing the rule of law is organised crime involving, but not limited to, drug

trafficking and the trafficking of women for the purposes of prostitution in and through Kosovo. Efforts of the international structures and the local government to combat the corruption and organised crime prevalent in Kosovo still have not led to the expected results. At the same time, armed structures and political extremism continue to constitute a disturbing factor in the public life of Kosovo. Whether or not this will continue to be so depends on how effectively the Government and UNMIK will manage to, also politically, fight this phenomena.

Developments in the legal sector

Unfortunately, the “legal chaos” described in the Third Annual Report has not visibly diminished. There is still a general confusion as to which Yugoslav laws are applicable and which are not, in particular as there is no supreme judicial body which may issue decisions regarding the applicability and constitutionality of a certain law. This question is of particular importance with regard to the Yugoslav laws that entered into force after 22 March 1989, which, according to Section 1. 2 of UNMIK Regulation 1999/24 on the Law Applicable in Kosovo, may be applicable if they cover a subject matter that is not covered by the other laws in force and are not discriminatory nor in contradiction to the international human rights instruments applicable in Kosovo. It becomes somewhat difficult to determine, on a general basis, whether or not a certain law is discriminatory if there is no independent judicial organ to do so. Obviously, ordinary Municipal and District Courts do not have the competence to decide on such matters, nor would they be able to assume a unified approach, which can only be guaranteed by a Constitutional Chamber of the Supreme Court or a Constitutional Court, whereby the latter would be the preferable option. Even though plans to establish such a body are about as old as UNMIK itself and the existence of such an organ is also provided for in Chapter 9.4.11 of the Constitutional Framework, it has not been created yet.

At the same time, virtually all laws passed by the Assembly or UNMIK regulations contain an omnibus provision stating that this law supersedes all previous laws concerning the same subject matter. These formulations are vague and leave the public completely in the dark with regard to which laws are superseded by the new one and which laws continue to remain in force. This is in flagrant contradiction to the principle of legal security.

As already stressed in the Third Annual Report, a law must, according to international rule of law principles, be officially published before it may be considered as a law in force. To this day, there is still no official legal procedure regarding the publication of laws in Kosovo, a problem which was raised by the Ombudsperson in a letter to the Prime Minister in early March 2004. So far, the Ombudsperson has not received a response to this letter.

The European standards for the lawfulness of laws require that laws must be of an adequate quality, which means that first of all, they must be accessible and foreseeable, both of which conjoin to protect individuals from arbitrary governmental action and to allow them to regulate their conduct accordingly. To this day, none of these requirements are sufficiently met by the legal system in force, where the wider public is not even aware of most of the laws applicable in Kosovo.

One reason for this lies in the fact that it is often hard to come by those Yugoslav laws which date from before 1989 and are thus deemed applicable in Kosovo by UNMIK Regulation 1999/24 on the Applicable Law in Kosovo, amended by UNMIK Regulation

2000/59. No official English versions of such laws exist, although every law should be accessible to the public in the languages Albanian, Serbian and English. This principle is also not followed with regard to the laws passed by the Kosovo Assembly and UNMIK Regulations. The translation of the latter into Albanian and Serbian often takes a considerable amount of time. Even if translations of the above laws and regulations exist, their quality is often so poor that legal texts are rendered completely unintelligible or have a different meaning depending on which language they are written in.

Throughout the reporting period, there have been some attempts to improve the publication and distribution of UNMIK Regulations and laws passed by the Kosovo Assembly. Judges throughout Kosovo have informed the Ombudsperson that they are now receiving copies of such legal instruments on a regular basis on CD-Rom. At the same time, the regulations issued by UNMIK are available on the UNMIK website and the laws passed by the Kosovo Assembly can be accessed on the Assembly's homepage. In June 2004, an internet law database containing Kosovo laws that entered into force as early as the late 1960's became operational. For the moment, only government institutions and certain organisations can access this database, but there are plans to make it accessible to the general public. Once this project has been realised, this will mark a considerable improvement in providing access to laws in Kosovo.

However, this still only solves the problem of the accessibility of laws for a small part of the population in Kosovo. The majority of the inhabitants of the province do not enjoy the luxury of having access to the internet. These persons are often completely unaware of new laws or amendments to old laws, as hard copies of UNMIK Regulations and of laws passed by the Kosovo Assembly are still hard to come by.

With only a few exceptions, the problem of a lack of *vacatio legis* mentioned in the Third Annual Report has not visibly improved. *Vacatio legis* is the period between the promulgation of a law and its entry into force. Most of the laws and UNMIK Regulations that entered into force during the reporting period did so on the date on which the law was promulgated by the SRSG. This renders it impossible for the wider public to be aware of any new laws or of amendments to existing laws before these laws become applicable. It is highly unrealistic to expect that in such a place as Kosovo, where large parts of the population still have difficulties accessing laws in general, the majority of the inhabitants will become aware of any changes in the law immediately after their entry into force. The continued practice of ignoring the *vacatio legis* principle may have very grave practical consequences, in particular in cases where new or amended laws entering into force on the date of promulgation directly affect the rights and freedoms of individuals or where they impose additional obligations on individuals or groups of persons.

Without an adequate period of *vacatio legis*, not only individuals, but also different entities including public institutions do not have enough time to prepare themselves so as to ensure a proper implementation of the new or amended laws.

One very prominent example where there was a nine months' period of *vacatio legis* was the entry into force of the new Provisional Criminal Code and the Provisional Criminal Code of Procedure on 6 April 2004. These codes were the product of three years' work by UNMIK and local and international experts and were a positive legal development. Despite all good intentions, both codes were not sufficiently distributed throughout Kosovo. There was also a surprising passivity on the side of UNMIK, the actual initiator of these laws, to inform both judges and prosecutors and the general

public about the often quite extensive legal and practical changes that these codes would bring about. Even if there were trainings organized for judges and prosecutors, there was a noticeable lack of an adequate concerted effort on the side of UNMIK to prepare judges and prosecutors for the implementation of these laws.

Another problem related to the new codes was that they did not cover all aspects of the Yugoslav criminal system that was no longer in force following their promulgation. One example for this is the requirements and procedure for the placement of mentally incompetent criminal offenders and criminal offenders of diminished mental capacity in mandatory psychiatric treatment, which is referred to a separate law. As such a separate law has not been promulgated yet, there is currently no legal basis for detaining the above category of persons.

While the new Provisional Criminal Code of Procedure foresees the creation of a special judicial police that will undertake certain investigatory tasks under the direct supervision of the competent public prosecutor, there have so far not been sufficiently effective attempts to create such a judicial police, neither during the nine months' *vacatio legis* period, nor in the four months following the entry into force of the code. There are also an insufficient number of prosecutors and inadequate facilities to adequately implement the considerable reforms in the investigation phase brought about by the new code.

While the above criminal laws at least aimed at bringing about a much needed reform in the criminal legal system of Kosovo, this unfortunately does not apply to certain other parts of the still deficient legal system.

There is no existing legal framework to guarantee to every person whose rights have been violated by public authorities the possibility to hold the state liable and to obtain an adequate compensation.

At the same time, there is also still no law regarding the granting of compensation to persons who have been victims of violent crimes. As these persons are not war invalids and the crimes committed against them are not connected to the conflict of 1999, UNMIK Regulation 2000/66 of 21 December 2000 on Benefits for War Invalids of Kosovo and for the Next of Kin of Those Who Died as a Result of the Armed Conflict in Kosovo does not apply to them. As the reporting period has regrettably seen a number of such violent crimes, it is of the utmost importance that the persons who were victims of these crimes receive adequate financial assistance. In February and early March 2004, the Ombudsperson raised this issue with the then SRSG and the President of the Kosovo Assembly. So far, his letter has not met with any response. In the end of March 2004, following the violent crimes committed against many Kosovans on 17 – 20 March 2004, the Ombudsperson again raised this issue with the President of the Kosovo Assembly, stressing that in the light of these events, this question had become increasingly important and urgent. So far, he has not received an answer to any of these letters.

At the same time, approximately 10 000 Serbs whose property was damaged after the arrival of KFOR and UNMIK since 1999 have brought civil lawsuits for compensation before the courts of Kosovo. Serbian newspapers have estimated that around 20 – 50 000 more such lawsuits will be filed in the foreseeable future. However, in many cases where these persons intend to bring such claims before court, the prescription periods for these claims may now have run out, or may run out in the near

future. In these and other civil claims cases, the claimants were often prevented from accessing the competent courts in Kosovo earlier, as they were often forced to flee their homes after the conflict. In this time, the courts in Kosovo had also stopped functioning for a certain period and did not officially resume their work until several months or in some cases even a year later. Since the end of the conflict, the security situation in Kosovo has prevented a large number of the above persons from accessing the competent courts. Bearing this in mind, the Ombudsperson wrote a letter to the Acting SRSG in the beginning of June 2004 asking whether there was any solution by which this group of people could still be able to pursue their claims despite the fact that the relevant prescription periods had run out or would soon run out. The Ombudsperson noted that the present situation could raise issues regarding these persons' right of access to court under Article 6 of the European Convention on Human Rights. To the date of this report, there has been no response to this letter.

The events in March 2004 also brought to light another deficiency in the Kosovo legal system, namely that there have still been no attempts to draft a law in order to protect the cultural, historical and natural legacy of Kosovo. In May 2004, the Ombudsperson raised this issue with the Prime Minister of Kosovo and urged him to ensure that such a law be drafted, so that the culture and common identity of Kosovo be given the importance they deserve.

Other examples of laws which are needed to provide an adequate level of human rights protection but which still do not exist in Kosovo are a general law concerning the treatment of persons of unsound mind and an adequate law on public assembly that is in compliance with the right to peaceful assembly under Article 11 of the European Convention on Human Rights.

However, the above are not the only examples to highlight the chaotic legal situation existing in Kosovo today. One of the difficulties, specifically in this province, is the problem that UNMIK as a surrogate state has so far not managed to ensure that the documents issued by UNMIK have full authority and validity outside the territory of Kosovo. A government is required to grant to its population the ability to move outside its borders, through whichever legal means necessary. As UNMIK has failed to reach this aim, for whatever reason, it has created an absurd situation, where parallel Serbian administrative offices that are unrecognised by UNMIK fill the vacancy thus left by UNMIK by issuing to the inhabitants of Kosovo documents that are considered valid in Serbia proper and other countries in the region. One telling example for this is the issuance of driving licenses. Persons wishing to visit their relatives in Serbia proper, including the largely Albanian-populated part of southern Serbia, are thus forced to resort to parallel Serbian offices providing them with the appropriate documents. In many cases, these individuals become the victims of this double standard and are punished by Kosovo courts if caught with such driving licenses while passing through the territory of Kosovo. This creates a situation where UNMIK as the surrogate state in Kosovo punishes certain individuals for the weaknesses inherent in and created by UNMIK itself.

No democratic society can function without a functioning and transparent legal system. The situation as it stands today is a serious impediment to the proper administration of the rule of law in Kosovo.

The judiciary in Kosovo

With regard to the judiciary in Kosovo, it must be noted that despite some progress, the problems addressed in the Third Annual Report have not improved much during the reporting period, so that the local judiciary is still far away from attaining a level where it may be considered as a solid ally in protecting people's rights.

Due to the above-mentioned undemocratic structure of UNMIK, it is difficult to speak of an independent judiciary in Kosovo. The judicial administration is still entirely in the hands of the executive. While the SRSJ is responsible for the appointment and removal from office of judges and prosecutors, the actual administration of courts is undertaken by the Judicial Administrative Department, which is part of the Ministry of Public Services. All questions dealing with court facilities and remuneration, not only of court staff, but also to some extent of judges, are thus left up to the executive. Both the international and the local executive thus have an excessive and unhealthy amount of influence on the local judiciary, so that for this reason as well, the existence of an independent judiciary is still questionable.

As stated by the President of the Supreme Court in Kosovo, the judicial system continues to suffer from at least three main problems: the lack of proper legislation regarding the administration of justice, no consistent practice for the selection and filtering of professional judges and the deplorable remuneration received by the local judges. It is impossible for the judiciary in Kosovo to always work in an independent and impartial manner, in particular given the amount of pressure that they are often under by parties to proceedings or third parties. One other problem not mentioned by the President of the Supreme Court is the fact that members of minority communities are still not sufficiently represented in the judiciary.

The continuing existence of Serbian parallel courts further mars the already imperfect picture of the functioning of the judiciary in Kosovo. Their judgments are considered invalid in a province which is otherwise officially governed by UNMIK structures. However, in the municipalities north of Mitrovica, which are predominantly populated by the Serbian community, the courts established by UNMIK are still not functioning properly, so that the inhabitants of such areas often have no other choice but to take their cases to parallel courts. This strengthens the position of the latter and causes considerable confusion, mainly within the Serbian community.

When talking about the regular courts, there is still a large imbalance with regard to the caseload to be reviewed by each court. While especially the municipal courts in the main cities of Kosovo and to some extent certain district courts continue to suffer from a chronic lack of sufficient staff to deal with the considerable backlog of cases, courts in smaller towns often have relatively little work to do. For inexplicable reasons, the proceedings for the appointment of judges and prosecutors are excessively long, often taking up to one year or more.

Even if there is a sufficient number of judges in a certain court, there are no replacement judges in cases where for unforeseeable reasons, a judge is no longer able to exercise his functions. Following the death of a judge at the Supreme Court two years ago, who was mainly responsible for cases involving administrative conflict and administrative silence, it took a considerable amount of time to find another solution, which is the

reason why today, there is such a large backlog of these cases in the docket of the Supreme Court.

In cases where district courts remit cases back to municipal courts for reconsideration, this lack of judges also creates a problem of partiality, as the cases are then reconsidered by the same judge that had already participated in issuing the first decision. This appears to be a common practice in the courts of Kosovo and raises serious issues with regard to the fair trial principles inherent in Article 6 of the European Convention on Human Rights.

The length of proceedings before many municipal courts and some district courts continues to be excessive and the backlog is increasing steadily. In criminal cases, this usually means that the time spent by the accused in detention also increases, despite the internationally recognised legal principle, according to which special diligence must be displayed in criminal proceedings if the accused is in detention. At the same time, there is no legal remedy in place providing preventive or compensatory relief to persons affected by delays in court proceedings, contrary to the right to an effective legal remedy guaranteed by Article 13 of the European Convention on Human Rights.

One problem involving the court proceedings themselves is the lack of experts who could introduce forensic evidence before courts. It is understandable that only a small amount of persons are willing to work as forensic experts, in particular as their fees are ridiculously low.

More often than not, court judgments are not being executed in a timely manner. While the number of court bailiffs has increased, it is still not sufficient to ensure the smooth functioning of execution proceedings.

However, the success of execution proceedings is not only up to the competent judge and judicial administration. Private banks generally refuse to permit courts to execute into individuals' bank assets or to allow the blocking of accounts as an interim measure. In the face of such a blatant refusal to collaborate, there is no clear legal mechanism obliging private banks to cooperate with courts.

In certain cases, properties are now under the administration of the Kosovo Trust Agency (KTA), a body constituted by UNMIK to administer formerly socially owned properties. A court may then only order the execution of a judgment into this property in favour of a private party considered by the court to be the legal owner of the property if the KTA agrees to this, even in cases where the final judgment dates from before the existence of the KTA. The success of the enforcement of judgments in such cases thus depends on an administrative body, which again raises serious issues regarding the independence of the judiciary in Kosovo and the protection of people's right to a court.

Another problem encountered with regard to the execution of criminal sentences is the fact that there is not enough space in the existing prisons and detention centres to accommodate all persons who by court judgment have been deprived of their liberty. This leads to a situation where many individuals, in particular those who have been sentenced to a relatively short prison term, are not taken to prison at all. In this way, there is often a realistic chance that certain criminal acts will be left unpunished, which weakens the credibility and authority of the judiciary and jeopardizes the effectiveness of the rule of law in Kosovo.

This is already the fifth year since UNMIK assumed control over the judiciary and the administration of justice is still not functioning as it should.

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

Although the protection of human rights is expressly mentioned in the Constitutional Framework for Provisional Self-Governance in Kosovo, promulgated through UNMIK Regulation 2001/9 on 15 May 2001, and that the protection of human rights was one of the reasons for the Security Council's adoption of Resolution 1244 in 1999, there are still no proper existing legal mechanisms in place in Kosovo today to ensure such a protection of human rights in practice.

One problem is the lack of information to the general public about international human rights protection instruments contained in the Constitutional Framework. These are the Universal Declaration on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (ECHR), the International Covenant on Civil and Political Rights and the Protocols thereto, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the European Charter for Regional or Minority Languages, as well as the Council of Europe's Framework Convention for the Protection of National Minorities.

Despite the fact that through Chapter 3.2 of the Constitutional Framework, these human rights documents have been directly applicable in Kosovo for over three years now, the general public remains unaware of this fact because these instruments have still not been published and distributed in all three of Kosovo's official languages, in particular in Albanian and Serbian. As also most judges, prosecutors and many lawyers are still completely unaware even of the existence of these conventions, their practical implementation into the Kosovo legal system remains a myth. In May 2004, the Ombudsperson raised this issue in a letter to the Prime Minister of Kosovo and urged him to give the highest priority to the publication and distribution of the above-mentioned international treaties.

On the other hand, the jurisdiction of the local courts, which in democratic systems are seen as the prime guarantor of citizens' rights, has been limited by UNMIK Regulations in some important areas. One very important example for this are claims raised by persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred. Such matters have been placed under the sole jurisdiction of the UN Housing and Property Directorate (HPD). Courts, which should constitute a main pillar in the protection of such rights, are thus to a considerable extent deprived of assuming such a role in Kosovo in an area of particular importance from the viewpoint of basic human rights protection.

Another obstacle to the establishment of a working human rights protection mechanism in Kosovo is the fact that claimants wishing to bring cases involving human rights violations to court against UNMIK as an institution, as well as against their property, funds and assets, are prevented from having these cases decided by courts due to the complete immunity enjoyed by UNMIK itself. While such an immunity of international organisations is necessary in order to ensure their effective operation, this general principle should be applied differently to the circumstances prevailing in Kosovo, where

UNMIK fulfils the functions of a surrogate state. Nowhere in the world does a democratic state operating under the rule of law accord itself immunity from any administrative, civil or criminal responsibility. The same applies to KFOR. According to Section 3 of UNMIK Regulation 2000/47, the SRSG, his deputies, the UNMIK Police Commissioner, as well as other high-ranking officials of UNMIK, are immune from local jurisdiction in respect of any civil or criminal act performed or committed by them in the territory of Kosovo, while the remaining UNMIK personnel, both local and international, are immune from legal process in respect of words spoken and all acts performed by them in their official capacity. Although the immunity of individual staff members may be waived, such waivers are discretionary. The problem of the immunity of UNMIK as an institution and of its staff members was addressed at length by the Ombudsperson in his Special Report No. 1, issued in April 2001, where, for the reasons stated above, the grant of immunity for UNMIK and KFOR was considered to be incompatible with international human rights standards. In June 2001, the then SRSG responded to this report noting that the matters raised in the report were under the active consideration of his office and that he would undertake further consultations with UN Headquarters and others before issuing a substantive response to the report. To the date of this report, there has been no such substantive response by UNMIK to this issue.

The above immunity leads to a certain unaccountability of UNMIK, as the UN itself does not provide for proper internal safeguards to ensure the legality of such actions. Even if allegations concerning the commission of criminal acts are raised against members of UNMIK, in particular but not only members of UNMIK Police, the local prosecuting authorities are unable to investigate, nor are there any independent bodies that would be competent to undertake this task. No other mechanism in place in Kosovo today is capable to assure effective and proper investigations into such cases, as internal UNMIK Police investigations are by their very nature unable to constitute fully independent investigations and thus are not even sufficient to ensure a minimal level of compliance with international standards. Moreover, such investigations are not conducted in order to bring a person suspected of having committed criminal acts to justice, but are instead only aimed at initiating disciplinary proceedings against the respective police officer.

At the same time, it is impossible for UNMIK local staff to challenge employment decisions of UNMIK before Kosovo courts. These persons are thus under no judicial protection with regard to labour disputes. The same is still true for members of the civil service wishing to bring employment disputes against the PISG. According to Section 11.1 of UNMIK Regulation 2001/36 on the Kosovo Civil Service, a civil servant who is aggrieved by a decision of the public authorities employing him may appeal against such a decision to the Independent Oversight Board of Kosovo, which is an autonomous unit located within the Ministry of Public Services. Although this UNMIK Regulation entered into force in December 2001, such a board has still not been constituted. In these circumstances, there is no appeals body for civil servants.

In cases where Kosovans become the victims of human rights violations committed by UNMIK as such or its staff members, there is thus no independent body with judicial character that could intervene or by which these persons could obtain some sort of redress for damages or injuries. Even if local courts in Kosovo cannot examine the legality of the conduct of UNMIK, there should be some special tribunal to at least provide the possibility of a judicial review of actions taken by UNMIK that affected the rights of local subjects or the labour rights of UNMIK local staff members. Section 7 of

UNMIK Regulation 2000/47, which envisions the creation of Claims Commissions to settle certain third party claims for property loss or damage that arise from or may be directly attributed to UNMIK or its personnel, does not provide adequate mechanisms for the conduct of an independent, effective and proper inquiry into the merits of such claims and has thus so far been of rather limited help in this respect. The same applies to the KFOR Claims Commission.

This situation in general creates a paradox, whereby those entities that are in Kosovo to help preserve human rights and the rule of law are themselves not answerable to the very persons they are obliged to protect. It also raises issues concerning one of the most fundamental rights, namely that of the right to a court provided for in Article 6 para. 1 of the ECHR, which foresees that in the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing before a tribunal established by law. The effects of the violent events of March have drastically highlighted the practical repercussions of this dilemma, as there does not appear to be any way in which individuals who suffered injuries and damages during these events could claim damages from UNMIK as a surrogate state responsible, in particular, for security and public order. This situation is untenable and excludes any possibility of invoking, for example, certain provisions of the still applicable Yugoslav Law on Obligations, under which public authorities are liable for certain damages and injuries caused by, *inter alia*, violent demonstrations as long as the organisers of the demonstrations or perpetrators of the respective crimes have not been identified. Such laws are robbed of their effect if the structures exercising state powers in Kosovo has absolute immunity before local courts.

The Ombudsperson, although not competent to investigate into complaints against KFOR, is currently the only legal instrument constituting a human rights protection mechanism. He has jurisdiction to oversee both the work of the UNMIK administration and the local provisional governing bodies, but there are still many practical and legal obstacles that keep him from exercising this mandate in the best possible way.

One of these has been the lack of adequate cooperation of UNMIK with the Ombudsperson Institution, in particular, but not only in cases involving UNMIK Police. Although there has been an improvement in this cooperation, in particular since the violent events in March 2004, the practice of UNMIK in such matters is still far from being in compliance with Section 4.7 of UNMIK Regulation on the Establishment of the Ombudsperson Institution, which stipulates that the interim civil administration and any emerging central or local institution is obliged to cooperate with the Ombudsperson by supplying him with relevant information, documents and files.

Access to files may only be refused by the SRSG himself, provided that reasons in writing are given to the Ombudsperson. Other UNMIK authorities are thus not permitted to withhold any documents from the Ombudsperson and his staff, a fact which is apparently often not known to UNMIK staff members, in particular members of the UNMIK Police. There have been several cases during the reporting period in which members of the UNMIK Police have persistently refused access to certain files, a practice which has effectively blocked investigation proceedings in the respective cases. On the other hand, while the SRSG has refused to grant access to a police file in one case for security reasons, while in other cases he has not responded at all, despite explicit requests for access on the side of the Ombudsperson Institution.

When dealing with different complaints and allegations against the PISG, the Ombudsperson faces two main problems: one is the fact that the Ombudsperson does

not have at his disposal any kind of legal remedy, nor may he participate in court proceedings, even as a third party. The other problem is the frequent lack of adequate support from the UNMIK authorities when the local structures do not react to requests, including requests for various interventions or recommendations from the Ombudsperson.

The inability for the Ombudsperson to initiate or take part in court or any other legal proceedings results in part from gaps in the UNMIK Regulation on the Establishment of the Ombudsperson Institution, but also from the weaknesses inherent in the legal framework in force in Kosovo today, in particular the lack of a Constitutional Chamber or Constitutional Court. While the Ombudsperson may raise certain issues in a report and may recommend to the SRSG to change a certain practice or law, he cannot directly, by legal means initiate any procedure to ensure that an illegal situation be changed.

As regards the lack of adequate support by the UNMIK administration when dealing with the local government and administrative bodies, it is important to stress that such support is very much required in a situation where all institutions of the PISG still remain under the overall supervision of the SRSG, who, based on Security Council Resolution 1244, has the final responsibility for all of their actions and is at the same time responsible for the protection and promotion of human rights.

Unfortunately, cases where local institutions do not react to the Ombudsperson's actions, or where their reaction is far from adequate, are still occurring on a much too frequent basis. Although UNMIK is always informed about the Ombudsperson's actions or requests regarding a subject that is under the direct competence of the PISG, UNMIK too often omits to take any visible form of action in support of the Ombudsperson in such cases.

As long as UNMIK does not respond to the issues raised by the Ombudsperson and fails to effectively ensure that the local institutions under its supervision react in an adequate manner to steps taken by the Ombudsperson, the effectiveness of the Ombudsperson Institution as a human rights protection mechanism will, to a considerable extent, be limited. Such cooperation is especially important in Kosovo, which, unlike other places, is not equipped with any other legal instrument strong enough to ensure the compatibility of its authorities' actions with human rights standards.

There are still too many situations where the Ombudsperson's requests or recommendations are either ignored or receive unsatisfactory responses. In such cases, the Ombudsperson does not dispose of any legal mechanism to react to this disregard on the side of UNMIK or the PISG. Whether or not his recommendations to the SRSG are followed or taken into consideration is very much up to the discretion of the respective SRSG. Once a report has been delivered, there is no forum for any further legal debate – if the SRSG decides, for certain reasons, not to follow the Ombudsperson's recommendations, both sides retain their opposing positions and no solution is reached.

In such cases, there is no higher body of judicial character to which this difference of opinion could be submitted. Contrary to Bosnia and Herzegovina, no Human Rights Chamber or similar body with the competence to issue legally binding decisions on human rights issues has yet been created in Kosovo. At the same time, while Serbia and Montenegro have now ratified the ECHR, the Convention protection mechanism still does not apply in Kosovo. As UNMIK is not part of the European Convention on

Human Rights and other international convention systems, the inhabitants of Kosovo are thus deprived of those international human rights protection mechanisms which have been recently accorded to inhabitants of Serbia proper and Montenegro.

In order to improve the human rights protection situation in Kosovo, which, as already mentioned in the Ombudsperson's Third Annual Report, thus still constitutes a sort of "human rights black hole" in Europe, the Council of Europe, encouraged by the Ombudsperson, has initiated discussions with UNMIK on how to place Kosovo under the umbrella of international human rights protection mechanisms. These discussions appear to have been successful in some aspects, at least with regard to the Council of Europe's Framework Convention for the Protection of National Minorities and the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. There are expectations that soon, UNMIK and the Council of Europe will sign a technical arrangement in which UNMIK will undertake to exercise its responsibilities in compliance with the principles contained in these legal instruments without, however, becoming party to these conventions. Whenever appropriate, these responsibilities will also cover actions by the PISG. This will be a considerable step on the way to improving human rights protection in Kosovo.

The situation of non-Albanian communities in Kosovo

The most fundamental of the standards to be introduced in Kosovo is the guaranteed right of members of minority communities in Kosovo to live, travel and work freely throughout Kosovo, in other words the right to live a normal life in dignity under peaceful and undisturbed conditions.

Even before the violent attacks in March 2004 against members of the Non-Albanian communities, the living conditions for the Serbian, Roma, Ashkali, Egyptian, Bosniak and Gorani communities were very difficult, to a greater or lesser extent, depending on each community.

Since the conflict in 1999, it has not been possible for members of certain non-Albanian communities, in particular the Serbian and Roma communities, to move freely in Kosovo. Instead, they have been confined to their homes, relying mostly on escorted transport for occasional visits to other places in Kosovo populated by minority ethnicities or to the administrative border with Serbia proper.

The confinement of the above persons to restricted areas has far-reaching practical implications such as extremely limited access to employment, education and to most other aspects of normal life. At the same time, Serbian enclaves often do not have sufficient means of communication, ordinary forms of communication such as a proper postal service or telephone lines are often non-existent or interrupted.

Unemployment in Kosovo in general is very high, but in areas largely populated by non-Albanian communities, it reaches up to 70 – 80 %. The representation of non-Albanian communities in the Kosovo civil service in general is still far from satisfactory. In many cases, it is also impossible for persons of minority ethnicities, in particular if they are farmers, to exercise any kind of entrepreneurial activity, mostly because large parts of their agricultural land are inaccessible or occupied by Albanian neighbours. Even if certain goods are produced, there is hardly any access to the respective markets in and outside Kosovo.

Throughout the last few years, the Kosovan 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 disregard of the stage of the reform processes in neighbouring areas such as Serbia proper, Montenegro, Bosnia and Herzegovina and the Former Yugoslav Republic of Macedonia (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, have almost lost 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 recently 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.

The access of members of non-Albanian communities to courts and to any form of legal protection remains severely curtailed. In certain municipalities, persons wishing to visit the next court need to rely on the UNMIK Local Community Office, which assists in contacting the local police station to arrange transport. In other municipalities, the UNMIK Department of Justice has arranged court liaison offices. In the ethnically divided town of Mitrovica, all courts are located in the predominantly Serbian Northern part of town. UNMIK Police operates a shuttle to transport parties and witnesses from the Southern part of town to the courthouses in the north.

Even though Serbian remains one of the three official languages in Kosovo, in practice it is almost completely absent from public life. Even though the Constitutional Framework provides for the official use of both Albanian and Serbian, the central government of Kosovo, as well as some municipalities, has so far not followed these provisions at the required level. Communication between the different central governmental bodies and municipalities populated largely or exclusively by Serbs is conducted almost entirely in Albanian, which renders the communication between these bodies difficult if not hopeless. The Ombudsperson raised this issue with the Prime Minister of Kosovo several times in the beginning of March and in May 2004 and urged him to ensure that the respective provisions of the Constitutional Framework be applied without any further delay. The Prime Minister’s Office answered and stressed that both the local and central levels of the PISG respect and implement the relevant provisions of the Constitutional Framework and that despite the low salaries in the public sector, translation units operate on a regular basis. As if to prove the Ombudsperson’s point, however, this letter was only formulated in Albanian.

In March 2004, the more or less latent discrimination and selective acts of violence against those members of the non-Albanian communities, in particular Serbs, who had decided to remain in Kosovo after the conflict in 1999, turned into a brutal explosion of violence against almost anybody who was not of Albanian ethnicity.

The main victims of these attacks were members of the Serb, Roma, Ashkali and Egyptian communities – in Vushtrri/Vucitrn alone, around fifty Ashkali families were forced to leave their homes and are for the most part currently still staying at a French KFOR base. In isolated incidents, Serbs were brutally lynched by a hysterical and angry mob. Albanians who refused to take part in the mass destruction of properties, churches and of public facilities were threatened.

According to the Report on UNMIK issued by the UN Secretary-General on 30 April 2004, this onslaught was an organised, widespread and targeted campaign. Properties and churches were demolished, public facilities such as schools and health clinics were destroyed, communities were surrounded and threatened and residents of these communities were forced to abandon their homes. Minority areas were targeted, sending a message that minorities and returnees were not welcome in Kosovo. The Secretary-General saw this as a targeted effort to drive out Kosovo Serbs and members of the Roma and Ashkali communities and to destroy the social fabric of their existence in Kosovo. It also showed a lack of commitment among large segments of the Kosovo Albanian population to creating a truly multi-ethnic society in Kosovo.

The conclusion reached by the UN Secretary-General supported the viewpoint of many persons in and outside Kosovo regarding the March events including the Ombudsperson himself, namely that they amounted to nothing less than a concerted attempt to conduct ethnic cleansing in parts of Kosovo.

After the violence, the pledge of local politicians to reconstruct the destroyed buildings has so far not led to the expected tangible results. It still remains to be seen how and when these promises will be fulfilled and whether the perpetrators of the violent crimes of March 2004 will be brought to justice. For the moment, around 2 000 people continue to be displaced. One can only hope that they will be able to return to their homes before the winter.

Contrary to before the March events, it has now become increasingly difficult to maintain any form of pretence that there is a reasonable possibility of creating a real multi-ethnic society in Kosovo in the foreseeable future. In particular Serbs are in many places again obliged to resort to armed escorts if they wish to travel outside their settlements.

Inexplicably, before and even after the March events, KFOR decided to remove checkpoints in certain villages populated mainly by Serbs, in spite of protests from the local inhabitants. In January 2004, the Ombudsperson asked the competent KFOR authorities for reasons for this removal of checkpoints. The KFOR Legal Advisor answered on behalf of the KFOR Commander, stating that KFOR's decision had been based in particular on improvements in the security situation throughout Kosovo. Only two months later, the violent events in March 2004 showed that these considerations did not entirely correspond to reality.

Little more than two months after the March violence, Swedish KFOR decided to remove a checkpoint situated at the entrance of the Serbian village of Gračanica/Graçanicë. Two days later, a car drove into Gračanica/Graçanicë at midnight. Two persons stepped out and opened fire on a group of Serbian teenagers, thereby killing a 16-year-old Serb. This incident again proved that the assessment of the security situation made by KFOR was not necessarily accurate.

The above are only a few examples of the continuing problems faced by non-Albanian communities in Kosovo. Such a situation should not be tolerated by the international civil presence in Kosovo, nor by the Kosovan leaders, who need to commit openly and operate effectively, not only verbally, in order to ensure the protection of the human rights of all inhabitants of Kosovo, in particular people who are ethnic minorities in this province.

The situation of displaced persons inside and outside Kosovo

During the reporting period, an increasing, although still very limited number of displaced persons have returned to Kosovo. The reasons for this, often indicated by the Ombudsperson in public statements, as well as in the Third Annual Report, mostly involve a lack of security, the dire economic situation and the fact that the final status of Kosovo has not yet been resolved. At the same time, the emigration of Serbs and members of other Non-Albanian communities out of Kosovo, however limited, has continued. For the year 2003 alone, the Commissioner for Refugees of Serbia officially registered 600 persons who had left Kosovo for Serbia proper.

After the violent events in March 2004, the situation has become even more difficult. Between 17 and 19 March 2004, settlements housing recent returnees were also attacked and, as in the example of Belo Polje/Bellopojë, even totally destroyed.

A considerable number of internally displaced persons are still living on the territory of Kosovo since the end of the Kosovo conflict in 1999. The violent events in March 2004 have increased this number considerably. During these events, more than 4 000 persons were forced to flee their homes, which were then subsequently burned by angry mobs. Now, over three months later, around 2 000 of these persons are still displaced and living in deplorable conditions, most of them in tents, school buildings and even in KFOR camps. None of these accommodation shelters were intended for housing such a large number of persons for a longer period of time.

The Ombudsperson remains actively seized of the fate of displaced persons from Kosovo staying in Serbia proper, Montenegro and the FYROM. During the reporting period, he visited camps of internally displaced persons in Kraljevo region in Serbia proper and had a meeting with the representatives of displaced persons staying in Montenegro in Podgorica. In contrast to those persons who were forced to leave Croatia and Bosnia Herzegovina, both of which are now independent States, the persons who came to Serbia and Montenegro from Kosovo do not have refugee status, as Kosovo is still seen as belonging to the territory of Serbia and Montenegro. Nevertheless, the problems faced by internally displaced persons from Kosovo and their counterparts from Croatia and Bosnia Herzegovina are in many cases very similar. The Ombudsperson raised this issue with the Prime Ministers of Serbia and of Montenegro and during meetings with other leading politicians of both entities. Noting that a large number of the displaced persons from Kosovo had been living in very poor conditions for almost five years, he urged both Prime Ministers to see whether it could be possible to grant internally displaced persons some of the rights and benefits that are today enjoyed by refugees. The Ombudsperson is of the opinion that there is no valid excuse for not treating both categories of persons in a similar manner.

In addition to this, the displaced persons from Kosovo living in Montenegro are not able to take part in elections held in Serbia, although they are considered to be citizens of this state. In view of the presidential elections held in Serbia in mid-June 2004, the Ombudsperson raised this issue with the Republican Electoral Commission of Serbia and the Council of Europe. It is unacceptable that for political reasons and due to internal problems between the two entities composing the union of Serbia and Montenegro, the internally displaced persons from Kosovo currently residing in Montenegro are not able to exercise their right to participate in elections held in Serbia and are thus deprived of one of the basic fundamental rights to guarantee a functioning democracy.

With regard to refugees from Kosovo staying in the FYROM, the main problem in this respect is the plight of persons of Roma ethnicity who fled there from Kosovo following the conflict in 1999. According to international human rights organisations, there are currently still some 2 500 Roma from Kosovo living in the FYROM. Following the closure of Shuto Orizari, the largest Roma refugee camp in the FYROM in May 2003, the inhabitants of this camp were left to their own devices, with no support from the local government or international humanitarian organisations. In a letter sent to the Prime Minister of the FYROM in May 2004, the Ombudsperson raised this issue and urged the Prime Minister to see whether it could be possible to find a solution for these persons, either in cooperation with international human rights agencies within the FYROM or through negotiations with third countries.

As far as Roma and Ashkali refugees staying in West European states are concerned, the governments of some of these countries, notably Belgium, Denmark, Germany, Norway, Sweden and the Netherlands, still intend to return these people to Kosovo. In a public letter to the competent ministers of these states, the Ombudsperson strongly advised against such a step, stressing the miserable conditions in which most members of ethnic minorities are living in Kosovo, as well as the general security situation, in particular following the violent events in March 2004. Until the security situation in Kosovo does not improve substantially and there are no signs of a considerable improvement of the Kosovan economy, states which consider returning members of Non-Albanian ethnicity to Kosovo should rethink their policies.

Undoubtedly, all displaced persons regardless of their ethnicity have a right to return to their homes and properties in Kosovo and the Kosovo leaders and authorities, together with the international community, are under the obligation to create safe and sustainable conditions for any Kosovan wishing to continue his life in Kosovo. At the same time, all internally displaced persons who, for the above reasons, were induced to leave Kosovo after 1999, should today have a free choice of whether to stay in the areas which currently are harbouring them or whether to return to Kosovo. If these persons decide not to come back to Kosovo and to stay in Serbia proper or Montenegro, the respective governments of these places should create the necessary conditions for the realisation of this option as well.

In particular in Serbia proper and Montenegro, the large number of displaced persons places a heavy burden on the already very weak infrastructure and economy of these states. That is why this situation calls for a strong involvement of the international community, in order to help these countries bear this burden. Those persons that were displaced to these countries have the same right to live an ordinary life as anybody else and it is important that local and international powers cooperate in order to realise this obligation that they have towards these individuals.

Missing persons and the lack of investigation into serious crimes

Unfortunately, the fate of thousands of Kosovans who went missing before and during the 1999 conflict in Kosovo, or after the arrival of UNMIK and KFOR, is still unclear. While the reporting period has seen the identification of a certain number of bodies and remains as belonging to such missing persons, progress in this respect has not been satisfactory. As regards the unsolved cases of persons who went missing after the arrival of first KFOR and later UNMIK and, mostly Serbs and other members of non-Albanian communities, the international authorities in Kosovo, first military and then civilian,

failed to investigate these cases properly right after the time when the persons in question went missing. As time passes, it will become more and more difficult to collect evidence allegedly leading to the fate of these missing persons.

The failure of the UNMIK Police to achieve proper results when investigating into other serious crimes that occurred since the beginning of the international presence in Kosovo was already criticised in previous reports and the situation has not improved since, in particular in cases where such crimes were allegedly politically or ethnically motivated. In certain cases, the victims of such crimes and their families have been waiting for the results of police investigations for over three years now, frequently without even having been duly informed on any new developments in their respective cases. As noted in the Third Annual Report, one of the main reasons for this failure of the UNMIK Police to effectively investigate into such crimes continues to be the constant and swift turnover of investigative staff. The often invoked lack of cooperation from local communities and witnesses cannot serve as a valid excuse for this inability of the law enforcement authorities to achieve the expected investigatory results, in particular in cases involving the most serious crimes.

Property rights

Securing property rights continues to remain a big challenge. Many persons in Kosovo do not respect the property rights of others, a fact which is demonstrated by the ever growing number of new buildings and of annexes to existing buildings regardless of the construction laws applicable in Kosovo. Persons engaging in such illegal construction practices clearly do not feel obliged to follow these laws and this blatant disregard of the rule of law is not seriously and adequately checked by the central and municipal authorities. Too frequently, the local courts are similarly reluctant to issue interim-measure orders to stop illegal constructions. The Ombudsperson raised this issue in a letter to the Prime Minister in November 2003 and asked him to take adequate steps to put an end to such an open and apparently permissible disrespect of the existing laws on construction.

After the conflict of 1999, a large number of ethnic Albanians illegally took into possession land belonging to Serbs and members of other non-Albanian communities. This land is currently being worked by these illegal occupants, leaving the actual owners no possibility of exercising their property rights. The situation is even worse for internally displaced persons inside and outside Kosovo, for whom their land is as good as lost – they can neither access it, nor do they have any effective way of finding out what happened to their properties.

Even in cases where land belonging to persons of non-Albanian ethnicity was not illegally occupied, the security situation in Kosovo often prevents the owners of this land from accessing their property. Thousands of Serbs and a number of other members of ethnic minorities are thus not able to work their land because this would involve a considerable danger for their life and safety. In many cases, this prevents people from working their land at all, in some areas this affects 70 – 80 % of the land.

The illegal occupation of apartments and houses still constitutes a wide-spread practice, despite attempts by UNMIK to repossess people deprived of their property. In November 1999, UNMIK created the HPD in order to treat claims of natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999. The HPD has had a painfully slow start caused by chronic

resource shortages, poor management and inter-institutional struggles. After 2002, the situation improved, but as there are apparently still not enough funds to employ a sufficient number of lawyers to work on the backlog of cases, the complaints against the HPD have not grown less. In many cases, claimants have been waiting to regain possession of their property for over three to four years now.

Most of the complaints concerning the HPD involve the length of proceedings before the HPD Claims Commission, the significant delays in the delivery of decisions taken by the Claims Commission and the slow or ineffective execution of such decisions.

The execution of the decisions of the HPD is often delayed for security reasons. In many cases, illegal occupants of apartments or houses that were then evicted following a decision of the HPD later came back to threaten the rightful owners, or in the worst cases to burn or destroy the apartments or houses. UNMIK Regulation 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 does not provide an adequate solution to this problem. Apparently, when drafting this and other laws concerning the procedure before the HPD, UNMIK did not anticipate that the execution of HPD decisions would be thwarted in such a tenuous and lawless manner.

This inability to efficiently enforce decisions of the HPD jeopardises the effectiveness of the entire mechanism of repossessing the rightful owners of their property. Currently, not enough attention is being paid to this untenable situation, where a UN body which was specifically set up in order to repossess persons illegally deprived of their property has for the last three to four years had neither adequate financial means nor the power to fulfil the expectations placed in it.

With regard to the property of members of Non-Albanian communities in Kosovo, the violent events in March 2004 involved the systematic burning and destruction of many of these persons' homes and belongings. Directly after these events, the Prime Minister and other leading Kosovan politicians publicly announced that the houses would be rebuilt within a few months, in order to allow all these persons to return to their homes as fast as possible. Now, more than three months after the March events, there has still not been much progress with respect to the rebuilding of these houses. Apparently, the assessment of damages is also taking place in the absence of the rightful owner of the destroyed property. On the other hand, there is no legal appeals mechanism in place by which these assessments may be challenged. At the same time, the damage assessment hitherto undertaken only concerns damages inflicted on immovable property. Assistance linked to the loss or damaging of moveable property has been very limited and has not paid any regard to each individual situation. Up to now, the public authorities in Kosovo do not appear to feel any sort of legal obligation towards the victims of the events of March 2004 for their losses. The competent authorities appear to consider that the events in March 2004 happened exclusively due to some sort of *force majeure* and have therefore only felt obliged to provide certain forms of humanitarian assistance.

The situation of persons with mental disabilities

Since the end of the armed conflict in Kosovo 1999, not much attention has been paid to the plight of persons of unsound mind in Kosovo. Currently, the only mental health institution existing in Kosovo is the Pristina University Mental Health Clinic, which is woefully unprepared for the amount of persons brought to them, nor do they have the facilities to ensure long-term psychiatric treatment. At the same time, there is no law

governing the placement of individuals of unsound mind into mental health institutions, which means that for the moment, these persons' placement into such institutions is not based on any legal provision. This deprivation of liberty is thus unlawful.

The situation is even worse in the case of criminal offenders who are considered mentally incompetent or of diminished mental capacity. The new Provisional Criminal Code of Kosovo, which entered into effect in April 2004, does not contain any provisions on when and under which circumstances such criminal offenders may be placed in mental health institutions. Instead, it stipulates that the procedures for ordering mandatory psychiatric treatment shall be provided for separately by law. However, such a law has not been promulgated yet.

This creates a certain gap in the law and also causes a great amount of confusion. For lack of a new regulation in this field, criminal courts in Kosovo continue to apply the Yugoslav law, which is now no longer in force. This creates a situation where, in order to guarantee that mentally incompetent criminal offenders and criminal offenders with diminished mental capacity undergo adequate psychiatric treatment, the competent judges are forced to issue court orders that are no longer in keeping with the applicable law. Despite repeated requests on the side of UNMIK to order the release of these illegally detained criminal offenders, judges have been understandably reluctant to do so, especially in cases where these detainees have not shown any signs of recovery.

Leaving aside the problem that their detention has no basis under the applicable law, most mentally incompetent criminal offenders or criminal offenders with diminished mental capacity are mostly concerned with practical problems related to their detention. Due to the overall lack of space in the Pristina mental health institution, these persons whose detention in such institutions was ordered by certain courts could so far not be admitted for treatment. Instead, they have been placed in ordinary prisons while waiting to be admitted to the Pristina Mental Health Clinic, often for several months at a stretch. Needless to say, ordinary prisons lack the facilities to provide adequate treatment for these people. This practice of pre-placing such criminal offenders in ordinary prisons has negative effects on the success of their treatment and is not foreseen in both the previously applicable Yugoslav laws and the currently applicable Provisional Criminal Code of Kosovo. It is the position of the UNMIK Department of Justice that the Ministry of Health is responsible for establishing facilities to accommodate persons whose placement under mandatory treatment has been ordered. Apparently, there are plans on the side of this Ministry to build an intensive care facility which would, however, not accommodate persons in need of long-term care. Even if a mental health law or a criminal law providing for mandatory treatment orders were to be promulgated, there do not appear to be any plans on the side of the Ministry of Health to establish appropriate facilities.

Currently, both the detention of mentally incompetent criminal offenders and of criminal offenders with diminished mental capacity are not covered by law. The same is true for the above-mentioned pre-placement of such persons in ordinary prisons while awaiting their admittance to the Pristina Mental Health Clinic. Both situations are thus unlawful and in violation of these people's right to liberty as guaranteed by Article 5 para. 1 of the European Convention on Human Rights.

Those criminal offenders that have found a place in the Mental Health Clinic in Pristina have so far often been placed in the same wards with ordinary psychiatric patients, a fact which in certain cases has resulted in acts of violence. The fact that some of these

criminal offenders continue to be guarded by police also alarms the other patients and has negative consequences on the improvement of their mental state of mind. In mid-June 2004, following the Ombudsperson's requests that this situation be rectified, the competent UNMIK authorities informed the Ombudsperson that they had obtained authorisation from the Ministry of Health to close one wing of the Mental Health Clinic in Pristina, which will allow criminal offenders to be separated from ordinary patients and permit a reduction of police officers assigned to guard the justice sector patients.

ACTIVITIES AND OPERATIONS OF THE OMBUDSPERSON INSTITUTION

Main activities

During the reporting period, there was a constant expansion of the activities of the Ombudsperson Institution, both in a legal and in a practical sense.

One example for this was the cooperation between the new UNMIK Standards Coordinator, appointed in the fall of 2003. In November 2003, during the discussion on what the standards for Kosovo should be, the Ombudsperson submitted a list of suggestions reflecting what he considered to be important standards that had so far not been included in the drafts on standards compiled by UNMIK to the SRSG. During the entire reporting period, the UNMIK Standards Coordinator has been informed on all significant interventions or letters addressed to the PISG by the Ombudsperson.

The compilation of standards for Kosovo presented by UNMIK and the PISG in December 2003 also stated that democratic institutions would only be considered as functioning properly if "recommendations of the Ombudsperson are given full weight".

On 6 November 2003, the SRSG issued UNMIK Regulation No. 2003/32, whereby the Law on Access to Official Documents (No. 2003/12) was promulgated. In Section 7. 1. A of this Law, the Ombudsperson Institution was named as one of two remedies open to persons whose request for access to documents had been refused or left unanswered. In order to adapt to this new field of activities, the staff of the Ombudsperson Institution underwent training on 31 May and 1 June 2004, which was organised and financed by the Council of Europe.

On 25 February 2004, 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. This meeting took place in Prizren on the premises of the local NGO "Inicijativa 6", which is active in the field of minority rights in Kosovo. It constituted the first of such review meetings with non-Serbian minority leaders, which will now be taking place on a regular basis. The next such meeting took place in the beginning of July.

Also in February 2004, the Ombudsperson visited all District Courts and Prosecutors' Offices in Kosovo, as well as the Kosovo Supreme Court, in order to evaluate the situation of the judiciary and the problems that prosecutors are faced with.

Compared to the last reporting period, the Ombudsperson and representatives of the UNMIK Office of Returns and Communities have more and more increased their cooperation in the interests of returnees and displaced persons. In one case, a joint effort

by the Ombudsperson and the above office succeeded in restoring electricity to internally displaced persons living in collective centres in Brezovica/Brezovicë in Štrpce/Shtërpçë municipality. In another case, the Ombudsperson raised the question of adequate security measures in order to ensure that Serbian children could attend schools in their language. The UNMIK Office for Returns and Communities thereupon made efforts to procure appropriate escorts for the transport to schools.

Cooperation was also established with the recently created Office of Good Governance, Human Rights, Equal Opportunities and Gender Issues within the office of the Prime Minister of Kosovo. The Ombudsperson also held consultations with the Ministry of Labour concerning this Ministry's work on the issue old-age and invalidity pensions and social assistance in Kosovo.

Although the Ombudsperson Institution does not have jurisdiction over KFOR, the cooperation with KFOR was continued during this period. Representatives of the Ombudsperson Institution had several meetings and other forms of contact with the KFOR Legal Advisor and cooperated with different national KFOR units regarding issues of security and humanitarian assistance, in particular with regard to displaced persons staying at those camps after the riots of 17 – 20 March 2004. The Ombudsperson also established contact with KFOR/NATO regarding the recognition and possibly compensation for the casualties that had occurred when NATO accidentally bombed a passenger bus on a bridge close to Luzhan/Luzane.

During the reporting period, there were several consultations between the Ombudsperson and the Special Rapporteur of the Parliamentary Assembly of the Council of Europe, in the course of which the Ombudsperson provided the Special Rapporteur with reports of the Ombudsperson Institution and other relevant documents relating to the human rights situation in Kosovo. On 16 March 2004, the Ombudsperson travelled to Paris to make a presentation on Human Rights Protection Mechanisms in Kosovo at a hearing of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe. He also maintained contact with different structures of the Council of Europe concerning the human rights situation in Kosovo, in particular the question regarding internally displaced persons currently residing in Serbia proper and Montenegro. Similar consultations were held with representatives from the European Parliament, the European Union, OSCE, as well as from different state governments and NGO's.

There was also an extensive exchange of information and other forms of cooperation between the Ombudsperson and the Offices of the High Commissioner for Human Rights in Belgrade and Pristina. The Ombudsperson also consulted and collaborated with the Serbian Commissioner for Refugees regarding the situation of those internally displaced persons staying in Serbia proper and with the Head of the Coordinating Centre for Kosovo and Metohija of the Serbian Government regarding the circumstances in which the Serbian community lives in Kosovo.

Moreover, the Ombudsperson furthered cooperation and communication with certain international NGOs working in Kosovo, in particular with the ICG and Human Rights Watch, in order to exchange views on recent developments in Kosovo from a human rights perspective.

There was an increasing level of collaboration with local and international media, either through interviews given by the Ombudsperson or through press statements prepared

and issued by the press officer of the Ombudsperson Institution. Frequently, the Ombudsperson made use of the media to publish his reactions to certain developments or incidents in Kosovo raising human rights issues. During the reporting period, over 1000 such reports and interviews were published by the media in Kosovo, Serbia proper, Montenegro and in the media abroad.

During the months of June, July and August 2003, students from the Law Faculty of Pristina University did monthly internships at the Ombudsperson Institution. This practice will continue throughout the summer months of 2004. There have been plans to also establish such forms of cooperation with the University of Mitrovica.

In order to improve the protection of special categories of human rights like the rights of the child and the right for all persons to be free from any form of discrimination, the Ombudsperson created two special teams – the Non-Discrimination Team (NDT) and the Children’s Rights Team (CRT). The CRT will work with the support of and in close cooperation with the United Nations Children’s Fund (UNICEF) based on a special agreement.

In January 2004, the Ombudsperson Institution, in cooperation with the United Nations Development Fund for Women (UNIFEM), organized training on gender equality for all lawyers working at the Institution. In March 2004, both teams began their work, supervised by a Deputy Director of Investigations especially appointed for this purpose and assisted by an International Consultant. As of April 2004, this Consultant was joined by an International Advisor to assist in monitoring and supervising the work of these new teams. Regular review meetings with NGO’s dealing with women’s and children’s rights are planned and have, in the case of the latter, already begun to take place.

Although the CRT had already begun its work in March 2004, the event celebrating the official launching of this team did not take place until the end of May 2004. On this occasion, the Ombudsperson Institution invited representatives from local government institutions, NGO’s and other entities devoted to the protection of children’s rights. Towards the beginning of June 2004, the Ombudsperson then met with representatives of the International Programme on the Elimination of Child Labour of the International Labour Office in order to discuss the situation of child labour in Kosovo as well as the possibilities of further collaboration.

The CRT’s primary activities will include conducting investigations into general aspects of violations of children’s rights, as well as dealing with individual complaints from children or those representing children. Following investigations, the CRT will then discuss with the Ombudsperson which course of action would be most appropriate, always taking into account the best interests of the children concerned.

One of the CRT’s first cases involved the problem of children of war widows living off social security, who had, for many years, been able to participate in organized summer holiday trips to the Albanian coast thanks to the work of the NGO “Lift Kosovo”. Contrary to their previous practice, the UNMIK border police had not allowed these children to enter Albania without the necessary UNMIK travel documents. In May 2004, the Ombudsperson thereupon intervened and asked the DSRSG for Civil Administration to exempt these widows from the obligation to pay for travel documents, as they could not afford the necessary fee. The competent DSRSG responded a week later and informed the Ombudsperson that the Directorate of Administrative Affairs

would issue a group temporary travel document for these children that in this case would be free of charge.

Another case that the CRT had to deal with concerned allegations made by the Kosovo media that the Ministry of Health had not been supplying maternity wards in public hospitals with BCG vaccine, while at the same time, this vaccine could apparently be bought illegally in pharmacies in Kosovo, without however having passed through the necessary medical controls beforehand.

As regards the NDT, this team will conduct investigations into all forms of discrimination, including, but not limited to discrimination based on gender, religion, a person's origin, political opinion or association with a national minority. These investigations may be of a general nature, or they may be based on individual complaints.

Between October 2003 and March 2004, the Ombudsperson publicly criticised certain aspects of the Draft Law on Gender Equality prepared by the Commission on Gender Equality of the Kosovo Assembly, namely the idea to establish a special Ombudsman for gender issues. According to the Ombudsperson, the creation of such an organ would lead to an overlapping of competences of both Ombudsmen. As human rights involving issues related to gender equality are nevertheless human rights, there would be two Ombudsmen competing in the same field, which would cause confusion and would also occasion totally unnecessary additional expenses on the side of the Government. The Ombudsperson also warned that the establishment of such a new Ombudsman would be contrary to the Constitutional Framework on Provisional Self-Government and UNMIK Regulation 2000/38 on the Establishment of the Ombudsperson Institution. This position was also supported by the SRSG.

This criticism led to a heated response from the President of the Commission for Gender Equality, who publicly accused the Ombudsperson of "flagrantly interfering" with the competences of the institutions in Kosovo. In June 2004, following many discussions, the Law on Gender Equality was promulgated by the SRSG. On the basis of this law, cases of discrimination based on gender and other gender issues would be investigated by a special unit inside the Ombudsperson Institution created specifically for this purpose. The procedure to be followed would be the same as for all other human rights issues before the Ombudsperson Institution.

The Ombudsperson Institution was also involved in debates regarding certain aspects of the new Draft Anti-Discrimination Law, which to a certain extent pose similar problems as the Draft Law on Gender Equality.

The NDT instituted investigations into a case involving the reaction of public authorities to the wearing of headscarves in public schools. A special report on this issue was consequently published in June 2004. The NDT also dealt with cases involving the discrimination of Gorani and Bosniak pupils, who were not able to continue their school education in their language following a separate curriculum. Furthermore, the Ombudsperson opened an *ex-officio* investigation into the question of the public use of the Serbian language in Kosovo.

Activities following the violent events in March 2004

Directly after the outburst of violence on 17 – 20 March 2004, the Ombudsperson publicly appealed to the population of Kosovo, asking the persons involved to refrain from further violence and called upon all politicians to do their utmost to put an end to the bloodshed. He also urged the media to report on the events in a fair and responsible manner, so as not to further aggravate the crisis at hand.

A few days later, the Ombudsperson and his deputies traveled to different places in Kosovo in order to obtain a clear picture of the damages and of the situation in which the remaining minority communities found themselves after these events. They met with representatives of Serbs and some other non-Albanian communities and discussed with them the recent violence directed against them, their need for humanitarian assistance and the perspectives for their future in Kosovo.

The Ombudsperson also visited the KFOR Camp in Pristina, where many persons who had been victims of the violent protests had been evacuated to. The Ombudsperson discussed the current situation with representatives of these persons and ensured, *inter alia*, that small children and pregnant women be taken immediately to the village of Gračanica/Gracanice in order to receive the appropriate treatment and supplies. Following this visit, the Ombudsperson also published an urgent appeal to all international and local humanitarian organisations working in Kosovo to instantly supply evacuees of Serbian and other non-Albanian ethnicities staying in KFOR camps and other provisional shelters with basic supplies.

The Ombudsperson paid another visit to the KFOR Camp in Prizren, where other persons of non-Albanian ethnicity had been evacuated to, as well as to a KFOR camp in Novo Selo accommodating members of the Ashkali community who had been evacuated from Vushtrri/Vucitrn. Following a request from the representatives of these Ashkali, the Ombudsperson organised and hosted a press conference which allowed these persons to recount to members of the local press their version of the March events.

In the following days and weeks, the Ombudsperson gave several interviews to representatives of the media from Kosovo, Serbia proper, and other countries, in which he discussed the situation in Kosovo in the aftermath of the violent events in March from a human rights perspective.

Following information and individual reports on these violent events, the Ombudsperson opened an investigation into human rights aspects of the reaction of international and local public authorities to the events of March 2004. This investigation is currently pending.

The Ombudsperson also intervened with UNMIK Police in Northern Mitrovica, asking them to investigate into allegations of families of Albanian ethnicity that they had been forcibly removed from their homes in Northern Mitrovica by certain people in the aftermath of the March violence. Apparently, the police investigations are still under way, but the Ombudsperson remains actively seized of this matter.

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 and the lawyers have received extensive training in this field throughout the reporting period.

In the summer of 2003, representatives of the Ombudsperson Institution were involved in a dispute between a Kosovan living in Pejë/Peć and the Kosovo Electric Corporation (KEK) concerning electricity poles that were leaning to one side and threatened to fall onto the applicant's property. Following the intervention of representatives of the Ombudsperson Institution, both parties reached a compromise and by August 2003, new electricity poles had been set up.

On 5 September 2003, following violent riots in the prison of Dubrava which left many injured and five prisoners dead, the prisoners protested against prison conditions by going on hunger strike. On 7 September 2003, representatives of the Ombudsperson Institution engaged in many discussions and talks with the prisoners and the prison administration and eventually managed to find a compromise between the parties involved. On 8 September 2003, three prisoners continued to protest and threatened to set fire to a corridor of the prison in which they had barricaded themselves. On the same day, the representatives of the Ombudsperson Institution again engaged in mediation between these prisoners and the prison administration and managed to reach a solution to this situation as well. Later, the Ombudsperson cooperated with the special commission instituted by the SRSG to review the situation in Dubrava prison.

Throughout the reporting period, the Ombudsperson was involved in mediation between the representatives of Bosniak and Gorani pupils wishing to continue their education in their language using a different curricular and the competent representatives of the Ministry of Education and of UNMIK. In May 2004, a short-term solution was found to this problem, although the question as such is far from being solved in a satisfactory manner. This issue is treated in more detail under the section dealing with the situation of the Non-Albanian community in Kosovo.

The Ombudsperson also engaged in discussions with 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 and are currently still staying there. The Ombudsperson Institution offered its good offices in discussions between the Ashkali representatives and the competent public authorities with a view to finding an adequate solution. There have been repeated attempts to organize the Ashkali's transfer to a motel in Vushtrri/Vucitrn, whereupon they entered into a hunger strike. Following a renewed intervention of the Ombudsperson Institution, the Ashkali agreed to end their hunger strike.

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 where the engagement of the authorities of those countries was necessary to resolve problems faced by individuals from Kosovo, for example the Ombudsmen of Bosnia and Herzegovina, the FYROM, Norway, Slovenia, Sweden, certain cantonal Ombudsmen of Switzerland, the Netherlands and the United Kingdom, as well as the Petitions Committees of the German Bundestag and of the Parliaments of certain German *Länder*. Some of these situations involved complaints against national KFOR troops.

Throughout the reporting period, representatives of the Ombudsperson Institution gave presentations on the work of the Ombudsperson Institution in Kosovo at Ombudsmen meetings in Bosnia and Herzegovina, Bulgaria and Greece, as well as at the European Ombudsman Round Table in Norway. The Ombudsperson Institution also submitted a report on the work of the Institution to a comparative presentation of Ombudsman Institutions in South Eastern Europe, published by the Greek Ombudsman and the Council of Europe as a part of the Eunomia project promoting Ombudsman Institutions in this part of Europe.

In October 2003, the Finnish Deputy Ombudsman paid a visit to the Main Office of the Ombudsperson Institution in Pristina.

During this reporting period, the Ombudsperson Institution also laid the foundation for future cooperation and assistance with the newly created Ombudsman Institutions of the autonomous Vojvodina region in Serbia proper and of Montenegro. On 26 – 28 May 2004, a delegation from the Ombudsperson Institution participated in a workshop organised with the assistance of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), together with delegations from the above Ombudsman Institutions in Podgorica in Montenegro. Depending on the future developments of the Ombudsperson Institution in Kosovo and these two Ombudsman Institutions in Vojvodina and Montenegro, there are plans to conduct more meetings of such a nature and other forms of close cooperation in future.

Overview of cases

During the reporting period, more than 4 000 people contacted the Ombudsperson Institution for advice and assistance or to lodge formal complaints.

During the 72 Open Days that were held during the reporting period, approximately 1 300 people met with the Ombudsperson or his deputy. There was a slight reduction in the numbers of people coming to Open Days due to the Ombudsperson's temporary inability to meet everybody personally for health reasons.

As during previous reporting periods, most cases investigated by the Ombudsperson Institution concerned property rights, lack of effective investigations into criminal acts, abuse of authority, administrative silence, fair hearing issues, especially complaints concerning the length of court proceedings, and employment-related matters (see Annex 1).

The Ombudsperson received many complaints which were marked as CR-cases. These cases involved different issues such as social welfare and assistance matters, in particular involving homeless people, individual complaints against the KEK, problems regarding public authorities outside the territory of Kosovo, cases involving the reconstruction of houses, as well as various complaints by prisoners from all over Kosovo.

In the period between 1 July 2003 and 30 June 2004, the Ombudsperson issued twenty-two final reports, of which eighteen were case reports and four were special reports (see Annex 3 for summaries of these reports).

During the reporting period, the Ombudsperson made six interim measure requests to governmental authorities or the SRSG. One of these requests was successful, one was partly successful and four were not successful (see Annex 2).

Investigation proceedings are still pending in many cases in which the verification of the compatibility of certain public practices or actions with international human rights standards is still under way. One of these cases concerns the use of Serbian language in public by central and municipal authorities in Kosovo, another one deals with the inability of disabled persons to obtain driving licenses due to a lack of adequately equipped cars. Another investigation was opened regarding the compatibility of the detention of persons of unsound mind in the psychiatric ward of the University Clinic in Pristina and the Social Care Facility in Shtime/Stimlje with international legal standards. As in other reporting periods, there are also many cases pending before the Ombudsperson involving allegations of police violence and lack of effective investigations into such allegations, as well as a large number of cases dealing with the inability of the Housing and Property Directorate (HPD) to deliver and execute decisions of the HPD Claims Commission within a reasonable time. The amount of cases dealing concerning the length of court proceedings also continues to be quite high.

After the violent events in March 2004, the Ombudsperson opened investigations into the reaction of international and local public authorities to these events, seen from a human rights perspective. These investigations mainly deal with the question of whether the international and local authorities adequately fulfilled the duty they were under to protect all inhabitants of Kosovo and their property, whether there were effective and independent investigations into their conduct during the violent protests in March and whether the public authorities are obliged to compensate the victims of these events for their losses.

Also in the aftermath of the riots in March 2004, the Ombudsperson opened investigations following complaints from a number of Albanian families from Northern Mitrovica allegedly having been evicted from their apartments by certain people.

Funding and in-kind support

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

Towards the end of May 2004, the Ombudsperson sent letters to several European governments asking for financial support in order to maintain the work and efficiency of the Ombudsperson Institution.

In June 2004, the Swedish International Development Cooperation (SIDA) approved a project aiming at providing the staff of the Ombudsperson Institution with an 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 and study visits to different Ombudsman Institutions.

Throughout the reporting period, the Council of Europe organized and funded, *inter alia*, a study visit to the European Court of Human Rights in Strasbourg, France, training on access to documents in Pristina in May/June 2004 and consultative visits undertaken by the Ombudsperson to Strasbourg in November 2003 and May 2004.

The participation in an Ombudsperson meeting in Sofia, Bulgaria was financed by the Eunomia project, which is a joint project undertaken by the Council of Europe and the Greek Ombudsman. A study visit to the Greek Ombudsman in December 2003 was financed by the Council of Europe and the OSCE.

In September 2003, the Helsinki Foundation for Human Rights funded a study visit of two lawyers from the Ombudsperson Institution to the Helsinki Foundation's human rights' summer school in Warsaw.

Future prospects for the Ombudsperson Institution

As of July 2003, in line with its gradual kosovanisation, the Ombudsperson Institution had significantly reduced the size of its international staff, so that as of that date, all senior posts in the Institution are filled by Kosovans. The Ombudsperson remained as the only international in the Institution. On 26 May 2004, the SRSG decided to prolong the current Ombudsperson's mandate until 10 July 2005.

In the meantime, in order to maintain a hands-on training of the local staff of the Ombudsperson Institution and to resolve cases involving the international civil presence and still existing inter-ethnic problems, the Institution has received substantial support from international advisors and consultants working in- and outside Kosovo. For a certain period of time, such support will remain necessary. It will also help in expanding and developing the structures of the Ombudsperson Institution, not only in order to improve the functioning of the Institution, but also in order to respond adequately to the extension of the Ombudsperson's jurisdiction into new areas.

One problem that threatened to severely hamper the functioning of the Ombudsperson Institution was the issue of salaries of the local staff. In the middle of 2003, these salaries were significantly reduced by a decision of the OSCE and the salaries of the Ombudsperson Institution's staff were placed under the competences of the Kosovo Consolidated Budget. The level of remuneration thereby granted to professional staff was in no way sufficient to ensure a proper engagement and work of professional quality on their side. On the contrary, it was so low that it almost provoked a large-scale exodus of the Institution's core professional staff, which had been trained to assume more and more responsibilities over the last three years. Losing these staff members would have put into question the very existence and sustainability of the Ombudsperson Institution. Following intense discussions, in particular with UNMIK, the Ombudsperson finally succeeded in obtaining the SRSG's approval for a transitional salary scheme that would ensure higher salaries for professional staff and a larger level of independence from the Kosovo Consolidated Budget, at least for the year 2004. For the year 2005, the salary arrangements have so far been left open.

These events taught us all a very important lesson, namely that the entire work and functioning of an Institution such as ours is to a high extent connected to the question of salaries. There should be no compromises on granting professional staff adequate remuneration for their work and qualities. If the Ombudsperson Institution is to continue its work on qualitatively high level, the key personnel must receive salaries to match

this aspiration. I must stress that it was only thanks to the proper understanding and cooperation of the SRSG and eventually those government officials responsible for the Kosovo Consolidated Budget that we have managed to reach an acceptable solution until the end of 2004. However, the Ombudsperson is confident that in the coming years, the staff of the Institution will be granted proper remuneration.

Regarding the question of the future character of the Ombudsperson Institution and general expectations in this respect, the final aim remains the transformation of the Institution into a body consisting of and led entirely by Kosovans. There is still no final decision on when this will happen. One idea is that the Institution will be completely kosovanised as early as the completion of the Kosovo standards evaluation, in which the Ombudsperson will continue to play an active role. There are other voices, among them that of the Ombudsperson himself, that would prefer the Institution to be led by an international Ombudsperson until the end of the international civil presence in Kosovo. At least for the moment, only an international Ombudsperson would be able to guarantee the functioning of the Ombudsperson Institution as an independent institution covering both international and local government structures, while at the same time taking into consideration the interests of all ethnic communities in Kosovo. This view was, *inter alia*, supported by leading politicians of Kosovo and the Government of Serbia in letters sent to the Secretary-General of the UN and the Secretary-General of the OSCE in the summer of 2003.

Marek Antoni Nowicki
Ombudsperson

Annex 1: Statistical overview of cases

(1 July 2003 to 30 June 2004)

<u>PROVISIONALLY REGISTERED CASES (APPLICATIONS):</u>	<u>420</u>
<u>ETHNICITY OF APPLICANTS:</u>	
Albanian:.....	289
Serbian:.....	96
Other:.....	35
<u>RESPONDENT PARTIES:</u>	
UNMIK:.....	269
PISG:.....	85
HPD:.....	54
KFOR:.....	24
Other:.....	22
<u>CASES DECLARED INADMISSIBLE:</u>	<u>124</u>
<u>CASES STRUCK OUT OF LIST:</u>	<u>148</u>
POSITIVELY SOLVED ISSUES:	63
CASES DISCONTINUED FOR OTHER REASONS:	85
<u>INVESTIGATIONS OPENED:</u>	<u>75</u>
APPLICATION-BASED INVESTIGATIONS:	62
<i>EX OFFICIO</i> INVESTIGATIONS:	13
<u>FINAL REPORTS ISSUED:</u>	<u>22</u>
CASE REPORTS:	18
SPECIAL REPORTS:	4

<u>INTERIM MEASURE REQUESTS:</u>	<u>6</u>
<u>CASES FOR REACTION (TOTAL):</u>	<u>753</u>
POSITIVELY SOLVED CASES:	172
CASES DISCONTINUED FOR OTHER REASONS:	319
<u>INCOMING CORRESPONDENCE:</u>	<u>1576</u>
<u>OUTGOING CORRESPONDENCE:</u>	<u>1483</u>

**Subject matter of formal applications
(1 July 2003 – 30 June 2004)**

The length of civil court proceedings:.....	93
Property and related issues (HPD):.....	88
Property and related issues (other):.....	72
No effective investigations into criminal acts:.....	67
Abuse of authority:.....	63
Administrative silence and related issues:.....	56
Issues involving the right to court:.....	37
Employment-related issues:.....	35
Economic, social and cultural rights:.....	25
The right to liberty:.....	16
The length of criminal court proceedings:.....	14
Miscellaneous:.....	21

Annex 2: Overview of requests for interim measures

(1 July 2003 – 30 June 2004)

Property disputes in Suharekë/Suva Reka

On 21 December 2002, the Ombudsperson received an application from which it appeared that the applicant complained about the length of proceedings before the Municipal Court in Suharekë/Suva Reka involving the applicant's civil claim against the Directorate of Urban Planning in Suharekë/Suva Reka concerning the ownership of a piece of land in Suharekë/Suva Reka. On 20 May 2003, following information that the above Directorate had in the meantime issued construction permits concerning parts of the property in dispute, the Ombudsperson sent a request to the President of the Municipal Court in Suharekë/Suva Reka asking him to take urgent action to order the Directorate of Urban Planning in Suharekë/Suva Reka to revoke the decisions permitting construction work on the properties under dispute and to ensure that all construction work be stopped immediately. On 2 June 2003, following a lack of response to the preceding request, the Ombudsperson sent a request for interim measures to the SRSB asking him to order the Directorate of Urban Planning in Suharekë/Suva Reka to revoke the decisions it had issued permitting construction work on properties that were the subject matter of judicial proceedings and to ensure that all construction work be stopped immediately.

4 August 2003: The Ombudsperson sent another request for interim measures to the Acting SRSB and expressed his concern about the lack of response to his previous requests.

31 October 2003: The Ombudsperson received a letter from the SRSB informing him that, following his request for action, the UNMIK Municipal Representative had undertaken an investigation into the matter. From this investigation, it followed that the necessary permits for construction work had been issued on the basis of legal evidence, as appropriate property papers had been submitted to the Directorate of Urban Planning. The SRSB further explained that, considering that the applicant's ownership claim was still pending before court and following the advice of the UNMIK Legal Advisor, he did not consider it appropriate for UNMIK to intervene before the competent court had reached a final decision.

6 January 2004: The Ombudsperson sent a letter to the Prime Minister of Kosovo expressing his concern about the above situation, stressing that it was not permissible to begin construction work on a property whose ownership was in dispute. This sort of behaviour would create a *fait accompli* which would cause the other party's interests to suffer irreparable harm. The Ombudsperson considered that the Directorate for Urban Planning of the Municipality of Suharekë/Suva Reka in particular had clearly helped in creating this situation by issuing the necessary construction permits. This behaviour was particularly unacceptable considering that as the Municipality was directly involved in the relevant ownership proceedings, it must have known that no actions concerning this particular piece of property could be taken before the Municipal Court had issued a final decision on ownership. The Ombudsperson stressed that if the Municipal Court would decide in the applicant's favor, it will be very difficult to return to the *status quo ante*, and would create a situation where the applicant would need to be compensated for his loss. The Ombudsperson asked the Prime Minister to make use of his power in order to put an end to the situation described above.

The protection of private orchard gardens in Morinë/Morina village

On 27 March 2002, the Ombudsperson received an application from a number of persons living in the village of Morinë/Morina, who complained that trees located on their private property had been cut and that when informed about these criminal acts, the police had not responded. On 8 May 2002, the Ombudsperson sent an interim measures request to the SRSG, asking him to take urgent action to ensure the protection of these private orchards. On 30 August 2002, due to a lack of response to the preceding request, the Ombudsperson sent a second request to the SRSG, again asking him to take urgent action with regard to the above issue.

6 November 2003: The Ombudsperson sent a third request for interim measures to the SRSG and expressed his concern with regard to the lack of response to his previous requests.

16 March 2004: The Ombudsperson received a letter from the DSRSG for Police and Justice informing him that the UNMIK Station Commander of Gjakova/Djakovica, who was responsible for this territory, had advised the police to pay special attention to this area in order to reduce incidents of illegal woodcutting. The DSRSG also explained that, particularly where a terrain was difficult and sparsely populated, as was the case with regard to the area surrounding the village of Morinë/Morina, the police had to deploy their resources strategically. He also noted that the police would welcome a closer collaboration with the community and encouraged community members to contact their local police station to provide as much information as possible, in order to enable the police to target their resources and improve their responses to any complaints.

Forceful removal of a kiosk in Pristina

On March 2004, the Ombudsperson received an application from which it appeared that the applicant complained about the decision of the Inspection Directorate of the Municipality of Pristina to open execution proceedings against him in order to remove his kiosk. The applicant had been owner of this kiosk since 1992, when he was first granted permission to run it. On 14 February 2003, he asked the Municipality of Pristina to prolong the permission for the kiosk, but did not receive any response. On 25 February 2004, following an on-site inspection, the Inspection Directorate of the Municipality of Pristina found that the kiosk was being run without permission and consequently initiated execution proceedings in order to remove the kiosk. The applicant appealed against the decision to open execution proceedings on 3 March 2004, but according to the applicable law, his appeal had no power to stay the execution proceedings.

8 March 2004: The Ombudsperson sent to the President of the Municipality of Pristina an urgent request for interim measures, asking him to suspend the execution proceedings involving the forceful removal of the applicant's kiosk, pending the Ombudsperson's investigations. He also explained that if the Municipality pursued the execution proceedings, the applicant would lose his kiosk despite his previous request to prolong the respective permission, thereby becoming a victim of the Municipality's own failure to consider his request for permission within a reasonable time.

There has been no response to this request.

The forceful removal of a shop in Pristina

On 17 March 2004, the Ombudsperson received an application from which it appeared that the applicant complained about proceedings initiated by the Municipality of Pristina to remove his shop situated in a shopping centre. The applicant had bought his shop in 2002 from a socially owned enterprise. On 27 February 2004, the Inspection Unit of the Municipality of Pristina ordered the above-mentioned socially owned enterprise to remove the applicant's shop, following complaints from the owner of a neighbouring shop. This order was served on the socially owned enterprise on 11 March 2004. The applicant only found out about this order by chance. On 14 March 2004, the applicant appealed to the Inspection Unit of the Municipality against this order, complaining that the socially owned enterprise no longer owned the shop and that the order of 24 February 2004 had no legal basis. At the same time, the applicant submitted that it was inconceivable that the Municipality should not know who the real owner of the shop was, as he had been paying property taxes since 2003. Finally, the applicant noted that in May 2003, a commission from the Municipality had inspected the entire shopping centre and had concluded that technically, everything was in order and according to the applicable legal standards.

31 March 2004: The Ombudsperson sent to the President of the Municipality of Pristina an urgent request for interim measures, asking him to suspend the proceedings involving the forceful removal of the above shop, pending the Ombudsperson's investigations.

There has been no response to this request.

The destruction of a house located on an allegedly state-owned piece of land in Prizren

On 5 April 2004, the Ombudsperson received an application from which it appeared that the applicant complained about a decision issued by the Directorate for Cadastre and Judicial Property Issues in Prizren Municipality to destroy his house located on an allegedly state-owned piece of land. In this decision, the applicant, who had been living on the property at issue for forty years, was ordered to return this piece of land to the Municipality of Prizren in its previous condition within ten days of the date of the decision. According to the Directorate for Cadastre and Judicial Property Issues, the applicant had arbitrarily usurped this land earlier. On 12 February 2004, the applicant appealed to the Chairman of the Executive Board of Prizren Municipality and requested the suspension of the execution of the decision pending review by this authority. According to the applicant, he had bought the house on the piece of land from a third person, who had built it before certain regulations on construction had entered into force. On 16 February 2004, the Executive Board rejected the applicant's appeal. On 3 March 2004, the applicant appealed to the Ministry of Public Services in Pristina, before which the case was now pending.

6 April 2004: The Ombudsperson sent to the SRSG an urgent request for interim measures asking him to suspend the execution of the decision of the Directorate for Cadastre and Judicial Property Issues in Prizren Municipality, in order not to cause irreparable harm to the applicant and his family, pending the further investigations of the Ombudsperson.

16 June 2004: The Ombudsperson received a letter from the UNMIK Municipal Representative in Prizren together with a copy of an instruction of the DSRSG for Civil Administration ordering the suspension of the execution of the above-mentioned decision until further notice.

The non-execution of a decision to stop illegal construction in Pejë/Peć

On 13 May 2004, the Ombudsperson received an application from which it appeared that the applicant complained about the non-execution of a decision issued by the Directorate for Urban and Rural Planning in the Municipality of Pejë/Peć. In this decision, following the applicant's request, the Directorate of Urban and Rural Planning had ordered a third person to stop the illegal construction of an apartment building ten meters from the applicant's house in Pejë/Peć. On 5 May 2004, the applicant addressed a letter to the Executive Director of the Municipality of Pejë/Peć, in which he requested the Municipality to execute the above-mentioned decision. He also informed the Executive Director that the illegal construction of the above-mentioned apartment building was still continuing. Indeed, the excavation for the foundation of the above-mentioned 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.

11 June 2004 : The Ombudsperson sent to the Acting SRSG an urgent request for interim measures, asking the SRSG to ensure that the Municipality of Pejë/Peć put an end to the above illegal construction pending the Ombudsperson's investigations, so as to prevent further harm to the properties nearby the construction site.

There has been no response to this request.

Annex 3: Summaries of reports

SUMMARY

Registration No. 631/02

Regarding the length of proceedings in the case of

SELIM ZYMI

On **1 August 2003**, 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 has issued the above report.

In this case, the Ombudsperson found that the failure of the Municipal Court in Gjakovë/Djakovica to reach a decision in the applicant's civil case from 12 October 1992 until the date of the Report constituted a violation of his right to a fair hearing within a reasonable time as guaranteed under paragraph 1 of Article 6 of the European Convention on Human Rights. The initial case itself involved the applicant seeking the return of land previously expropriated by the Municipality of Gjakovë/Djakovica and just compensation for its lost use. The Ombudsperson noted that the proceedings were not complex, nor was the applicant at any fault for the delay. On the other hand, the Ombudsperson did find that the justifications put forth, pertaining to the understaffing of the court, were insufficient to excuse the court's unreasonable inaction, which included a failure to hold a single hearing for several years prior to the 1999 conflict, a ten week delay in delivering the written judgment to the applicant, and a failure to respond to the applicant's timely appeal for nearly two years. Furthermore, the Ombudsperson noted that the Municipal Court had itself made serious errors in its handling of the case, and followed improper procedures. 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, without further delay and no later than 15 September 2003, ensure the review and resolution of the applicant's case and appoint a sufficient number of judges to the courts in Pejë/Peć or take other necessary means to guarantee the review of cases and delivery of judgments to all parties within a reasonable time. The Ombudsperson also recommended that the SRSG should issue a Regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human Rights offering both preventive and compensatory relief with respect to complaints about excessive length in civil cases.

By letter of 26 August 2003, the SRSG responded by informing the Ombudsperson that in early 2003, an additional judge specialising in civil matters had been appointed to the District Court in Pejë/Peć, which would improve the effectiveness of this court in civil matters. The SRSG further informed the Ombudsperson that the Kosovo Judicial and Prosecutorial Council had recently commissioned a general assessment covering, inter alia, the staffing needs of the courts in Kosovo.

With regard to the Ombudsperson's request that the applicant's case be resolved without further delay, the SRSG noted that the time period of civil proceedings invariably depended on the actions of the parties involved. The SRSG added that the Ombudsperson's proposal for providing an effective remedy for excessively lengthy proceedings in civil matters was under active consideration.

SUMMARY

Ex Officio Registration No. 27/2003

Regarding the alleged destruction and removal of books in Serbian language from the Gjilan/Gnjilane City Library

On **4 August 2003**, 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 investigated media reports, according to which Serbian language books and other items had been removed from the Gjilan/Gnjilane City Library to the city garbage dump. The Ombudsperson examined whether these actions constituted a violation of human rights or an abuse of authority. It turned out that, while some Serbian language books had indeed ended up in the garbage dump, this was part of a larger library inventory program removing damaged and unusable books. The program had also involved the distribution of many Serbian language books to local libraries in areas inhabited by Serbs to provide better accessibility to a larger number of interested readers. The Ombudsperson accordingly found that this normal and necessary librarian practice, carried out in a professional fashion, was not an unjustified removal of books, and could not be considered as either an abuse of authority or a violation of human rights.

SUMMARY

Special Report No. 6

On the conformity with recognised international standards of judicial practice regarding a certain category of cases against persons using invalid driving licenses issued by authorities of the Federal Republic of Yugoslavia (FRY)

On **20 November 2003**, 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 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above special report.

In this report, the Ombudsperson concluded that in cases where individuals carrying invalid driving licenses issued by FRY authorities were convicted for forgery under Article 203 of the 1977 Criminal Law of the Socialist Autonomous Province of Kosovo,

this constituted a violation of these individuals' rights under Article 7 of the European Convention on Human Rights. The Ombudsperson first noted that Article 7 embodied the general principles that only a law can define a crime, and that such a law should not be extensively construed to the detriment of an accused. Rather, Article 7 held that the law must be construed in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment. In short, judicial interpretation of a criminal code must be reasonably foreseeable, and consistent with the essence of the offense. The Ombudsperson found that the current practice of interpreting the criminal code's provisions on forged documents was not foreseeable. It was in fact an arbitrarily extensive interpretation of the law, as there was a fundamental difference between a driving license that was considered to be invalid and a forged driving license.

The Ombudsperson recommended that the SRSB should, no later than 20 December 2003, ensure that all available and appropriate legal remedies be taken to re-establish the rule of law in this category of cases, and disseminate the special report to all courts, public prosecutors' offices and police authorities in Kosovo.

By letter of 18 December 2003, the DSRSB for Police and Justice responded to Special Report No. 6, noting that, as mentioned in this special report, a justice circular issued by the Department of Justice had made clear that forgery charges were not appropriate for persons carrying invalid driving licenses and had reminded judges and prosecutors that bringing and/or confirming illegal charges could lead to sanctions for professional misconduct. Nevertheless, prosecutors continued to bring forgery charges under Article 203 of the Criminal Law. These cases had been brought to the attention of the Judicial Inspection Unit of the UNMIK Department of Justice.

The UNMIK Department of Justice had written to the President of the Supreme Court of Kosovo and the Acting Public Prosecutor of Kosovo requesting information about the measures these persons had taken or intended to take to ensure the unified and lawful implementation of the applicable law. The victims of wrongful convictions and detentions would be informed that there were eligible to apply for compensation pursuant to Justice Circular 2001/1 on the Commission for Compensation for Wrongfully Accused and/or Wrongfully Detained Persons.

Further to the Ombudsperson's second recommendation, Pillar I would ensure that the Report be disseminated through all appropriate channels to courts, public prosecutors and police authorities.

SUMMARY

Registration No. 896/03

Regarding the length of the proceedings in the case of

FATMIR REXHEPI

On **25 November 2003**, 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 noted that it had taken six months for the Municipal Court in Ferizaj/Uroševac to send the applicant's appeal from his conviction on charges of falsifying a document to the District Court in Pristina on 23 October 2002 and that to the day of the report, the District Court in Pristina had not issued a decision in the case. The Ombudsperson noted that the reasonableness of the length of the proceedings must be assessed in light of the particular circumstances of the case, in particular focusing on the complexity of the case, the conduct of the applicant and of the authorities in dealing with it, and the applicant's interest at stake. The President of the District Court sought to explain the delays as a consequence of the excessive workload for a small number of judges at the court. The Ombudsperson subsequently found that the explanation set forth was not sufficient to justify the delays in the appeals process for this relatively simple case, in which the applicant's liberty was at stake, and that this situation thus constituted 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 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 District Court expedite the proceedings in the instant case in order to reach a decision without any further delay and take all necessary steps to guarantee the review of criminal cases before the Pristina District Court in general within a reasonable time. The Ombudsperson also recommended that the SRSG should issue a Regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human Rights offering both preventive and compensatory relief with respect to complaints about excessive length of proceedings in criminal cases.

By letter of 18 December 2003, the DSRSG for Police and Justice responded by informing the Ombudsperson that in the meantime, the District Court in Pristina had upheld the applicant's appeal and had remanded the case to the court of first instance. The DSRSG also stated that the Kosovo Judicial and Prosecutorial Council had commissioned a study of the judicial system, which would be released in January 2004, in order to identify factors contributing to inefficiencies and to suggest appropriate reforms. Meanwhile, the SRSG had appointed 19 additional judges and 7 new prosecutors, bringing the total number to 316 and 53, respectively. Two of the new judges and one of the new prosecutors would serve in the District Court in Pristina. Finally, the DSRSG stressed that the Department of Justice expected to implement certain reforms in response to the Ombudsperson's report and would determine what type of mechanism would be appropriate to compensate defendants in excessively long criminal proceedings and to prevent further delays.

SUMMARY

Registration No. 988/03

Regarding the length of the proceedings in the case of

HAMIJETE QOROLLI and FEJZULLAH QOROLLI

On **4 December 2003**, 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 act on the applicant's appeal against the Municipal Court's denial of their request to reopen proceedings that had terminated in August 2001 did not constitute a violation of their 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; the Ombudsperson in turn found that property rights, the initial focus of the case, qualified as civil rights in this sense, but that the proceedings in question following the applicants' request to reopen the case dealt not with property rights but with the determination of a procedural question—namely, whether a determination from prior proceedings, which has acquired the force of *res judicata*, should be reconsidered. According to the case law of the Convention's organs, Article 6 is not applicable to such proceedings.

The Ombudsperson thus concluded that there had been no violation of the applicants' right to a fair hearing within a reasonable time as guaranteed by Article 6 of the European Convention on Human Rights.

SUMMARY

Registration No. 696/02

Regarding the length of the proceedings in the case of

ISUF MIROCI

On **12 December 2003**, 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 noted that in civil proceedings to obtain insurance compensation following an automobile accident, which had been pending since 1994 and interrupted by the conflict of 1999, it had taken the Municipal Court in Deqan/Dečani one year and two months to decide on the applicant's case. The Ombudsperson found that the reasons advanced by the District Court in Pejë/Peć - most notably, that there was only one judge

dealing with civil cases - were insufficient justification for the delays and that this situation thus constituted 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 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, no later than 12 January 2004, appoint a sufficient number of judges to the courts in Pejë/Peć or take other necessary measures to guarantee the review of future cases within a reasonable time. The Ombudsperson also recommended that the SRSG should issue 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 of proceedings in civil cases.

On 12 February 2004, the SRSG answered that there were now 59 judges in the courts of Pejë/Peć region, including eight judges at the District Court, 28 judges at the municipal courts, four of which were in Deqan/Dečani, and 23 judges in the minor offences courts. This number represented the full number of judges currently required. With regard to the Ombudsperson's request that the applicant's case be resolved without further delay, the SRSG noted that the time period of civil proceedings invariably depended on the actions of the parties involved. The SRSG added that the Ombudsperson's proposal for providing an effective remedy for excessively lengthy proceedings in civil matters was under active consideration.

SUMMARY

Registration No. 810/03

Regarding UNMIK investigations into the killing and wounding of the relatives of

GANI XHAKA

On **30 January 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 inadequate investigations into the killing of the applicant's wife and the wounding of his daughter in February 2000 constituted violations of the victims' right to life guaranteed under Article 2 of the European Convention on Human Rights. The Ombudsperson first noted that Article 2 inherently requires an effective investigation into the circumstances surrounding a violent death and that this investigation should be capable of leading to the identification and punishment of those responsible. In the instant case, the authorities exercised proper diligence in their initial investigatory efforts, but their lack of any substantive investigative action in the succeeding months, even taking into account the difficult environment for security forces, failed to satisfy the guarantees of the Convention.

The Ombudsperson recommended that the SRSG should, no later than 18 February 2004, ensure that the competent authorities resume their investigations into the killing of the applicant's wife and the wounding of his daughter, with a view to indicting and prosecuting those responsible for these criminal acts.

There has been no response to this Report.

SUMMARY

Registration No. 999/03

Regarding the length of proceedings in the case of

SALIF BECIROVSKI

On **3 March 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 delays in the proceedings before the District Court in Pristina between 9 April 2003 and 6 January 2004 constituted a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed under paragraph 1 of Article 6 of the European Convention on Human Rights. Assessing the reasonableness of two separate delays in light of the particular circumstances of the case, which involved a dispute over the monthly rent for the applicant's business premises, the Ombudsperson reasoned that a first delay during the appeals process, from 12 February 2002 to 3 October 2002, was not excessive. However, the court's inaction during the second delay, due to a backlog of cases and lasting from 9 April 2003 to 6 January 2004, was not commensurate with the court's obligation to provide timely justice, even taking into account the lasting disruptive effects of the conflict and turmoil in Kosovo. Consideration of the applicant's significant economic interests involved further supported this finding.

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, no later than 22 March 2004, ensure the execution of the 6 January 2004 judgment of the District Court without any further delay. The Ombudsperson further recommended that the SRSG should appoint a sufficient number of judges to the District 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.

By letter of 14 June 2004, the Acting SRSG informed the Ombudsperson that the relevant judgment had been duly executed on 29 March 2004. Furthermore, of the

15 judicial positions allocated to the District Court of Pristina, 14 had been filled. In mid-May 2004, an additional judge had been transferred from the Municipal Court in Podujevë/Podujevo to the District Court in Pristina in order to alleviate the backlog of pending cases. The Acting SRSG added that the Kosovo Judicial and Prosecutorial Council, as the authority advising the SRSG on matters related to the appointment of judges, prosecutors and lay-judges, would be reviewing the currently budgeted number of judicial and prosecutorial posts in the light of the upcoming results of a comprehensive study that it had undertaken in order to assess the current staffing of the Kosovo courts and prosecutors' offices. This report would probably result in recommendations that would affect the number of budget posts required for judges. Finally, the Acting SRSG stated that the Ombudsperson's recommendation for the drafting of a Regulation to provide an effective remedy for excessively lengthy proceedings was being given active consideration by the UNMIK Office of the Legal Advisor and the UNMIK Department of Justice.

SUMMARY

Registration No. 320/01

Regarding the non-execution of a judgment in the case of

KADRI AHMETAJ

On **31 March 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 concluded that the failure of the responsible enforcement judge and of all existing supervisory bodies to ensure the execution of the judgment of the Municipal Court in Suharekë/Suva Reka of 11 April 2000 effectively barred the applicant from his right to a court as guaranteed under Article 6 of the European Convention on Human Rights. Noting that access to an effective court was an integral component of the Convention's Article 6 guarantees, the Ombudsperson held several parties at fault for the non-execution of the judgment, in which the Municipal Court in Suharekë/Suva Reka had ordered the defendants to refrain from actions obstructing the applicant in the use of his property. The enforcement judge's failure to act following the rejection of his request to be excused from the case, the failure of the Municipal Court President to react accordingly to this, and the failure of the President of the District Court in Prizren to act in response to the applicant's requests each constituted omissions that were not in keeping with these bodies duties under Article 6 of the Convention. Furthermore, UNMIK fell short in meeting its obligations as well, as neither the Judicial Investigation Unit (the "JIU"), nor the Kosovo Judicial and Prosecutorial Council (the "Council") had provided effective assistance to the applicant.

The Ombudsperson recommended that the SRSG should, no later than 23 April 2004, instruct the President of the Municipal Court in Suharekë/Suva Reka to ensure the prompt execution of the final judgment of 11 April 2000 without further delay. Furthermore, the SRSG should take all necessary measures to ensure that the JIU and

the Council pursue the investigations against the competent judges, concluding with a report.

By letter of 29 April 2004, the DSRSG for Police and Justice responded to this report by informing the Ombudsperson that the judge in question, who had been responsible for an unreasonable delay in the case at issue, had been guilty of misconduct. However, before the Department of Justice, on the basis of the JIU's report, could initiate disciplinary proceedings against him, this judge had resigned from his position. As the JIU had found no misconduct on the part of the President of the Municipal Court in Suharekë/Suva Reka in handling the applicant's case, the case had been closed.

With regard to the Ombudsperson's recommendations that the President of the Municipal Court in Suharekë/Suva Reka be instructed to ensure the prompt execution of the judgment in question, the DSRSG informed the Ombudsperson that the JIU had found that on 13 October 2003, this court had issued a decision to interrupt further proceedings in the case. Furthermore, in the property dispute proceedings initiated by the applicant regarding the same subject matter on 25 June 2002 before the same court, a first instance judgment was issued on 5 September 2003. The applicant had had the opportunity to challenge both these decisions before the competent District Court.

SUMMARY

Registration No. 485/01

Regarding the non-execution of a judgment in the case of

ISAK AHMETI

On **2 April 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 Ferizaj/Uroševac to execute its final judgment of 27 November 1992, coupled with the failure of supervisory judicial and UNMIK organs to ensure that the execution take place, constituted a violation of the applicant's right to a court as guaranteed under Article 6 of the European Convention on Human Rights. The judgment in question had ordered the applicant's employer to compensate him with monthly support for injuries stemming from a workplace accident. The Ombudsperson noted that the requirements of a fair and public hearing under Article 6 of the Convention necessarily implied a similar requirement to protect the implementation of judicial decisions. Addressing the justifications put forth by the enforcement judge, the Ombudsperson further found that neither the applicant's exercise of his procedural rights nor the practical difficulties presented by a lack of financial assets were sufficient to excuse the court's inaction in the face of the employer's non-compliance. As such, the applicant had been deprived of his right to a court as guaranteed by Article 6 of the Convention.

The Ombudsperson recommended that the SRSG should, no later than 23 April 2004, take urgent steps to ensure that the judgment be executed without further delay. Furthermore, the SRSG should consider extending the competencies of the Kosovo Judicial and Prosecutorial Council to include the right to order a certain judge under investigation to perform his duties in an expeditious fashion, and, in cases of negligence, the SRSG should ensure that the Department of Justice would induce the president of the respective court to take the necessary action to prevent this from resulting in excessive delays in the proceedings.

By letter of 29 April 2004, the DSRSG for Police and Justice responded to this report by informing the Ombudsperson that he would advise the President of the respective court and the competent judge to prioritise execution of the applicant's judgment and to inform the DSRSG as to the actions taken to this effect.

The Ombudsperson's recommendations to extend the competences of the Kosovo Judicial and Prosecutorial Council would duly be considered by the Department of Justice. Finally, in cases where negligence of a duty by a judge would be established by the Judicial and Prosecutorial Council, the Department of Justice would advise the court in question that cases affected by such misconduct would be processed in the best practicable manner.

SUMMARY

Ex Officio Registration No. 23/02

Concerning the Right to Life of A.Q.

On **29 April 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 report, examining the adequacy of criminal investigations into an individual's disappearance, the Ombudsperson concluded that the steps taken by law enforcement authorities did not satisfy the obligation to protect the right to life that they were under according to Article 2 of the European Convention on Human Rights. Various delays in the investigative process, attributable to different units of the UNMIK police, the French Gendarmerie and other competent authorities, reflected a lack of the due diligence required by the Convention with regard to the investigation of serious crimes. Noting that the required effectiveness of an investigation is not an obligation of result but rather of conduct, the Ombudsperson found that this conduct had in the present case been insufficient to protect A.Q.'s right to life.

The Ombudsperson recommended that the SRSG should, no later than 19 May 2004, ensure that the competent authorities resume their investigations into the circumstances of the disappearance of A.Q., with a view to the indictment and prosecution of those responsible, and ensure that criminal investigations be conducted in compliance with the applicable law.

By letter of 3 June 2004, the DSRSG for Police and Justice responded to the above report by informing the Ombudsperson that UNMIK Police had continued to

investigate the circumstances related to the case and remained committed to resolving the fate of A. Q. As a result, the victim's vehicle had been located and associated witnesses identified and interviewed. Furthermore, police investigations had led to the confirmation that the death of A. Q. was a homicide. A suspect had been identified. Soon, the case would be presented to a prosecutor, with a view to the arrest of the suspect and the filing of a formal decision to investigate pursuant to the Provisional Criminal Procedure Code of Kosovo.

SUMMARY

Special Report No. 7

On the compatibility with recognized international standards of certain provisions of the Yugoslav Law on the Enforcement of Criminal Sentences (1977)

On **5 May 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 Rule 22 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above special report.

In this report, the Ombudsperson examined whether certain provisions of the Yugoslav Law on the Enforcement of Criminal Sentences concerning the right to respect for correspondence of sentenced individuals were compatible with recognised international human rights standards. Article 107 of the above law limited sentenced individuals' right to correspondence to close family members, making other correspondence subject to the permission of prison authorities. The Ombudsperson found that this provision was in direct contravention with Article 8 of the European Convention on Human Rights, which guaranteed the right to respect for private life and correspondence, and protected individuals against interference therewith by public authorities except in cases where this is in accordance with the law and necessary in a democratic society. Indeed, Article 107 provided for clear interference by public authorities with sentenced individuals' rights to correspondence, and did not conform with the standards set by Article 8 as it left prison authorities unbridled discretion to censor sent and received mail.

The Ombudsperson recommended that the SRSG should, no later than 26 May 2004, ensure that the Law on the Enforcement of Criminal Sentences be amended in accordance with the findings in this report and ensure the dissemination in Kosovo, through all appropriate channels, of the amended law.

By letter of 25 June 2004, the DSRSG for Police and Justice replied to the above report. He noted that personnel in the Penal Management Division/Kosovo Correctional Service of the UNMIK Department of Justice are obliged to observe international human rights standards pursuant to UNMIK Regulation No. 1999/24 of 12 December 1999 and does not, in practice, restrict sentenced individuals' right to correspondence. Such persons' correspondence is not opened unless there is reason to believe that it contains an unauthorised object or unless there is information that the inmate in question plans to engage in illegal activity. The correspondence of a convicted person posing a security risk is closely monitored, but is neither restricted nor censored.

Should the Ombudsperson Institution be in possession of any evidence indicating that a convicted person's right to correspondence has been violated, the UNMIK Department of Justice would spare no effort in investigating this matter.

Finally, the DSRSG informed the Ombudsperson that, under the direction of the Office of the UNMIK Legal Advisor and in consultation with the local legal community and members of the international legal community, the Law on the Enforcement of Criminal Sentences was currently being revised so as to comply with international standards. The DSRSG anticipated that the text would be promulgated in the near future. The provisions relating to the correspondence of sentenced persons had been substantially amended and were now fully consistent with international human rights standards.

SUMMARY

Registration No. 592/02

Regarding the failure to execute a decision of the HPD in the case of

STAMENKO KOVAČEVIĆ

On **5 May 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 competent authorities 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 as guaranteed by Article 8 of the European Convention on Human Rights. Despite several efforts to enforce the decision, the occupants of the applicant's house repeatedly disregarded orders and returned to the house following forcible evictions, even going so far as to threaten the applicant with destruction of his house if he should again request execution of the order. The Ombudsperson concluded that, while the essential object of Article 8 is to protect individuals from arbitrary interference by public authorities, in such a case the obligation may extend beyond this negative undertaking to positive obligations inherent in an effective respect for the applicant's rights. Balancing the public and private interests at stake, the Ombudsperson found that such obligations existed in the instant case. Furthermore, he concluded that UNMIK Regulation 2000/60 regarding residential property claims issues had not been construed in a way to allow for action in the face of intransigence on behalf of illegal occupants. The Ombudsperson did not consider it necessary to examine whether a violation of Article 1 of Protocol No. 1 had occurred, as the requirements of that Article were subsumed under those of Article 8 of the Convention.

The Ombudsperson recommended that the SRSRG should, no later than 25 May 2004, instruct the HPD and UNMIK Police to take all necessary measures to ensure the effective execution of the HPD decision of 26 October 2001 without further delay and to pursue criminal investigations against the occupant. Additionally, the SRSRG should instruct the UNMIK Legal Department to review UNMIK Regulation 2000/60 with a

view to including certain mechanisms to guarantee a more efficient execution of HPD decisions.

There has been no response to this Report.

SUMMARY

Registration Nos. 1041/03 & 1042/03

Regarding the length of proceedings in the cases of Muharrem Demiri and Edim Ademi

On **7 May 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 reports.

In these cases, presenting identical fact patterns and conclusions, the Ombudsperson found that the failure of the Municipal Court in Mitrovica and of the competent UNMIK bodies to take the necessary actions to ensure the resolution of the applicants' cases within a reasonable time constituted a violation of the applicants' right to fair hearings within a reasonable time as guaranteed under para. 1 of Article 6 of the European Convention on Human Rights. In these cases, in which the applicants had sought permission to return to their previous places of employment, from which they 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. Moreover, UNMIK did not carry out its responsibility to ensure that the proceedings be terminated in an expeditious fashion.

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, without further delay and no later than 28 May 2004, ensure that the Municipal Court in Mitrovica issue judgments on the applicants' cases. Furthermore, the SRSG should appoint a sufficient number of judges to the court, or take other necessary means, to guarantee the review of cases and delivery of judgments within a reasonable time. The Ombudsperson also recommended that the SRSG should issue 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 of proceedings in civil cases.

By letter of 14 June 2004, the SRSG responded to the report by informing the Ombudsperson that while the budgeted number of judicial positions in the Municipal Court of Mitrovica was nine, only seven judges were currently serving in the court. The Kosovo Judicial and Prosecutorial Council would be reviewing the currently budgeted number of judicial and prosecutorial posts in the light of the upcoming results of its comprehensive study that, *inter alia*, assessed the current staffing of the Kosovo courts and prosecutors' offices. This review was

likely to result in recommendations that would affect the number of budget posts required for judges. Nevertheless, should any further unreasonable delay occur in the applicant's case, the Ombudsperson should advise the applicant to report such misconduct to the UNMIK Department of Justice.

The Ombudsperson's recommendation for the drafting of a Regulation to provide an effective remedy for excessively lengthy proceedings was being given active consideration by the UNMIK Office of the Legal Advisor and the UNMIK Department of Justice.

SUMMARY

Registration No. 728/02

Regarding the length of proceedings in the case of

MUHARREM PAQARADA

On **7 May 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 applicant filed suit with the Municipal Court in Pristina on 5 May 2001 requesting a renewal of his labour contract with the UNMIK Customs Service. The Ombudsperson noted that the reasonableness of the length of the proceedings, which in the instant case were still continuing at the date when this report was issued, must be assessed in light of the particular circumstances of the case, focusing specifically on the complexity of the case and the conduct and interests of the involved actors. Recognising the case to be relatively non-complex and of great import to the applicant, who had been unemployed for over three years at the time of the report, the Ombudsperson concluded that the delays were not justified by a lack of judicial manpower. As such, the delays 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 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, without further delay and no later than 28 May 2004, ensure that the District Court in Pristina proceed with the applicant's case and take care to appoint a sufficient number of judges to the court, or take other necessary means to guarantee the review of cases and delivery of judgments within a reasonable time. The Ombudsperson also recommended that the SRSG should issue 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 of proceedings in civil cases.

By letter of 14 June 2004, the Acting SRSG informed the Ombudsperson that of the 15 judicial positions allocated to the District Court of Pristina, 14 had been

filled. In mid-May 2004, an additional judge had been transferred from the Municipal Court in Podujevë/Podujevo to the District Court in Pristina in order to alleviate the backlog of pending cases. The Acting SRSG added that the Kosovo Judicial and Prosecutorial Council, as the authority advising the SRSG on matters related to the appointment of judges, prosecutors and lay-judges, would be reviewing the currently budgeted number of judicial and prosecutorial posts in the light of the upcoming results of a comprehensive study that it had undertaken in order to assess the current staffing of the Kosovo courts and prosecutors' offices. This report would probably result in recommendations that would affect the number of budget posts required for judges. Finally, the Acting SRSG stated that the Ombudsperson's recommendation for the drafting of a Regulation to provide an effective remedy for excessively lengthy proceedings was being given active consideration by the UNMIK Office of the Legal Advisor and the UNMIK Department of Justice.

SUMMARY

Special Report No. 8

On 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**, 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 Special Report.

In this report, the Ombudsperson found that any action of a public authority aimed at banning the wearing of religious symbols by pupils in public educational institutions throughout Kosovo would not be lawful within the meaning of Article 9 of the European Convention of Human Rights, which *inter alia* guarantees the freedom of religion. The Minister of Education, in his letter to the Ombudsperson Institution of 4 April 2004, indicated Section 4.7 of the Law on Primary and Secondary Education in Kosovo as the legal basis for such actions. This provision states that "public educational institutions shall refrain from religious instruction or any activities promoting any specific religion". The Ombudsperson stressed that the prohibition contained in the above provision was addressed expressly and exclusively to public educational institutions and their staff members and not to pupils. For this reason, the above-mentioned legal provision could not serve as a legal basis for any public authorities' actions aimed at interfering with the freedom of pupils to manifest their religious belief at schools.

The Ombudsperson recommended that in the absence of any adequate legal provision, public authorities should refrain from any such action which could interfere with pupils' freedom of manifesting their religion in schools by wearing religious symbols. He further recommended that the SRSG should, upon receiving this report, disseminate it through all appropriate channels to all public educational institutions throughout Kosovo.

There has been no response to this Report.

SUMMARY

Registration No. 1163/03

Regarding the UNMIK Police's rejection of a request to organise a peaceful protest in the case of the

PEOPLE'S MOVEMENT OF KOSOVO

On **28 June 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 report, examining the legal basis advanced by the UNMIK Police for refusing the applicant permission to organise a peaceful protest before the Kosovo Assembly, the Ombudsperson concluded that the Law on Public Peace and Order invoked by the UNMIK Police, while regulating, in a general manner, the behaviour of citizens in public, did not specifically cover the requirements for obtaining permission to hold a public assembly. This law thus could not constitute a basis for a decision limiting the right to assembly under Article 11 of the European Convention on Human Rights. Instead, the applicable law for such situations was the Law on Public Assembly. However, even assuming that the UNMIK Police had invoked this law when rejecting the applicant's request, the Ombudsperson noted that this law did not lay down any principles governing the exercise of effective control over public meetings. Further, no provisions of this or any other applicable law provided for a remedy enabling a person to contest the manner or scope of a measure limiting the right to freedom of assembly. The Law on Public Assembly even if invoked, did not meet the requirements of Article 11 of the Convention and was thus itself in contravention to this article.

The Ombudsperson recommended that the SRSG should, no later than 15 September 2004, ensure the adoption and promulgation of a new law on the right to public and peaceful assembly, which would be in conformity with the standards of Article 11 of the Convention, in particular those aspects of Article 11 that were of relevance in the instant Report.

SUMMARY

Registration No. 1046/03

Regarding the length of the proceedings before the HPD Claims Commission in the cases of

MILENA RISTIĆ AND OTHERS

On **29 June 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 HPD Claims Commission to decide on the applicants' cases within a reasonable time constituted a violation of the applicants' right to respect for their home as guaranteed by Article 8 of the European Convention on Human Rights. While the essential object of Article 8 is to protect individuals from arbitrary interference by public authorities, in the applicants' cases the Ombudsperson, balancing the public and private interests at stake, found that this obligation extended beyond this negative undertaking to positive obligations inherent in an effective respect for the applicants' 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 UN 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 did not consider it necessary to examine whether a violation of Article 1 of Protocol No. 1 had occurred, as the requirements of that Article were subsumed under those of Article 8 of the Convention.

The Ombudsperson recommended that the SRSG should, no later than 15 September 2004, 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.

SUMMARY

Special Report No. 9

On the compatibility with recognised international standards of certain aspects of the detention of mentally incompetent criminal offenders and of criminal offenders with diminished mental capacity

On **29 June 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 Rule 22, paras. 3 and 4 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above Special Report.

In this report, the Ombudsperson first examined whether under the criminal law that was applicable until 6 April 2004, the practice of pre-placing mentally incompetent criminal offenders and criminal offenders with diminished mental capacity into ordinary prisons prior to their admittance to the Pristina Mental Health Clinic violated these persons' right to liberty under Article 5 para. 1 of the European Convention on Human Rights. Observing that the then applicable Yugoslav laws did not leave much room for such a practice, the Ombudsperson nevertheless noted that it would be unrealistic and too rigid an approach to expect the competent authorities to ensure that places in such institutions are immediately available. However, bearing in mind that in certain cases,

this pre-placement in ordinary prisons had already lasted for a considerable amount of time, thereby jeopardising the success of these persons' psychological treatment, and that the competent UNMIK and PISG authorities had been aware of the general structural lack of capacity in the mental health institutions in Kosovo for a considerable amount of time, the Ombudsperson came to the conclusion that the practice in question violated these persons' rights under Article 5 para. 1 of the Convention.

Following the entry into force of the Provisional Criminal Code of Kosovo on 6 April 2004, the Ombudsperson noted that the Yugoslav laws were no longer applicable to this situation. However, the new Criminal Code did not contain any provisions on the requirements and procedures for ordering mandatory psychiatric treatment. Instead, the Criminal Code referred this question to a separate law. Such a law has, however, not been adopted or promulgated yet. The Ombudsperson thus came to the conclusion that there was no longer any legal basis for the detention in mental health institutions of mentally incompetent criminal offenders or of criminal offenders with diminished mental capacity, so that any such detentions were in violation of Article 5 of the Convention.

The Ombudsperson recommended that the SRSG ensure that an appropriate law concerning the detention of mentally incompetent persons and of criminal offenders with diminished mental capacity be adopted and promulgated immediately and that, no later than 15 September 2004, he also ensure that UNMIK, together with the Ministry of Health, do its utmost to find a solution that will enable the above categories of persons to receive the necessary and required psychiatric treatment in appropriate mental health institutions.

SUMMARY

Ex Officio Registration No. 39/04

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

On **30 June 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 report dealt with the six months' suspension of twelve members of the Kosovo Protection Corps (KPC) from their work places by a decision of the SRSG of 3 December 2003, which was then revoked in May 2004. The SRSG had based his decision on credible information linking these persons to "activities of a serious nature that were clearly incompatible with their membership of the KPC" and had also directed that criminal investigations be conducted into this information. Finding that this decision amounted to an implicit criminal charge within the autonomous meaning of Article 6 of the European Convention on Human Rights, which protects every person's right to a fair trial, the Ombudsperson concluded that the suspended KPC Officers 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.

SUMMARY

Registration No. 596/02

Concerning the ill-treatment of

DRITON HOXHA

On **30 June 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 report, examining the adequacy of criminal investigations into the applicant's allegations of ill-treatment by an UNMIK Police Officer, the Ombudsperson first noted that due to the lack of cooperation from UNMIK Police, he had not obtained enough information to establish whether the applicant had in fact been ill-treated by a member of UNMIK Police. The Ombudsperson noted further that the local prosecuting authorities in Kosovo had not been competent to conduct investigations in this case due to the immunity of staff members of UNMIK before the courts in Kosovo. At the same time, the internal investigations carried out by the UNMIK Police itself only aimed at conducting disciplinary proceedings, but not at bringing an alleged perpetrator before a criminal court. The responsible local and international public authorities were thus unable, for different reasons, to comply with the procedural obligation imposed on them by Article 3 of the European Convention on Human Rights, to undertake effective investigations into arguable claims of ill-treatment by public agents. The fact that the currently applicable law in Kosovo did not provide for effective access to criminal proceedings or for compensation proceedings in such cases is also in violation of Article 13 of the Convention, which provides for every person's right to an effective legal remedy. Finally, the Ombudsperson found that the UNMIK Police's failure to cooperate with the Ombudsperson by refusing to grant him access to the respective police file constituted a violation of UNMIK's obligation to assist the Ombudsperson in his investigations under Section 4.7 of UNMIK Regulation 2000/38 on the Establishment of the Ombudsperson Institution.

The Ombudsperson recommended that the SRSG should, no later than 30 August 2004, ensure that criminal proceedings be initiated against the UNMIK Police Officer who allegedly used excessive force against the applicant on June 2002, wherever jurisdiction may lie. Moreover, he should promulgate a regulation or ensure that an appropriate legal act be adopted to see to it that any individual suffering a violation of human rights or abuse of authority by a person acting in an official capacity in Kosovo, including UNMIK staff, will have at his disposal, also in Kosovo, an effective remedy within the sense of Article 13 of the European Convention of Human Rights. Finally, the SRSG should ensure that the interim civil administration and any emerging central and local institution cooperate with the Ombudsperson by providing him with relevant information, documents and files pursuant to section 4.7 of UNMIK Regulation 2000/38.

Annex 4: Summaries of selected intervention letters

(1 July 2003 – 30 June 2004)

The placement of mentally incompetent criminal offenders and of offenders with diminished mental capacity in the Mental Health Clinic in Pristina

On 2 July 2003, the Ombudsperson received a letter from doctors working at the Mental Health Clinic in Pristina complaining about the fact that mentally incompetent criminal offenders and offenders with diminished mental capacity sent to the clinic in order to undergo forensic psychiatric examination were placed in the same ward with ordinary psychiatric patients.

19 August 2003: The Ombudsperson wrote a letter to the DSRSG for Police and Justice asking for a serious, adequate and immediate intervention aimed at placing the above persons in another building in order to separate them from ordinary patients.

25 August 2003: The Ombudsperson received a letter from the DSRSG for Police and Justice informing him that he was looking into the matters raised by the Ombudsperson.

22 October 2003: The Ombudsperson wrote a second letter to the DSRSG for Police and Justice reiterating his previous request.

12 December 2003: The Ombudsperson received a letter from the DSRSG for Police and Justice, who informed him about two proposals. The first option proposed by the UNMIK Department of Justice consisted in securing a wing of the clinic for the use of detainees. The second option consisted in building a new facility inside the clinic complex especially for justice sector patients. As the DSRSG mentioned in his letter, this new facility could be built quickly and without a great expense.

26 January 2004: The Ombudsperson wrote a letter to the Prime Minister informing him about the steps taken by the DSRSG for Police and Justice to solve the problems concerning the Mental Health Clinic in Pristina. In his letter, the Ombudsperson also noted that as the first option proposed by the UNMIK Department of Justice had been refused by the Ministry of Health, only the second option remained to be discussed. Stressing the urgency of the matter, the Ombudsperson requested the Government to take immediate and proper intermediary steps to improve the situation until a new psychiatric forensic institute would become operational.

There has been no response to this letter.

16 March 2004: The Ombudsperson received a letter from the DSRSG for Police and Justice, who, *inter alia*, explained that the Ministry of Health had agreed with the UNMIK Department of Justice's proposal to build new facilities for justice sector patients. As a short-term solution, a decision had been taken to physically modify a wing of the Mental Health Clinic in Pristina.

15 June 2004: The Ombudsperson received a letter from the Director of the UNMIK Department of Justice in which he, *inter alia*, stressed the responsibility of the Ministry of Health for establishing facilities to accommodate justice sector patients and noted that this was the only way to find a solution to the above issue.

The registration of private vehicles in northern Kosovo

On 4 August 2003, the Ombudsperson received a letter from the President of the District Court in Mitrovica, in which he expressed his concerns about UNMIK executive orders and other rules and conditions regarding the registration of private vehicles in northern Kosovo. In his opinion, the legal regime introduced by UNMIK in this field violated human rights standards, in particular the principle of non-discrimination and equality before the law.

19 August 2003: The Ombudsperson sent a letter to the DSRSG for Police and Justice, asking for copies of the respective executive orders, as well as of other relevant rules concerning the registration of private vehicles in northern Kosovo. In the same letter, the Ombudsperson asked for explanations about the reasons leading the introduction of such a regime.

6 October 2003: The Ombudsperson received a response from the SRSG, in which he explained that one executive order was intended to be a temporary measure to fulfil UNMIK's legal commitment towards Kosovo Serbs, in order "to increase freedom of movement through the issuance of free license plates to Kosovo Serbs". The above order had expired on 31 August 2003 and on 30 August 2003 an executive decision on the registration of private operated vehicles in Kosovo was signed. This decision exempted all habitual residents of Kosovo from paying fees for the initial registration of privately operated vehicles in Kosovo. In the same letter, the SRSG informed the Ombudsperson about progress in preparing a protocol on the free movement of registered vehicles and providing for the free conversion of FRY license plates to Kosovo license plates regardless of the ethnicity of the applicants.

20 November 2003: The Ombudsperson wrote a letter to the President of the District Court in Mitrovica. Following the answer received by the SRSG, the Ombudsperson considered that the problems invoked by the President of the District Court had been solved, and that there was no need for the Ombudsperson's further involvement in this particular matter.

The alleged lack of proper investigation with regard to the bombing of the "Nis Express" bus

On 8 August 2003, the Ombudsperson received an application concerning the lack of proper investigation into the bombing of the "Nis 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.

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.

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.

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.

There has been no response to this letter.

26 January 2004: The Ombudsperson wrote a second letter to the SRSG, in which he renewed the requests contained in his previous letter.

There has been no response to this letter.

The serving of court decisions on detainees

8 September 2003: The Ombudsperson wrote a letter to the Director of the Department of Justice expressing his concern about the delays in delivering court decisions to detainees, especially in the case of court orders releasing individuals from detention. In particular, he referred to the cases where suspected individuals were held in detention for more than 48 hours after the issuance of court decisions ordering their release. In this letter, the Ombudsperson also asked for urgent and concrete actions in compliance with international human rights standards and the relevant provisions of the applicable Yugoslav Criminal Procedure Act.

There has been no response to this letter.

11 November 2003: The Ombudsperson wrote a letter to the SRSG reiterating the request expressed in his previous letter.

29 December 2003: The Ombudsperson received a letter from the DSRSG for Police and Justice, in which he informed the Ombudsperson about steps taken by the Department of Justice in order to find a solution to the issues addressed above. He also illustrated the contents of a circular on the service of court documents on Detainees recently issued by the Department of Justice in order to ensure that in the future, the serving of court documents on detainees would be in accordance with the applicable law.

The handing over of competencies by international staff members to their local counterparts in the Department of Judicial Administration

24 October 2003: The Ombudsperson wrote a letter to the SRSG expressing his concern about the project of the handing over of competencies of the international staff in the Department of Judicial Administration to their local counterparts. According to the Ombudsperson, the above project was premature, considering the critical role of the Department of Judicial Administration within the Kosovo judiciary system and bearing in mind the direct influence the Department of Judicial Administration held over the functioning of individual courts. The Ombudsperson noted that any reduction in commitment, any incompetence, or subjective bias within the Department of Judicial Administration could easily hinder the proper functioning of the Kosovo courts and adversely affect the efficiency of the judicial system and staff turnover. In his letter, the Ombudsperson furthermore expressed his concern regarding the absence of ethnic minorities in substantive positions in the Department of Judicial Administration, underlining that the recruitment of members belonging to ethnic minorities to positions

of higher authority would have provided a system of checks and balance against objective discrimination.

There has been no answer to this letter.

The Law on Gender Equality

30 October 2003: The Ombudsperson wrote a letter to the President of the Kosovo Assembly expressing his concerns about certain provisions contained in the Draft Law on Gender Equality. These provisions, dealing with the establishment of an Office on Gender Equality and with the appointment of an Ombudsperson for Gender Equality were, according to the Ombudsperson, contrary to the Constitutional Framework for Provisional Self-Government. The Ombudsperson stressed that gender equality issues were completely under his jurisdiction, as it was part of his duties to give, *inter alia*, particular priority to allegations based on discrimination, which included, but was not limited to, gender equality issues. Furthermore, the Institution of an Ombudsperson for Gender Equality would duplicate the activities already being undertaken by the Ombudsperson Institution in Kosovo, entailing unnecessary governmental expenses and confusion in the Kosovo public. The Ombudsperson finally asked the President of the Assembly to inform the Kosovo Assembly about the concerns expressed in this letter and to give appropriate attention to the arguments raised prior to the adoption of the draft law on gender equality.

There has been no response to this letter.

12 February 2004: The Ombudsperson wrote a second letter to the President of the Kosovo Assembly, reiterating his position and the requests expressed in his previous letter.

There has been no response to this letter.

1 March 2004: During the promotion of the Draft Law on Gender Equality, the President of the Commission on Gender Equality, referring to the Ombudsperson's letters, publicly accused the Ombudsperson of flagrantly interfering with the competences of the local institutions in Kosovo.

2 March 2004: In response to these public accusations, the Ombudsperson sent a statement to the media, which he forwarded in copy to the President of the Kosovo Assembly. In his statement, the Ombudsperson declared that his criticism regarding the Draft Law on Gender Equality was not targeting its aim and purpose, but the establishment of a new Ombudsperson specialised in the protection of gender equality. The Ombudsperson explained the reasons for his criticism and underlined the absence of any response from the President of the Kosovo Assembly to his previous letters.

3 March 2004: The Ombudsperson wrote a letter to the SRSG, reiterating his stance with regard to the above-mentioned issues. The Ombudsperson stressed again that the appointment of a second Ombudsperson dealing only with problems involving gender equality was not necessary. He warned about the negative consequences that such a step would entail, in particular the confusion regarding the competences of both Ombudspersons and the additional expenses it would entail for the Government.

11 March 2004: The Ombudsperson received a copy of a letter sent by the SRSG to the President of the Assembly of Kosovo. In this letter, the SRSG expressed his concerns that the Kosovo Assembly had not taken into consideration the comments made by the

UNMIK Legal Advisor and by the Ombudsperson on the Draft Law on Gender Equality. The SRSG noted that the Draft Law on Gender Equality, as adopted by the Assembly, contained elements which were not in compliance with the Kosovo Constitutional Framework. The SRSG stressed that the draft law could not be promulgated without necessary adjustments.

4 May 2004: Following a meeting on 24 April 2004 with the Commission on Gender Equality and two lawyers from the Office of the UNMIK Legal Advisor, the Ombudsperson wrote a letter to the Head of the above Commission reiterating his position on the Draft Law on Gender Equality. This letter contained a proposal for the modification of the relevant provisions of this law. According to the Ombudsperson, a body authorised to receive and investigate complaints concerning gender equality issues had to be appointed by the Ombudsperson in Kosovo and had to follow the Ombudsperson Institution's Rules of Procedure. He also stressed that the Ombudsperson Institution had established a Non-Discrimination Team in order to adequately deal with all forms of discrimination in Kosovo including gender-based discriminations.

There has been no response to this letter.

3 June 2004: As a result of several meetings with the office of the UNMIK Legal Advisor, the Ombudsperson received a copy of a letter sent by the UNMIK Legal Advisor to the Head of the Gender Equality Commission containing indications for amendments to the aforementioned Draft Law. The amendments concerned the establishment of a Gender Equality Unit within the Ombudsperson Institution in Kosovo.

17 June 2004: The Ombudsperson wrote a letter to the UNMIK Legal Advisor asking for information about developments with regard to the promulgation of the Draft Law on Gender Equality.

25 June 2004: The Ombudsperson received a letter from the UNMIK Legal Advisor explaining that the Law on Gender Equality had been promulgated by the SRSG on 7 June 2004, through UNMIK Regulation 2004/18, which contained the amendments that had been agreed upon.

The conduct of the police during investigations

5 November 2003: The Ombudsperson wrote a letter to the DSRSG for Police and Justice expressing his concern about the conduct of UNMIK Police during investigations. In particular, he noted that when personal belongings were temporarily seized as evidence for court proceedings, the police frequently did not prepare a search record, nor did they issue a receipt with regard to the seized items. In his letter, the Ombudsperson stressed that such a conduct violated the relevant provisions of the applicable criminal procedure and therefore asked for an urgent change of this police practice.

There has been no response to this letter.

Standards for Kosovo

26 November 2003: The Ombudsperson wrote a letter to the UNMIK Standards Coordinator in which he included a list of certain issues which the Ombudsperson considered to be of special importance when discussing the setting of standards for the future of Kosovo. In this list, the Ombudsperson stressed the role of the Kosovo public authorities in developing human rights awareness among the population of Kosovo, as well as the public authorities' obligation to cooperate with the Ombudsperson and to follow his recommendations at all times. Concerning issues related to the rule of law, the Ombudsperson focused, *inter alia*, on the importance of establishing a lasting and coherent legal system by improving the accessibility of laws in all official languages used in Kosovo, the importance of adapting prison conditions to general European standards, and the strengthening of basic guarantees to ensure the independence of the judiciary according to internationally recognised standards. The Ombudsperson also underlined the importance of assuring the existence of a legal framework to guarantee to every person whose rights had been violated by public authorities the possibility to hold the state liable and to obtain an adequate compensation. It was also necessary to provide a pension system and other basic social security schemes on an adequate level and to ensure that such systems be applied without discrimination. The Ombudsperson further maintained that measures should be provided in order to reestablish the rule of law in the construction sector. With regard to issues related to sustainable returns and minority rights, the Ombudsperson stressed, *inter alia*, that all Kosovo authorities and the entire society of Kosovo were obliged to provide adequate protection for historical and religious sites belonging to all communities. Furthermore, he underlined the need to ensure the use of the official languages of Kosovo in all public institutions and to extend this use to a working level. Concerning issues related to property rights, the Ombudsperson noted, *inter alia*, the importance of ensuring that all property claims and disputes would be, at least in the last instance, within a court's jurisdiction.

The lack of response to the Ombudsperson's letters by UNMIK Police

27 November 2003: The Ombudsperson wrote a letter to the SRSG expressing his disappointment about the UNMIK Police's unwillingness to provide the Ombudsperson with information, and/or to access to police files regarding a large number of cases alleging violations of human rights or an abuse of authority by the police. The Ombudsperson, who had unsuccessfully raised this issue with the SRSG in two previous letters sent in March and April 2003, drew the SRSG's attention to the fact that, in accordance with UNMIK Regulation 2000/38, the police authorities were obliged to grant access to files and documents and to provide copies of the documents relevant to the Ombudsperson's investigations. The Ombudsperson also requested the SRSG to direct the competent police authorities to provide him with the requested files without further delay, or to indicate where and when the Ombudsperson could have access to those files. He finally stressed that without the appropriate cooperation of the UN administration and its staff, it would be difficult, if not impossible, for the Ombudsperson Institution to properly exercise its functions.

16 December 2003: The Ombudsperson received a letter from the SRSG in which the SRSG stressed that the UNMIK Police Commissioner had already provided the Ombudsperson with information on all cases that the latter had brought to his attention.

19 January 2004: The Ombudsperson wrote a letter to the UNMIK Police Commissioner, referring to the letter of the SRSG and informing the UNMIK Police

Commissioner that he had not received the information mentioned by the SRSG. The Ombudsperson provided the UNMIK Police Commissioner with further information on a number of the cases mentioned in his previous letters and reiterated his requests for information and access to the relevant case files.

There has been no response to this letter.

The increase of illegal constructions throughout Kosovo

27 November 2003: The Ombudsperson wrote a letter to the Prime Minister of Kosovo expressing his concerns regarding an increase of illegally constructed houses. The Ombudsperson noted that public authorities were not reacting to this unlawful situation in an adequate way. There was thus no incentive for citizens of Kosovo to follow the law. He asked the Prime Minister to intervene in order to put an end to this disrespect of the existing laws on construction.

There has been no response to this letter.

Photographs in the police station

On 21 and 24 November 2003, the Ombudsperson received complaints alleging that certain individuals' photographs hanging in the Police Station in Obliq/Obilić were visible from the public area at the entrance to the police station.

2 December 2003: The Ombudsperson wrote a letter to the SRSG drawing his attention to the harm that this could cause to the applicants' right to private and family life and to their right to be presumed innocent until proven guilty. The Ombudsperson therefore asked the SRSG to investigate into this and other potentially related matters and to take the necessary steps to put an end to this practice in Obliq/Obilić or in other police stations around Kosovo where such a practice was being followed.

18 May 2004: The Ombudsperson received a letter from the DSRSG for Police and Justice informing him *inter alia* that the UNMIK Police had taken all adequate steps in order to ensure that photographs of people who were not the object of official arrest warrants, as well as official documents, would not be visible to the public.

Difficulties faced in obtaining UNMIK travel documents

On 11 December 2003, the Ombudsperson received an application concerning the difficulties the complainant faced when trying to obtain UNMIK travel documents. Apparently, the responsible clerk in the Municipality of Vushtrri/Vucitrn had rejected the complainant's application for renewal of her UNMIK travel document due to new criteria introduced by the UNMIK Civil Administration, which required the submission of Yugoslav documents as proof of a person's identity in addition to those issued by UNMIK.

13 January 2004: The Ombudsperson wrote a letter to the Director of Administrative Affairs of the UNMIK Central Civil Registry expressing his concern about the above situation. The Ombudsperson noted that there were many Kosovans who were not in possession of Yugoslav travel documents and who did not have the possibility of obtaining them, as such documents needed to be issued in Serbia proper. In his letter,

the Ombudsperson asked the Director of Administrative Affairs to inform him whether the UNMIK Civil Registry had introduced new criteria for issuing travel documents and, if so, to be provided with a written copy of these new criteria.

27 January 2004: The Ombudsperson received a letter from the Director of Administrative Affairs of the UNMIK Central Civil Registry in which the Director explained that, in order to prevent cases of habitual resident registration and/or UNMIK travel documents based on false, illegal or otherwise unsatisfactory evidence, the UNMIK Civil Registry had set up a screening process for civil registration. He stressed that this new process, set out in the SRSG's Administrative Direction 2003/20 of 7 August 2003, did not introduce new criteria for an individual's eligibility for civil registration and travel document services. In his letter, the Director of Administrative Affairs furthermore explained that a review procedure, involving the UNMIK Civil Registry and the UNMIK Registration Appeals Commission, had been set up for those cases in which the requested documents could not be submitted.

Attempts to obtain an official recognition of damages caused to victims of the 1999 NATO bombings of the bridge in Luzhan/Luzane

Over the years, following the establishment of the Ombudsperson Institution in Kosovo in 2000, a great number of residents of Kosovo had approached the Ombudsperson regarding the loss of family members during the NATO air strikes in 1999. Many of these cases referred to incidents acknowledged by NATO to having been mistakes, for example the bombing of a passenger bus on a bridge near the village of Luzhan/Luzane.

22 January 2004: Following an earlier but unsuccessful request to the then Secretary-General of NATO in 2001 for recognition and compensation of the victims of such military mistakes, the Ombudsperson raised this issue again with the current Secretary-General. He asked him why NATO persisted in its unwillingness to provide the above persons with some kind of relief and noted that such relief could include, but need not be limited to the possibility of compensation.

20 February 2004: The Ombudsperson forwarded to the KFOR Commander in Kosovo a letter written by a Kosovan who had lost eight members of his family during the attack on the bridge near Luzhan/Luzane. This person, who also represented other families of victims of this incident, complained about the lack of recognition of the damages caused to civilians during this attack.

25 May 2004: The Ombudsperson received a letter from the Chief Legal Advisor of KFOR Headquarters, who informed the Ombudsperson that the above letter had been referred to a higher level in the NATO chain of command for consideration and asked for specific details regarding the family concerned.

4 June 2004: The Ombudsperson informed the complainant about the letter from KFOR and asked him for the necessary information related to the case.

7 June 2004: The Ombudsperson sent to the KFOR Chief Legal Advisor the complainant's required documents, asking him to forward them to the NATO.

22 June 2004: The Ombudsperson received a letter from the NATO Secretary-General in which he explained that NATO deeply regretted all civilian injuries that had inadvertently resulted from Operation Allied Force and had taken extensive steps to minimise risks of collateral damage. He also pointed out that NATO could not be held liable for any collateral damages suffered by individuals as a result of Operation Allied

Force, as this operation had been a direct result of the policies pursued by former President Milosevic.

The representation of Albanians among the staff members of the Mitrovica Detention Centre

28 January 2004: The Ombudsperson wrote a letter to the DSRSG for Police and Justice requesting information about the representation of Albanians among the staff members of the Mitrovica Detention Centre and asking whether any steps had been planned or taken in order to increase their number.

16 March 2004: The Ombudsperson received a letter from the DSRSG for Police and Justice containing detailed information about the current Albanian representation in the above-mentioned detention centre and informing the Ombudsperson about certain steps that were being taken in order to increase the number of Albanians among the staff members.

The release of detainees and prisoners brought back from Serbia proper to Kosovo following UNMIK administrative orders

On 29 December 2003, the Ombudsperson received a letter from an individual complaining that a person who had been accused and convicted of murdering the complainant's sister by the Mitrovica District Court before 1999 had now, following his transfer from a Serbian prison to a prison in Kosovo, been released, although the District Court's judgment was not final. The release was based on an administrative order of UNMIK. Following his release, this person had allegedly threatened the complainant's family.

29 January 2004: The Ombudsperson wrote a letter to the DSRSG for Police and Justice expressing his concerns about the above-mentioned situation and asking for information about the legal basis on which the administrative order concerning the release had been issued. On a more general note, the Ombudsperson raised the question of how UNMIK intended to deal with such serious criminal cases where persons were brought back to Kosovo from Serbian prisons and released regardless of whether criminal proceedings against them had ended with a final judgment or not.

2 February 2004: The Ombudsperson received a copy of a letter addressed to the complainant from the DSRSG for Police and Justice, in which he promised that the UNMIK Department of Justice would send an official request to the Serbian authorities in order to obtain the relevant court documents in the case, including the final verdict. Moreover, he assured that upon receipt of these documents and if appropriate, a further review of the case would be conducted.

10 February 2004: The Ombudsperson wrote a letter to the SRSG underlining that the letter received on 2 February 2004 did not constitute a sufficient and adequate response to the serious general rule of law question raised in his letter of 29 January 2004.

30 March 2004: The Ombudsperson received a letter from the DSRSG for Police and Justice containing *inter alia* some additional information regarding the above administrative order. The letter also contained information concerning the release of other persons convicted in criminal proceedings once back from Serbia, but still did not answer the question raised by the Ombudsperson about how UNMIK intended to deal with similar cases.

The treatment of members of the “Povratak” Coalition in the Kosovo Assembly

On 19 January 2004, the Ombudsperson received a letter from a member of the “Povratak” Coalition, in which he complained inter alia that during the first parliamentary session of the year 2004, Albanian parliamentarians had requested one minute of silence in honour of the individuals who were massacred in Reçak/Racak in 1999. The applicant noted that the Kosovo Assembly did not apply this practice to cases where Serbs were the victims. Furthermore, he stressed the use of bullying and abusive language by members of the Assembly either against the “Povratak” Coalition or against other parliamentarians representing members of non-Albanian communities.

29 January 2004: The Ombudsperson wrote a letter to the SRSG expressing his concern about the above-mentioned incident and asking to be informed about all steps that UNMIK intended to take with regard to this issue.

On 9 March 2004: the Ombudsperson received a letter from the SRSG, who shared the concern expressed by the Ombudsperson. Furthermore, the SRSG explained that he was drawing the attention of the President of the Assembly to the inadmissibility of such behaviour, making clear *inter alia* that if repeated, this behaviour would affect the achievement of the Standards for Kosovo.

The ban on praying in public educational institutions throughout Kosovo

On 30 January 2004, the Kosovan newspaper “Koha Ditore” published an article concerning the problems faced by believers of the Islamic faith, who were no longer permitted to pray on the premises of public educational institutions in Kosovo. Apparently, this decision was made public by the Minister of Education following a meeting with the head of the Islamic community of Kosovo.

9 February 2004: The Ombudsperson wrote a letter to the Minister of Education expressing his concern about this limitation to the right of individuals to manifest their religion and asked for information about the legal provision on which the above Minister had based his decision to ban praying on the premises of public educational institutions in Kosovo.

There has been no response to this letter.

8 June 2004: The Ombudsperson wrote a letter to the Prime Minister of Kosovo expressing his concern about the lack of response to his previous request to the Minister of Education and reiterating the contents of his earlier letter.

There has been no response to this letter.

The question of the removal of KFOR security post from the Saint Archangel monastery

In the beginning of February 2004, the Serbian Beta News Agency published information regarding the decision of the German KFOR Commander to remove the KFOR security post from the Saint Archangel monastery near Prizren and to forbid the use of the military generator placed in front of the monastery. According to the

allegations of the monks in the Saint Archangel Monastery, the intention of German KFOR was to punish them because they had revealed information regarding an incident in Gjakovë/Đjakovica when a KFOR vehicle was attacked by a group of Albanians.

9 February 2004: The Ombudsperson wrote a letter to the German KFOR Commander asking for information on whether the published facts were true and if so, to explain why the KFOR Commander had decided to remove the security post from the Saint Archangel monastery. The Ombudsperson also stressed the importance of providing security and facilities for the Serbian Church and inquired about alternative arrangements that the German KFOR Commander intended to provide in order to ensure the proper protection for the monks and for such a vital religious and historical monument.

There has been no response to this letter.

The right to education of Gorani pupils

On January 2004, during a meeting with the Ombudsperson, a Gorani member of the Kosovo Assembly lodged a complaint concerning the challenges that Gorani pupils were facing with regard to their high school education following educational reforms in Kosovo. These reforms were meant to begin with the 9th grade. The Gorani community refused to enrol their children in the 9th grade because they would lose one school year in the regional context, as schools outside Kosovo had not yet implemented similar reforms. Gorani pupils thus faced certain obstacles when attempting to continue their higher education in universities within the region. In 2002, the implementation of the 9th grade reform had been postponed for one year in schools attended by Gorani. Now, the Gorani community asked the Ministry of Education, Science and Technology to prolong this exemption for the present year, as the conditions for the exemption still existed. Apparently, the Ministry of Education, Science and Technology had not created adequate conditions in order to enable Gorani students to continue their education in Kosovo according to their needs and expectations.

10 February 2004: The Ombudsperson wrote a letter to the SRSG informing him about the difficulties faced by Gorani students and asking for a prolongation of the exemption accorded to these students for another one or two school years. According to the Ombudsperson, the prolongation of the exemption would enable the Ministry of Education, Science and Technology to change the Kosovo educational system in order to offer more appropriate conditions for the above students. The Ombudsperson furthermore asked the SRSG to take urgent steps in order to permit Gorani students to enjoy their right to education.

10 March 2004: The Ombudsperson received a letter from the DSRSG for Civil Administration, in which the DSRSG *inter alia* explained that he had already emphasised with the Ministry of Education, Science and Technology the need to take steps in order to provide students of the Gorani community with uninterrupted educational services. He furthermore added that since 2002, the Ministry of Education, Science and Technology had been actively engaged in developing curricula for all communities, followed by the printing of textbooks, and that there were projects to impart adequate training to school teachers and school directors. Finally, UNMIK

considered it a priority to find a mutually agreed solution for implementing a proper curriculum for the 9th grade and other reforms in schools attended by Gorani.

17 May 2004: The Ombudsperson received a letter from the Ministry of Education, Science and Technology, in which the Minister informed him about the establishment of a working group in order to develop a core study program for Gorani students who had missed their lessons during the 2003/2004 school year.

1 June 2004: The Ombudsperson received a copy of a letter sent by the DSRSB for Civil Administration to the representative of the Gorani community within the Kosovo Assembly. In this letter, the DSRSB informed the above representative that Gorani students were authorised to follow catch-up classes and to enrol in grade 2 of the old system as of September 2004. He furthermore wrote that the UNMIK Civil Administration and the Ministry of Education, Science and Technology had been trying to find a solution in order to meet the concerns of the Gorani community in conformity with the Law on Primary and Secondary Education.

15 June 2004: The Ombudsperson wrote a letter to the Minister of Education, Science and Technology, noting again 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. The Ombudsperson stressed that the above issues were of vital importance, as the persons concerned would not be able to make use of their right to education and would be forced to leave Kosovo if it should not be possible to find a solution that would benefit all of the parties involved. He asked the Minister of Education, Science and Technology to give this matter the highest priority.

21 June 2004: The Ombudsperson received a letter from the UNMIK Legal Advisor to the Minister of Education, Science and Technology, explaining that recent developments would ensure that the above pupils would have access to higher education in the region. He informed the Ombudsperson 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. Following a visit of the Prime Minister of Kosovo to Montenegro, both sides had recognised the desirability of preparing a similar agreement in the future. Over the coming two years, there was every reason to think that it would become possible to address the question of school certificates with other neighbouring countries. Concerning Gorani pupils, the Legal Advisor observed that on 12 and 17 May 2004, the Minister of Education had issued instructions exempting 38 Gorani children from continuing the 9th grade in Kosovan schools. They would finish their schooling under the old Serbian system. The Minister of Education, Science and Technology had also undertaken to prepare all material in Serbian in order to integrate Gorani children in the reform as from September 2004. 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.

The removal of KFOR checkpoints in villages inhabited mainly by members of the Serbian community

10 February 2004: The Ombudsperson wrote a letter to the KFOR Commander expressing his concern about the decision to remove KFOR check points from certain villages inhabited mainly or exclusively by Serbian communities and requested information about the reasons which had led to the above decision. The Ombudsperson noted that the inhabitants of the villages in question were not feeling secure without the presence of KFOR personnel and that there was a lack of adequate telephone services or other means of communication that were fundamental in case of emergency for requesting help. In the same letter, the Ombudsperson asked for information about alternative security arrangements that KFOR had provided or intended to provide in the above-mentioned villages in order to insure the proper protection of people living there.

5 March 2004: The Ombudsperson received a letter from the Legal Advisor of the KFOR Headquarter who explained, on behalf of the KFOR Commander that, in accordance with the KFOR-UNMIK Security Transition Strategy, all non-military tasks were now undertaken by UNMIK, together with UNMIK Police and the Kosovo Police Service (KPS), while KFOR only provided the necessary means and capabilities. He also explained that the reason for this transfer of security tasks was a consequence of the improvement of the security situation. Furthermore, the Legal Advisor explained that in order to encourage the evolution of the KPS, UNMIK Police, during the last three years, had been working in order to develop KPS professionalism and to ensure that the staff member composition of KPS could reflect the size of ethnic communities in Kosovo. With regard to the lack of means of communication in the villages, he suggested to address a request to the municipalities or to NGOs that might be willing to provide these locations with cell phones "if deemed necessary".

The illegal occupation of the court building in Deçan/Decani

On 24 November 2003, the Kosovan newspaper "Koha Ditore" published an article concerning the problems faced by the Municipal Court in Deçan/Decani, whose staff was forced to work in thirty years old barracks without any security or fence. The actual court building had first been requisitioned in order to house Serbian refugees in 1991. Since 1999, it was being illegally occupied by Kosovo Albanian families. The article alleges that both international and local institutions have been informed about this problem, but have not done anything to resolve it.

11 February 2004: The Ombudsperson wrote a letter to the UNMIK Director of the Department of Judicial Administration expressing his concern that neither UNMIK nor any other competent public authorities had taken any effective steps to resolve the above matter. He asked for an adequate solution for the problem in order to provide a proper working environment for the Municipal Court and to re-establish public control and management of this building.

19 March 2004: The Ombudsperson received an answer from the Director of the Department of Judicial Administration, in which he noted that both he and the President of the Municipal Court had addressed several letters regarding this issue to the UNMIK Department of Justice and to the HPD. In his letter, the Director informed the Ombudsperson that in 2002, the SRSG had approved a request of the UNMIK Regional Administrator and a decision of the Deçan/Decani Municipal Assembly to build a new court building, but that the Municipal Court did not have the financial means to

construct a new court building and that its requests for funding had so far not met with any response.

18 May 2004: The Ombudsperson wrote a letter to the SRSG renewing his concerns about the lack of reaction to the absence of public control and management of the above-mentioned building and to the inadequate working environment for the Municipal Court in Deçan/Decani. He further reiterated his request that the necessary action be taken in order to ensure the resolution of the case.

There has been no response to this letter.

The unlawful use of handcuffs by police officers

On 16 February 2004, the Ombudsperson received seven applications, in which the applicants complained about, inter alia, their allegedly unlawful arrest conducted by KPS officers. Apparently, on 5 February 2004, KPS officers had come to the applicants' houses in Obiliq/Obilić without presenting an arrest warrant, and had arrested them in order to ensure their appearance before court, presumably in connection with unpaid electricity bills. On the way to the Municipal Court in Pristina, the police officers had allegedly used handcuffs on the applicants, which were not taken off until they were brought before a judge.

18 February 2004: The Ombudsperson wrote a letter to the Regional Commander of UNMIK Police in Pristina expressing his concerns about the above situation and asking for information regarding the legal grounds on which these arrests had been based and for an explanation regarding the use of handcuffs. He also requested to be provided with copies of the arrest warrants and other documents relevant to the above-mentioned cases.

18 May 2004: The Ombudsperson received a letter from the UNMIK Police Commissioner explaining that UNMIK Police had intervened in this case following arrest warrants issued by the Municipal Court in Pristina in order to ensure the appearance of the applicants before court due to their failure to pay their electricity bills. He also stressed that, in accordance with police regulations and for the protection of the officers, all persons taken in custody had to be handcuffed.

7 June 2004: The Ombudsperson wrote a letter to the DSRSG for Police and Justice expressing his concerns about the contents of the letter received from the UNMIK Police Commissioner. The Ombudsperson stressed that the general police practise of automatically using of handcuffs, regardless of the circumstances of the individual case, did not appear to be fully in line with human rights standards. He also informed the DSRSG that on 18 March 2004, a representative of the Ombudsperson Institution had visited the responsible judge in the Municipal Court in Pristina, who had explained that he had issued the respective arrest warrants in order to ensure the appearance of the above-mentioned persons before court, but that all of these arrest warrants had required the police to conduct the arrest “without the use of force”. The Ombudsperson furthermore asked for an urgent intervention by the DSRSG for Police and Justice.

28 June 2004: The Ombudsperson received a letter from the DSRSG for Police and Justice, explaining that UNMIK Police was aware of the fact that the use of handcuffs was considered to be a “use of force”. The application of handcuffs was therefore governed by the “use of force” policy within UNMIK Police. The DSRSG also explained that UNMIK Police had determined that the use of handcuffs was generally warranted to reduce the potential threat that an arrestee could pose and would also minimise the possibility of escape. However, the police was required to take into

account individual circumstances and would not, for instance, handcuff a pregnant woman or a person whose arms had been injured. Finally, the DSRSG assured the Ombudsperson that the development, training and actions of the UNMIK Police had always been and would continue to be guided by international human rights standards.

The lack of information on police investigations related to the killing of 14 people in Staro Gracko/Grackë e Vjetër in Lipjan/Lipljan Municipality

On 26 February 2004, the Ombudsperson received an application in which the applicant complained about the lack of information on police investigations related to the killing of 14 people in Staro Gracko/ Grackë e Vjetër, Lipjan/Lipljan Municipality, on 23 July 1999.

27 February 2004: The Ombudsperson wrote a letter to the UNMIK Police Commissioner asking for information about the stage of the investigations related to this case.

12 March 2004: The Ombudsperson received a letter from UNMIK Police Commissioner in which he explained that the case was still under investigation by the Central Criminal Investigation Unit of the UNMIK Police. He furthermore informed the Ombudsperson that the responsible investigators had contacted the families of the victims to reassure them that UNMIK Police was still investigating their case.

Compensation for the victims of violent crimes and their families

Throughout the last four years, the Ombudsperson Institution had been receiving numerous complaints from victims of violent crimes and/or their families. Apparently, these persons' requests for social benefits had been refused by the Ministry of Labour and Social Welfare because their situation did not meet certain requirements.

1 March 2004: The Ombudsperson wrote a letter to the SRSG and to the Prime Minister of Kosovo expressing his concerns with regard to the lack of legal mechanisms in support of victims of violent crimes. The Ombudsperson stressed that UNMIK Regulation 2000/66 of 21 December 2000, under which war invalids and the next of kin of those who had died as a result of the armed conflict in Kosovo could receive certain benefits, did not apply to many of these persons, as it only granted such benefits for incidents that had happened before 20 June 1999. The Ombudsperson suggested preparing a draft law on compensation for victims of violent crimes in order to provide them with more appropriate assistance.

There has been no response to this letter.

31 March 2004: The Ombudsperson wrote a letter to the SRSG and to the Prime Minister of Kosovo reiterating the requests made in his previous letter. Moreover, following the violent events of March, the Ombudsperson noted that also the victims of these recent violent episodes should receive adequate compensation for the injuries and damages suffered, as well as for the death of close relatives.

There has been no response to this letter.

The publication of laws

3 March 2004: The Ombudsperson wrote a letter to the Prime Minister of Kosovo expressing his disappointment about the lack of a legal framework on the official publication of laws in Kosovo. He considered this deficiency to be unacceptable from the viewpoint of international human rights standards, and therefore urgently asked for such a law to be drafted.

There has been no response to this letter.

The Draft Law on Mental Health

3 March 2004: The Ombudsperson wrote a letter to the DSRSG for Police and Justice asking him for information about the current stage of proceedings regarding a draft law on the compulsory treatment of persons suffering from mental disorders, which had been in preparation since 2001.

16 March 2004: The Ombudsperson received a letter from the DSRSG for Police and Justice in which he explained that the Draft Law was still under discussion. Some changes had been made to this draft law, which had since been divided into two separate draft laws. The first Draft Law dealt with the protection of persons with mental disorders, while the second Draft Law was related to persons held in the Social Care Facility in Shtime/ Stimlje.

Until the date of this report, no such law has been discussed or adopted by the Kosovo Assembly.

The validity of UNMIK travel documents before the competent authorities in Germany

On 29 January 2004, the Ombudsperson received a petition initiated by a Kosovan citizens' initiative from Wartburg, Germany and containing 18 000 signatures, in which the representatives of this initiative expressed their concerns about the invalidity of UNMIK travel documents before the competent authorities in Germany, as well as the difficulties they faced when submitting requests for the continuation of their residence permits in Germany.

9 March 2004: The Ombudsperson wrote a letter to the DSRSG for Civil Administration asking for information about the action that had been taken in order to facilitate and/or create the conditions for these individuals to apply for the extension of their residence and employment permits based on travel documents issued by UNMIK.

25 March 2004: The Ombudsperson received a letter from the DSRSG for Civil Administration in which, *inter alia*, the DSRSG explained that UNMIK travel documents were documents *sui generis* produced with the aim to facilitate the travel and movement of Kosovans. Nevertheless, it was up to the competent authorities of each State to properly assess documents relating to residence permits. He also informed the Ombudsperson that he had requested to have a meeting with the Head of the German Liaison Office and with the representatives of the petitioners and ensured the Ombudsperson that he would be updated on the outcome of these meetings, as well as on all other actions taken.

The oral and written use of the Serbian language by public authorities in Kosovo

12 March 2004: The Ombudsperson wrote a letter to the Prime Minister of Kosovo drawing the Prime Minister's attention to problems related to the oral and written use of the Serbian language in public in Kosovo. According to all information and documents received, members of the Serbian community alleged that their right to publicly use the Serbian language, in oral and written form, within the provisional institutions of self-government in Kosovo had been violated. This kind of situation had become evident particularly in the municipalities of Pristina, Novo Brdo/Novo Brdo, Lipjan/Lipljan, Fushë Kosovë/Kosovo Polje, Obiliq/Obilić, Kamenicë/Kamenica and Štrpce/Shtërcë, where there was a large representation of Serbs. The correspondence between these municipal bodies and different bodies and authorities in Kosovo had been conducted mainly in Albanian and English. This constituted, *inter alia*, a violation of the Constitutional Framework. In his letter, the Ombudsperson urgently asked the Prime Minister to take immediate steps in order to ensure the use of the Serbian language in public, pursuant to the Constitutional Framework and other relevant legal instruments.

There has been no response to this letter.

7 May 2004: The Ombudsperson wrote a second letter to the Prime Minister of Kosovo expressing his concerns about the continuation of the aforementioned situation. The Ombudsperson reiterated the requests made in his previous letter, underlining the unacceptability of such a situation that curtailed the communication between different institutions in Kosovo.

27 May 2004: The Ombudsperson received a response, only in Albanian, from the Acting Permanent Secretary in the Office of the Prime Minister, who explained that both central and local levels of the PISG respected and implemented the Constitutional Framework by translating all official documents into the three official languages in Kosovo (Albanian, English and Serbian) whenever translation units were available. In particular, she explained that with regard to the Kosovan Government and Assembly, all communications were conducted in the three official languages, while all municipal assemblies had hired translators or had established units for translation in order to respect the Constitutional Framework and other relevant legal provisions.

4 June 2004: The Ombudsperson wrote a letter to the Acting Permanent Secretary in the Office of the Prime Minister, in which he reminded her to send a Serbian version of her letter of 27 May 2004, stressing that Serbian was one of the official languages in Kosovo. He again reminded her that the use of Serbian language by public authorities in Kosovo was exactly the object of Ombudsperson's investigation in this context.

There has been no response to this letter.

The Draft Anti-Discrimination Law

15 March 2004: The Ombudsperson wrote a letter to the President of the Assembly of Kosovo expressing his concerns about certain provisions of the Draft Anti-Discrimination Law dealing with the establishment of a Centre for Equal Treatment. The Ombudsperson welcomed the idea of establishing such a Centre in order to guarantee an effective protection against discrimination, but at the same time he stressed that this Centre's competences should not interfere with the Ombudsperson's jurisdiction. According to the Ombudsperson, the competences of the Centre were very

similar and even broader than those of the Ombudsperson Institution in Kosovo. Furthermore, the Ombudsperson noticed that giving such competences to the above Centre would create confusion among the public and would not be very beneficial to the aim of promoting and protecting human rights in Kosovo.

There has been no response to this letter.

The forcible expulsion of families in Northern Mitrovica on 21 March 2004

Following the violent riots of March 2004, the Ombudsperson's field office in Mitrovica received numerous complaints from Albanian families forcibly expelled from their homes in Northern Mitrovica by groups of masked people and other people joining these groups.

26 March 2004: The Ombudsperson wrote an urgent fax to the UNMIK Mitrovica North Station Commander, expressing his concern about the above situation, and asking for an adequate and timely reaction from the competent authorities, first of all UNMIK Police.

30 March 2004: The Ombudsperson received a letter from the Head of the UNMIK Office and General Administration Officer, in which he *inter alia* informed the Ombudsperson that a Social Welfare Team composed of local staff members with UNMIK Police escort had visited the houses of persons allegedly victims of the above evictions, without finding any illegal occupant, except in one case. He further informed the Ombudsperson that the HPD would conduct its own independent investigations, in order to ascertain that property rights had not been violated.

2 April 2004: The Ombudsperson wrote a letter to the UNMIK Police Commissioner drawing his attention to the findings of the Social Welfare Team. The Ombudsperson informed the UNMIK Police Commissioner that, following a meeting with the complainants, and based on the evidence submitted by them, he had reached the conclusion that the above persons were expelled from their homes by force. In his letter, the Ombudsperson asked for a timely solution to this problem.

31 May 2004: The Ombudsperson received a letter from the UNMIK Police Commissioner, in which he explained that the above issue was being investigated. He also explained that the HPD had agreed to administer all properties in question in order to protect property rights while the ownership of the property was being verified, and that the UNMIK Police had been investigating the reports of intimidation and physical, verbal and psychological assault on the individuals in question. The UNMIK Police Commissioner stressed that the safe return of the legal residents, as well as the identification and prosecution of any persons participating in the alleged criminal activities, were objectives of the UNMIK Police.

The interpretation of Article 180 of the Yugoslav Law on Obligations

Following the violence that had occurred in Kosovo in March 2004, the Ombudsperson Institution began investigating the possibilities of obtaining compensation for persons accidentally hurt or killed during these violent demonstrations.

2 April 2004: The Ombudsperson wrote a letter to the SRSG drawing his attention to the contents of Article 180 of the Yugoslav Law on Obligations. The Ombudsperson found that the aforementioned article involved state liability in cases where persons

were injured or killed following terrorist acts, violent demonstrations or public manifestations. In this letter, the Ombudsperson asked the SRSG for information about the proceedings that individuals with a claim to compensation under Article 180 should follow in order to make use of this right.

21 April 2004: The Ombudsperson received a letter from the SRSG, who did not agree with the Ombudsperson's interpretation of the above provision. According to the SRSG, Article 180 did not oblige public authorities to bear a general responsibility for loss and damage caused by death and bodily injuries attributable to acts of violence or terror during demonstrations. In accordance with the SRSG's interpretation, public authorities were only responsible if under the law in force they had an obligation to prevent such loss and damage and had failed to do so. They could not be liable if they had acted in accordance with the law. He also noted that under Article 181 of the aforementioned law, the organiser of a large demonstration should be responsible for loss, damages and injuries due to the extraordinary circumstances created in such a situation.

23 April 2004: The Ombudsperson wrote a letter to the SRSG reiterating the request expressed in his previous letter and attaching a copy of an excerpt from the commentary "Komentar Zakona o Obligacionim Odnosima" in Serbian containing interpretations of Articles 180 and 181 of the above law. According to these interpretations, public authorities were liable for damages and injuries caused by violent demonstrations as long as the organisers of the demonstrations had not been identified.

There has been no response to this letter.

Pensions for people living on the territory of Kosovo

Over the years, following the establishment of the Ombudsperson Institution in Kosovo in 2000, the Ombudsperson had been receiving numerous complaints from individuals who alleged that they did not receive any pensions from the Pension Fund in Serbia proper.

April - June 2004: The Ombudsperson wrote several letters to the Serbian Minister of Labour, Employment and Social Affairs, asking him to review these cases and to find an adequate solution to this issue.

30 June 2004: The Ombudsperson received a letter from the Serbian Minister of Labour, Employment and Social Affairs, in which he explained that persons living in the territory of Kosovo could not benefit from pensions issued by the Pension Fund of Serbia as the inhabitants of this province had not paid contributions to this fund. He noted that in 2001, UNMIK, without having previously consulted the competent organs of the Republic of Serbia, had adopted UNMIK Regulation 2001/35 on Pensions in Kosovo. This Regulation had introduced a new pension insurance system for the inhabitants of Kosovo, which was different from the pension system existing in Serbia proper. In fact, the pension system in the Republic of Serbia was based on inter-generational solidarity. If employees did not fulfill the obligations they were under to pay contributions to this fund, there was no possibility for them to receive pensions, regardless of the moment in which their pension rights had been recognised.

Kosovans who lost their homes in Northern Mitrovica after 1999

Over the years, following the establishment of the Ombudsperson Institution in Kosovo in 2000, a great number of Kosovans, who had formerly lived in the northern

part of Mitrovica and had lost their homes after 1999, had approached the Ombudsperson complaining that the competent authorities had still not found a solution to their problems. These individuals continued to live in extremely bad conditions without shelter.

4 May 2004: The Ombudsperson wrote a letter to the Prime Minister of Kosovo drawing the Prime Minister's attention to the above situation and to other difficulties that these people faced, such as an insufficient electricity and water supply. The Ombudsperson also noticed that most of these families that had found themselves a temporary solution had not received any financial support from the public authorities. They were also not able to apply for temporary accommodation through the HPD, since, as of this year, the HPD had changed its policy and no longer offered humanitarian support or shelter. In his letter, the Ombudsperson proposed that the Kosovo Government create a special fund for supporting these families and, having in mind the complexity of the political and economical situation, consider the possibility of reducing the fees that these people would have to pay for public utilities or of exempting them from such obligations. The Ombudsperson furthermore asked to be informed about any steps that the Prime Minister planned to take in order to improve the living conditions of these families.

There has been no response to this letter.

Internally displaced persons in Serbia proper

5 May 2004: The Ombudsperson wrote a letter to the Prime Minister of the Republic of Serbia in order to draw the Prime Minister's attention to the situation of internally displaced persons from Kosovo currently staying in Serbia proper. These people, who had been living for almost five years in very poor conditions without receiving any adequate support from the Serbian Government, did not hold the status of refugees as they had not fled to Serbia proper from a foreign country. The Ombudsperson asked the Prime Minister to find a solution to these people's situation, in order to guarantee them at least some of the rights and benefits enjoyed by refugees. The Ombudsperson also stressed the importance of giving these people, as citizens of Serbia and Montenegro, the right to choose whether to go back to Kosovo or to build a new life in Serbia.

There has been no response to this letter.

Temporary residence permits for foreigners

On 27 March 2004, the Ombudsperson received a complaint from an Albanian citizen, who had been working in Pristina for about 2 years and half. For immigration purposes, he was asked to obtain a police certificate for the time spent in Kosovo. He alleged that in order to obtain this certificate, he had addressed almost all institutions in Kosovo including the Police Headquarters in Pristina, the Municipal Court in Pristina and the Supreme Court of Kosovo asking for advice in solving his problem. None of these organs had provided him with an answer regarding this matter.

4 May 2004: The Ombudsperson wrote a letter to the Head of the UNMIK Civil Registry expressing his concern about the above situation and asking for information

about which authority was responsible for requests regarding temporary resident permits in Kosovo.

17 May 2004: The Ombudsperson received a letter from the Head of the UNMIK Civil Registry explaining that no residence permits for foreigners in Kosovo had been issued since UNMIK had received the mandate to administer Kosovo. He further informed the Ombudsperson that UNMIK had sought the UNMIK Legal Adviser's opinion on the applicability of the 1980 Yugoslav Law on the Movement and Residence of Foreigners, as well as on the responsible authorities for its implementation.

16 June 2004: The Ombudsperson received a letter from the Head of the UNMIK Civil Registry informing the Ombudsperson that UNMIK did not issue residence permits to foreigners. The Head of the UNMIK Civil Registry also explained that they were preparing legislation according to which foreigners would be required to obtain authorisation to enter and remain temporarily in Kosovo, because, according to the UNMIK Legal Advisor's interpretation, the provisions of the 1980 Yugoslav Law on the Movement and Residence of Foreigners concerning authorisation for foreigners were not automatically applicable in Kosovo.

Roma refugees from Kosovo currently staying in the FYROM

6 May 2004: The Ombudsperson wrote a letter to the Prime Minister of the FYROM, drawing the Prime Minister's attention to the situation of Roma refugees from Kosovo currently staying in the FYROM. The Ombudsperson noticed that after the closure, in May 2003, of Shuto Orizari, the largest Roma refugee camp in the FYROM, the inhabitants of this camp were left to their own devices, with no support from the local government or international humanitarian organisations. He also noted that there had been no further attempts to improve the legal, economic and social situation of the Roma refugees living in the FYROM. The Ombudsperson also stressed that, after the recent violent attacks against ethnic minorities in Kosovo, it had become impossible to say how long the situation there would keep these refugees from returning to their homes. For the above reasons, the Ombudsperson asked the Prime Minister to find a solution for these persons, either in cooperation with international human rights agencies within the FYROM, or through negotiations with third countries.

There has been no response to this letter.

The impossibility of Serbian pupils in Kosovo to attend schools in their language due to lack of transport

6 May 2004: The Ombudsperson wrote an urgent fax to the SRSG expressing his concern about the situation of certain Serbian pupils from Pristina attending schools in their language in Gračanica/Graçanicë and other nearby Serbian villages, who had not been able to attend school due to lack of transport. The Ombudsperson underlined that after the violent events of March 2004, these children living in the YU Program in Pristina had been promised an escort and transportation in order to enable them to attend schooling in neighbouring villages inhabited by Serbs. The Ombudsperson asked the SRSG to ensure that the necessary transport to such schools be provided for in a timely manner, in order to grant these children, who for reasons of safety were living behind barbed wire and needed to be constantly protected by KFOR soldiers and international and local police, certain basic needs such as school education.

17 May 2004: The Ombudsperson received a response from the Deputy Director of the UNMIK Office of Returns and Communities explaining that after the violent events of March 2004, the driver who had previously been transporting these children to school refused to continue to do so. She pointed out that her office had contacted the Directorate of Education of Pristina Municipality, asking it to provide for a new driver, who would transport these pupils to their school until the end of the school year, escorted by KPS from Gračanica/Gračanice.

The Draft Law on Cultural Heritage in Kosovo

7 May 2004: The Ombudsperson wrote a letter to the Prime Minister of Kosovo, drawing the Prime Minister's attention to the lack of a law on the protection of the cultural, historical and natural legacy of Kosovo. In his letter, the Ombudsperson stressed the importance of adopting such a law, following the destruction of monasteries and churches all over Kosovo during the violent events of March 2004. Furthermore, according to the Ombudsperson, the adoption of a law on cultural heritage would ensure that the culture and the common identity of Kosovo be given the importance they deserve.

27 May 2004: The Ombudsperson received a letter from the Legal Advisor of the Permanent Secretary of the Prime Minister's Office. The Legal Advisor, on the behalf of the Acting Permanent Secretary, *inter alia* informed the Ombudsperson that the drafting of a Law on the Preservation and Protection of Cultural Heritage had been included in the Kosovo Government's legislative plan for the period of October 2003-October 2004. The Ministry of Culture, Youth and Sport had drafted this Law, which was being reviewed by the government's working group.

Adequate access to the school in Serbian language in the village Crkvena Vodica/Caravadicë for Serbian pupils

On 7 May 2004, during a meeting with the Ombudsperson, some representatives of the Serbian community raised the issue of adequate access to the school in the village Crkvena Vodica/Caravadicë. Apparently, children from Serbian families living in the area around this village wished to attend classes in the above-mentioned school, which offered classes in Serbian in the morning and classes in Albanian in the afternoon. According to the complainants, there was no KFOR escort that could accompany these children to school and the security situation did not permit them to continue attending classes there without such an escort.

10 May 2004: The Ombudsperson wrote a letter to the Deputy Director of the UNMIK Office of Returns and Communities expressing his concern about the above-mentioned situation. The Ombudsperson stressed that, for reasons of safety, especially after the March riots, Serbs living in Kosovo were in need of better protection by KFOR soldiers and international and local police. The Ombudsperson asked the Deputy Director of the UNMIK Office of Returns and Communities to keep him informed about any steps taken in order to solve this problem, in order to ensure that at least certain basic needs such as school education for Serbian children would be guaranteed by any means available to UNMIK and KFOR.

17 May 2004: The Ombudsperson received a response from the Deputy Director of the UNMIK Office of Returns and Communities informing him that her office had

addressed the need for escorted transport for these children and would inform the Ombudsperson about further results.

The problem of the return of Roma, Ashkali and Egyptian refugees

18 May 2004: Following information that certain European countries, namely Belgium, Denmark, Germany, Norway, Sweden and the Netherlands, were planning to send refugees of Roma, Ashkali and Egyptian ethnicity back to Kosovo in the near future, the Ombudsperson wrote an open letter to the competent Ministers of the above countries. According to the Ombudsperson, the situation for ethnic minorities in Kosovo had recently gotten worse and neither UNMIK nor the local police had been able to adequately guarantee these persons' safety. This was effectively demonstrated by the riots that took place on 17 – 20 March 2004, when a violent and angry mob had conducted organised attacks not only against members of the Serbian minority, but also against other persons of non-Albanian ethnicity. The security situation was so grave that these people were not able to move around Kosovo without being accompanied by an escort. In this letter, the Ombudsperson warned that, considering the recent violent events in Kosovo, returning these persons to Kosovo at this stage would involve considerable risks for their lives and safety and would not be consistent with international human rights standards.

18 May 2004: In order to draw the international community's attention to the above issue, the Ombudsperson sent a copy of the above letter to the Secretary-General of the United Nations, the Secretary-General of the OSCE, the EU High Representative for the Common Foreign and Security Policy, the President of the European Parliament, the Secretary-General of the Council of Europe, the President of the Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights of the Council of Europe, the UN High Commissioner for Refugees, the Acting UN High Commissioner for Human Rights, the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, the Secretary-General of the Storting of Norway, the Speaker of the Folketing of Denmark, the President of the Parliamentary Chamber of the Netherlands, the President of the Chamber of Representatives of the Federal Parliament of Belgium, the Speaker of the Riksdag of Sweden, the President of the Bundestag of Germany, the UNMIK SRSG, the Prime Minister of Kosovo, the Personal Representative in Pristina of the EU High Representative for CFSP, Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, the Executive Director of the International Helsinki Federation for Human Rights, the Chairman of the Board of Directors of the European Roma Rights Centre.

1 June 2004: The Ombudsperson received a letter from the President of the Chamber of Representatives of the Federal Parliament of Belgium, in which he informed the Ombudsperson that he had written to the Belgian Home Minister, pointing out the Ombudsperson's concerns about Ashkali, Egyptian and Roma.

15 June 2004: The Ombudsperson received a letter on behalf of the Speaker of the Swedish Riksdag, explaining that the Ombudsperson's letter of 18 May 2004 had been forwarded to the political parties represented in the Riksdag, to the Committee on Social Insurance dealing with issues of asylum and migration, and to the Committee of Foreign Affairs.

15 June 2004: The Ombudsperson received a letter from the Secretary of the Immigration and Integration Affairs Committee in Denmark who, on the behalf of the Speaker of the Folketing of Denmark, informed the Ombudsperson that his letter of 18

May 2004 had been distributed to the members and alternates of the Integration Affairs Committee of the Folketing.

25 June 2004: The Ombudsperson received a letter from the Secretary General of the Council of Europe, who informed him that the Council of Europe was working actively to ensure that the human rights of all potential returnees were protected. In fact the Parliamentary Assembly of the Council adopted a Recommendation (PACE R.1633 (2003)), in which, *inter alia*, it was stressed that Member States of the Council of Europe should ensure that there be no forced returns of Roma originating from Kosovo either to Kosovo or to Serbia and Montenegro, as long as the security situation in Kosovo did not allow their return. He also explained that the Committee of Ministers of the Council of Europe had warned its Member States that the security of Roma in Kosovo could be not guaranteed, and that an expert committee was in the process of preparing a Draft Code of Good Conduct for Expulsion Procedures.

Internally displaced persons in Montenegro

19 May 2004: The Ombudsperson wrote a letter to the Prime Minister of the Republic of Montenegro in order to draw the Prime Minister's attention to the situation of internally displaced persons from Kosovo currently staying in Montenegro. Those people, who had been living for almost five years in very poor conditions without receiving any adequate support from the Government of Montenegro, did not hold the status of refugees as they had not fled to Montenegro from a foreign country. The Ombudsperson asked the Prime Minister to find a solution to these people's situation, in order to guarantee them at least some of the rights and benefits enjoyed by refugees. The Ombudsperson also stressed the importance of giving these people, as citizens of Serbia and Montenegro, the right to choose whether to go back to Kosovo or to build a new life in Montenegro.

There has been no response to this letter.

The lack of publication of international human rights instruments

19 May 2004: The Ombudsperson wrote a letter to the Prime Minister of Kosovo in order to draw the Prime Minister's attention to the fact that so far, international human rights instruments had still not been officially published and were thus not accessible to the population of Kosovo. The Ombudsperson noted that competent international and local organs had not undertaken any form of action to ensure that those international human rights instruments which, according to Chapter 3.3 of the Constitutional Framework for Provisional Self-Government of Kosovo, were directly applicable in Kosovo, were published and made available to the citizens of Kosovo in Albanian, Serbian and English. In the Ombudsperson's view, this failure to act on the side of the public organs prevented the inhabitants of Kosovo from obtaining sufficient knowledge about their human rights and about the legal instruments that they could invoke in order to sufficiently protect these human rights. In his letter, the Ombudsperson urgently asked for an official publication and distribution of the above-mentioned international treaties, which would constitute a basic and fundamental step towards the much-needed improvement of human rights protection mechanisms in Kosovo.

There has been no response to this letter.

The ability of prisoners to take part in parliamentary elections in Kosovo in October 2004

21 May 2004: The Ombudsperson wrote a letter to the Head of the Central Election Commission raising the question of the ability of prisoners to take part in the upcoming parliamentary elections in Kosovo in October 2004. Stressing the living conditions of these persons, who were deprived of their freedom of movement, the Ombudsperson asked for information on the procedure that the Central Election Commission intended to adopt in order to ensure that prisoners all over Kosovo would have the opportunity to make use of their right to vote. In the same letter, he furthermore requested information about efforts made during the previous general or municipal elections to safeguard prisoners' rights to vote.

2 June 2004: The Ombudsperson received a letter from the Head of the Central Election Commission, in which he informed the Ombudsperson that after the issuance of the Electoral Rule, the Central Election Commission would update the Ombudsperson about voting methods for prisoners all over Kosovo.

The children of war widows

On 21 May 2004, an activist of the NGO Lift Kosovo lodged a complaint with the Ombudsperson Institution. In the past few years, this NGO had been organising summer trips to the Albanian coast for children of war widows living in the village of Krushe e Madhe/Velika Krusa, located in Gjakovë/Đjakovica region. This year, however, the UNMIK border police refused to let the children pass into Albania without the necessary UNMIK travel documents. Due to their difficult economical situation, the mothers of these children, who are forced to live on a monthly 60 euro social welfare stipend, could not afford the necessary service fees in order to obtain the above travel documents.

24 May 2004: The Ombudsperson wrote a letter to the DSRSG for Civil Administration, in which he drew the DSRSG's attention to the situation of these children and asked to exempt them from paying the service fees for travel documents.

2 June 2004: The Ombudsperson received a letter from the DSRSG for Civil Administration, in which he accorded to these children and their families an exemption from the payment of the above fees.

The availability of BCG Vaccine in maternity wards throughout Kosovo

On 15 May 2004, the Kosovan newspaper "Koha Ditore" published an article regarding the lack of BCG vaccine in maternity wards in public hospitals of Kosovo and its illegal sale in certain pharmacies. According to the newspaper, the Ministry of Health had not been supplying maternity wards in public hospitals with BCG vaccine, while at the same time, this vaccine could apparently be bought illegally in pharmacies in Kosovo, without having previously passed through the medical controls, which, according to the Health Institute in Kosovo, were compulsory before this vaccine could be given to children.

24 May 2004: The Ombudsperson sent a letter to the Minister of Health, in which he expressed his concern that so far, neither the Ministry of Health nor any other

competent public authority had taken any effective steps to find a solution to this issue. He asked the Ministry of Health what it intended to do to resolve this problem.

27 May 2004: The Ombudsperson received an answer from the Minister of Health, stating that maternity wards in Kosovo had been supplied with sufficient doses of vaccine from Albania to guarantee vaccination for the first four months of 2004. While it was true that in the beginning of 2004, there had been periods in which the Ministry of Health had not had enough of this vaccine, this problem was solved in May 2004, when the Ministry had received sufficient doses for 2004 and the beginning of 2005. The Minister of Health stated that he had not been aware of the illegal sale of BCG vaccine in pharmacies in Kosovo and that upon knowledge of this fact, the Ministry of Health had urged parents not to vaccinate their newborns with the vaccines sold in private pharmacies. At the same time, the BCG vaccine, which was administered to infants in the first year of life, did not need to be submitted to a special test beforehand.

The Ashkali petition following the events of March 2004

26 May 2004: The Ombudsperson forwarded to the SRSG a petition signed by Ashkali families living in Vushtrri/Vucitrn. These people had been forced out of their homes during the March events by a violent mob, which had later burned down their houses. They had no place to go and were currently staying at a French KFOR base in Novo Selo. These persons considered the security situation to be so grave that they could not move around Kosovo without being accompanied by an escort. In the petition addressed to the Acting SRSG, the representatives of these Ashkali asked him to find a solution for them which would permit them to live outside Kosovo, at least for the time being. The Ombudsperson drew the Acting SRSG's attention to the urgency of the issue and asked him to find a solution to these persons' predicament, in order to enable them to live a life free from the fear, suffering and day to day risks to their personal safety that they had been forced to endure during and after the March events.

12 June 2004: The Ombudsperson received a letter from the Acting SRSG explaining that UNMIK was aware of the situation of the Ashkali and had been actively involved in addressing their needs since the events of March. The Acting SRSG stressed that in early April, following a visit by the Prime Minister of Kosovo, a meeting was held in the French KFOR Camp with Ashkali representatives, during which the UNMIK delegates received a petition similar to the one sent by the Ombudsperson. The Acting SRSG also informed the Ombudsperson that at the end of May, the Office of Returns and Communities had facilitated a meeting between the liaison offices of Britain, France and Sweden and the Ashkali council. The above liaison offices had rejected the possibility of granting asylum to the Ashkali in their countries. Following this, the Office of Returns and Communities had identified a site in the municipality of Vushtrri/Vucitrn which would serve as a temporary humanitarian shelter to the Ashkali. The Acting SRSG further stressed that the responsibility for meeting the humanitarian needs of this vulnerable group rested primarily with the PISG, and asked the Ombudsperson to write a letter to the Prime Minister of Kosovo about the Ashkali situation, requesting that the PISG fulfil its responsibilities, in accordance with the Constitutional Framework, by providing humanitarian support and more secure environment for this group of people.

17 June 2004: The Ombudsperson wrote a letter to the Prime Minister of Kosovo, in which he drew the Prime Minister's attention to the situation of the Ashkali families from Vushtrri/Vucitrn, and asked about steps that the Kosovo Government intended to

take in order to find a solution for these persons, so that they would be able to live a normal life.

There has been no response to this letter.

The “Freedom of Movement Train”

On 18 May 2004, the train connection between Lipjan/Lipljan and Leshak/Lesak had been suspended, apparently because an agreement between the Kosovo Trust Agency and the UNMIK Pillar for Civil Administration could not be signed due to the Ministry of Finances’ failure to provide the necessary funding.

2 June 2004: The Ombudsperson wrote a letter to the DSRSG for Civil Administration expressing his concerns about the aforementioned interruption, stressing in particular that this train was the only means of public transport and communication between Serbian enclaves in central Kosovo and Northern Mitrovica and surrounding areas. The Ombudsperson also underlined the importance of the maintenance of the above connection in order to ensure the freedom of movement of these persons, considering that the security situation in Kosovo severely curtailed their liberty of movement.

7 June 2004: The Ombudsperson received a letter from the Chief of the Office of Community Affairs informing him that the above connection had been restored.

9 June 2004: The Ombudsperson received a letter from the DSRSG for Civil Administration explaining that due to the lack of oversight acknowledged by all parties, the Ministry of Finance and Economy had neglected to allocate funding for the service in this fiscal year’s budget. According to the DSRSG, UNMIK railways and the Ministry of Finance and Economy had reached an interim solution, pursuant to which the service had been financed. He did not know the reasons which had led to the suspension of the connection during May. The DSRSG furthermore informed the Ombudsperson that another interim solution had been reached and that the SRSG had approved other means of funding for the operation of the above connection until the end of December 2004.

The ability of internally displaced persons currently staying in Montenegro to take part in elections in Serbia proper

2 June 2004: The Ombudsperson wrote a letter to the Head of the Republican Election Commission in Serbia proper drawing his attention to the question of the ability of internally displaced people staying in Montenegro to take part in the upcoming presidential elections in Serbia. The Ombudsperson noticed that according to the applicable Serbian law, every citizen of Serbia was eligible to vote. Nevertheless, those internally displaced persons staying in Montenegro had not been able to take part in the Serbian parliamentary elections held in December 2003. The Ombudsperson furthermore stressed that during the past elections, Serbians living abroad had had no problems delivering their votes. 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.

4 June 2004: The Ombudsperson received a letter from the Head of the Republican Election Commission in Serbia proper in which, *inter alia*, the latter explained that it was not possible for Serbia to organise the participation in the upcoming presidential

elections for internally displaced persons temporarily staying in Montenegro, as the Serbian authorities had no jurisdiction or competence in Montenegro.

8 June 2004: The Ombudsperson wrote an urgent fax to the Secretary-General of the Council of Europe and to the Secretary-General of the Parliamentary Assembly of the Council of Europe expressing his concern about the above-mentioned situation. In particular, the Ombudsperson noted that due to internal problems between the two entities composing the union of Serbia and Montenegro, the internally displaced persons from Kosovo residing in Montenegro were not able to exercise their right to participate in the upcoming presidential elections, and were thus deprived of one of the basic fundamental rights in a functioning democracy. Bearing in mind the fact that the State Union of Serbia and Montenegro was a member of the Council of Europe and for this reason obliged to adhere to the basic principles and values of this body, he asked to be informed about the Council's of Europe's reaction to this matter.

18 June 2004: The Ombudsperson received a letter from the Secretary-General of the Parliamentary Assembly of the Council of Europe informing the Ombudsperson that the Assembly did not observe elections on a national level, but that at the same time the Ombudsperson's letter had been transmitted to the Assembly's monitoring committee, so that this committee could take the issues raised into consideration with regard to the ongoing monitoring procedure concerning Serbia and Montenegro.

25 June 2004: The Ombudsperson received a letter from the Secretary-General of the Council of Europe, in which he stressed the dedication of the Council of Europe to the full respect of the democratic and human rights of all citizens of Kosovo. He also forwarded to the Ombudsperson a letter that he had sent to the Minister of Foreign Affairs of Serbia and Montenegro, in which he had expressed his regret in relation to the disfranchisement of internally displaced persons from Kosovo within the State Union of Serbia and Montenegro. The Secretary General of the Council of Europe stressed his disappointment about the fact that the Republic of Serbia had been able to deploy significant efforts to allow its citizens living abroad the possibility to vote, but had not made any efforts to grant the same possibility to internally displaced persons staying in Montenegro.

The running of prescription periods for civil claims

9 June 2004: The Ombudsperson wrote a letter to the Acting SRSB drawing the Acting SRSB's attention to the running of prescription periods for civil claims under the law applicable in Kosovo. The Ombudsperson noted that as a consequence of the conflict in 1999, many members of non-Albanian communities in Kosovo were displaced or forced to flee their homes. At the same time, the courts in Kosovo stopped functioning for a certain amount of time and did not officially resume their work until several months or in some cases even a year later. Even after the conflict, the security situation in Kosovo had prevented a large number of the above persons from accessing the competent courts. In many cases where these persons intended to bring civil claims before court, the prescription periods for these claims may have run out, or may run out in the near future. The Ombudsperson asked the Acting SRSB to find a solution by which this group of people might still be able to pursue their claims despite the fact that the relevant prescription periods had run out or would run out soon.

There has been no response to this letter.

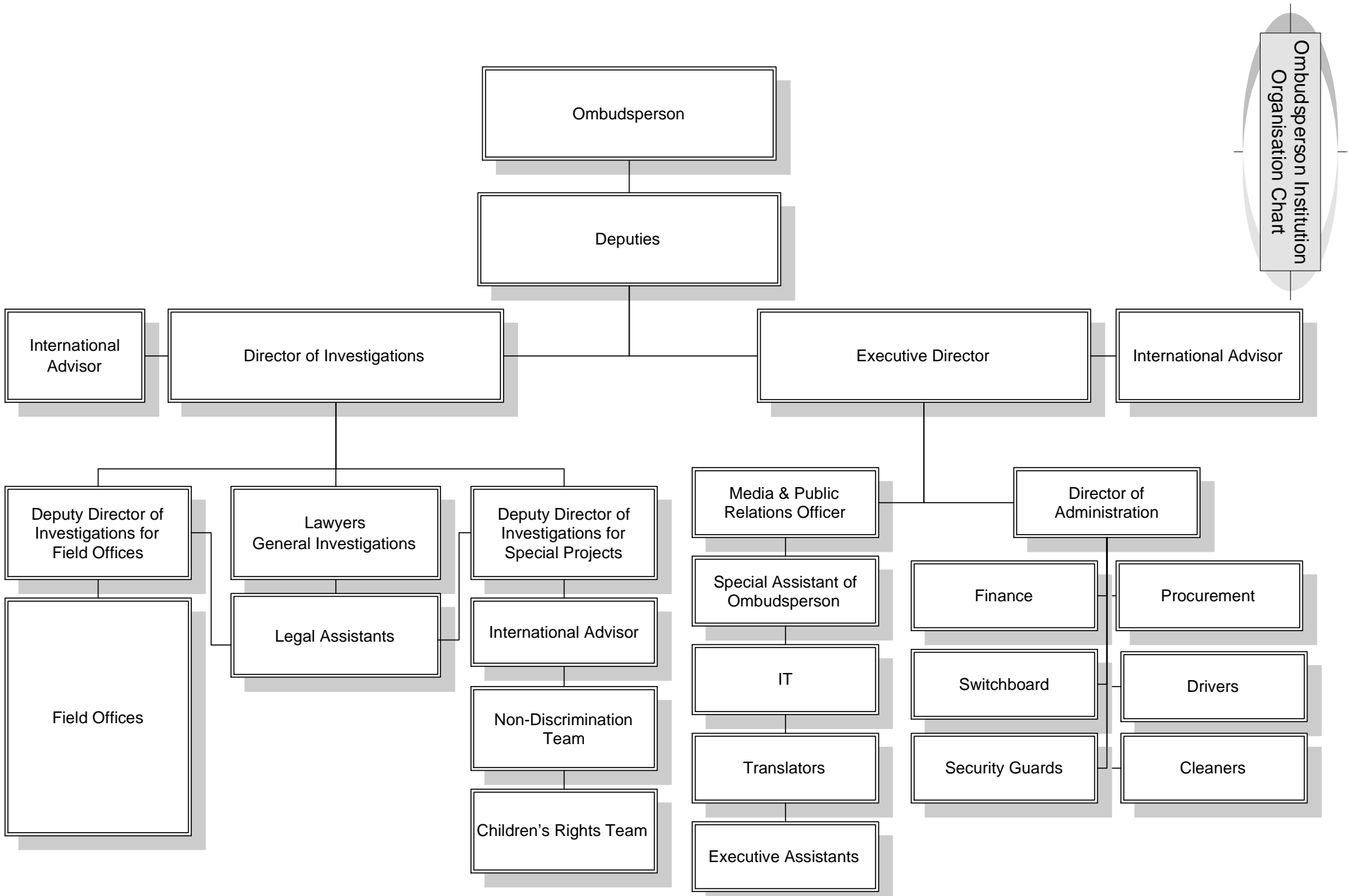
Equal opportunities for persons with physical disabilities to operate motor vehicles

During a meeting with the President of Handikos, an NGO dealing with persons with physical disabilities, the Ombudsperson's representative inter alia received a complaint regarding the absence of any possibilities for persons with physical disabilities to obtain driving licenses. Apparently, driving schools, which were all privately operated, did not dispose of any vehicles specially adapted for such drivers. Neither there were any special garages in which these persons could adapt their cars in order to meet their specific needs. In addition, driving instructors lacked the necessary training to teach driving to persons with physical disabilities. The President of Handikos pointed out that there was no regulation in force providing for the identification of cars operated by persons with physical disabilities, a situation which led to many serious practical implications such as situations where persons were considered to have defied police officers' orders when summoned to step out of the car for routine traffic controls.

17 June 2004: The Ombudsperson wrote a letter to the Minister of Transport and Communications expressing his concern about the above situation and asking him to take all appropriate steps in order to avoid any further discrimination in this area.

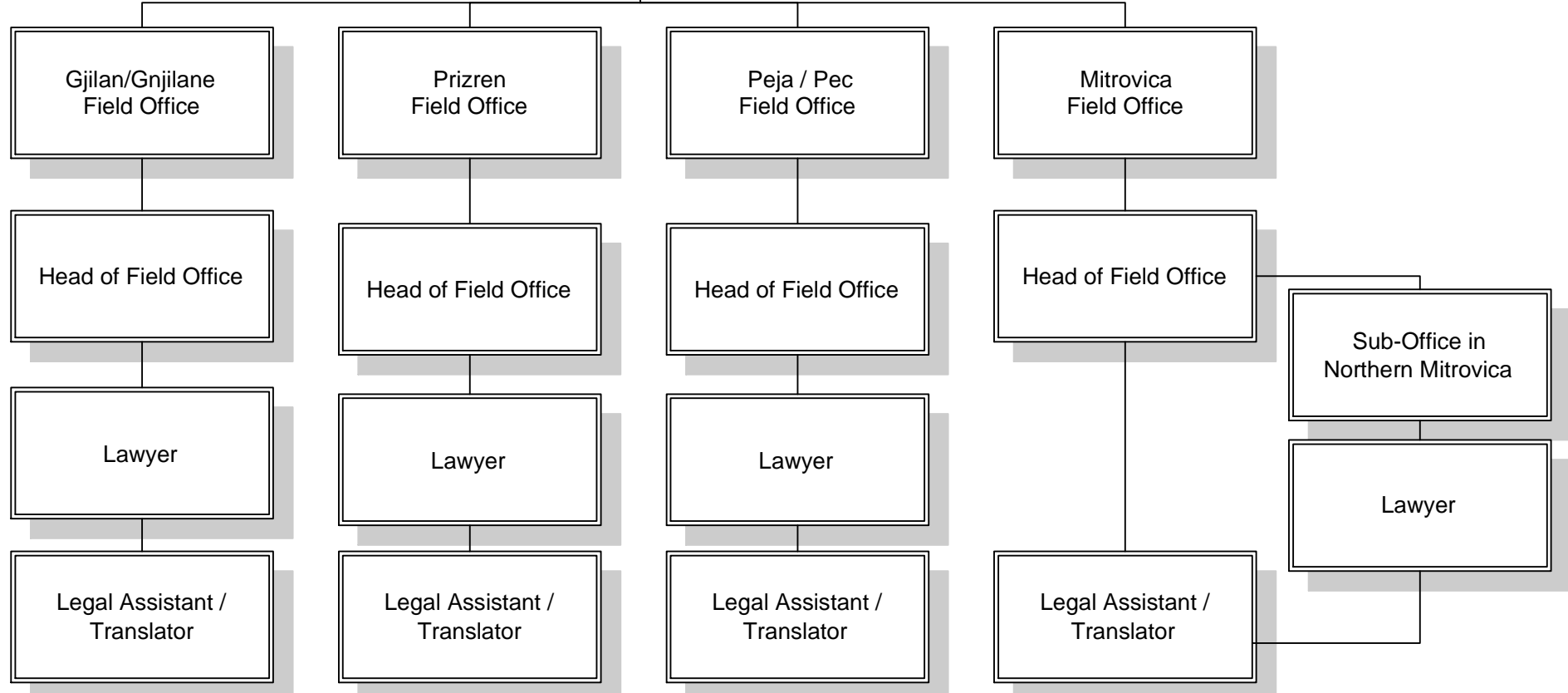
There has been no response to this letter.

Annex 5. Organisation Charts of the Ombudsperson Institution



Director of Investigations

Deputy Director of Investigations for
Field Offices



Annex 6: List of staff

Staff members (update 30 June 2004)

Ombudsperson	Marek Antoni Nowicki
Deputy Ombudsperson	Ljubinko Todorović
Deputy Ombudsperson	Hilmi Jashari
Executive Director	Agron Berisha
Director of Investigations	Veton Vula
Deputy Director of Investigations for Special Projects	Violeta Rexha
Deputy Director of Investigations for Field Offices	Sefadin Blakaj
Senior Lawyer, Pristina	Gjylbehare Murati
Senior Lawyer, Pristina	Avni Hasani
Senior Lawyer, Pristina	Dragana Ristić
Head of the Field Office in Gjilan/Gnjilane	Goroljub Pavić
Head of the Field Office in Mitrovica	Naim Krasniqi
Head of the Field Office in Pejë/Peć	Ilijana Çollaku
Head of the Field Office in Prizren	Murlan Prizreni
Lawyer, Pristina	Enis Shatri
Lawyer for CRT	Thëllënza Arifi
Lawyer for NDT	Dragana Rodić
Lawyer for NDT	Merita Syla
Lawyer, Northern Mitrovica	Miljana Scekić
Lawyer, Pejë/Peć	Besim Tafa
Lawyer, Prizren	Hunaida Pasuli
Special Assistant to the Ombudsperson	Leonora Visoka
Media and Public Relations Officer	Ibrahim Arslan
Director of Administration	Përparim Vula

IT Manager	Flamur Gogolli
Procurement Officer	Gëzim Latifi
Chief Translator/Legal Assistant, Pristina	Branislava Stojilović
Senior Translator/Legal Assistant, Pristina	Lirak Hamiti
Translator/Legal Assistant, Pristina	Safete Sadrija
Translator/Legal Assistant, Pristina	Alban Stafai
Translator/Legal Assistant, Pristina	Isak Skenderi
Translator/Legal Assistant, Gjilan/Gnjilane	Meliha Brestovci
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, Pristina	Venera Rizvanolli
Legal Assistant, Pristina	Xhafer Tahiri
Switchboard	Bedri Kamberi
Chief Driver	Shpëtim Reçica
Driver	Sami Kuqi
Driver	Fatmir Pireva
Driver	Goran Stević
Chief Security Guard	Bekim Bunjaku
Security Guard	Xhevat Cakolli
Security Guard	Tamer Gas
Security Guard	Gëzim Hadri
Security Guard	Skender Krasniqi
Security Guard	Mentor Myftari

Security Guard	Avni Osmani
Security Guard	Besim Osmani
Security Guard	Arben Plakaj
Cleaner	Vesna Cvejić
Cleaner	Nekibe Hoxha

International Advisors (update 30 June 2004)

International Advisor to the Executive Director	Antonella Ingravallo
International Advisor to the Director of Investigations	Alice Thomas
International Advisor for Special Projects	Francesca Marzatico

Persons who left the Ombudsperson Institution during the reporting period

Donna Gomien (International Deputy Ombudsperson, later International Consultant)

Nikë Lumezi (Deputy Ombudsperson)

Halit Kadriu (Executive Director)

Mexhit Berisha (Head of the Field Office in Gjilan/Gnjilane)

Gabriella Yates (International Consultant for Special Projects)

Nebojsa Boricić (Senior Lawyer, Pristina)

Isuf Mehmeti (Finances Officer)

Atogent Gojani (Legal Assistant/Translator)

Dua Dauti (Legal Assistant)

Aleksandar Simić (Driver)

Zoran Stojilović (Driver)

Ilir Rraci (Driver)

Liridon Xërxa (Security Guard)

Atila Gorica (Security Guard)

Remzije Haliti (Cleaner)

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
DSRSG	Deputy Special Representative of the Secretary-General
ECHR	European Convention on the Protection of Human Rights and Fundamental Freedoms
FYROM	Former Yugoslav Republic of Macedonia
HPD	UN Housing and Property Directorate
KEK	Kosovo Electric Corporation
KFOR	Kosovo Force [of NATO]
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
SRSR	Special Representative of the Secretary-General
UN	United Nations
UNMIK	United Nations Mission in Kosovo