OMBUDSPERSON INSTITUTION in KOSOVO

SECOND ANNUAL REPORT

2001 – 2002

addressed to

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Special Representative of the Secretary General of the United Nations

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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.

This Second Annual Report covers the first full year of operations of the Institution, from 1 July 2001 to 30 June 2002. It has two main sections. The first comprises a brief analysis of certain aspects of the human rights situation in Kosovo as seen from the perspective of the Ombudsperson. The second, on activities and operations of the Ombudsperson Institution, updates information provided in the first Annual Report regarding the background, history and nature of the Ombudsperson Institution, including the conduct of proceedings.

CERTAIN ASPECTS OF THE HUMAN RIGHTS SITUATION IN KOSOVO

Infrastructure and Governance

The human rights situation in Kosovo is distinct from the human rights situation in other parts of post-conflict Yugoslavia, in part due to the unique role of the United Nations Mission in Kosovo (UNMIK) as the surrogate state. As the state, however, UNMIK is not structured according to democratic principles, does not function in accordance with the rule of law, and does not respect important international human rights norms. The people of Kosovo are therefore deprived of protection of their basic rights and freedoms three years after the end of the conflict by the very entity set up to guarantee them.

On its establishment as the surrogate state in Kosovo, in 1999, UNMIK gave no cognizance to one of the founding principles of democracy, the separation of governmental powers. Amongst the earliest actions of the Special Representative of the Secretary-General of the United Nations (SRSG) was the promulgation of an UNMIK Regulation vesting total executive and legislative powers in himself. In the same Regulation, he also accorded himself administrative authority over the judiciary. The SRSG can and does act outside the bounds of judicial control to restrict or deny fundamental human rights to individuals in Kosovo. For example, he has exercised this power to remove individuals from electoral lists (See p. 18) and to override the decision of international judges and international prosecutors to release certain individuals from detention (See pp. 11-15). The effects of the failure of the SRSG to respect the principle of the separation of powers continues to have extremely negative ramifications for the rule of law and human rights in the territory.

Since the establishment of the United Nations regime in Kosovo, UNMIK has both perpetuated and created obstacles to the full protection of human rights, issuing Regulations granting themselves and the international military presence (KFOR) total immunity from legal process in Kosovo, removing decision-making authority over important civil rights from the courts and placing it in administrative bodies under the direct control of UNMIK, and pursuing similar courses of action that serve to eliminate or severely restrict the rights of individuals from Kosovo. The applicable law is often unclear, with UNMIK Regulations and

subsidiary legal acts declared as the supreme law of the land, prevailing over any domestic laws in force. Whatever law a court in Kosovo may apply is of little importance, however, as UNMIK will choose whether or not to permit the execution of any resulting judgment. It has refused to do so, for instance, in a case relating to a job recruitment conducted under direct UNMIK control and authority (see pp. 20-21).

Lack of Respect for the Rule of Law

Residents of Kosovo must overcome a number of obstacles in order to exercise their human rights and fundamental freedoms. One of the foremost of these obstacles is the lack of legal protection prevailing in the province, stemming in large part from the inaccessibility and the lack of clarity in the applicable law.

An early UNMIK Regulation provided that all UNMIK Regulations would be published in English, Albanian and Serbian. Three years later, important UNMIK Regulations remain in English only, although efforts have been made to accelerate translations into Albanian and Serbian. Delays in publishing laws considered by UNMIK to be in force remain a problem, even in the event that publication on the internet can be considered adequate where a large proportion of the population does not have access to computer services. As noted above, the complex structure of the applicable law causes confusion in the population and the courts. The confusion is exacerbated by the inclusion in many UNMIK Regulations of a provision declaring that the new Regulation supersedes 'any existing law with which it is inconsistent', often in Regulations that are written in quite general terms. Administrative Directives are used as tools for repairing gaps in UNMIK Regulations, leaving the applicable law unclear even to those intended to implement it. International standards governing lawfulness thus continue to be flouted, as the 'applicable law' remains inaccessible and unforeseeable and fails to protect individuals against arbitrary action by the state.

Certain categories of human rights complaints have been entirely removed from the jurisdiction of the courts and placed under the control of administrative authorities operating under UNMIK control. Their decisions cannot be appealed to any judicial body. In some circumstances, however, UNMIK and KFOR have at least nominally recognised that individuals who have suffered an injury caused by UNMIK or KFOR should be able to ask for compensation or damages. The response has been to establish various types of 'commissions' or 'claims offices' under the auspices of UNMIK and/or KFOR, through which individuals may theoretically claim such damages or compensation. However, virtually no information is publicly available about the existence, mechanisms or procedures of these commissions or claims offices. To date, no information has been publicised about the number of claims settled or compensation or damages awarded by any of them.

Individuals in Kosovo have been detained without any judicial decision or control, either by the SRSG or by the Commander of KFOR, both of whom exercise total power in this regard. Recommendations by the Ombudsperson and others that the legal regime governing detentions be returned to judicial authority and control, in accordance with all relevant international human rights standards, have been ignored (see pp. 11-15). In any event, Regulation 2000/38 does not permit the Ombudsperson to exercise any authority to address KFOR regarding their parallel unlawful practices in this regard.

Kosovo has one of the highest concentrations of military and police personnel in the world, some estimates placing the figure as high as one soldier or police officer for every forty residents of Kosovo. Extensive international resources have been dedicated to the recruitment

and training of local police and a large number of international police remain on the United Nations payroll as well. However, this vast international presence has failed to investigate or to prosecute serious crimes, from murder to organised criminal activity (See pp. 22-24).

Rather than addressing the inadequacies of the security regime in Kosovo, UNMIK has instead placed a disproportionate burden on individual Kosovans for UNMIK's failures in this regard. For example, UNMIK can prohibit individuals from selling their property if the buyer cannot prove that the funds being used to purchase the property are 'clean' or if UNMIK considers that the sale of the property will create a security risk in the community. These arbitrary restrictions on the sale of property apply only to members of minority communities, who are not compensated for UNMIK's constructive taking of their property. Thus UNMIK violates recognised principles of international law, doing so through the application of a discriminatory law that UNMIK itself promulgated (See pp. 12 and 28).

Many people from Kosovo remain in a limbo engendered by the failure of the International Community to address the nature of Kosovo now and to resolve the question of its final status in the future. Whilst both domestic and international political actors cannot agree about these broader political issues, many individuals trying to conduct normal lives are entangled in a bureaucratic web spun by the politicians. Individuals needing to obtain identification documents, travel documents, birth, marriage or death certificates, and so forth face lengthy delays. Individuals may be required to be physically present at various points in the process of applying for or obtaining documents, posing obstacles for persons not living in the vicinity of the competent governmental authority.

Some aspects of civil life are considered as under the exclusive authority and control of UNMIK, with tight restrictions being imposed on the exercise of rights, for example by allowing the imposition of fines and/or the criminal prosecution of individuals resident in Kosovo who register their vehicles in Serbia proper in order to be able to travel freely to the many European countries that do not recognise Kosovo vehicle registrations. This practice has negatively affected businesses as well as private persons.

Dormant economy and chronic low standards of living

According to the United Nations Development Programme, over half the population in Kosovo live in poverty, with 12 % living in extreme poverty. There are approximately 90,000 persons in Kosovo who have accrued pension rights, but who do not currently receive their pensions. There is very limited governmental financial support for the approximately 29,000 persons who cannot work due to disability, in this post-conflict territory.

Unemployment in Kosovo stands at 65%. The inadequate system of job security and the lack of protection against age discrimination in employment creates an imbalance with the rigid social assistance scheme established by UNMIK. Both the international administration and the newly established local governmental bodies, the main form of public employment, provide only short term contracts. The relevant UNMIK Regulation on labour law specifically excludes these entities from the operation of the law, leaving the employees without any protection. Individuals over a certain age, but well below the statutory retirement age of 65, are often told that they are 'too old' for a given job. Others have been forcibly retired from their jobs at the age of 60. At the same time, the UNMIK social assistance regime generally considers that any household with a member between the ages of 18 and 65 is presumed to be ineligible for assistance, because that family member should be working. If a household has small children, when the youngest has a fifth birthday, the family is considered to no longer

require social assistance. Families living in isolated communities, often with disabled members, will be considered ineligible for assistance if they own a car. There is extremely limited public transportation in Kosovo and the very few doctors do not normally make house calls.

Members of minority communities inside and outside Kosovo

The situation of residents of Kosovo who are not of Albanian ethnicity remains very difficult. Many, in particular Serbs and Roma remain isolated in ghettos and face great danger should they venture out of those ghettos without armed international escorts. Their extremely restricted freedom of movement has serious repercussions on all aspects of normal life – access to employment, medical care, schools, and public services generally. The provision of public utilities (electricity, water, etc.) to these ghettos is at a much lower standard than to the rest of the population.

With respect to the return of those displaced in connection with the conflict, and in particular members of non-Albanian communities forced to leave Kosovo at its conclusion, the physical and economic security situation still renders sustained returns a distant goal. In the meantime, internally displaced persons in Serbia proper are living in dire conditions that are exacerbated by their uncertain legal status.

At the same time, the situation of members of minority communities inside and outside of Kosovo is a highly politicised issue. All sides envision these people as objects of political debate, rather than subjects of law, an approach that is incompatible with human rights. This politicised approach has led to the establishment of contradictory policies that obstruct not only the realisation of the political agenda but the capacity of the individuals affected to realise their rights. For example, UNMIK has decided that Serbs who bought urban residential property during the early 1990s may not necessarily be considered to be the legitimate owners, and that the properties may be given back to Albanians who had lived there previously. The process of determining who 'owns' these properties is very long. Until the process is over, a displaced Serbian family will not have or know that they will ever have a place to live, should they return to Kosovo. Whereas this policy may meet certain political objectives, it creates insurmountable obstacles to Serbs wishing to return 'to their homes' in Kosovo. As noted elsewhere, UNMIK may also restrict the right of Serbs whose property ownership is not in dispute from selling their property, thereby severely limiting the possibilities of those property owners from determining their best interests for the future.

Property issues

In Kosovo, the international community has taken a long-term view of the resolution of property issues, in the interests of righting historical wrongs stemming back to 1989 as alluded to above. The administrative body established by UNMIK to resolve complex property problems (the Housing and Property Directorate, or HPD) has received several thousand applications requesting the return of residential property in Kosovo. However, to date, they have managed to effect relatively few returns. According to HPD's own calculations, if they continue at the current rate of resolving cases, it will take over six years to complete their case load. However, the cases that they have focused on thus far are easy cases, where both parties agree about the resolution, the property at issue is not occupied, and so forth. So even if a six year wait to return to one's home could be seen as reasonable, the figure is not based in the reality of the cases that remain to be resolved.

Forthcoming human rights issues

Since the 2000 elections, the Federal Republic of Yugoslavia has moved towards greater participation in the international human rights regime, accepting ever increasing levels of external monitoring and control. In 2001, it accepted the right of individual petition to the Human Rights Committee, which reviews complaints under the International Covenant on Civil and Political Rights. Within the next year, it will become a member of the Council of Europe and thus, within the foreseeable future, be subject to the jurisdiction of the European Court of Human Rights.

People from Kosovo can gain little, if any, benefit from these or other similar positive developments, as it is the Federal Republic of Yugoslavia that will be bound by these new human rights obligations, and not the United Nations Mission in Kosovo or the local governmental authorities in Kosovo, neither of which can become a party to international human rights instruments or become subject to the external controls of human rights treaty bodies or judicial mechanisms. It is ironic that the United Nations, the self-proclaimed champion of human rights in the world, has by its own actions placed the people of Kosovo under UN control, thereby removing them from the protection of the international human rights regime that formed the justification for UN engagement in Kosovo in the first place.

It is clear that the human rights situation in Kosovo still raises many concerns. A continued failure to address these concerns will have negative implications for the people of Kosovo. This future looks bleak indeed, as Kosovo must prepare itself to be a 'human rights black hole', in Europe and in the world.

Activities and Operations of the Ombudsperson Institution

Access to the Ombudsperson Institution

During the current reporting period, the Institution established four small field offices serving individuals from the regions of Mitrovice/Mitrovica, Peje/Pec, Prizren, and Gjilan/Gnjilane. The Institution's Prishtine/Pristina-based local lawyers also provided regular services to individuals in municipalities near Prishtine/Pristina .

The Ombudsperson continued to hold regular 'Open Days', a practice that was originally introduced in May 2001. These Open Days, which are held every other Thursday at the Prishtine/Pristina headquarters and once a month in five regions (those listed above plus Gjakove/Djakovica), provide an opportunity for members of the public to meet directly with the Ombudsperson in order to discuss their cases or raise other matters of concern. During the fifty-two Open Days that were held during the reporting period, approximately 1000 people met with the Ombudsperson.

UNMIK Regulation 2000/38 guarantees immediate, direct and confidential access of the Ombudsperson to anyone in detention in Kosovo. In spring 2002, UNMIK officials conditioned access of the Ombudsperson to Dubrava Prison on his providing notice of any such visit twenty-four hours in advance. When informed about this unlawful action, the SRSG

issued an instruction that no restrictions should be placed on the Ombudsperson's access to anyone in detention in Kosovo.

Overview of cases

During the reporting period, approximately 2500 people contacted the Ombudsperson Institution for advice and assistance or to lodge formal complaints. Roughly half contacted staff from the Pristina office, including a number of individuals who met with representatives of the Institution during the May 2002 visit of representatives of the Institution to Serbia.

Since the inauguration of the Ombudsperson Institution on 21 November 2000, 590 formal applications have been lodged. Also since the opening of the Institution, the Ombudsperson has opened twenty-four *ex officio* investigations. Most cases investigated by the Ombudsperson Institution concern property issues (governmental takings of or damage to property, difficulties in gaining access to property, etc.), employment issues (recruitment practices, unjust dismissals, etc.), fair trial issues (lack of access to court, undue delays in civil proceedings, etc.) or impunity issues (governmental failures to investigate or prosecute crimes, etc.)(see Annex 1).

Of the individual applications that have been lodged with the Ombudsperson Institution since its inauguration, the Ombudsperson has rejected 55% on the grounds either that he does not have jurisdiction to investigate the complaints raised or on similar formal grounds. He also closed eighteen cases on the grounds that the problems raised had been resolved and twenty on the grounds that the applicants were no longer interested in pursuing their complaints.

From 1 July 2001 to 30 June 2002, the Ombudsperson issued two Special Reports, eight final reports in individual cases and nine final reports in *ex officio* investigations (See Annex 3).

During the reporting period, the Ombudsperson made eleven requests for governmental authorities to take interim measures. He considers that two of these requests were successful, two were partly successful and seven were not successful (see Annex 2).

Expansion of activities

The first full year of operations of the Ombudsperson Institution in Kosovo saw an expansion of activities focused towards the full implementation of the mandate of the Institution. In addition to providing better access to individual applicants outside Prishtine/Pristina (see above), the Ombudsperson also introduced new working methods to better address all matters falling within his mandate. In particular, the Ombudsperson increased his contacts with the authorities on behalf of individuals or groups facing difficulties amenable to resolution without the need for extensive formal investigations. (See Annex 4).

In late summer 2001, the Ombudsperson was instrumental in negotiating with Serbian prisoners conducting a hunger strike in Mitrovice/Mitrovica Detention Centre. In similar circumstances in spring 2002, however, the UNMIK authorities denied him access to Albanian prisoners conducting a hunger strike in Dubrava Prison, in direct contravention of UNMIK Regulation 2000/38 (see above).

Over the course of the reporting period, the Ombudsperson helped both to establish contacts and to facilitate communications between members of different ethnic communities in

Kosovo, for example between Albanians and Serbs in Bordosh/Devet Jugovic, Fushe Kosove/ Kosovo Polje, Rahovec/Orahovac, and other communities.

UNMIK Regulation 2000/38 calls on the Ombudsperson to offer his good offices with regard to cases involving individuals from Kosovo living outside the territory. (See Annex 4 for summaries of selected relevant correspondence). In May 2002, at the invitation of the Civil Rights Project of the Norwegian Refugee Council, who hosted the visit, the Ombudsperson, together with other senior members of the staff of the Institution, travelled to Serbia proper to visit individuals who had been displaced from Kosovo, representatives of non-governmental organisations engaged in addressing problems confronting this population and governmental officials, including both the President of the Federal Republic of Yugoslavia and the Chairman of the Co-ordination Committee for Kosovo.

During this reporting period, the Ombudsperson Institution availed itself of the assistance of the Spanish Ombudsman (to arrange for medical treatment in Spain for a resident of Kosovo who had been injured in an accident for which Spanish KFOR accepted responsibility), the Belgian Ombudsman (to initiate compensation proceedings in Belgium in the interests of survivors of an individual who had been killed by Belgian KFOR), the Ombudsman for Bosnia and Herzegovina (to assist an individual living in Kosovo to obtain a disability pension), the Macedonian Ombudsman (to obtain assistance for an individual trying to obtain Macedonian citizenship) and the Albanian Ombudsman (to investigate allegations against members of the Albanian Security Service and allegations of unfair criminal proceedings conducted in Albania).

During this reporting period, the Ombudsperson exercised his power to recommend that the competent authorities pursue criminal proceedings in two instances. The Ombudsperson recommended that the public prosecutor initiate a criminal investigation against a member of the Kosovo Police Service who had allegedly ill-treated an individual in his custody. He also forwarded to the public prosecutor relevant information about alleged corruption in the Kosovo Customs Service.

Outreach and information activities

During the reporting period, the Ombudsperson and senior staff visited all municipalities and enclaves in Kosovo, meeting with governmental officials, community leaders and individuals. During these meetings the Ombudsperson informed the participants about the work of the Ombudsperson Institution and solicited their views on problems they were facing in their daily lives and work. The Ombudsperson also met with Kosovan political leaders in order to discuss the role of the Ombudsperson with respect to the new institutions of provisional self-government.

In October 2001, the Ombudsperson Institution in Kosovo became a member of the European Ombudsman Institute. The Ombudsperson made a presentation at the biennial meeting of this Institute in May 2002.

In November 2001, the Ombudsperson made a presentation to the Permanent Council of the Organisation for Security and Co-operation in Europe.

In April 2002, the Ombudsperson made a presentation at the European Ombudsmen Conference.

In May 2002, the Ombudsperson Institution hosted a visit to Kosovo of the Albanian Ombudsman and members of his staff.

In June 2002, the Ombudsperson made his second presentation to the Council of Europe Committee of Ministers Rapporteurs Group for Democratic Stability (GREDS).

Funding and In-Kind support

Funding for the Ombudsperson Institution for 2002 has been provided by the Kosovo Consolidated Budget, the Permanent Council of the OSCE, and the following bilateral donors: United States, Switzerland, Poland, Denmark, Sweden, Norway, France, Liechtenstein, and Turkey.

The Council of Europe provided extensive support to the Institution, including technical assistance and training for administrative and legal staff. The European Court of Human Rights permitted a member of the staff of the Registry to provide the Institution with expert legal analysis.

The Kosovo Open Society Foundation provided funding for some official travel undertaken by local staff and for some training activities.

The OSCE Office of Democratic Institutions and Human Rights (OSCE/ODIHR) supported the visit of a consultant from the Polish Ombudsman's Office to the Institution.

In addition to financial support, the Government of Switzerland donated cars and office equipment to the Ombudsperson Institution.

The Albanian Ombudsman supported staff members of the Ombudsperson Institution to make study visits to Albania and to participate in two conferences.

Marek Antoni Nowicki
Ombudsperson

Annex 1: Statistical Overview of Cases

21 November 2000 to 30 June 2002

PROVISIONALLY REGISTERED CASES: 590

ETHNICITY OF APPLICANTS:

Albanian:	421
Serbian:	153
Other:	43

RESPONDENT PARTIES:

UNMIK:	277
KFOR:	63
Municipal Authorities:	152
Other:	91

CASES DECLARED INADMISSIBLE:	**294**
Ombudsperson cannot investigate complaints against the respondent party:	75
Applicant has failed to exhaust other remedies:	110
Facts or final decision occurred prior to 30 June 2000:	40
Manifestly ill-founded (no case to answer):	66
Subject matter not in the jurisdiction of the Ombudsperson:	3
Cases discontinued during proceedings for other reasons:	69

EX OFFICIO INVESTIGATIONS OPENED: 24

FINAL REPORTS ISSUED:24

SUBJECT MATTER OF CASES:

Property-related rights: **236** (*64* taking of property/no compensation; *45* damage to property/ no compensation; *33* non-payment of salary; *61* access to home or other property; *7* non-payment of pensions; *10* non-removal of illegal occupant from property; *16* other)

Employment-related issues: **132** (*42* failure to obtain employment through competitive employment process; *40* dismissals from employment; *15* failure to be offered pre-conflict job; *35* other).

Fair hearing rights: **94** (*29* right to a court (17 no possibility to raise case before a competent court; 8 failure of authorities to executive court order or judgment; 4 court not independent and impartial); *12* criminal procedural issues; *31* length of civil proceedings; 8 conflict between HPD and courts; 14 fair trial (other)).

Right to liberty: **54** (*8* no arrest warrant; *8* no means to challenge lawfulness of detention; *8* not brought promptly before a judicial authority; *4* not released at time prescribed by judge; *7* no detention order; *4* no information about charges; *15* other)

Impunity: **45** (*13* failure to adequately investigate alleged violations of the right to life; *4* failure to adequately investigate alleged inhuman or degrading treatment; *32* failure to investigate crimes affecting the right to security, right to respect for private life, etc.)

Abuses of authority: **40** (*26* failure of administrative authorities to respond to proper request; *8* arbitrary or discriminatory administrative decisions; *6* other)

Right to social benefits and/or an adequate standard of living: **25**
Freedom from inhuman or degrading treatment: **19**
Right to respect for private or family life: 12
Discrimination/ **Equal Protection**: **11**
Other (issues not included in above categories and raised fewer than ten times) : **63**

Annex 2: Overview of Requests for Interim Measures

(1 July 2001 – 30 June 2002)

3 July 2001: Request to the SRSG to order the manager of "RMHK Trepca Kosovo under UNMIK Administration" immediately to cease the sale, barter or other disposal of lead stocks (alloy, soft lead, etc.) the ownershhip of which constituted the subject matter of proceedings against the UNMIK Department of Trade and Industry before the Commercial Court in Prishtine/Pristina. Request repeated on **3 April 2002**.

(**Unsuccessful**: no response.)

16 July 2001: Request to the SRSG to take urgent action to ensure adequate protection of private stocks of timber located near the villages of Banja and Priluzhija. Request repeated on **24 September 2001**.

(**Successful:** On 10 October 2001, the SRSG informed the Ombudsperson that the Chief Executive Officers in the Municipalities of Vushhtri/Vucitrn and Skenderaj/Srbica had agreed to work on a better limitation of public and private forests in these areas and to intensify co-operation with KFOR and the UNMIK Police regarding the circulation of timber. The SRSG also instructed the Kosovo Forest Authority in Mitrovica to pay particular attention to the protection of the forest in the area and to report any illegal cutting. On 11 March 2002, the UNMIK Municipal Administrator in Skenderaj/Srbica informed the Ombudsperson about procedures being followed to confirm ownership of the forests at issue, in order to better curb trespassing and illegal woodcutting).

16 July 2001: Request to the SRSG to order the municipal authorities in Lipjan/Lipljan to provide a public building in the municipality to meet the educational and security needs of approximately 250 Serbian pupils.

(**Partly successful**: On 7 August 2001, the SRSG informed the Ombudsperson about difficulties in resolving this problem, progress in negotiations with the Serbian and Albanian communities in the community, and plans to construct a school for Serbian students within several months.)

21 January 2002: Request to the President of the Municipal Court in Gjilan/Gnjilane to ensure that decisions and judgments issued by the Court prior to the 1999 conflict be communicated to the relevant parties. Request repeated on **8 March 2002**.

(**Successful**: In a letter received at the end of April 2002, the Director of the Department of Justice provided the Ombudsperson with a copy of an undated Circular sent to the Presidents of all courts in Kosovo, asking them to conduct a review of all court files containing judgments or decisions from 1999 or before in order to ensure that any such judgments or decisions be communicated to the relevant parties by 31 May 2002.)

7 March 2002: Referring to the original positive action by the SRSG in May 2001 with regard to the same matter, requested the SRSG to suspend the implementation of a decision of the Municipal Administrator of Gllogovc/Glogovac to demolish a number of properties situated on the main thoroughfare of the municipality. Request repeated on **29 March 2002** and on **8 April 2002**.

(**Partly successful**: On 8 April 2002, the SRSG informed the Ombudsperson of his intention to issue an Executive Decision to suspend all demolition action with regard to the properties in question pending a final decision by the Supreme Court, rather than until the completion of the Ombudsperson's investigation of the case.)

8 May 2002: Request to the SRSG to take urgent action to ensure the protection of private orchards located in the village of Morin.

(**Unsuccessful**: no response.)

Annex 3: Summaries of Reports

SUMMARY

Special Report No. 4
on Certain Aspects of
UNMIK Regulation No. 2001/18
on the Establishment of a Detention Review Commission for
Extra-judicial Detentions Based on Executive Orders (25 August 2001)

12 September 2001

At the end of the previous reporting period, the Ombudsperson issued Special Report No. 3 on the Conformity of Deprivations of Liberty under 'Executive Orders' with Recognised International Standards (Special Report No. 3). In this Special Report, the Ombudsperson found that deprivations of liberty imposed under 'Executive Orders' or any other form of executive instruction, decree or decision issued by the Special Representative of the Secretary General of the United Nations (SRSG) did not conform with recognised international standards. He found that any such deprivation of liberty could not be considered to be lawful in the sense of para. 1 of Article 5 of the European Convention on Human Rights, that the absence of judicial control over deprivations of liberty imposed under Executive Orders constituted a violation of paras. 3 and 4 of Article 5 of the Convention and that the lack of an enforceable right to compensation for unlawful deprivations of liberty constituted a violation of para. 5 of Article 5.

The Ombudsperson recommended that the SRSG **immediately** cease the practice of issuing Executive Orders imposing on any individual in Kosovo a deprivation of liberty. The Ombudsperson further recommended that the SRSG, no later than **20 July 2001**, convene one or more panels composed of international judges to review, on an urgent basis, the lawfulness of detentions of individuals currently deprived of their liberty under Executive Orders, such review to conform with the requirements of Article 5 of the European Convention on Human Rights. The Ombudsperson also recommended that the SRSG should undertake to comply with decisions on deprivations of liberty taken by the judicial panels convened in accordance with the recommendations.

The Ombudsperson also recommended that the SRSG, no later than **31 August 2001**, promulgate a Regulation setting forth the legal bases for compensation claims for unlawful deprivations of liberty and proper judicial proceedings in this respect and, on the date of its entry into force, disseminate it through all appropriate channels in all languages widely used in Kosovo. The Ombudsperson further recommended that the new Regulation should be distributed to all persons who have been deprived of their liberty under Executive Orders issued by the SRSG and to all judges, judicial officers or others exercising judicial authority in Kosovo.

On 25 August 2001, the SRSG issued UNMIK Regulation 2001/18 on the Establishment of a Detention Review Commission for Extra-judicial Detentions Based on Executive Orders.

On 12 September 2001, the Ombudsperson issued Special Report No. 4. At the beginning of this Report, the Ombudsperson noted that some aspects of UNMIK Regulation 2001/18 apparently were intended to address concerns reflected in one of the recommendations the Ombudsperson made in Special Report No. 3. The Ombudsperson found, however, that UNMIK Regulation 2001/18 on the Establishment of a Detention Review Commission for Extra-judicial Detentions Based on Executive Orders (25 August 2001) did not constitute an adequate response to the recommendations contained in that Report. The Ombudsperson also found that the mechanisms and procedures to be established under Regulation 2001/18 did not comply with the international human rights standards set forth in para. 4 of Article 5 of the European Convention on Human Rights.

In Special Report No. 4, the Ombudsperson reiterated the recommendations of Special Report No. 3.

The Ombudsperson has received no response to either Special Report No. 3 or Special Report No. 4.

SUMMARY

Special Report No. 5
On Certain Aspects
of
UNMIK Regulation No. 2001/17
on the Registration of Contracts for the Sale of Real Property
in Specific Geographical Areas of Kosovo (22 August 2001)

29 October 2001

In this Report, the Ombudsperson found that UNMIK Regulation 2001/17 was not 'in accordance with law' in the sense of the European Convention on Human Rights. The Ombudsperson also found that the restrictions on guaranteed rights permitted by the Regulation could not be considered 'necessary in a democratic society' for legitimate governmental aims.

The Ombudsperson further found that UNMIK Regulation 2001/17 was incompatible with Article 1 of Protocol No. 1 to the Convention, in that UNMIK could prevent individuals from selling their property without compensating the property owners and Article 8 of the Convention and Article 2 of Protocol No. 4 to the Convention, in that UNMIK could restrict the right of individuals to choose where to locate their homes. The Ombudsperson also found a violation of Article 14, in that the Regulation was based on impermissible distinctions based on the ethnicity of those affected, and Article 18, in that the Regulation imposed restrictions on rights for purposes that are not permitted under the Convention.

The Ombudsperson recommended that the Special Representative of the Secretary General of the United Nations, no later than **15 November 2001**, abolish UNMIK Regulation 2001/17 and Administrative Direction 2001/16 which was issued for its implementation and should issue a new Administrative Direction declaring null and void any decision to refuse to register a contract for the sale of real property taken pursuant to UNMIK Regulation 2001/17 and/or Administrative Direction 2001/16.

In a letter dated 17 April 2002, the SRSG described the provisions of UNMIK Regulation No. 2001/17 and stated that it had been promulgated 'after extensive negotiations and consultations with all concerned to address concerns about the adverse effect upon the demographic balance in Kosovo resulting from involuntary or otherwise inappropriate sales of minority-owned residential real property.... we are closely monitoring the application of the Regulation and will take appropriate steps where necessary.'

(See also Summary of the Report in the case, '*Ex officio* Registration No. 24/2002 regarding the refusal of UNMIK to register a contract for the sale of a residential property in Lipjan/Lipljan', below at p. 28).

SUMMARY

Avdi Behluli
against
The United Nations Mission in Kosovo
(UNMIK)

12 September 2001

In this case, the Ombudsperson found that the deprivation of liberty of the applicant from 28 March 2001 to the date of the Report, imposed under a series of Executive Orders of the SRSG could not be considered to be lawful, that the overriding by the SRSG of the 28 March 2001 decision of the District Court in Pristina to release the applicant from detention, the lack of adequate procedural protections to challenge the lawfulness of deprivations of liberty imposed on the applicant under Executive Orders, and the lack of an enforceable right to compensation for the unlawful deprivation of liberty suffered by the applicant constituted violations of several provisions of Article 5 of the European Convention on Human Rights. The Ombudsperson also found that the applicant had not enjoyed the right to a court for the determination of his civil right to liberty, in violation of his rights under para. 1 of Article 6 of the Convention. The Ombudsperson finally found that no circumstances existed that required consideration of the applicability of Article 15 of the Convention, permitting limited derogations from human rights obligations, to the facts of the case.

The Ombudsperson recommended that the SRSG, **no later than 21 September 2001** (the last work day prior to the expiration of the 24 August 2001 Executive Order authorising the continued detention of the applicant), convene a panel composed of international judges to review, on an urgent basis, the lawfulness of the detention of the applicant, such review to conform with the requirements of Article 5 of the European Convention on Human Rights. The Ombudsperson also recommended that the SRSG undertake to comply with the decision on detention or release of the applicant taken by the judicial panel convened in accordance with the previous recommendation.

The Ombudsperson also recommended that the SRSG, **no later than 28 September 2001**, comply with the recommendations set forth in Special Report No. 3 and reiterated in this individual case report, to promulgate a Regulation setting forth the legal bases for compensation claims for unlawful deprivations of liberty and instituting a system of proper judicial proceedings in this respect and, on the date of its entry into force, disseminate, through all appropriate channels the new UNMIK Regulation in all languages widely used in Kosovo.

There has been no response to this Report.

SUMMARY

Cele Gashi
against
The United Nations Mission in Kosovo
(UNMIK)

12 September 2001

In this case, the Ombudsperson found that the deprivation of liberty of the applicant from 28 March 2001 to the date of the Report, imposed under a series of Executive Orders of the SRSG could not be considered to be lawful, that the overriding by the SRSG of the 28 March 2001 decision of the District Court in Pristina to release the applicant from detention, the lack of adequate procedural protections to challenge the lawfulness of deprivations of liberty imposed on the applicant under Executive Orders, and the lack of an enforceable right to compensation for the unlawful deprivation of liberty suffered by the applicant constituted violations of several provisions of Article 5 of the European Convention on Human Rights. The Ombudsperson also found that the applicant had not enjoyed the right to a court for the determination of his civil right to liberty, in violation of his rights under para. 1 of Article 6 of the Convention. The Ombudsperson finally found that no circumstances existed that required consideration of the applicability of Article 15 of the Convention, permitting limited derogations from human rights obligations, to the facts of the case.

The Ombudsperson recommended that the SRSG, **no later than 21 September 2001** (the last work day prior to the expiration of the 24 August 2001 Executive Order authorising the continued detention of the applicant), convene a panel composed of international judges to review, on an urgent basis, the lawfulness of the detention of the applicant, such review to conform with the requirements of Article 5 of the European Convention on Human Rights. The Ombudsperson also recommended that the SRSG undertake to comply with the decision on detention or release of the applicant taken by the judicial panel convened in accordance with the previous recommendation.

The Ombudsperson also recommended that the SRSG, **no later than 28 September 2001**, comply with the recommendations set forth in Special Report No. 3 and reiterated in this individual case report, to promulgate a Regulation setting forth the legal bases for compensation claims for unlawful deprivations of liberty and instituting a system of proper judicial proceedings in this respect and, on the date of its entry into force, disseminate, through all appropriate channels the new UNMIK Regulation in all languages widely used in Kosovo.

There has been no response to this Report.

SUMMARY

Jusuf Veliu
against
The United Nations Mission in Kosovo
(UNMIK)

12 September 2001

In this case, the Ombudsperson found that the deprivation of liberty of the applicant from 28 March 2001 to the date of the Report, imposed under a series of Executive Orders of the SRSG could not be considered to be lawful, that the overriding by the SRSG of the 28 March 2001 decision of the District Court in Pristina to release the applicant from detention, the lack of adequate procedural protections to challenge the lawfulness of deprivations of liberty imposed on the applicant under Executive Orders, and the lack of an enforceable right to compensation for the unlawful deprivation of liberty suffered by the applicant constituted violations of several provisions of Article 5 of the European Convention on Human Rights. The Ombudsperson also found that the applicant had not enjoyed the right to a court for the determination of his civil right to liberty, in violation of his rights under para. 1 of Article 6 of the Convention. The Ombudsperson finally found that no circumstances existed that required consideration of the applicability of Article 15 of the Convention, permitting limited derogations from human rights obligations, to the facts of the case.

The Ombudsperson recommended that the SRSG, **no later than 21 September 2001** (the last work day prior to the expiration of the 24 August 2001 Executive Order authorising the continued detention of the applicant), convene a panel composed of international judges to review, on an urgent basis, the lawfulness of the detention of the applicant, such review to conform with the requirements of Article 5 of the European Convention on Human Rights. The Ombudsperson also recommended that the SRSG undertake to comply with the decision on detention or release of the applicant taken by the judicial panel convened in accordance with the previous recommendation.

The Ombudsperson also recommended that the SRSG, **no later than 28 September 2001**, comply with the recommendations set forth in Special Report No. 3 and reiterated in this individual case report, to promulgate a Regulation setting forth the legal bases for compensation claims for unlawful deprivations of liberty and instituting a system of proper judicial proceedings in this respect and, on the date of its entry into force, disseminate, through all appropriate channels the new UNMIK Regulation in all languages widely used in Kosovo.

There has been no response to this Report.

SUMMARY

Ex officio Registration No. 02/01
concerning the deprivation of liberty of A.P.L
.
18 October 2001

In this Report, the Ombudsperson found that the request of the UNMIK police to detain A.P.L. for an initial period of 72 hours was not 'lawful' in the sense of Article 5 of the European Convention on Human Rights, on several grounds. According to the applicable law, a law enforcement authority may detain a person suspected of having committed a criminal offence for an initial period of up to 72 hours only on an exceptional basis and in well-defined circumstances. Within 24 hours of such detention, the authorities must provide the detainee with a copy of the detention order, the contents of which are also delineated in the applicable law. The detainee also has the right to judicial review of any such order within a short time frame and in accordance with procedures prescribed by the law. The Ombudsperson found that none of these requirements were met in connection with the initial detention of A.P.L.. The Ombudsperson also found that the forms used by the UNMIK police to request the imposition of detention did not conform with the applicable legal standards. The Ombudsperson further found that the failure of the authorities to bring A.P.L. before the competent judicial authority between 31 January and 5 February 2001 constituted a violation of his right to be brought 'promptly' before a judicial authority as guaranteed under paragraph 3 of Article 5 of the European Convention on Human Rights. The Ombudsperson finally found that the lack of an enforceable right to compensation for the contraventions of the aforementioned rights constituted a violation of A.P.L.'s rights under paragraph 5 of Article 5 of the Convention.

The Ombudsperson recommended the SRSG, **no later than 16 November 2001**, 1) to ensure that all forms or other documents constituting orders, requests or similar acts by a law enforcement agency calling for the initial detention of individuals in the context of a criminal investigation or proceeding be revised to conform with the domestic and international standards; 2) to issue an administrative directive or other appropriate administrative act, incorporating the revised forms or other documents and instructing all law enforcement agencies and all heads of detention facilities in Kosovo to guarantee both the consistent application of the relevant provisions of the applicable domestic law and compliance with the relevant international human rights standards; 3) to instruct the responsible parties in the Kosovo Police School to integrate the points raised in the Report into the training programmes for the Kosovo Police Service, through the dissemination of the Report and/or the revised forms and/or the administrative directive or instruction called for in the previous recommendations; 4) to comply with the recommendation set forth in Special Report No. 3 (29 June 2001) and reiterated in Special Report No. 4 (12 September 2001) and the Reports in the cases of Cele Gashi, Jusuf Veliu and Avdi Behluli (12 September 2001), to promulgate a Regulation setting forth the legal bases for compensation claims for unlawful deprivations of liberty and instituting a system of proper judicial proceedings in this respect; and 5) to disseminate the new UNMIK Regulation in all languages widely used in Kosovo, and, in particular, to distribute the Regulation to all persons who have been deprived of their liberty and all judicial officers or others exercising judicial authority in Kosovo.

In a letter dated 13 November 2001, the SRSG informed the Ombudsperson that a Commission for Compensation for Wrongfully Accused and/or Wrongfully Detained Persons had been established under Justice Department Circular 2001/1, through which A.P.L. could apply for compensation. The SRSG also enclosed copies of two letters, also dated 13 November 2001, sent to the following persons:

> **To the UNMIK Police Commissioner -- requesting that the Detention Request Form be revised to reflect the hour from which an individual was deprived of liberty, reminding the Commissioner of the obligations to inform a detainee in writing of the reasons for his or her arrest or detention and to bring him or her before the competent judicial authority within the time limit prescribed by law. The SRSG also asked the Commissioner to emphasize these obligations to all police officers and to inform him of the reasons for the failures of the UNMIK Police to respect the applicable law in the case of A.P.L..**
>
> **To the Director of the UNMIK Department of Judicial Affairs – requesting information about the failure of the responsible authorities to bring A.P.L. before the competent judicial authority within the time limit prescribed by law and of the investigative judge to provide a reasoned basis for the detention of A.P.L.**

SUMMARY

Ex officio Registration No. 10/01
Regarding the circumstances surrounding the arrest and detention of a person detained under the name Elion Kuci

1 October 2001

This case related to allegations that an individual detained under the name Elion Kuci had been subjected to ill-treatment during the course of his arrest and detention in March 2001.

The Ombudsperson found no convincing evidence supporting the allegations. He thus concluded that there had been no violation of human rights or abuse of authority.

SUMMARY

Ex officio Investigation No. 19/01
Regarding the Removal of
Emrush Xhemajli, Gafurr Elshani and Sabit Gashi
from the List of Candidates for the November 2001 Elections

29 October 2001

In this case, the Ombudsperson found that the removal of Mr. Emrush Xhemajli, Mr. Gafurr Elshani and Mr. Sabit Gashi from the list of candidates of their respective political parties for the 17 November 2001 elections to the Kosovo Assembly violated the right to free elections guaranteed under Article 3 of Protocol No. 1 to the European Convention on Human Rights, the right to respect for private life guaranteed under Article 8 of the Convention, the right to a fair hearing in the determination of a civil right guaranteed under Article 6 of the Convention, the right to freedom of association guaranteed under Article 11 of the Convention and the right to an effective remedy guaranteed under Article 13 of the Convention.

The Ombudsperson recommended that the Special Representative of the Secretary General of the United Nations, no later than 2 November 2001, reinstate Mr. Xhemajli, Mr. Elshani and Mr. Gashi on the list of candidates for the elections of 17 November 2001 for the Kosovo Assembly and ensure that all means be pursued to ensure that these candidates were provided the same status and guarantees as they would have enjoyed had their names not been unlawfully removed from the aforementioned list.

In a letter dated 13 November 2001, the SRSG stated, *inter alia,* the following :

> **...[T]he situation in the region continues to constitute a threat to international peace and security with elements analogous to public emergency.... [T]his allows for a reasonable and proportionate derogation of the (implied) right of persons to stand as candidates for election and certain other rights you have mentioned ... on the basis of security considerations....**
>
> **This difficult determination was made after extensive consultations with key members of the international community actively engaged with UNMIK in Kosovo, and you may be assured that the action taken has their full support.**

SUMMARY

Registration No. 52/01
Hamdi Rashica
against
The United Nations Mission in Kosovo
(UNMIK)

31 October 2001

In this case, the Ombudsperson found that in December 2000 an UNMIK Police Officer had used excessive force against the applicant, causing him injuries and thus violating his right to be free from ill-treatment guaranteed under Article 3 of the European Convention on Human Rights. The Ombudsperson also found a violation of the applicant's right to an effective remedy under Article 13 of the European Convention on Human Rights.

The Ombudsperson recommended that the SRSG, **no later than 30 November 2001**, ensure that criminal proceedings were begun against the UNMIK Police Officer who had used excessive force against Mr. Rashica, wherever jurisdiction lay, provide Mr. Rashica with the identity and nationality of the UNMIK Police Officer who had used excessive force against him, provide Mr. Rashica with full information about the means and mechanisms through which he could raise a claim for compensation and/or damages against the responsible Police Officer and/or against UNMIK and promulgate a Regulation or issue publicly another appropriate legal act to ensure that any individual suffering a violation of human rights or an abuse of authority by a person acting in an official capacity in Kosovo would be provided with the name, nationality and all other pertinent information about that person and will have available, also in Kosovo, an effective remedy in the sense of Article 13 of the European Convention on Human Rights.

In a letter dated 12 March 2002, the SRSG indicated that he had taken the following actions:

- **brought the case to the attention of the acting UNMIK Police Commissioner, requesting the full co-operation of the UNMIK Police to ensure that appropriate legal action could be taken to address any criminal acts that might have been committed**

- **requested the assistance of the DSRSG for Police and Justice in forwarding the case to an international public prosecutor for his attention**

- **forwarded the case to the UNMIK Claims Review Board for their determination as to whether the applicant should be awarded compensation**

SUMMARY

Registration number 122/01

Elife Murseli
against
The United Nations Mission in Kosovo
(UNMIK)

10 December 2001

The applicant in this case complained about the failure of the responsible governmental authorities to execute a judgment of the Municipal Court in Kacanik holding that a competition for the directorship of a pre-school in the Municipality had been unfair and calling on the authorities to re-evaluate the qualifications of the candidates who had been short-listed for the job. The judgment of 12 March 2001 became final on 10 April 2001.

The Ombudsperson found that the case fell within the purview of Article 6 of the European Convention on Human Rights, in accordance with prevailing European legal standards regarding labour and hiring disputes affecting teachers and other education professionals working within the public employment sector. The Ombudsperson further found that the execution of a final and binding judgment of a court constituted an important aspect of the right to a court guaranteed under Article 6 of the Convention. In connection with points raised by the Respondent Party during the course of the investigation, the Ombudsperson also found not only that claims of immunity could not serve to nullify fundamental human rights but that the scope of immunity established by UNMIK Regulation 2000/47 did not extend to the matters at issue in the case, a view confirmed by the domestic court in its judgment. The Ombudsperson finally found that there currently existed in Kosovo no 'state of emergency' that could justify any derogation of the right to a court guaranteed under Article 6 with respect to the recruitment of education professionals by governmental authorities. The failure of UNMIK to execute the final judgment of the Municipal Court in Kacanik thus constituted a violation of the applicant's rights under Article 6 of the European Convention on Human Rights.

The Ombudsperson recommended that the SRSG, **no later than 31 December 2001**, instruct the responsible education authority to comply with the judgment of the Kacanik Muncipal Court without further delay.

In a letter of 29 January 2002, the SRSG disavowed any responsibility of the UNMIK authorities for the recruitment process at issue in this case, on the grounds that the governmental authorities that had conducted the process did not have the competence to do so. The SRSG concluded by stating, '[W]here ... a court enters a judgment against a party incapable of performing the acts specified in the judgment, UNMIK cannot be faulted for the result'.

The Ombudsperson notes that UNMIK exercised direct control over all aspects of the recruitment process at issue in this case. All levels of governmental authorities were obliged to implement UNMIK legal acts, administrative instructions, and so forth throughout the recruitment process. The signatures of UNMIK authorities were required for the appointment of the successful candidate for the post at issue.

The Ombudsperson also notes that the position of UNMIK throughout the investigation of this case and as reflected in the above correspondence has reflected arbitrary and inconsistent conduct. At various points throughout the domestic legal proceedings, UNMIK invoked its total immunity from legal process as its grounds for refusing to participate. Well after the judgment became final, UNMIK filed a request to waive the relevant deadlines and to have the proceedings repeated, thus implying that they were waiving whatever immunity they enjoyed. However, the competent court rejected this request on the grounds that the deadline had passed. UNMIK then appealed this decision, arguing that the deadline had not expired because of the date on which they had received the judgment. The court rejected this appeal, on the grounds that the judgment had been delivered to UNMIK at an earlier date, for which the court provided official documentation.

Subsequently, the Director of Education in Kacanik issued a decision for the execution of the judgment (annulling the appointment made in contravention of the applicable labour law and calling on the recruitment panel to review the applications again, in accordance with the Municipal Court judgment). The Principal International Officer of the UNMIK Transitional Administrative Department of Education, Science and Technology, however, instructed the Director of Education in Kacanik to reinstate the candidate and not to proceed further, on the grounds that 'any steps to reopen the selection procedure ... fall within the competence

of the DES', in direct contradiction to the position taken by the SRSG in his formal response to the Report of the Ombudsperson.

The judgment has not been executed.

In connection with this case, the Ombudsperson expresses his continuing concern about the negative effects of the total immunity of UNMIK from legal process in Kosovo (see Special Report No. 1). In this regard, the Ombudsperson considers that the extension of this immunity to the recruitment of pre-school teachers, in contravention of the applicable law in Kosovo, and the refusal of UNMIK to execute valid judgments of domestic courts in public employment cases, also in contravention of the applicable law in Kosovo, cannot have been envisioned by the United Nations Security Council in its Resolution 1244.

SUMMARY

Ex officio Registration No. 8/01/II
Concerning the right to life of R.C.

29 January 2002

In this Report, the Ombudsperson found that the investigation by the competent authorities into the killing of R.C. on 3 February 2000 failed to meet the requirements of Article 2 of the European Convention of Human Rights guaranteeing the right to life. In this case, the competent authorities took no investigative actions after 11 September 2000.

The Ombudsperson noted that Article 2 of the Convention requires the state to conduct an effective investigation when an individual has been killed as a result of the use of force, whether or not agents of the State are implicated in the killing. The effectiveness of any such investigation should be capable of leading to the identification and punishment of those responsible. Attributes of an effective investigation include such actions as the prompt and determined follow up of initial investigative steps, such as the questioning of suspects and witnesses, the search of premises and so forth. The Ombudsperson stressed, in this regard, that a difficult or even dangerous environment for security forces and police could not be a persistent excuse for the failure of the authorities to pursue effective investigative measures.

In this case, the Ombudsperson found that the authorities had taken only very limited action in investigating the killing of R.C.. In particular, he found that the authorities had never questioned individuals whose names and addresses had been provided at an early date by witnesses and that no investigative actions at all had been taken since 11 September 2000. The inadequacy of the investigation, therefore, constituted a violation of the right to life guaranteed under Article 2 of the European Convention on Human Rights.

The Ombudsperson recommended that the Special Representative of the Secretary General of the United Nations, should, **no later than 1 March 2002**, ensure that the competent authorities actively pursue their investigations into the killing of R.C. with a view to the indictment and prosecution of those responsible for the killing.

There has been no response to this Report.

SUMMARY

Ex officio Registration No. 8/01/V
Concerning the right to life of S.A.

29 January 2002

In this Report, the Ombudsperson found that the investigation by the competent authorities into the shooting of S.A. on 3 February 2000 and her subsequent death on 4 February 2000 failed to meet the requirements of Article 2 of the European Convention of Human Rights guaranteeing the right to life. In this case, the competent authorities have taken no investigative actions since 11 September 2000.

The Ombudsperson noted that Article 2 of the Convention requires the state to conduct an effective investigation when an individual has been killed as a result of the use of force, whether or not agents of the State are implicated in the killing. The effectiveness of any such investigation should be capable of leading to the identification and punishment of those responsible. Attributes of an effective investigation include such actions as the prompt and determined follow up of initial investigative steps, such as the questioning of suspects and witnesses, the search of premises and so forth. The Ombudsperson stressed, in this regard, that a difficult or even dangerous environment for security forces and police could not be a persistent excuse for the failure of the authorities to pursue effective investigative measures.

In this case, the Ombudsperson found that the authorities exercised proper diligence at the beginning of their investigations regarding the killing of S.A. but that they were less diligent during succeeding months. In particular, he found that important information obtained through interviews was never followed up and that no investigative actions at all had been taken since 11 September 2000. The Ombudsperson considered that the inadequacy of the investigation, therefore, constituted a violation of the right to life guaranteed under Article 2 of the European Convention on Human Rights.

The Ombudsperson recommended that the Special Representative of the Secretary General of the United Nations, should, **no later than 1 March 2002**, ensure that the competent authorities actively pursue their investigations into the killing of R.C. with a view to the indictment and prosecution of those responsible for the killing.

There has been no response to this Report.

SUMMARY

Ex officio Registration No. 8/01/IV
Concerning the right to life of S.B.

29 January 2002

In this Report, the Ombudsperson found that the investigation by the competent authorities into the killing of S.B. on 3 February 2000 failed to meet the requirements of Article 2 of the European Convention of Human Rights guaranteeing the right to life. In this case, the competent authorities took no investigative actions between 11 September 2000 and 3 December 2001.

The Ombudsperson noted that Article 2 of the Convention requires the state to conduct an effective investigation when an individual has been killed as a result of the use of force, whether or not agents of the State are implicated in the killing. The effectiveness of any such investigation should be capable of leading to the identification and punishment of those responsible. Attributes of an effective investigation include such actions as the prompt and determined follow up of initial investigative steps, such as the questioning of suspects and witnesses, the search of premises and so forth. The Ombudsperson stressed, in this regard, that a difficult or even dangerous environment for security forces and police could not be a persistent excuse for the failure of the authorities to pursue effective investigative measures.

In this case, the Ombudsperson found that the authorities had taken only very limited action in investigating the killing of S.B.. He also found that from 11 September 2000 to 3 December 2001, the competent authorities had taken no substantive investigative action at all. The Ombudsperson considered that even should actions taken after 3 December 2001 bear fruit, a fifteen month gap in pursuing the investigation could not be considered acceptable. The inadequacy of the investigation, therefore, constituted a violation of the right to life guaranteed under Article 2 of the European Convention on Human Rights.

The Ombudsperson recommended that the Special Representative of the Secretary General of the United Nations, should, **no later than 1 March 2002**, ensure that the competent authorities actively pursue their investigations into the killing of R.C. with a view to the indictment and prosecution of those responsible for the killing.

There has been no response to this Report.

SUMMARY

Ex officio Registration No. 8/01/I
Concerning the right to life of V.S. and V.N.

29 January 2002

In this Report, the Ombudsperson found that the investigation by the competent authorities into the killing of V.S. and V.N. on 3 February 2000 failed to meet the requirements of Article 2 of the European Convention of Human Rights guaranteeing the right to life. In this case, the competent authorities took no investigative actions between 11 September 2000 and 3 December 2001.

The Ombudsperson noted that Article 2 of the Convention requires the state to conduct an effective investigation when individuals have been killed as a result of the use of force, whether or not agents of the State are implicated in the killings. The effectiveness of any such investigation should be capable of leading to the identification and punishment of those responsible. Attributes of an effective investigation include such actions as the prompt and determined follow up of initial investigative steps, such as the questioning of suspects and witnesses, the search of premises and so forth. The Ombudsperson stressed, in this regard, that a difficult or even dangerous environment for security forces and police could not be a persistent excuse for the failure of the authorities to pursue effective investigative measures.

In this case, the Ombudsperson found that the authorities exercised proper diligence at the beginning of their investigations regarding the killings of V.S. and V.N. but that they were less diligent during succeeding months. He also found that from 11 September 2000 to 3 December 2001, the competent authorities had taken no substantive investigative action at all. The Ombudsperson considered that even should actions taken after 3 December 2001 bear fruit, a fifteen month gap in pursuing the investigation could not be considered acceptable. The inadequacy of the investigation, therefore, constituted a violation of the right to life guaranteed under Article 2 of the European Convention on Human Rights.

The Ombudsperson recommended that the Special Representative of the Secretary General of the United Nations, should, **no later than 1 March 2002**, ensure that the competent authorities actively pursue their investigations into the killings of V.S. and V.N. with a view to the indictment and prosecution of those responsible for the killings.

In a letter dated 12 March 2002, the SRSG stated that the UNMIK Police investigation had not yielded any evidence regarding the identity of the perpetrator or perpetrators of two unsolved murders that had occurred in Mitrovica on 3 February 2000, but that the Police were continuing their search for new witnesses.

SUMMARY

Registration No. 361/01
Shefqet Maliqi
against
The United Nations Mission in Kosovo
(UNMIK)

13 March 2002

In this case, the applicant alleged that, on 1 May 2001, he was ill-treated by an UNMIK Police Officer while in custody in Vitija/Vitina Police Station, in contravention of his rights under Article 3 of the European Convention on Human Rights. In their report on the internal investigation of the allegations, the UNMIK Police themselves concluded that an UNMIK Police Officer used excessive force against the applicant on 1 May 2001 in Vitija/Vitina Police Station. The Ombudsperson therefore found a violation of the right of the applicant to be free from ill-treatment guaranteed under Article 3 of the European Convention on Human Rights.

The Ombudsperson also found a violation of the applicant's right to an effective remedy under Article 13 of the European Convention on Human Rights. The Ombudsperson stressed that an effective remedy for violations of the prohibition against ill-treatment calls for: 1) an investigation into allegations of ill-treatment that is capable of leading to the identification and punishment of those responsible; 2) the prosecution under the criminal law of those responsible; 3) effective access of the victim to any criminal investigative proceedings against the agent who has ill-treated him; and 4) availability of proceedings through which the victim may be able to obtain compensation where appropriate.

The Ombudsperson also reiterated his serious and ongoing concern about the wide scope and continuing applicability of UNMIK Regulation 2000/47 granting immunity to UNMIK and its personnel in Kosovo (cf. Special Report No. 1) and emphasised that the United Nations dual policy of anonymity of its international police officers and the refusal even to identify the country from which a police officer abusing rights comes creates a fertile environment for 'virtual impunity' to flourish.

The Ombudsperson recommended that the Special Representative of the Secretary General of the United Nations, **no later than 12 April 2002**, ensure that criminal proceedings were begun against the UNMIK Police Officer who had used excessive force against Mr. Maliqi, wherever jurisdiction lay, provide Mr. Maliqi with the identity and nationality of the UNMIK Police Officer who had used excessive force against him, provide Mr. Maliqi with full information about the means and mechanisms through which he could raise a claim for compensation and/or damages against the responsible Police Officer and/or against UNMIK and promulgate a Regulation or issue publicly another appropriate legal act to ensure that any individual suffering a violation of human rights or an abuse of authority by a person acting in an official capacity in Kosovo would be provided with the name, nationality and all other pertinent information about that person and will have available, also in Kosovo, an effective remedy in the sense of Article 13 of the European Convention on Human Rights.

In a letter dated 19 March 2002, the SRSG indicated that he had taken the following actions:

- **brought the case to the attention of the UNMIK Police Commissioner, requesting the full co-operation of the UNMIK Police to ensure that appropriate legal action could be taken to address any criminal acts that might have been committed**

- **requested the assistance of the DSRSG for Police and Justice in forwarding the case to the international public prosecutor for his attention**

- **forwarded the case to the UNMIK Claims Review Board for their determination as to whether the applicant should be awarded compensation**

In a letter dated 29 April 2002, the DSRSG indicated that he had forwarded the case to an international prosecutor in Gjilan/Gnjilane and would inform the Ombudsperson of further developments at the conclusion of the investigation.

SUMMARY

Ex officio Registration No. 9/2000
Regarding the spring 2001 recruitment process for the Kosovo Police Service
in Dardane, Kamenica

13 March 2002

This case related to allegations presented in a 19 February 2001 article in the newspaper "Koha Ditore" that a notice of a competition for recruitment to the Kosovo Police Service had been misleading and that a number of persons suffered financial losses as a result.

The Ombudsperson found that the notice announcing the competition had been clear and there had thus been no violation of human rights or abuse of authority.

SUMMARY

Ex officio *Registration No. 24/2002*
Regarding the refusal of UNMIK
to register a contract for the sale of a residential property in Lipjan/Lipljan

22 April 2002

In this Report, the Ombudsperson found that the refusal of the UNMIK Municipal Administrator in Lipjan/Lipljan to permit the Municipal Court to register a contract for a sale of residential property, pursuant to UNMIK Regulation 2001/17 constituted a violation of the following human rights of the individuals affected: the right to peaceful enjoyment of possessions (Article 1 of the Additional Protocol to the European Convention on Human Rights); the right to respect for private and family life and for the home (Article 8 of the European Convention on Human Rights); the right to choose one's place of residence (Article 2 of Protocol No. 4 of the European Convention on Human Rights); the right to freedom from discrimination (Article 14 of the European Convention on Human Rights); and the right to freedom from the imposition of restrictions on rights for purposes other than those prescribed under the Convention (Article 18 of the European Convention on Human Rights). The Report reiterated concerns raised in conjunction with Special Report No. 5 (see above at p. 12). The Ombudsperson also found that the implementation of a Regulation that had previously been found to be incompatible with recognised international human rights standards also constituted an abuse of authority by the Municipal Administrator in Lipjan/Lipljan.

The Ombudsperson recommended that, **no later than 31 May 2002**, the SRSG abolish UNMIK Regulation No. 2001/17 on the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo (22 August 2001), Administrative Direction 2001/16 Implementing UNMIK Regulation No. 2001/17 on the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo (19 October 2001), and Administrative Direction 2002/4 Implementing UNMIK Regulation NO. 2001/17 on the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo (28 February 2002). The Ombudsperson also recommended that the SRSG issue a new Administrative Direction declaring null and void any decision to refuse to register a contract for the sale of real property anywhere in Kosovo, where that decision was taken pursuant to UNMIK Regulation No. 2001/17 and/or Administrative Directions 2001/16 or 2002/4 and inform all courts in Kosovo of the above actions and should direct them to register any contracts for the sale of property that have not been registered pursuant to the implementation of UNMIK Regulation 2001/17

In a letter of 20 May 2002, the SRSG stated, *inter alia*, that 'The Regulation ... does not violate human rights of individuals. It is the duty of the Administration to implement the Regulation. The Municipal Administrator of Lipjan/Lipljan ... was, therefore, justified in enforcing the Regulation, and this cannot be called an abuse of power.'

SUMMARY

Registration No. 412/01
Muharrem Sadiku
against
The Municipal Court in Gjilan/Gnjilane

29 April 2002

In this case, the Ombudsperson found that the failure of the Municipal Court in Gjilan/Gnjilane to communicate a decision of the District Court of 19 January 1999 to the applicant until 28 January 2002 constituted a violation of his right to a fair hearing within a reasonable time, as guaranteed under para. 1 of Article 6 of the European Convention on Human Rights. The Ombudsperson also found that the absence of any remedy for the violation of the right to a fair hearing within a reasonable time, as guaranteed under Article 6 of the European Convention on Human Rights, also constituted a violation of the right to an effective remedy under Article 13 of the Convention.

With respect to the violation of Article 6 of the Convention, the Ombudsperson noted that the length of proceedings in a civil case is normally calculated from the time of the initiation of the court proceedings to the time when the case is finally determined and/or the judgment has been executed. The Ombudsperson also noted that one of the factors to be taken into consideration when determining the reasonableness of the length of proceedings is the conduct of the competent administrative and judicial authorities. In this regard, it is the responsibility of the courts to organise their work in such a way that individuals are apprised of the progress and outcome of their cases in a timely fashion. In the present case, the decision of the District Court of 19 January 1999 was not communicated to the applicant until three years later. Even taking into account disruptions to the judicial system stemming from the 1999 conflict, the applicant had exercised due diligence since the end of the conflict to try to obtain information about the status of his case. The excessive delays in providing the applicant with the decision in his case could thus be attributed exclusively to the responsible judicial authorities. There was therefore a violation of the right to a fair hearing within a reasonable time guaranteed under para. 1 of Article 6 of the European Convention on Human Rights.

With respect to the violation of Article 13 of the Convention, the Ombudsperson stressed that excessive delays in the administration of justice in respect of which litigants have no remedy constitutes a threat to the rule of law within a domestic legal order. He also noted that the effect of Article 13 is to require the provision of a domestic remedy to deal with the substance of an 'arguable complaint' under the Convention and to grant appropriate relief. Any such remedy must be effective in practice as well as in law. In connection with a complaint about unreasonably long proceedings, an 'effective remedy' in the sense of Article 13 would either have to have been able to prevent the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred. The Ombudsperson noted that no specific legal avenue existed whereby the applicant in the present case could have complained about the length of proceedings with any prospect of obtaining either preventive or compensatory relief. There was therefore a violation of the right to an effective remedy guaranteed under Article 13 of the European Convention on Human Rights.

The Ombudsperson recommended that the Special Representative of the Secretary-General of the United Nations, should, **no later than 31 May 2002**, issue a formal instruction to all courts operating in Kosovo: 1) to review the files of all cases for which decisions and/or judgments were issued during 1998 and 1999; 2) to document the communication of such decisions and judgments to the relevant parties; and 3) to complete these tasks within a reasonable time, in light of the requirements of Article 6 of the European Convention on Human Rights. He also recommended that, by the same date, the Special Representative of the Secretary-General issue a Regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human Rights.

There has been no response to this Report. However, at the end of April 2002, the Director of the Department of Justice provided the Ombudsperson with a copy of an undated Circular sent to the Presidents of all courts in Kosovo, asking them to conduct a review of all court files containing judgments or decisions from 1999 or before in order to ensure that any such judgments or decisions be communicated to the relevant parties by 31 May 2002.

SUMMARY

Ex officio Registration No. 11/2001
Regarding Alleged Discrimination in the Provision of Social Assistance
by the
Center for Social Welfare in Fushe Kosove/Kosovo Polje

3 June 2002

This case investigated allegations presented in a Weekly Report (3 April - 9 April 2001) of the Human Rights/Rule of Law section of the OSCE Mission in Kosovo (OMIK) that the Center for Social Work in Fushe Kosove/Kosovo Polje had conducted itself in a discriminatory manner with regard to the provision of social assistance to Serb families in the municipality. The substance of the complaint was that the Center for Social Welfare had not provided social assistance to any new Serbian families during the period January to March 2001.

The Ombudsperson found that the number of Serbian families receiving social welfare decreased by 2% during the relevant period. However, the Ombudsperson's investigations into this minimal decrease in the number of Serbian families receiving social assistance in Fushe Kosove/Kosovo Polje did not reveal any discriminatory policies or practices leading to this decrease.

The Ombudsperson therefore concluded that there had been no violation of human rights or abuse of authority.

Annex 4: Summaries of selected letters requesting assistance or services

(1 July 2001 – 30 June 2002)

15 August 2001: Letter to the Commander of KFOR Multi-national Brigade North (Mitrovica) in support of a request by the Director of Mitrovica Detention Center for Brigade North to provide any emergency medical care needed by detainees engaged in a hunger strike.

> **In a letter of 17 August 2001, the Commander of KFOR Multi-national Brigade North (Mitrovica) informed the Ombudsperson that the provision of medical services to detainees was the responsibility of UNMIK, rather than KFOR. He had forwarded the Ombudsperson's request to the competent UNMIK authorities. He also indicated his readiness to provide emergency medical care to any of the hunger strikers requiring such attention, on the request of the responsible UNMIK/DJA doctor.**

27 August 2001: Letter to the SRSG asking for his assistance in helping individuals from Kosovo gain access to their financial assets held in banks in Serbia proper. Also **14 November 2001 l**etter to the SRSG requesting his assistance in helping an individual requiring expensive and urgent medical treatment to obtain access to financial assets held in "Jugobanka" in Belgrade and repeating general concerns raised in the letter of **27 August 2001**.

> **In a letter of 28 March 2002, the SRSG informed the Ombudsperson of actions taken to resolve both the urgent individual case, regarding which he had requested the competent body in Kosovo (BPK) to act, and the general issues surrounding access of individuals from Kosovo to their financial assets in Serbia proper, regarding which the BPK had held several meetings with its counterpart in Serbia. The SRSG further informed the Ombudsperson about the applicable FRY law governing repayment of foreign exchange savings to individuals whose accounts had been frozen in 1991, but noted that such payments from accounts held in "Jugobanka" might be negatively affected by its having been placed in receivership.**

31 October 2001: Letter to the UNMIK Director of the Department of Social Welfare concerning electricity cuts of destitute individuals

> **In a letter of 26 November 2001, the Director of the Department of Social Welfare informed the Ombudsperson about a one-off "winterization" payment scheme to all beneficiaries of the Social Assistance Scheme (approximately 56,000 families) and plans to introduce an "Exceptional Needs" scheme for families needing a small amount of money for an emergency such as an electricity cut-off. The Director noted that the Central Fiscal Authority had rejected a proposal from the Department of Social Welfare for the introduction of limited electricity concessions for persons receiving social assistance.**

2 November 2001: Letter to the UNMIK Co-head of the Department of Transport concerning repairs to a road in extremely bad condition connecting twenty villages in the north eastern section of Podujeve/Podujevo and asking for favourable consideration of the request of the residents and the Municipal authorities to place a priority on repairing the road.

> **There has been no response to this letter.**

11 December 2001: Letter to the Minister of Finance and Economy of the Government of Serbia asking for his assistance to help a resident of Kosovo obtain access to his savings in "Jugobanka" Belgrade for the purposes of paying for urgent medical treatment.

> **In a letter of 8 January 2002, the Minister of Finance and Economy of the Government of Serbia informed the Ombudsperson that he had referred the matter to the Minister of the Economy of the Federal Republic of Yugoslavia.**

4 January 2002: Letter to the Head of the UNMIK Department of Public Utilities concerning the lack of drinking water available to the residents of the Hajredinaj quarter of the village of Koshtova, Mitrovica Municipality.

There has been no response to this letter.

8 January 2002: Letter to the Deputy SRSG for Civil Administration describing difficulties faced by forcibly retired teachers and recommending that certain actions be taken to improve their economic circumstances. Follow-up letter sent to the SRSG on **19 March 2002**.

In a letter of 7 May 2002, the SRSG clarified circumstances surrounding the loss of jobs by teachers during 2001 (including those characterising the actions as forced retirements). He also stated that UNMIK's roll in the education sector did not extend to accepting any legal or financial responsibility for obligations or liabilities owed to education employees by previous regimes.

9 January 2002: Letter to the Co-Head of the UNMIK Department of Justice asking him to ensure that over one hundred outstanding labour cases pending before the Municipal Court in Mitrovica could proceed, either by appointing a competent judge in the field of labour relations, or by transferring the cases to the nearest court with the necessary competence.

In a letter of 4 June 2002, the Director of the UNMIK Department of Justice informed the Ombudsperson that five judicial positions in the Municipal Court in Mitrovica were in the process of being filled. The Director also attributed part of the delay to periods of civil unrest that made it impossible for judges and/or parties to attend court sessions. Hearings for 91 outstanding cases were scheduled to take place by 27 June 2002.

29 January 2002: Letter to the SRSG concerning the lack of access of Kosovo Albanians to civil documents being held in Serbia proper.

There has been no response to this letter.

29 January 2002: Letter to the UNMIK Police Commissioner concerning the establishment of a local police station in Bardosh/Devet Jugovic. Similar letter sent to the Deputy SRSG for Police and Justice on **28 February 2002**.

In a letter of 11 March 2002, the Deputy SRSG for Police and Justice informed the Ombudsperson that the budget for 2002 did not provide for the establishment of a police station in Bardosh/ Devet Jugovic, but that such a suggestion could be considered by the Police in the context of the 2003 budget cycle.

30 January 2002: Letter to the Co-Director of the UNMIK Department of Public Services concerning the continuing impossibility for individuals to obtain driver's licenses in Kosovo. Similar letter sent on **4 March 2002**, noting also that Municipalities in Kosovo had begun to issue their own driving permits.

In a letter of 20 March 2002, the Principal International Officer of the Transitional Department of Public Services informed the Ombudsperson that a comprehensive system of training, examining licensing and certifying driving instructors and/or drivers was scheduled to be put in place during the second half of 2002 and that the public would be informed accordingly.

1 February 2002: Letter to the UNMIK Police Commissioner concerning the suspension of two individuals from the Kosovo Police School and the refusal to permit a third individual from attending the School.

In a letter of 14 February 2002, the Deputy Police Commissioner for Planning and Development informed the Ombudsperson that the two suspended individuals were to be reinstated, with no negative effects on their seniority, and that the third individual had been placed at the top of the list of candidates for the next class at the Police School.

5 February 2002: Letter to the UNMIK Department of Justice requesting that a detainee be transferred from the Pristina to the Mitrovica Detention Centre to enable his father to visit him, expressing concerns about difficulties faced by other members of ethnic minorities wishing to visit their relatives in detention and recommending that such detainees either be moved to detention facilities to which regular convoys had been arranged or that additional convoys be instituted to detention facilities not currently served.

In a letter of 19 February 2002, the Head of the Penal Management Division of the UNMIK Department of Justice informed the Ombudsperson that operational and security concerns rendered it impossible to order the transfer of the individual detainee to Mitrovica and that responsibility for escorting relatives of detainees was vested in the UNMIK Police.

5 February 2002: Letter to the Director of the UNMIK Civil Registry concerning civil registration of persons under sixteen years of age and issuance of travel documents to them.

In a letter of 7 February 2002, the UNMIK Civil Registrar informed the Ombudsperson that he had issued an instruction to Municipal Civil Registration Centres to begin registering children for the purpose of issuing them both ID cards and, subsequently, UNMIK travel documents.

5 February 2002: Letter to the UNMIK Municipal Administrator in Prizren concerning the difficult living circumstances and personal security situation of an elderly Serb man living alone in the centre of Prizren.

In a letter of 20 February 2002, the UNMIK Municipal Administrator in Prizren informed the Ombudsperson about assistance and services provided to the individual concerned by UNMIK, the OSCE, UNHCR and KFOR and indicating the intention to redouble efforts to enable him to lead a more normal life. She also noted that the responsibility for his personal security lay with the competent security authorities.

12 February 2002: Letter to the Head of the UNMIK Social Welfare Department outlining concerns about the Social Assistance scheme in Kosovo.

There has been no response to this letter.

28 February 2002: Letter to the Deputy SRSG for Police and Justice regarding internal investigations into allegations that UNMIK and/or KPS Police Officers have ill-treated detainees or abused their authority and the refusal of UNMIK to allow representatives of the Ombudsperson Institution to have access to relevant documentation, in contravention of UNMIK Regulation 2000/38.

In a letter of 11 March, the Deputy SRSG for Police and Justice informed the Ombudsperson that the Police would provide relevant information 'as long as it does not jeopardize further investigations or the security and privacy of individuals'. He also noted that UNMIK was conducting a review of its compliance with its obligations under the applicable law and would provide more detailed information on the conclusion of that review.

5 March 2002: Letter to the Pristina Regional Commander of the UNMIK Police regarding denial of access to documents and files to the Ombudsperson Institution, in contravention of UNMIK Regulation 2000/38 and requesting information regarding a number of investigations into physical attacks on specific individuals and their property in Lipjan/Lipljan.

There has been no response to this letter.

8 March 2002: Letter to the Director of the UNMIK Department of Judicial Affairs recommending the assignment of an international panel of judges to hear an appeal in a criminal case that had had extensive media coverage due to its political overtones.

There has been no response to this letter.

19 March 2002: Letter to the SRSG concerning the eviction of Rilindja and TAN news companies from their premises in Pristina

In a letter of 3 April 2002, the SRSG informed the Ombudsperson that the premises at issue had been under UNMIK administration since 1999 and that the two news companies had been asked to vacate the building in 2000 and 2001 but had failed to do so, although they had been offered alternative office and archive space in a nearby building. The building itself is to be renovated for use as office space for the Provisional Institutions of Self-Government.

19 March 2002: Letter to the Deputy SRSG for Police and Justice asking for accelerated handling of requests from a group of high school students for UNMIK travel documents in order for them to be able to participate in an academic programme abroad.

> **In a letter of 22 March 2002, the Deputy SRSG for Police and Justice informed the Ombudsperson of the procedures to be followed to obtain ID cards and, subsequently, UNMIK Travel Documents. (The students all obtained the necessary papers and were able to participate in the programme.)**

21 March 2002: Letter to the UNMIK Police Commissioner asking him to provide an individual with a copy of the UNMIK police report of an automobile accident involving the individual and KFOR, in order for the individual to proceed with discussions with his insurance company.

> **In a letter of 15 April 2002, the UNMIK Police Commissioner informed the Ombudsperson that the matter at issue fell under the jurisdiction of the KFOR Military Police, from whom a copy of the report could be requested.**

22 March 2002: Letter to the SRSG expressing the view of the Ombudsperson that courts conducting criminal proceedings in Kosovo should not be permitted to attempt to exercise their jurisdiction outside of Kosovo for part of those proceedings.

> **There has been no response to this letter.**

29 March 2002: Letter to the President of the Supreme Court asking for information about steps to be taken to move forward with civil proceedings regarding which no action had been taken for a considerable period of time

> **In a letter of 3 May 2002, the Director of the UNMIK Department of Justice forwarded a memorandum of 18 April 2002 from the President of the Supreme Court explaining that the delay in the proceedings in the case at issue stemmed primarily from delays in the appointment of lay judges to the Court until 18 March 2002. He noted that he expected a decision in the case to be issued within a month of the date of his memo.**

3 April 2002: Letter to the Director of "Elektrokovosa" (KEK) asking for the company to ensure that the electricity supply of a disabled unemployed person would not be cut off for failure to pay a large bill.

> **There has been no response to this letter.**

28 May 2002: Letter to the SRSG asking for his intervention with the Serbian authorities to enable individuals with accrued pension rights in Kosovo to obtain their pensions. (Identical requests had been addressed to the previous SRSG on two occasions).

> **There has been no response to this letter.**

31 May 2002: Letter to the SRSG expressing concern about the refusal of the Director of Dubrava Prison to permit representatives of the Ombudsperson to visit prisoners without providing twenty-four hours notice, in contravention of UNMIK Regulation 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo.

> **In a letter received by the Ombudsperson on 18 June 2002, the SRSG informed the Ombudsperson that the Regulation would be respected and recommended several means to ensure that visits of Ombudsperson Institution staff to detention facilities would go smoothly.**

4 June 2002: Letter to the Deputy SRSG for Police and Justice expressing concern that the evictions or planned evictions of ethnic Albanians who had formerly resided in North Mitrovica from properties they were temporarily occupying in Pristina would render the affected families homeless, due to the impossibility of their returning to North Mitrovica.

> **There has been no response to this letter.**

5 June 2002: Letter to the General Director of Post and Telecom of Kosovo (PTK) asking for important information to be provided to the public in both Albanian and Serbian.

In a letter of 7 June 2002, the General Director of PTK informed the Ombudsperson that budgetary constraints had prevented the provision of important information in Serbian, but the matter was in the process of being rectified.

24 June 2002: Letter to the SRSG regarding difficulties faced by individuals living and working outside Kosovo wishing to obtain UNMIK identification cards and/or UNMIK travel documents, where long delays in the processing of applications for these documents plus requirements of personal appearances by applicants could lead to the loss of jobs or residence permits abroad of the affected individuals.