



**OMBUDSPERSON INSTITUTION in KOSOVO**

**SIXTH ANNUAL REPORT**

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**addressed to**

**the Assembly of Kosovo**

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## FOREWORD

This year has been a year of changes following the transfer of leadership of the Institution from an international to a local Ombudsperson, a modification of the Institution's mandate by an UNMIK Regulation promulgated in February 2006, the start of the process of drafting procedures for the recruitment and appointment of the next Ombudsperson by the Assembly of Kosovo, and most recently the drafting of the Assembly's Law on the Ombudsperson Institution, which is expected to be approved by the end of this year. These changes created certain difficulties for the staff of the Institution, especially since the current transition phase was initiated without a proper legal basis.

With the departure of my predecessor on December 2005, I was appointed Acting Ombudsperson in Kosovo by an Executive Decision issued by the SRSG, Mr. Søren Jessen-Petersen, and was given the responsibility of ensuring the continuation of the work of the Ombudsperson Institution until the appointment of a new Ombudsperson by the Assembly of Kosovo. Since this reporting period covers both the period when the Institution was under international leadership and the period of its transfer into local hands, I would like to take this opportunity to express my gratitude for Mr. Nowicki's contribution to human rights protection in Kosovo. As international Ombudsperson, he tirelessly defended the rights of people here during the last five years. I would also like to express my gratitude for his recommendations and advice during the preparation of this report.

For me, it is a special privilege and honour to have been given the chance to present, for the first time, an Annual Report of the Ombudsperson Institution to the Kosovo Assembly in its capacity as representative organ of the people.

While Kosovo is going through a very important period in which the future of its people is being defined, a process conducted under the auspices of the Security Council of the United Nations, the protection of the rights of people, in particular those of minorities, seems to be the greatest challenge for the Provisional Institutions of Self-Government, and one which will endure beyond the establishment of Kosovo's final status. The level of protection of human rights and the rule of law are key indicators of the level of democracy and they represent the main pillars for the eventual European integration of Kosovo.

In this context, the role of the Ombudsperson is of considerable importance. While working as an independent body with the authorities to investigate human rights violations and recommend remedies if those rights have been violated by the public authorities, the Ombudsperson will fulfil his mandate both by helping people on the one hand, and by using his authority to promote better governance on the other.

The contents of this Report demonstrate our concerns regarding problems faced by people on a daily basis and difficulties faced in the realisation of the rights accorded by the legal system in Kosovo. The lack of accountability of the public administration, insufficient protection of the rights of minorities, lack of a proper social security system, corruption, nepotism and organised crime are the main factors that have helped to create a system of legal uncertainty for the citizens of Kosovo and have prevented the justice system from functioning at an adequate level.

I would like to believe that many of the concerns this report raises will receive the proper attention of the authorities and that, in the near future, these issues will be resolved and surpassed. I would like to believe in the commitment of the policy-makers, governmental leaders and public officials to make the protection and respect for the rights of people a genuine reality in Kosovo society.

Hilmi Jashari  
Acting Ombudsperson  
July 2006

## **INTRODUCTION**

This Annual Report is issued in accordance with Section 16.1 of United Nations Mission in Kosovo (UNMIK) Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo and Rule 16 of the Rules of Procedure of the Ombudsperson Institution.

The Sixth Annual Report covers the fifth full year of operations of the Institution, from 1 July 2005 to 30 June 2006. It has three main sections. The first section is an introduction to the Ombudsperson Institution, its staff and its work. The second section comprises a survey of human rights issues in Kosovo as seen from the perspective of the Acting Ombudsperson. The third section describes the activities and operations of the Institution during the reporting period.

### **Introduction to the Ombudsperson Institution**

The Ombudsperson Institution in Kosovo (OIK) is an independent organization which has a mandate to address alleged human rights violations or abuses of authority by public institutions in Kosovo. It was first established under UNMIK Regulation No. 2000/38, which gave the Institution a mandate to investigate complaints against UNMIK and the local public administration. In February 2006, UNMIK Regulation No. 2006/06 was promulgated, superseding Regulation No. 2000/38. Under Regulation No. 2006/06, the Ombudsperson Institution has a mandate to investigate complaints against local authorities or other organs of Kosovo's Provisional Institutions of Self-Government (PISG), but no longer complaints against the international administrative bodies in Kosovo.

The Ombudsperson Institution officially opened office on 21 November 2000 in Prishtinë/Priština with 18 staff members. At the time, all the senior staff were internationals. As the office expanded and field offices were opened, the Institution's staff swelled to 50 and gradually, internationals were replaced by locals. From mid-2003 until December 2005, the Institution consisted of the international Ombudsperson, two local deputies, a team of human rights lawyers and supporting administrative staff. In December 2005, the international Ombudsperson departed and one of the Deputy Ombudspersons was appointed Acting Ombudsperson. Regulation No. 2006/06 prescribes a new organisational structure: one local Ombudsperson, one Principal Deputy Ombudsperson and three Deputy Ombudspersons, all of which are to be appointed by the Assembly of Kosovo. As this Annual Report went to press, the Assembly had drafted, approved, and begun the implementation of a formal procedure to select a new Ombudsperson.

Since the founding of the Institution, its staff has been multiethnic – the majority is of Albanian ethnicity, while other staff members are of Serbian, Turkish or Roma origin. In accordance with Regulation No. 2006/06, the official working languages of the Institution are Albanian and Serbian.

## **The mandate of the Ombudsperson Institution**

The Ombudsperson Institution accepts and investigates complaints from anyone in Kosovo who believes that her or his human rights have been violated by a local public authority in Kosovo. The Institution conducts investigations, issues reports and provides legal services and public advocacy; all services are provided free of charge. If their investigations identify human rights violations, the leading representatives of the Institution may seek remedies through a variety of channels. They may demand further information from local authorities, recommend actions to local authorities, issue public reports, or raise their concerns with the media. In cases involving complaints of Kosovans against any public authorities outside Kosovo, the Ombudsperson Institution may offer its “good offices” to complainants, namely advice or other support; it may also forward the case to the competent domestic Ombudsman or similar institution of the state in question.

The Ombudsperson Institution is competent to act independently on information it has received and open investigations in the absence of a formally filed complaint (known as *ex-officio* investigations). The Institution is mandated to monitor the policies and laws adopted by local authorities to ensure that they respect human rights standards and the requirements of good governance. If the Ombudsperson Institution finds that a general practice or situation affecting the public as a whole – not only one person or group of persons – has violated international human rights’ standards, it may issue a Special Report with recommendations to the PISG.

To focus on the special concerns of certain vulnerable groups of people, particularly children, women and minorities, the Ombudsperson Institution has formed three special teams of lawyers: the Children’s Rights Team (CRT), the Gender Equality Unit (GEU) and the Non-Discrimination Team (NDT).

While the Ombudsperson Institution monitors the judiciary’s compliance with human rights standards, it is not a substitute for courts and cannot directly investigate crimes, change court decisions, or issue binding decisions of its own. The Ombudsperson Institution does not deal with disputes between private individuals and it has no jurisdiction over either the UN-led international administration in Kosovo (UNMIK) or NATO’s Kosovo Force (KFOR), the military force responsible for security in the territory of Kosovo.

## **The former Ombudsperson**

Mr. Marek Antoni Nowicki held the position of Ombudsperson from 11 July 2000 to 31 December 2005. He was originally appointed as the Ombudsperson in Kosovo on 11 July 2000 by the former United Nations Special Representative of the Secretary-General (SRSG), Mr. Bernhard Kouchner, upon the recommendation of the Chairman in Office of the Organisation for Security and Cooperation in Europe (OSCE). On 11 July 2002, the former SRSG Mr. Michael Steiner extended Mr. Nowicki’s mandate as Ombudsperson in Kosovo for another two years until 10 July 2004. On 26 May 2004, the former SRSG

Harri Holkeri prolonged the Ombudsperson's mandate for another year until 10 July 2005. On 4 May 2005, SRSG Søren Jessen-Petersen decided to extend Mr. Nowicki's mandate for the last time until the end of the year 2005, when the leadership of the Institution was completely transferred into local hands.

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

From 1993 to 1999, Mr. Nowicki was a member of the European Commission of Human Rights in Strasbourg. He is the President of the Helsinki Foundation of Human Rights in Warsaw and the Polish member of the European Union Network of Independent Experts on Fundamental Rights.

Mr. Nowicki's appointment as Ombudsperson expired on 31 December 2005, whereupon Deputy Ombudsperson Hilmi Jashari became Acting Ombudsperson.

### **The Acting Ombudsperson**

After the departure of Ombudsperson Marek Antoni Nowicki, Mr. Jashari was appointed Acting Ombudsperson by SRSG Jessen-Petersen for a term lasting from 1 January 2006 until the Assembly of Kosovo appoints a new Ombudsperson. In the meantime, he continues to hold the position and perform the duties of Deputy Ombudsperson as well.

Mr. Hilmi Jashari was born in 1969 in Mazgit, in central Kosovo. After graduating from the Law Faculty in Prishtinë/Priština in 1993, Mr. Jashari began working in Obiliq/Obilić as Secretary of the Council for the Defence of Human Rights and Freedoms, the largest non-governmental organization in Kosovo. After 1994, Mr. Jashari was involved in the activities of various Albanian associations abroad. From 1996 to 1998, he worked as a legal assistant at an attorney's office in Prishtinë/Priština.

Mr. Jashari has worked for the Ombudsperson Institution since October 2000, starting as a staff lawyer and rising to Director of Investigations in July 2001. He was appointed Deputy Ombudsperson on 14 March 2004 by the SRSG at the time, Mr. Harri Holkeri. This appointment was renewed by SRSG Søren Jessen-Petersen in July 2005.

### **The Deputy Ombudsperson**

The Deputy Ombudsperson assists the Acting Ombudsperson in directing the work of the Ombudsperson Institution, and replaces him in times of absence.



Deputy Ombudsperson Mr. Ljubinko Todorović was born in 1951 in Gračanica/Graçanicë. He was appointed Deputy Ombudsperson by the former SRSG Mr. Bernard Kouchner on 15 September 2000 and his term as Deputy Ombudsperson was prolonged several times, most recently on 11 January 2006 by SRSG Søren Jessen-Petersen.

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

Before the installation of the UNMIK International Administration in Kosovo, Mr. Todorović worked as a Manager for the "Geriatrics Centre" in Prishtinë/Priština.

### **Public access to the Ombudsperson Institution**

Access to the Ombudsperson Institution is provided through its main office in Prishtinë/Priština and the field offices in Gjilan/Gnjilane, Pejë/Peć, Mitrovicë/Mitrovica, Prizren and Gračanica/Graçanicë. The field offices are generally manned by one or two lawyers and one legal assistant/translator. The field office in Mitrovicë/Mitrovica has a sub-office in the northern part of the city and the field office in Pejë/Peć has a sub-office in the village of Vidanje/Vidaje near Klinë/Klina; each of these sub-offices is staffed by one lawyer.

The main office in Prishtinë/Priština is open to the public four days a week, Monday to Thursday, between 10:00 and 14:00. The field offices receive complainants twice a week between 10:00 and 14:00, on Mondays and Thursdays in Gjilan/Gnjilane, Pejë/Peć, Mitrovica and Gračanica/Graçanicë. The Field Office in Prizren receives applicants on Mondays and Wednesdays. In urgent cases, complainants may approach the Ombudsperson Institution outside visiting hours.

The Institution opened a sub-office in Vidanje/Vidaje in 2005 in order to provide persons from minority communities in Western Kosovo, notably the Serbian community, with easier access to the services of the Ombudsperson Institution. This office became operational in September 2005.

The lawyers of the headquarters in Prishtinë/Priština and those working in the field offices regularly visit municipalities, enclaves and areas with substantial populations of non-Albanian ethnicity. Mindful that prisoners and detainees throughout Kosovo have limited access to outside institutions and are vulnerable to human rights abuses, representatives of the Ombudsperson Institution also pay frequent visits to prisons and detention centres all over Kosovo on a regular basis.

With the cooperation of the competent prison authorities, the Ombudsperson Institution has continued the process of directly communicating with detainees and prisoners through special mailboxes standing in all prisons and detention centres in Kosovo. Only staff members of the Ombudsperson Institution have access to these mailboxes, which often provide detainees and prisoners with their first confidential contact with the Ombudsperson Institution. The Ombudsperson Institution also distributes forms to the administrators of detention centres and prisons which prisoners can use to formulate complaints or requests, and which are then forwarded to the Institution by the competent administrator.

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

The Institution regularly holds Open Days at which complainants may personally meet the Ombudsperson or a Deputy Ombudsperson. At the headquarters in Prishtinë/Priština, such Open Days take place twice a month, while the field offices offer them once a month, as well as once a month in Gjakovë/Đakovica. A list is maintained of complainants from Lipjan/Lipljan interested in meeting the Ombudsperson, and when the list is long enough, an Open Day is held there as well. In the regions covered by the Field Offices, the inhabitants are informed about the dates of these open days by schedules that are made accessible to the public in the buildings of the various municipalities, as well as through announcements in the local media and a list of dates published on the Ombudsperson Institution's website.

A hotline for urgent cases in the Ombudsperson Institution's headquarters leads directly into the main lawyers' office without passing through the Ombudsperson Institution's switchboard. Over the last year, it has been used with increasing frequency, improving access to the Institution for those who need it most urgently. The Ombudsperson Institution has also been receiving more complaints by e-mail from Kosovans and inhabitants of Kosovo who are living abroad.

The communication between the Ombudsperson Institution and Kosovans staying temporarily in Serbia proper or, to a lesser extent, in Montenegro continues to be facilitated through cooperation with the Serbian Commissioner for Refugees and the Spanish humanitarian NGO Movimiento por la Paz, el Desarme y la Libertad (Movement for Peace, Disarmament and Freedom - MPDL). The Institution and MPDL recently extended an agreement signed in the previous reporting period, in which the MPDL agreed to assist complainants in filling out complaint forms and in contacting the Ombudsperson Institution.

### **Public information and awareness-raising activities**

In order to publicise the most important events and cases before the Ombudsperson Institution, the "Quarterly Information Sheet" continues to be published every three months in Albanian, Serbian, English, and Turkish. It has significantly contributed to a

wider public awareness of the work of the Ombudsperson Institution in Kosovo, especially abroad.

The Ombudsperson Institution's website is also a vital source of information on the activities of the Institution and also provides online versions of all reports, key intervention letters and press releases.

To ensure a widespread awareness of the Open Days, the Institution maintains a programme of radio announcements. Two weeks before any given Open Day, prominent radio stations within the relevant community begin broadcasting radio announcements that explain the nature of both the Ombudsperson Institution and its Open Days.

In addition, the Children's Rights Team maintains its own individual awareness-raising campaign. This is directed mainly at schools, visiting classes or inviting them to come to the Institution to inform children directly about their rights and how the Institution can help protect them.

## **SELECTED HUMAN RIGHTS ISSUES IN KOSOVO**

### **General aspects**

This reporting period deals with a special time in the short history of Kosovo as an UNMIK protectorate, namely the situation of talks on the future status of Kosovo. The tensions among both political parties and certain ethnic groups, mainly Albanians and Serbs, are running high and the public debate on each stage of status talks leaves little room for other issues.

In this situation, the efficiency and state of affairs of human rights protection are only addressed as a marginal issue, usually only in the context of the fulfillment of the standards set by UNMIK. While this reporting period saw many good efforts to raise awareness of human rights issues, the work of the local public administration in Kosovo is still marked by a lack of accountability to the people under its jurisdiction. This is a general attitude of public officials which is felt in more or less all fields for which the PISG is competent.

Both the executive and the judiciary branches of the PISG are still perceived as weak and riddled with corruption. The majority of the inhabitants of Kosovo place little trust in either. The Kosovo Police Service, although complimented as being one of the best-trained police forces in Europe, still suffers from a lack of experience and is in no position to fight the extensive level of criminality and disrespect for laws existing in Kosovo today. The legal system is confusing and lacks transparency. Many laws are applied in a selective and arbitrary manner, especially in the field of property rights.

Such an arbitrary implementation of the law permits widespread discrimination Kosovo. Individuals dealing with the public administration can never be sure whether the office

that they are dealing with will apply the law in their case or not. Vulnerable groups, especially members of minority ethnic communities, suffer most from this difference in treatment.

The relationship between the authorities and the people of Kosovo needs to be improved and both sides need to give more respect and consideration to the rights of minorities. The majority of powers hitherto reserved for UNMIK have now been transferred to local bodies and it is time for these structures to assume responsibility for their respective fields of work. The inhabitants of Kosovo need to gain trust in the PISG administration, namely in its ability or willingness to follow the rule of law and respect human rights. Without this trust, which is an essential element of democracy, any discussion of implementing UNMIK's standards or other European values in Kosovo is empty.

### **Developments in the legal sector**

No democratic state can function properly without effective implementation of the rule of law. In many European States, proper rule of law systems were put into place a very long time ago, so their functioning is taken for granted. The example of Kosovo, currently under UNMIK administration, demonstrates, however, what kind of legal and practical consequences arise if a system is not coherent and where there is confusion as to the contents and applicability of laws. While it is clear that for the moment, Kosovo is a place in transition, no political or legal transition can be effected in a proper manner in the absence of a proper functioning of the rule of law. A proper system to ensure this is not something that can be put in place in the end of a transition – it is the one thing that should be put in place at the beginning of such a phase, the *sine qua non* for making any transition work.

Seven years after UNMIK assumed its responsibilities in Kosovo, there is still much legal uncertainty as to which of the old Yugoslav laws are still applicable and which are not and there is still no competent judicial body to which those bodies responsible for implementing the law could address such matters. UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo, as amended by UNMIK Regulation No. 2000/59, provides that the laws applicable in Kosovo are UNMIK Regulations, laws of the Kosovo Assembly and Yugoslav laws from before 22 March 1989. While this may sound clear, in practice it creates problems, mainly since all UNMIK Regulations passed merely state that they supersede any other law or other provisions that are inconsistent with it, but still do not specify exactly which law or laws they are replacing. This issue was raised by the former Ombudsperson in several previous Annual Reports, but has not changed for the better. Unfortunately, Kosovo Assembly Laws have also adopted this practice.

Section 1.2 of the UNMIK Regulation No. 1999/24 states that exceptionally, any court of competent jurisdiction, body or person required to implement a provision of the law may also apply Yugoslav non-discriminatory laws from after 22 March 1989 if the subject matter or situation is not covered by the other laws mentioned above. However, there is no specific higher legal body that is competent to determine which laws are discriminatory and which are not.

One body which would be competent to review such cases and other matters where compliance with international human rights standards is at issue could be the Special Chamber of the Supreme Court for Constitutional Matters foreseen by the Constitutional Framework for Provisional Self-Government of 2001. However, five years after the promulgation of the Constitutional Framework through UNMIK Regulation 2001/9 of 15 May 2001, this Special Chamber has still not been constituted. The absence of such a body leads to a situation where any organ applying Yugoslav laws from the period after 22 March 1989 is at liberty to decide for itself which law to follow. This form of arbitrary interpretation of the law causes wide-spread legal insecurity.

At the same time, the laws currently applicable in Serbia proper are still being applied in those areas covered by the parallel court system administered by the Serbian Ministry of Justice, not recognised by UNMIK. This parallel application of a different legal system not only by parallel courts but also by parallel administrative offices only adds to the general confusion.

For many years, the general confusion and legal uncertainty were exacerbated by the difficulties that large parts of the public had accessing both UNMIK Regulations and the laws of the Kosovo Assembly. Informing the public about legal acts that are binding to them is a fundamental principle of the rule of law, which was for a long time not followed properly in Kosovo. In many cases, UNMIK Regulations were promulgated, but were not put onto UNMIK's website until three or more weeks later. Translations of the English originals into Albanian and Serbian have usually taken even longer to be published on the website.

The accessibility to certain old Yugoslav laws that are still applicable in Kosovo is difficult, if not impossible. While the courts in Kosovo, the national library in Prishtinë/Priština and the library of the Law Faculty of Prishtinë/Priština University have copies of a large number of these laws, many public ministries, municipalities and institutions do not and are often not even aware of their existence. This is particularly surprising since the Kosovo Law Centre collected these laws and has copies of all Yugoslav laws from 1945. The Kosovo Law Centre used to offer access to these laws in a library constituted specifically for this purpose, but unfortunately had to close it in mid-2005 for lack of space and funding.

During 2004, work on a database established by the Prime Minister's Office began, but later stagnated due to difficulties in maintaining the database programme. According to the information received from the competent persons at the Prime Minister's Office, efforts are currently underway to put the database into function in the near future. The creation of such a database, which would contain a large number of laws applicable in Kosovo in their English, Albanian and Serbian versions, would greatly enhance the knowledge of certain parts of the public with regard to the laws applicable in Kosovo and the rights and obligations they contain. It is expected that the database might be put into function in the second half of 2006. However, such a database would only benefit those persons who are able to access the internet. With regard to the general population, the recent implementation of the Law on the Official Gazette, passed on 12 May 2005, will reduce the problems of access of the public and relevant institutions to legal and sub-acts.

It will also be instrumental in enhancing legal certainty in Kosovo, which for the above reasons has so far largely not existed.

On 26 April 2006, the Government created the Office for Management and Administration of the Official Gazette of Kosovo and the first edition of the Gazette was published about a month later. It included two laws in the Albanian, Serbian, Turkish, Bosnian and English languages. According to the Law on the Official Gazette, the publication and dissemination of this Gazette to all the institutions and post offices on the municipal level will be done on a monthly basis, which will reduce the current difficulties that individuals face in accessing legal acts and sub-acts issued by the Government and the Ministries. Currently, legal sub-acts are often not even available on internet, so that the public in general has difficulties accessing or even knowing about them. Both legal acts and sub-acts always enter into force immediately following publication.

This touches on another problem with regard to the passing of laws, namely the persistent lack of *vacatio legis* in most of the Kosovo Assembly's laws or UNMIK Regulations. *Vacatio legis* is a certain time delay between the promulgation of a law and its implementation, which aims at giving the public and those institutions applying the law the chance to adjust and prepare for the new legal situation, which is one of the key principles of a law-abiding state. As it is, the failure of laws here to provide a *vacatio legis* slows down the implementation of a new law since appropriate preparations cannot be made beforehand. The effects of this can be seen in the majority of all laws or regulations passed, which are regularly implemented months or even years after entering into force. Even though this issue has been raised by the previous Ombudsperson in the last two Annual Reports, things have not changed for the better.

Due to the above-mentioned legal uncertainty, certain old Yugoslav laws are completely ignored, even though, in the absence of any new laws or UNMIK Regulations passed in the meantime, they are still applicable. One example of this is a law granting invalidity pensions to World War II invalids. Although this law is still in force, invalids from World War II are complaining that since 1999, they have not been receiving pensions. This issue was raised by the former Ombudsperson with the previous Prime Minister during the last reporting period. After receiving no response, the Acting Ombudsperson addressed this issue in a letter to the current Prime Minister in May 2006, but has still not received a response to this letter.

Another example for such a failure to implement existing legislation is the Law on Expropriation of the Autonomous Socialist Province of Kosovo of 1978. The expropriation procedures foreseen in this law are for the most part not being applied properly in practice.

Other applicable laws are not so much ignored as applied in a selective manner. One example of this is the Kosovo Assembly's Law No. 2004/15 on Construction, promulgated on 14 October 2004 by UNMIK Regulation 2004/37. The objective of this Law is to determine all aspects with regard to construction, materials, supervision and legal proceedings related to construction. Based on this Law, the Ministry of Environment and Spatial Planning has so far issued 11 Administrative Instructions, thereby fulfilling its obligation to issue legal sub-acts required for full implementation of

this law. On the other hand, the general explosion of construction work throughout Kosovo continues to be conducted in a completely lawless way, displaying a worrisome indifference to existing laws. Municipalities and courts often appear to support this phenomenon by not punishing many constructors of illegal buildings. The decision to remove illegally built kiosks in all municipalities, implemented on a large scale throughout Kosovo in 2005, only dealt with a small and insignificant aspect of illegal construction in Kosovo and merely constituted a half-hearted attempt to resolve this widespread problem. Some of the more serious cases investigated by the Ombudsperson Institution revealed that municipalities issued building permits in contravention to the law. In other cases, construction work is not conducted in compliance with the building permits issued by the relevant Municipality, which in turn usually fails to take appropriate measures to put an end to such illegal behaviour.

The Kosovo Assembly Law No. 2005/26 on the Suppression of Corruption, promulgated by UNMIK Regulation No. 2003/33 on 12 May 2005, has still not been implemented in practice. Provisions of this Law stipulate that an independent body, namely the Kosovo Anti-Corruption Agency, will be established to carry out the responsibilities determined by this Law. The functioning of this body is linked to the appointment of its director by the Kosovo Assembly, which has not taken place yet despite the fact that by now, more than one and a half years have passed since promulgation. At the end of the reporting period, according to information received from competent officials from the Assembly of Kosovo, the procedure for the appointment of the Agency's Director was currently underway and would be completed in the near future. In light of the fact that a proper functioning of the rule of law in Kosovo remains impossible in the face of wide-spread corruption, and the fight against corruption is one of the standards requested by the international community for countries waiting to join the European Union structures, a prompt implementation of the Anti-Corruption Law should be one of the main priorities of all competent bodies in general and the Assembly of Kosovo in particular.

With regard to individual cases, but also *ex officio*, the Ombudsperson Institution has investigated the issue of the implementation of the UNMIK Regulation 2001/27 on the Essential Labour Law, which in a general manner regulates employment in Kosovo. Similar investigations were conducted into the implementation of Kosovo Assembly Law No. 2003/19 on Occupational Safety, Health and the Working Environment promulgated by UNMIK Regulation No. 2003/33, aimed at preventing occupational injuries and diseases at the workplace and protecting the working environment, and Kosovo Assembly Law No. 2002/09 on the Labour Inspectorate of Kosovo, promulgated by UNMIK Regulation No.2003/4. This Law was adopted in recognition of the need to establish a Labour Inspection Authority as an important mechanism to control the implementation of the Essential Labour Law and other labour protection rules.

The Ombudsperson Institution's investigations revealed many errors with regard to the implementation of the above-mentioned laws. These flaws are more evident in the private sector, where many employers recruit manpower from the black market, without offering employees any work contracts and therefore not fulfilling any of the conditions stipulated by the above laws. At the same time, during inspections conducted by the relevant inspectors, employers are not provided with copies of normative and subsidiary acts regulating this field, as foreseen by the Law on the Labour Inspectorate. Receiving such

information would undoubtedly be vital in order to enhance knowledge of the rights and obligations of employers and employees.

During the last reporting period, by a letter sent on 18 May 2005 to the Minister of Health, the former Ombudsperson raised the issue of the implementation of the Law on Medicinal Products and Medical Devices in relation to the practice of selling imported medicines and medical products in pharmacies without translation of the instructions, dosage, and/or package labelling into any of the official languages of Kosovo. This issue was of great importance because the buyers of the above-mentioned medicines usually did not understand the language in which the instructions were written, and were simply left to trust the instructions given to them orally by pharmacists or, even worse, clerks working in pharmacies. After having received information that this situation had so far not improved, the Acting Ombudsperson recently raised this issue again with the Ministry of Health on 15 June 2006.

On a similar issue, the more general Law No. 2004/17 on Consumer Protection, promulgated on 19 October 2004 by UNMIK Regulation 2004/42, determines, regulates and protects the rights of consumers in their business dealings, in services and other forms in the free market. It seeks to protect the health, environment and economic interests of consumers. According to this Law, the Government is obliged to appoint a Council to draft the "Kosovo Consumer Protection Programme". According to information received from the Ministry of Trade and Industry, the main competent authority for implementing this Law, this Council will be created by October 2006 and will immediately start drafting the Kosovo Consumer Protection Programme, which will be delivered to the Assembly in the beginning of 2007. It should be noted that dealing with these issues at this stage is already in contravention to the law, which provides for the endorsement of this programme by the Government and its transmission to the Assembly six months after its entry into force of the above law. Concerted efforts to improve consumer protection have been missing over the last years and should have been undertaken much earlier.

Following the Market Inspection Law No. 02/L-1, promulgated on 31 May 2005 by UNMIK Regulation 2005/29, market inspection carried out by the Ministry of Trade and Industry, an important mechanism for the implementation of market laws, began about two months before the end of this reporting period and it remains to be seen how it will function in practice. The tasks and authorised domain of market inspection authorities include the supervision of normative acts which authorise them to implement specific provisions of such acts, including the Law on Consumer Protection.

According to provisions set out in the Law on Consumer Protection, the Ministry of Trade and Industry, in cooperation with other competent Ministries, shall issue internal by-laws within six months of the date when this Law enters into force. However, the implementation of this Law will not yield any practical results until other ministries competent for dealing with consumers issue legal sub-acts in order to establish internal proceedings to follow the law.

Regarding the Kosovo Assembly's Law on Disability Pensions in Kosovo (Law No. 2003/23, promulgated on 17 December 2003 by UNMIK Regulation 2003/40), the



Ministry of Labour and Social Welfare has issued several legal sub-acts that constitute sufficient grounds for the implementation of this Law. However, the relevant Ministries have yet to follow their obligation to issue legal sub-acts for the implementation of Article 13 of this Law, which concerns benefits for persons with permanent disabilities. The failure of the competent Ministries to issue the necessary legal sub-acts for the full implementation of this Law reflects a negligence that violates the principles of good governance and respect for human rights, which any Government is obliged to respect. Since the Ministries did not comply with their obligations, the above category of people who, due to their limited abilities, should have been privileged or at least treated differently, have so far been denied the rights guaranteed to them by this Law. The Acting Ombudsperson initially raised this issue with the Ministry of Labour and Social Welfare and later also with the Prime Minister and all the Ministries competent for issuing the necessary legal sub-acts.

With regard to the above issue, many of the complaints received by the Ombudsperson Institution stated that, according to decisions issued by the Pensions Administration, their requests were refused because they had allegedly not fulfilled the criteria listed in Article 3 of the Law on Disability Pensions. However, certain criteria are not very clear, such as the necessity of a complete disability under Article 3.2 (d), which is not defined in the Law. In a letter dated 30 June 2006, the Acting Ombudsperson sent a Recommendation to the Minister of Labour and Social Welfare asking him to propose to the Kosovo Assembly to amend and clarify Article 3 of this Law.

The Kosovo Assembly's Law on Access to Official Documents, (Law No. 2003/12, promulgated on 6 November 2003 by UNMIK Regulation 2003/32), is of special importance for the proper functioning of a democratic society. The purpose of this Law is to enable individuals to have greater insight into the decision-making process of public institutions and to guarantee that the latter acquire a higher level of legitimacy and transparency, thus adding to both their effectiveness and their accountability. The Government and the "relevant institutions" mentioned in the Law did not fulfil their obligations to implement the Law within the determined deadlines, although it was promulgated more than two and a half years ago. It appears that steps towards fulfilling these obligations have now been taken after the Ministry of Public Services issued an Administrative Instruction, which was approved by the Prime Minister on 28 March 2006. The Ministry of Public Services has also issued an implementation plan with regard to this Administrative Instruction, which it has disseminated to all public institutions. According to the information received, the "Inter-Institutional Commission for the Evaluation of Administrative Practices in the Field of Official Documents" has been established and the Ministry of Public Services is preparing draft rules of procedure for the work of this Commission. It is expected that the Government and the "relevant institutions" will take more steps towards the full implementation of this Law in the near future.

Regarding the comments about the implementation of the Law on Gender Equality, the Law on Primary and Secondary Education and the Law on Family, see the parts of this survey dealing with Gender Equality and with Children's Rights respectively.

In some areas, there are no laws at all to regulate certain situations. An example of this lack of laws is the fact that there is still no law providing any form of legal remedy for excessively long court proceedings. This issue was raised in all reports in which the Ombudsperson Institution came to the conclusion that certain court proceedings had been so long as to violate a person's right to have his case decided within a reasonable time. Although such reports have been issued by the Ombudsperson Institution for the last four years, so far no visible steps have been taken to prepare such a law.

Although the drafting and implementation of a law on the protection of cultural, historical and natural heritage of Kosovo is one of the standards that has been set by the international community, this law has not been passed yet. The response from the competent persons of the Assembly of Kosovo to inquiries on this issue indicated that drafts of such a law were under discussion and would be approved by the Assembly soon. The same appears to be true of a Draft Law on Religion and a Draft Law on Languages.

As it appears, in many respects the legal situation in Kosovo remains confusing and inconsistent with basic principles of the rule of law. In order to improve this state of affairs, it would be necessary for an independent legal body to conduct an overview of this situation and make recommendations on how to synergise and simplify legislation, ensure its proper implementation and improve its accessibility to the public. At the same time, the competent authorities in Kosovo should also become more aware of their obligations with regard to applying the rule of law and demonstrate a greater engagement with regard to ensuring the implementation of the existing laws. This is essential in order to help Kosovo's legal system develop in line with European standards.

## **The judiciary in Kosovo**

As in the previous Annual Reports, this part offers an in-depth examination of the functioning of the judicial system in Kosovo, in particular with its compliance with the provisions set forth by the international human rights standards. While some progress has been made towards attaining such standards in law and practice, the system still has considerable shortcomings.

In Kosovo, the recruitment and nomination of judges and lay judges is conducted by the Kosovo Judicial Council, currently made up of local and international judges and a number of non-judges including the Minister of Justice, the President of the Legislative Committee in the Kosovo Assembly, the President of Kosovo's Chamber of Advocates and a professor of law. Following a public announcement, this Council reviews applications and makes recommendations to the SRSG on whom to appoint. The Kosovo Judicial Council was established by UNMIK Regulation No. 2005/52 of 20 December 2005 and replaces the previously existing Kosovo Judicial and Prosecutorial Council, which was responsible for the recruitment and nomination of judges, lay-judges and prosecutors, pending the endorsement of nominations by the Kosovo Assembly.

One special aspect of the Kosovo judicial system is the existence of international judges, who are appointed and assigned to courts in Kosovo only by the SRSG with no legally specified nomination or recruitment procedures.

The competent body responsible for all legal, technical, financial and administrative issues related to the courts and the judiciary is the Ministry of Justice, established six months ago by UNMIK Regulation No. 2005/53 of 20 December 2005, amending UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo. Among other things, this Ministry assumes responsibility for developing policy on the administration of justice, especially public prosecution and access to justice for minorities, gives assistance to victims of crime and oversees the office of the Victims Assistance Coordinator. Currently, the Ministry is preparing to gradually take over the majority of the justice-related reserved powers of UNMIK's former Pillar for Police and Justice.

On 27 April 2006, the SRSG promulgated UNMIK Regulation No. 2006/25 on a Regulatory Framework for the Judicial System in Kosovo, setting out the SRSG's authorities over the Ministry of Justice and the Kosovo Judicial Council. The Regulation empowers the SRSG to exercise his respective functions with regard to the appointment of judges or prosecutors, in particular those of under-represented ethnic communities, establishing additional municipal courts, departments of such courts and municipal minor offences courts, establishing court liaison offices, and assigning judges to panels dealing with complaints of discrimination in courts.

In addition, according to UNMIK Regulation No. 2006/25, the SRSG reserves the right to interfere with the recruitment procedure for members of minority communities to ensure a proper ethnic representation in the courts, where candidates meet only some of the necessary requirements, provided that minimum requirements are fulfilled and the respective candidates acquire the missing requirements at the earliest opportunity and no later than one year after they have been appointed.

As noted above, Kosovo still lacks an independent procedure for the appointment of judges, since the final decision on such matters still lies with the SRSG, the highest executive authority in Kosovo. The Judicial Council, while made up of a wide spectrum of different actors from the legislative, executive, and judiciary, merely nominates judges for appointment, but does not take the decision on their appointment and thus lacks real power in this area.

With regard to international judges, the appointment procedure still lacks transparency, as apart from the criteria judges need to fulfill, there are no further provisions on how to select them in the applicable UNMIK Regulation 2000/06 on the Appointment and Removal from Office of International Judges and Prosecutors of 15 February 2000 (amended by UNMIK Regulation 2000/34 of 27 May 2000 and UNMIK Regulation 2001/2 of 12 January 2001). Furthermore, the above Regulation does not state how long the term of office of international judges is, which continues to pose a serious threat to judicial independence. In practice, the term is usually six months, which is insufficient to guarantee these judges' independence and bears the risk of negatively influencing the

quality of the administration of justice due to the high turnover in this field. Moreover, the persistent failure to establish a legal mechanism to address complaints involving international judges raises serious concerns with regard to the accountability of the system as a whole.

With regard to the actual work of courts, the biggest problem faced by the judicial system in Kosovo continues to be allegations of widespread corruption. During the reporting period, the Ombudsperson Institution continued to receive an alarmingly high number of complaints related to the alleged corruption of judges. These complaints demonstrate the weakness of the judiciary in Kosovo and the lack of trust that Kosovo's inhabitants place in it. The existing corruption prevention mechanisms do not appear to have improved the public's confidence in the local courts.

However, corruption is not the only reason for a lack of quality in courts' work. In addition to training sessions organised by the Kosovo Judicial Institute, further strategies must be devised to improve the overall standard of the administration of justice in Kosovo.

At the same time, strengthening the judiciary and enhancing confidence in its work will be difficult if not impossible if the remuneration received by the local judges remains at the low level that it is at today. In this context, it should be underlined that proper remuneration is one of the fundamental conditions for judicial independence. It helps guarantee the quality of the administration of justice and lowers the judges' susceptibility to bribery and corruption.

Another unresolved issue of high concern is the length of civil proceedings. It is true that this is largely attributable to the lack of sufficient numbers of judges and supporting staff to deal with the enormous and growing backlog of cases and to the fact that judges are not assigned to courts according to the existing need – certain courts in Kosovo have a small case load and more than enough judges to deal with them, while other courts have a huge caseload and a very small number of judges.

Another reason for delays in court proceedings are deficiencies in the management of cases by the court administrations, in particular with regard to urgent cases which are often not given the priority treatment they deserve. In its report "Kosovo: First Review of the Civil Justice System" issued in June 2006, the OSCE Mission in Kosovo reached a similar conclusion.

Therefore, the recruitment of more judges for those courts with the greatest backlogs, as well as proper training on court management for court administrators are issues that must be addressed by the competent local and international authorities without further delay.

Another shortcoming identified in courts all over Kosovo, which also appears to cause many delays in court proceedings, is the lack of a sufficient number of court rooms. Judges are often obliged to conduct hearings in their offices, which in turn prevents the public from attending such sessions and reduces the transparency of the system.

In the previous Annual Report, the former Ombudsperson highlighted the issue of parallel courts located in Serbian enclaves in Kosovo or in towns in Serbia proper, which nowadays continue to deal mainly with property issues. These parallel courts are administered and remunerated by the Serbian Ministry of Justice in disregard of UNMIK authority. UNMIK, in turn, does not recognise them. Seven years after assuming control in Kosovo, UNMIK has still not managed to establish full control over the judicial system in Kosovo.

In addition, the lack of experts and the lack of necessary equipment to prepare appropriate expert opinions for courts in Kosovo, as well as the absence of sufficient funds to pay for them, continues to lead to lengthy court proceedings. Currently, the UNMIK Medical Examiner's Office is limited to conducting autopsies and physical examinations of victims and providing expert opinions to courts in this respect. During meetings between representatives of the Ombudsperson Institution and the courts, the latter concluded that establishing a special institute responsible for preparing various kinds of expert opinions during proceedings, in particular for criminal courts and prosecutors, would help to solve these problems. Such expert opinions would include expertise and research in the field of forensic science and psychiatry. Similar institutions in many countries have demonstrated efficiency in performing their tasks and helped speed up court proceedings. Nevertheless, bearing in mind the budgetary problems of public institutions in Kosovo, the establishment of such an institute will require the financial support of international donors.

For the last seven years, there have also been substantial problems with regard to the translation of documents and oral interpretation during court proceedings. The root of this problem is the fact that currently, courts are not following any special procedures for determining the quality of translators or interpreters. The applicable Yugoslav law on court translators and interpreters of 1969 foresees such a procedure, but is not being applied. In order to resolve this confusing situation, competent authorities and higher courts must ensure that this Law be followed.

In many situations where proceedings pass to the appeals stage, the appeals courts remand court judgments of the first instance back to the original courts several times due to procedural mistakes or, even worse, errors in assessing evidence or in applying the law. Again, this shows the general low quality of work in the courts and demonstrates a serious lack of professionalism and motivation, especially on the side of the first-instance courts and only increases the already overwhelming backlog of cases pending before appeals courts.

One reason for such repeated errors is the fact that when cases are remanded back to first-instance courts for retrial, the panels conducting such a retrial are often made up of the same judges who decided on the matter in the first instance. The very fact that the second proceedings are carried out by the same judges also raises the issue of their impartiality regarding the case, as they are not the "new pair of eyes" that an independent and impartial review panel should be. A previous involvement in the case carries with it the risk that the affected judge may already have formed his opinion on the case, which may negatively affect the administration of justice.

Another problem related to the work of courts is the failure to enforce court judgments, which appears to have become a wide-spread practice in the judicial system of Kosovo, although it is not always the fault of the courts. Usually, the problem is that court judgments are not respected by defending parties, in particular municipalities.

A specific problem in this context is related to cases where the defending parties are former socially-owned enterprises now administered by the Kosovo Trust Agency (KTA), which is also responsible for the privatisation process. A large number of these cases involve former employees who complained to courts about outstanding salary payments. While the court issued judgments in the complainants' favour, they were not able to execute these judgments into the bank accounts of the former socially-owned enterprises since there was either no money left on the accounts or the banks had received instructions from the KTA not to execute such court decisions. The main problem is that while the Special Chamber of the Kosovo Supreme Court on Kosovo Trust Agency-Related Matters had issued information to courts on their competences in such cases, it had not given any information on how to go about the execution of judgments in practice. In addition, the KTA has not been very forthcoming in cooperating with courts in such matters. Therefore, all organs dealing with the legal aspects of the privatisation of socially-owned enterprises should discuss with the local courts on how to resolve this issue. Regarding this matter, the Acting Ombudsperson also sent out a report to the Kosovo Assembly in April 2006, in which it found that the non-execution of these judgments constituted a violation of the complainants' right to a court, as their access to court was rendered ineffective due to the respective Municipal Court's inability to execute its judgments.

Another, more practical and widespread problem related to the execution of judgments is the lack of a sufficient number of court bailiffs, which is a widespread problem. Certain courts do not have even a single court bailiff.

With regard to criminal cases, an issue that has not changed much since the last annual report is the lack of proper witness protection measures. During the current reporting period, the Ombudsperson Institution again received information that witnesses are still afraid to assist the judges and prosecutors in solving cases as there is little hope that law-enforcement agencies will be able to protect them. This causes considerable delays in the investigation of serious criminal cases. In Kosovo, a proper witness protection programme still exists only on paper and at the moment, there appear to be insufficient funds or other capacity to put this programme into practice. At the same time, however, it is doubtful whether any such limited programme could break the current cycle of intimidation, corruption and lack of cooperation from witnesses in Kosovo.

Another problem which is specific for criminal cases is the continuous lack of prison space for convicted offenders. In cases involving less severe criminal sentences, offenders must wait an unreasonably long time to begin their prison sentence. The problem of sufficient space also affects detainees on remand, who are often not placed in detention centres close to the competent court, but are distributed to detention centres all over Kosovo.

Despite certain initiatives to improve the functioning of the court system in Kosovo, the judiciary remains weakened by allegations of widespread corruption and lack of funding. Considering that Kosovo does not have a tradition of a strong and independent judiciary to fall back on and that most of the judges in Kosovo only started exercising judiciary functions after 1999, more effort must be made to overcome these weaknesses in order to provide for the independent and effective administration of justice to the people of Kosovo. Much work remains to be done in this area and the newly created Ministry of Justice will need to play an important role in seeing that the above aims be reached.

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

The reporting period has seen some improvement with regard to implementing certain international legal instruments for the protection of human rights in Kosovo.

UNMIK and the PISG have taken first steps to implement the Council of Europe's Framework Convention for the Protection of National Minorities in Kosovo. The last Annual Report already discussed an agreement signed in 2004 between UNMIK and the Council of Europe on technical arrangements related to this Framework Convention. In June 2005, pursuant to this agreement, UNMIK submitted a report to the Committee of Ministers of the Council of Europe, informing the Committee about the legislative and other measures it and the PISG had taken to implement the Framework Convention. In answer to this, based also on a "shadow report" issued by a working group made up of representatives of minority communities and a visit to Kosovo, the Council of Europe's Advisory Committee on the Framework Convention adopted an opinion on the implementation of the Framework Convention in Kosovo. The Advisory Committee's opinion was made public in March 2006 and contained recommendations on how to improve the implementation of the Framework Convention.

Following UNMIK's reply to the Advisory Committee's opinion, the Committee of Ministers of the Council of Europe issued a resolution on 21 June 2006, reiterating for the most part the conclusions reached by the Advisory Committee and recommending that UNMIK *inter alia* improve the process of transferring powers and the functioning of the judiciary, as well as confidence-building in courts. Finally, the Committee of Ministers also warned that UNMIK should ensure that the transfer of the Ombudsperson Institution to local leadership not harm the effectiveness of the institution or erode the trust it had built to date amongst minority communities.

In July 2004, the UN Human Rights Committee asked UNMIK, in cooperation with the PISG, to compile a report on the human rights situation in Kosovo since June 1999, which was sent to the Committee in February 2006. UNMIK asked the Ombudsperson Institution, as a local human rights institution, to give input on these matters, which it did. It appears, however, that this input was not included in the final version of the report sent to the Committee. This is unfortunate, since the Committee's rules of procedure provide for the possibility of input from national human rights institutions and the Ombudsperson Institution seems best-suited to give information about things directly related to the

Institution and its work. In the meantime, the Committee has asked for further clarifications, which specifically included questions on the cooperation between the Ombudsperson Institution and UNMIK and the effects that the Ombudsperson Institution's kosovanisation has had on the work of the Institution. UNMIK sent answers to these questions to the Committee in the end of June 2006.

UNMIK, again in cooperation with the PISG, was also asked by the UN Committee on Economic and Social Rights to prepare a report about the enjoyment of economic and social rights in Kosovo since June 1999. This report is currently being prepared and is expected to be sent to this Committee in March 2007.

Although these reports and related activities demonstrate that much remains to be done to raise the level of human rights awareness in Kosovo, they also demonstrate progress, as for the first time, UNMIK was obliged to account for its actions to independent international human rights monitoring bodies.

One drawback with regard to implementing international human rights instruments relates to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which grants the Council of Europe's Committee for the Prevention of Torture the right to access all facilities where persons are being deprived of their liberty. Following an agreement between UNMIK and KFOR, this Convention is now applicable on the territory of Kosovo. It appears that due to KFOR's refusal of the above Committee access to its detention facilities in Kosovo, the Committee has so far decided to not visit any of the detention centres or prisons in Kosovo, so that the above Convention is still not being implemented on the territory of Kosovo.

Another positive development with regard to internal human rights monitoring is the recent introduction of human rights units in many Ministries, which are currently receiving considerable support from the OSCE and their Human Rights Advisory Units. This is a big step towards ensuring that the local government structures in Kosovo become aware of European human rights standards and how to attain them and one can only hope that sufficient funding and support from the various ministries will ensure that they can perform their tasks in an efficient and proper manner.

The Advisory Office on Good Governance within the Office of the Prime Minister has so far been charged with advising the government, as well as reviewing and developing policies related to human rights. While there is much good will on the side of this office to improve the level of human rights awareness in the PISG, it depends for a large part on international donors for funding. This raises serious concerns about the sustainability of this very important office.

Despite these improvements in domestic human rights monitoring and the implementation of international instruments of human rights protection, there has been little progress in strengthening domestic human rights protection mechanisms.

Following the end of the international Ombudsperson's mandate in December 2005, the Ombudsperson Institution was completely kosovanised. Since UNMIK Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo, providing for a local



Ombudsperson, was not passed until February 2006, the Ombudsperson Institution has been headed by an Acting Ombudsperson since January 2006. The recruitment of the next Ombudsperson has begun and one can expect the position to be filled by the end of 2006. Despite delays in the promulgation of the above Regulation, the Ombudsperson Institution continued to operate as before and continued to enjoy the trust of all communities in Kosovo.

The Institution's daily activities are, however, to a certain extent rendered more difficult by the new UNMIK Regulation No. 2006/06, which has created confusion by employing a number of ambiguous formulations. For instance, while granting the Ombudsperson unhindered access to places where persons are deprived of their liberty, Section 4.9 provides that "special agreements" shall be developed between the Ombudsperson Institution and the competent authorities to facilitate access. This apparent contradiction raises the question of whether the Ombudsperson Institution will still be allowed to have unlimited access to prisons in the absence of special agreements.

However, the main problems created by UNMIK Regulation No. 2006/06 are that it removes UNMIK from the jurisdiction of the Ombudsperson Institution and limits the Institution's mandate to the PISG and that it fails to regulate how the Institution should deal with pending cases against UNMIK. Requests to UNMIK regarding this and other concerns about the Regulation have so far not brought any clarification of this issue.

There would be no problem if relevant UNMIK structures such as the police had been completely transferred into local hands at approximately the same time as the Ombudsperson Institution. As it stands, while there is an expectation that in the future, UNMIK will complete the process of handing over its reserved powers to local structures, it is still difficult to assess when and how this will happen.

A special problem in this respect can be seen in northern Kosovo, where those municipalities with a majority Serb population have recently decided to stop cooperating with the PISG altogether. If the PISG has no influence in these areas, then the only remaining body to supervise local municipalities is UNMIK. Since UNMIK is, however, no longer under the jurisdiction of the Ombudsperson Institution, municipalities in northern Kosovo are effectively outside the Ombudsperson Institution's reach as well.

As regards the relationship between the Ombudsperson Institution and UNMIK, the recently passed UNMIK Regulation 2006/06 provides that UNMIK shall cooperate with the Institution, but of course there is no obligation to cooperate – cooperation may be granted or withheld, with no justification needed if the latter is the case. Now, more than ever, it is up to the various departments of UNMIK to cooperate with the Institution or not and in certain cases, most notably in the case of the UNMIK Office for Communities, Returns and Minority Affairs, the cooperation has remained at a high level.

In order to deal with complaints against UNMIK, a Human Rights Advisory Panel within UNMIK was created by UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel. The members of the panel shall be nominated by the President of the European Court of Human Rights and appointed by the SRSG. The Panel has the mandate to receive and examine human rights complaints against UNMIK.

There are numerous weaknesses in this Regulation. While it obliges the SRSG to cooperate with the Panel by providing it with access to all documentation relevant to a complaint, the SRSG may at the same time refuse requests of the Panel to interview certain staff members of UNMIK and access UNMIK documents. Although the Panel may make public recommendations to the SRSG, he will have exclusive authority and discretion to decide on whether to act upon these recommendations or not.

While having a Human Rights Advisory Panel to examine complaints against UNMIK is better than nothing, this Panel cannot replace an Ombudsperson. It is not an independent body, but rather an advisory panel within the UNMIK system. It is entirely up to the SRSG whether he will take this advice or not. Furthermore, a Panel consisting of three members who meet regularly to discuss written submissions is not the same as an Ombudsperson, who meets with complainants all the time and whose actions are not limited to such a formal procedure.

For the moment, it is still not clear when this Panel will begin its work and the question of which and how many of the Ombudsperson Institution's pending cases against UNMIK can be transferred to this body remains unresolved. The Institution and its staff is thus left to explain to complainants that it cannot process their cases against UNMIK anymore.

Aside from these recent developments, certain requests to strengthen the Institution previously raised by the former Ombudsperson and the Parliamentary Assembly of the Council of Europe on numerous occasions have still been left unaddressed by UNMIK Regulation 2006/06. The Ombudsperson is still not permitted to initiate or take part in court or other legal proceedings, as a number of other Ombudsmen around the world are. There is also still no specific period of time within which public authorities are obliged to respond to the Ombudsperson's interventions and the same authorities are also not obliged to justify any delays in responding to the Ombudsperson's letters or reports. Hopefully, this situation will be improved when the Assembly of Kosovo will pass its own law on the Ombudsperson Institution.

In the absence of any strengthening of the position of the Ombudsperson, the cooperation with the different parts of the PISG still varies widely depending on each Ministry and Municipality. While some of these bodies have responded regularly to the requests and recommendations of the former Ombudsperson and the Acting Ombudsperson, there are others who clearly see no need to do so and see the Institution more as an enemy and a nuisance than as a human rights protection mechanism aimed at maintaining a balance between public authorities and the people under their jurisdiction. Cooperation with some local authorities is good. One example is the Kosovo Police Service, which has now appointed a police officer to deal specifically with human rights issues. Following a meeting with the senior staff of the Ombudsperson Institution, there will be regular meetings between the staff of the Institution and this KPS representative once every month.

However, the lack of general knowledge of human rights standards and the need to implement them in Kosovo is not only a problem of the PISG. Many of the people whose

human rights are meant to be protected still do not know that they have these rights. Although directly applicable in Kosovo since 2001, the texts of such important human rights documents as the Universal Declaration on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (ECHR), the International Covenant on Civil and Political Rights and the Protocols thereto and the Convention on the Elimination of All Forms of Racial Discrimination, to name only a few, are not known by the wider public. Thus, while many parts of the public administration do not recognise or do not wish to recognise the obligation they are under to adhere to certain human rights standards, large parts of the population also do not force them to out of ignorance of the range of human rights laws applicable in Kosovo. This issue has been raised many times in previous Annual Reports, but has so far not improved.

On the eve of discussions on the status of Kosovo, the issue of human rights protection must not be forgotten. It is unfortunate that at such an important time, the Ombudsperson Institution has been weakened by a period of legal uncertainty and limitations to its mandate. Therefore, it is of utmost importance that the Institution be strengthened in the future and that the strong support promised to it by the leadership of Kosovo, mainly the President of Kosovo, the Prime Minister and the President of the Assembly of Kosovo, continue.

However, real human rights protection cannot only be left to an Institution that by its very nature cannot issue binding decisions. It is also necessary that courts or chambers be established whose main function is to deal with the human rights aspect of cases. In this respect, not enough has been done. While the Constitutional Framework for Provisional Self-Government promulgated through UNMIK Regulation No. 2001/09 provided for a special Chamber of the Supreme Court on Constitutional Matters, such a chamber has still not been constituted.

At the same time, the inhabitants of Kosovo still do not benefit from the protection offered to most other inhabitants of Europe by the European Court of Human Rights in Strasbourg. This is due to the fact that the status of Kosovo is yet to be resolved, while UNMIK, a mission of an international organisation, cannot sign a convention that is essentially a multilateral treaty between States.

For the above reasons, it cannot be stressed enough that the creation of a human rights court or chamber on the domestic side and placing the inhabitants of Kosovo under the protection of the European Court of Human Rights on the international side should be issues of the utmost priority in the current discussion on the future of Kosovo.

### **Minority communities in Kosovo**

In Kosovo today, when looking at the population as a whole, ethnic Albanians are presumed to constitute a majority of approximately 90%. The minority communities that make up the remaining ten percent of the population are: Ashkali, Bosniaks, Croats, Egyptians, Gorani, Roma, Serbs and Turks. However, while in most areas Albanians are in the majority and the other groups in the minority, this picture is reversed in northern

Kosovo, where the northern part of Mitrovicë/Mitrovica and municipalities such as Zvečan/Zveqan, Zubin Potok and Leposavič/Leposaviq are mainly inhabited by Serbs. The same applies for Štrpce/Shtërpce Municipality in the south.

The issue of the protection of minority communities and their rights is very important and must be addressed in order for Kosovo to become a modern democratic society with realistic aspirations to join the European Union. Given the tensions between certain ethnic communities in Kosovo, the protection of minority rights, or even the definition of a minority, is and has always been a politically charged topic – now more than ever, given the ethnic violence in recent years.

In the current phase of status talks, the political situation is getting increasingly heated and this trend is expected to continue as these talks proceed, since different communities in Kosovo hope for different outcomes of these talks. While the Albanian majority hopes for a complete and unconditional independence from Serbia proper, the Serbian community for the most part still hopes that the Serbian government will succeed in obtaining some sort of extensive autonomy for Kosovo that will not split it off from Serbia. In particular, Serbs support the Belgrade plan for decentralisation involving a large number of new municipalities and continued support to the parallel education and health care systems still being offered by Belgrade to the Serbian and certain other minority communities. As regards smaller minority communities, they feel they need to more or less choose between these two sides, depending on where they live and where their affinities lie. In some cases, different members of the same community choose different sides, as in the case of the Gorani community, which is evenly divided.

The rise in tensions due to status talks have led to further incidents, in particular in the last few months, when UNCHR buses transporting Serbs from returnee villages in the Pejë/Peć region to Northern Mitrovicë/Mitrovica were stoned several times. Also, in May and the beginning of June 2006, armed attacks have increased especially in the mainly Serbian-inhabited northern part of Kosovo when several people were injured and one killed. While members of the Serbian community suspect that these armed attacks were ethnically motivated, UNMIK Police have so far not been able to confirm this and have not provided much information on the conclusions reached during investigations, which again gives rise to speculation among both Albanians and Serbs.

A bridge connecting two returnee villages, Grabac/Grapç and Biča/Binqë, was damaged by an explosive device, while a person of Serbian ethnicity who returned to Klinë/Klina was recently killed in his house by an automatic weapon. Also, 30 tombstones in the Serbian graveyard in the village of Staro Gracko/Starograckë in Lipjan/Lipljan municipality were destroyed. UNMIK Police has initiated investigations into the above incidents, but at the time when this report was published, the public had so far not heard about any concrete results of these investigations. The only concrete answer to these events from the side of UNMIK Police has been an increased presence of international police in areas inhabited by Serbs and Roma.

Apart from the recent rise in crimes, some of whose motivations remain disputed, there are areas in Kosovo where a regular pattern of harassment and intimidation of Roma and Serbs persists, especially in the returnee villages. Local and international leaders have

condemned all crimes publicly, and, according to the SRSG's technical assessment of progress in the implementation of the standards for Kosovo submitted to the UN Security Council in April 2006, Local Crime Prevention Councils had been set up in twenty-eight municipalities, which, following UNMIK Regulation 2005/54 on the Framework and Guiding Principles of the Kosovo Police Service, are now being transitioned into Municipal Community Safety Councils.

It should be noted that there have been improvements with regard to the freedom of movement and security of individuals who are not of Albanian ethnicity, but this also depends on the region and on the respective minority community. Freedom of movement for Serbs and Roma, the groups that so far have been most targeted, has to some extent improved in the regions of Prishtinë/Priština, Gjilan/Gnjilane and Prizren, but is still problematic in the regions of Pejë/Peć and Mitrovicë/Mitrovica. According to an opinion poll conducted by the Kosovo Police Service in April 2006, 99 % members of minority communities polled reported travelling outside their home area, 80 % said they felt safe while doing so, and none reported crimes against them while moving.

However, there remains a certain fear of potential incidents, in particular among those minority groups where the majority does not speak Albanian. In the current heated atmosphere of political dispute over the future status of Kosovo, this is only enhanced by incidents involving the stoning of buses or another incident that happened in the area of Pejë/Peć, where a car carrying two Englishmen with license plates from Belgrade was shot at.

Concerning public transport, the situation is the same as in the last reporting period – public buses pass through Serbian and Roma enclaves but never stop there. The only means of transportation for people from these communities are private vehicles and special buses that go twice a week from small villages to some bigger villages or to North Mitrovica where the local minority inhabitants from other parts of Kosovo can buy groceries and visit health care centres. Usually, the buses travel without police escorts, but following the stoning incidents, such escorts have been provided in certain areas on a temporary basis, until the responsible authorities consider that the situation has calmed down. According to the SRSG's assessment submitted to the Security Council in April 2006, certain buses subsidised to serve minority communities on a pilot basis ceased to run due to budgetary constraints, but the Ministry of Transport and Telecommunications was engaged in a new strategy to improve such transport in cooperation with the Ministry of Returns and Communities.

In relation to the living and housing situation of those persons displaced during the riots in March 2004, when some 730 houses belonging to Serbs and members of other minority communities, mostly Roma and Ashkali, were damaged or destroyed, many houses have been reconstructed through public funds. However, the Ombudsperson Institution is still receiving a considerable number of complaints from displaced persons of these communities, whose property has still not been reconstructed. Most of the displaced persons have not returned to their homes, mostly for security reasons. Many of them have sold their properties and moved elsewhere.

With regard to the 36 Serbian Orthodox churches that were destroyed during the events of March 2004, none of them have yet been reconstructed. A Memorandum of Understanding was signed between the Serbian Orthodox Church, the PISG and UNMIK at the end of 2005. Funds were allocated to rebuild the religious sites, half of them from the PISG, half of them from international donors. At the moment, no agreement could be found regarding who would manage the funds received from international donors and who would monitor the reconstruction and it remains to be seen how this will be resolved in future, pending the further political developments with regard to status.

Many members of the Roma community, who had to witness the destruction of their homes towards the end of the fighting in 1999, today still live in very poor conditions. A large number of them were living in lead-polluted camps in Northern Kosovo over the last seven years, waiting for their previous settlements to be rebuilt, but this year, many of these persons were moved to better accommodation in a former KFOR camp in Northern Mitrovica. Another larger group of Roma previously living in Plemetinë/Plemetina camp has now been moved to newly-constructed apartments in different municipalities. The competent authorities expect that by the end of 2005, all camp inhabitants, mainly Roma but also Serbs, will have received better accommodation, so that Plemetinë/Plemetina camp can be closed.

Most of the minorities such as Serbs, Bosniaks, Roma, Gorani and Ashkali live in villages and earn their living through agriculture, as there is no possibility for them to find other jobs.

At the same time, Serbs in rural areas still face problems when trying to work their land if it is not located in the immediate vicinity of their houses, either for security reasons or because their land is occupied and being cultivated by Albanians. This is a big problem, mainly for Serbs and Roma who live in returnee villages in the regions of Peja/Peć, Gjilan/Gnjilane or in Serbian or Roma villages in central Kosovo, where the disputed land is located in or near Albanian villages or in areas such as Lipjan/Lipljan, Priluzhje/Priluzhë or Miloshevë/Miloševo in central and north Kosovo. These communities also complain of the repeated theft of livestock and agricultural machines. The police have not been able to resolve most of these disputes and alleged crimes.

The above-mentioned fear of harassment also affects the access of certain minority groups, mainly Serbs and Roma, to different forms of health care. While most villages inhabited mainly by members of these communities have their own centres for basic medical treatment, they still rely on the hospitals in Gračanica/Gračanica, Laplje Selo/Lapllasellë and Northern Mitrovicë/Mitrovica for more serious health problems and rarely visit hospitals and medical centres in Albanian areas even if in some cases they are geographically closer, which also shows that there is still a lack of confidence between certain minority communities and the majority community.

With regard to access to a court, according to UNMIK information nine court liaison offices function in minority areas and the organisation of court days has begun in six places. The opening of a minor offences court in Graçanicë/Gračanica is being actively discussed between UNMIK and community leaders. According to the SRSG's

assessment to the Security Council in April 2006, 9.44 % of the judges and 9 % of the prosecutors in Kosovo are from minority communities.

The situation described in the last Annual Report regarding the postal and telephone services and the fact that there are different systems for different communities has not improved. Mainly, the Albanian, Ashkali, Turkish and Bosniak communities use the services offered by Post Telecommunications Kosovo (PTK), the only postal and telephone service in Kosovo acknowledged by UNMIK and the PISG, while members of the Serbian and Roma communities living in enclaves in central, northern and south-eastern Kosovo often use the Serbian postal service, postal code and telephone in use before UNMIK arrived in 1999. PTK does not operate in these areas and has also so far not tried to establish its services there. As usual, which system is used also depends on the regions where the different minority groups live.

The economical situation in Kosovo is still difficult for all inhabitants, but especially for certain vulnerable groups including minorities, even if there has been a slight increase of members of minority communities in the KPS. Most minority communities are still not part of the normal job market, especially Serbs and Roma. The rate of unemployment among the Serbian community is in some areas more than 80%. Particularly in the returnee villages, it reaches almost 100%. For members of the Roma community, the unemployment rate lies at 98%. Even though in 2005, the Kosovo Government opened more than 90 vacancies for members of minorities on the central and municipal level of the Kosovo Civil Service, so far no one has been employed in these positions. According to the information from local community offices, in some enclaves the above positions were withdrawn by certain ministries with the explanation that these positions were not foreseen in the budget.

On the political scene, the representation of the Serbian minority group is not adequate since Serbian politicians began boycotting the PISG before the last election in October 2004. In cases where members of minority communities do work in the PISG, the recent report of the UN Secretary-General on the UN Mission in Kosovo of 5 June 2006 stated that their functions involve issues of concern to minorities only, such as returns, or, in the case of Serbs working in health and education, they received salaries from both the Provisional Institutions and Belgrade until recently.

This system of double salaries stopped in March 2006, when the Serbian Coordination Centre for Kosovo and Metohija demanded that all individuals receiving salaries from both Serbia proper and the PISG choose and keep only one of the salaries. Due to the negative consequences that a withdrawal from the Serbian payroll would have on their pensions, most of the Serbs working in education and health, approximately 70%, based on UNMIK estimates, decided to refuse payment from the PISG and are now accepting salaries from the relevant Ministries in Serbia proper only, while remaining on the PISG payroll.

The parallel education system supported and financed by the Serbian government is being used by Serbs, Roma and a part of the Gorani community, while the Kosovo education system is used by members of the other minority communities and the majority Albanian community in Kosovo.

Moreover, there is still a problem with the higher education of most members of certain minority communities who do not speak Albanian. In spite of UNMIK's intention to reopen the University of Prishtinë/Priština as a multiethnic institution, this has not happened yet. In general, both UNMIK and the PISG have for the most part not managed to provide adequate school and higher education in minority languages and equal access to higher education. For this reason, but again also for political reasons, the Serbian community in Kosovo and certain members of other communities speaking Slavic languages rely on the parallel university in North Mitrovica, which is largely staffed by former professors and the former rector of Prishtinë/Priština Priština University before UNMIK's arrival in Kosovo in 1999. This university is under the authority of the Serbian Ministry of Education and uses a Serbian curriculum.

There are only two exceptions where higher education is offered in minority languages: the Faculty of Education in Prizren and the Business school in Pejë/Peć, where there are two subclasses in which Bosniak students can attend lessons held in the Bosnian language. Both of these faculties operate as branches of Prishtinë/Priština University, but the classes are still not running as smoothly as they should because the teachers from the Bosnian-speaking Sandžak in Serbia proper do not come regularly and the Ministry of Education, Science and Technology (MEST) has not yet provided adequate funds for their salaries. For the moment at least, the teachers have continued to work without salaries and one can only hope that they will be remunerated soon. It should be also emphasised that there is still a problem of textbooks for Bosniak pupils in their own language, as the MEST has still not printed such books, allegedly for lack of funding.

The Turkish community complains about similar issues, noting that since the UN established its civil administration in Kosovo, only a few textbooks has been published in the Turkish language. Due to that, pupils of primary and secondary schools usually use textbooks from Turkey, although that they are not in compliance with the Kosovo curriculum. It should also be emphasised that all public schools offering classes in the Turkish language lack professional staff and that in some of the schools, such as the one in Mamushë/Mamuša village near Prizren, the teachers travelling from Prizren to this village over the last three years have not been receiving salaries and are obliged to pay for their transport themselves. However, on a more positive note, the University of Prishtinë/Priština has been offering courses in Turkish language and literature for two years now.

When we talk about education with regard to the Roma community, it should be noted that their children either attend schools following the Kosovo Educational system or schools within Serbian parallel structures. The high level of poverty in this community presents serious difficulties for the education of its youth, as many families simply cannot afford textbooks for their children. Regarding education in the Roma language, there have been some initiatives in this direction by local and international NGOs, but so far, these initiatives exist only on paper. The main issue here is standardisation of the Roma language, since in Kosovo alone there are 15 different Roma dialects.

In general, education does not appear to be a priority for Roma families, whose concerns about their daily material needs overshadow the need for even basic school education for



their children. This problem also applies to some extent to the Ashkali and Egyptian communities, who also often do not have the finances to buy schoolbooks. Ashkali and Egyptians also often complain that in the textbooks used at school, they are not mentioned as minority groups in Kosovo.

With regard to the use of minority languages in Kosovo in general, it should be noted that while in theory, the Serbian language is an official language of Kosovo, this is not always taken into account in practice. The level of use of other languages, which also includes the use of Albanian in areas where there is a non-Albanian majority, is not satisfactory. The Committee of Ministers of the Council of Europe reached the same conclusion in a resolution issued on 21 June 2006 concerning the the situation of minorities in Kosovo, but admitted that there were certain positive examples of the regular use of languages of minority communities in official bodies. Also, the Committee of Ministers perceived that there was a lack of political will and capacity limiting the possibility of persons belonging to minority communities to use their languages to communicate with the public administration in a number of localities. This also applied to the private use of some of those languages, especially the use of the Serbian language, which is again linked to the current tense political situation.

The level of translation between languages varies, depending on the various municipalities, although the standard of the quality of translation is usually inadequate. According to the SRSG's technical assessment to the UN Security Council in April 2006 mentioned above, interpretation is available at all meetings of the Kosovo Assembly, municipal assemblies or committees whenever minority members are present. Twenty-two of thirty municipalities have dedicated language units, while others – except for Zvečan/Zveqan – have at least one translator/interpreter. It appears that in general, translation services in the three northern municipalities – Zvečan/Zveqan, Leposavić/Leposaviq and Zubin Potok – are inadequate. The Ministries of Public Services and Local Government Administration have units to monitor language compliance in ministries and municipalities respectively, but in many cases the allocation of funds for this purpose has been insufficient.

Along the same lines, the Constitutional Framework for Provisional Self-Government in Kosovo requires that all public signs in Albanian and Serbian. Compared to previous years, signs appear to be defaced less frequently, which might also be attributed to the fact that the competent authorities have intensified efforts to repair or replace such signs. In the area of Prizren, some signs are in three languages – Albanian, Serbian and Turkish. However, the above SRSG assessment to the Security Council notes that there have been many cases where public offices use unofficial place names for certain locations, especially at the municipal level.

With regard to the media, the SRSG assessment to the Security Council stated that of the 118 licensed broadcasters, 72 operate only in Albanian, 35 operate only in Serbian and 11 are multi-ethnic and/or multilingual. On 13 April 2006, the first Kosovo Turkish television station was officially launched, which will also broadcast news in the Albanian, Serbian, Bosnian and Roma languages.

Of the three Kosovo-wide television and four Kosovo-wide radio broadcasters, only the public broadcaster Radio Television Kosovo (RTK) provides television and radio

programming in minority languages and even there, this is only a small portion of their total programming. An amendment to Article 20 of the Kosovo Assembly's Law on Radio and Television of Kosovo, added by UNMIK Regulation 2006/04 of 11 April 2006 that promulgated this law, foresees that 5% of the public broadcasting fee will be allocated to a fund established in the Office of the Prime Minister to support "minority, multi-ethnic and disadvantaged media".

While the situation of minority television and radio broadcast media thus looks hopeful, the situation of the print media is not so positive. There is almost no Serbian language print media from Kosovo – most Serbian inhabitants read newspapers published in Serbia proper. The only exception is the recently-founded bi-weekly *Gradjanski Glasnik*, with an Albanian publisher and a Serbian editor, and the weekly *M Magazine* published in both Serbian and Albanian. The only Kosovo-based Turkish language weekly, *Yeni Dönem*, although established with the help of international donors, is privately-owned.

To sum up the issue of minority communities in Kosovo, it is important to note that certain steps have been taken but that in practice, there is still no adequate recognition of minority rights as such.

In ethnically diverse societies in general, there are various formulas for the preservation of peaceful coexistence. They presuppose that governing structures recognise, support and assist in the exercise of the special minority rights, while minority communities in return recognise and respect the authorities as such, as well as their powers. In Kosovo at the moment, the governing structures still resist recognition and support of the rights of minority communities, especially the Serbian and Roma communities, while certain minority groups, notably the Serbian community, refuse to recognise the Kosovo institutions. This failure of minority and majority communities to recognise each other's legitimacy and rights is a political issue and this must be resolved on a political level.

### **The situation of displaced persons inside and outside Kosovo and conditions for their return**

Many people in Kosovo are suffering from multiple waves of displacement that took place throughout the last decade. While in the period before mid-1999, a large number of Kosovo Albanians and members of certain Albanian-speaking minority groups became internally displaced in Kosovo or fled to Western Europe, many Serbs and other minority groups, mainly Roma, left their homes during or immediately after the NATO bombing campaign and found temporary accommodation in Serbia proper, Serbian enclaves and villages in the territory of Kosovo, Northern Mitrovicë/Mitrovica or collective centres (group housing for IDPs). As of 2000, a number of ethnic Albanians previously living in the northern part of Mitrovicë/Mitrovica fled to the southern part of this town and other areas mainly inhabited by Albanians. The final wave of displacement occurred in March 2004, when following violent protests, another 4 100 Serbs and other minorities, mostly Roma and Ashkali, became homeless (often for the second time) and in need of shelter. The same happened also to several Albanian families in Northern part of Mitrovicë/Mitrovica.

As regards the houses demolished before mid-1999, many of them were rebuilt after UNMIK assumed responsibility for public administration in Kosovo through the aid of international organisations and NGOs, which was distributed through the various municipalities.

There have been many complaints over the last few years from persons whose houses were never reconstructed, also ethnic Albanians. Since 2002, it appears that the funds for reconstruction of houses have all been used up and there was little support from municipalities, so that the displaced persons from all ethnic communities were left to fend for themselves. A number of these displaced persons, mainly Albanians, had illegally occupied apartments that had been abandoned during and after 1999, because the lack of housing.

Many of these people are now again in need of shelter as HPD proceeds to evict remaining occupants from houses or apartments. At the same time, Western European countries have forced or are in the process of forcing refugees, mainly ethnic Albanians, Ashkali and Egyptians, from Kosovo to return. Many of the people who have been evicted or forcibly returned should have had their homes rebuilt earlier. Since that has not happened yet, these people are now or will soon be homeless, with few resources or assistance to support them. Many of the currently displaced Serbs and Roma are also still waiting for their houses, destroyed after mid-1999, to be reconstructed, but for the moment, their temporary housing, even if often of poor quality, is assured.

Concerning the rebuilding of the former Roma Mahalla neighbourhood in South Mitrovicë/Mitrovica, the SRSG and the Kosovo Prime Minister officially laid the foundation for a new Roma settlement in the Roma Mahalla area in Southern Mitrovica in May 2006. The plan is to build two buildings with 24 apartments and 54 houses until the end of 2006, but since the laying of the foundation, there appeared to be little progress in the construction of these buildings.

The situation with the Roma IDP camp in the village of Plemetina/Plemetinë is improving. At the end of May 2006, the UNHCR and the PISG built and handed over apartments in this village to 40 families who used to live in Plemetina/Plemetinë camp with deplorable living conditions.

In the village of Magurë/Magura in Lipjan/Lipljan Municipality, the Kosovo Government built an apartment building for displaced Roma from Lipjan/Lipljan who used to live in Plemetina/Plemetinë camp. The apartment building can accommodate 18 displaced Roma families.

Now, there are still some 40 families left in the Plemetina/Plemetinë camp, including five families of Serb refugees from Croatia who have been displaced since the 1990s. According to the UNHCR, this final group will move to another social apartment building scheduled to start construction in June 2006. Once these remaining families have been provided with new accommodation, the UNHCR plans to close Plemetina/Plemetinë camp by the end of 2006.

Regarding the reconstruction of houses after the violent events in March 2004, more houses have been rebuilt in this reporting period than in the last, but the overall situation is still not satisfactory. More than two years later, the majority of persons are still displaced.

The criteria for rebuilding houses are not always transparent. The Ombudsperson has contacted the Inter-Ministerial Commission for Reconstruction in several cases where the objective criteria appeared to have been met, but the persons concerned were still not included in the list of beneficiaries.

In Prishtinë/Priština, most of the apartments in the YU programme building have not been repaired and compensation for damage to movable property has not been paid to all families but only to the ones whose apartments were burned – these are only 2 families out of 89 from the above building in Prishtinë/Priština, as most damages occurred through water used to extinguish fires. In Obiliq/Obilić, only 14 out of the 44 damaged and destroyed houses have been reconstructed. In the region of Peja/Peć, more precisely in the returnee villages of Belo Polje/Belopoje and Biča/Biqë, all houses destroyed during the March events in 2004 have been reconstructed.

Moreover, no business premises have yet been reconstructed. The reasons advanced by the Central Inter-Ministerial Commission for Reconstruction for the delays in reconstructing both private houses and business premises is the alleged lack of financial means for reconstruction, even though the Ministry for Returns and Communities has received funding for this purpose from UNMIK.

Reconstruction is not the only problem displaced persons face in Kosovo: living conditions are also a major concern. Over two hundred thousand of the Serbs from Kosovo displaced since 1999 are still accommodated in collective centres, or rented private houses and apartments in Serbia proper. Their status was already mentioned in the last Annual Report and has not changed: according to international law, Kosovo is not an independent state, so that these persons are not refugees, as they did not flee to another country. As internally displaced persons, however, they do not enjoy the same rights and support as the refugees from countries formerly belonging to Yugoslavia. At the same time, displaced persons do not enjoy the same rights as other inhabitants in Serbia proper or if they do, they have difficulties exercising these rights.

As for the approximately 18 000 IDPs from Kosovo still staying in Montenegro, one can only hope that the authorities of the newly independent state of Montenegro will now recognise these people as refugees and grant them the additional benefits that refugee status brings.

Many Roma have been internally displaced since 1999 and live in different collective centres in Kosovo and in Serbia proper. The last Annual Report emphasized the difficult situation of many Roma living in IDP camps in Česmin Lug, Kablare and Žitkovac in Northern Kosovo. Since 1999, when the Roma neighbourhood in Southern Mitrovica (the so-called Roma Mahalla) was destroyed, many former inhabitants of this area have been staying in the above camps despite increasing warnings that they were located on ground polluted by nearby waste dumps containing large quantities of lead, which poisoned

several children living in the camps and led to their hospitalisation. After the lead-poisoning became the subject of widespread discussion in 2004 and 2005 following the intervention of the media and a number of actors including the former Ombudsperson, UNMIK eventually began rebuilding the former KFOR camp Osterode in Northern Mitrovica to relocate these Roma IDPs. Originally, the leaders of the Roma living in the camps rejected moving to Osterode as they were afraid that moving to a camp with better conditions would make it more difficult to advocate for the reconstruction of their homes in the Mahalla. Eventually, however, increasingly bad conditions in the polluted camps caused half of the Česmin Lug camp, the Kablare camp and one third of the Žitkovac camp to move to Osterode which, while located close to the original camp, does not pose a significant health risk since the contaminated ground on which it was built has been paved with concrete. This was confirmed by independent experts, including WHO.

At the end of the reporting period, the Ombudsperson Institution received information from Roma leaders of the above camps that more than 60 families had already been accommodated in the new camp and that new containers were being prepared to house the remaining inhabitants of the Česmin Lug and Žitkovac camps. During a short visit of the Ombudsperson Institution to Osterode, this camp's new inhabitants complained that the plumbing and water supply of the new camp were not good. Also, they said that there were only a few toilets and bathrooms for more than 60 families in this camp. Representatives of the Ombudsperson Institution were not able to investigate these complaints since shortly after they had arrived at the camp, they were asked to leave by the security guards in the camp, who claimed to be acting under the orders of the camp management. Any attempts to arrange another visit proved unsuccessful due to continued inability to reach the camp management.

Whether all displaced persons of minority ethnicity, mainly Serbs and Roma, inside and outside of Kosovo will eventually return to their homes or other adequate accommodation depends on many factors, but mainly on whether they will feel that they can again live safely in Kosovo. They should be able to choose whether they wish to return to their original place of residence or move somewhere else.

Given the uncertainties surrounding the upcoming negotiations on Kosovo's future status, displaced persons of the above minority communities currently living outside Kosovo face a dilemma about whether to return or not. While in general, the security situation for returnees of minority ethnicity – mainly Serbs – has somewhat improved, many of them still fear to move around freely. This fear has grown after the recent attacks on Serbs (these returnees' fear of moving around freely in Kosovo has been fed by recent incidents of stoning buses and damaging gravestones discussed in further detail in the section on minority rights. Other factors that influence the above persons' decision to return are concerns about health care, the educational system, potential discrimination and the weak economy in Kosovo.

For the moment, Serbs and other minorities are slowly returning to rural areas, while there is almost no return to urban areas, primarily due to fears of a lack of security and also because many apartments have until recently been illegally occupied. However, even if the HPD has now evicted most illegal occupants, the above-mentioned fear for safety

and the apprehension regarding the future status of Kosovo prevent the majority of members of these minority communities from returning.

Those Serbs who have returned face difficulties, as in some cases fear for their security keeps them from working land which is geographically not close to their returnee settlement. Also, in some cases, illegal occupants cultivate land which rightfully belongs to these returnees and there have so far been little attempts on the side of the competent authorities to resolve or deal with such cases. It is difficult for returnees to start businesses due to their difficulties in accessing the already very limited employment market in Kosovo. The fear of moving around Kosovo and difficulties in purchasing appropriate machinery also make it very hard for them to develop sustainable livelihoods. There are also problems regarding the theft of machinery and livestock. While the Ministry of Returns and Communities is the Ministry responsible for returns and improving their living situation, it has so far not done enough to establish a proper strategy to improve the sustainability of the above persons' lives. However, one Ministry cannot do it alone – the entire leadership of Kosovo and the international community need to engage in a concerted effort to improve the lot of returnees.

Many people displaced by the March events have still not returned, as they are not confident that the security situation has sufficiently improved to allow them to live a peaceful life. All former residents of the returnee villages of Belo Polje/Bellopojë and Biča/Biqë, displaced for the second time by the above events, have now returned to their homes. In the area of Gjilan/Gnjilane and a village near South Mitrovicë/Mitrovica, many people have not yet dared to return, but come for daily visits to check on their property. A considerable number has decided to sell their property and settle elsewhere. In those cases where people have returned, a number of the reconstructed houses turned out to have been built in poor quality. In certain cases, the theft of doors, boilers, ceramic appliances and the breaking of windows pose additional problems. Examples of all of the above occurred in the municipalities of Prishtinë/Priština, Fushë Kosovë/Kosovo Polje and Obiliq/Obilić.

Regarding the issue of forced returns, the UNHCR issued a new position paper on the Continued International Protection Needs of Individuals from Kosovo in June 2006. One major change to the previous paper issued in April 2005 was that members of the Ashkali and Egyptian communities are no longer considered to be among those at risk, due to positive developments in the inter-ethnic environment. However, due to the limited absorption capacity of Kosovo, the return of persons from these groups should be approached in a phased manner. However, the UNHCR remained concerned about Kosovo Serbs, Roma and Albanians in situations where these groups constituted a minority. Persons of these communities should continue to be considered at risk of persecution and should continue to benefit from international protection in countries of asylum. This issue was raised repeatedly by the previous Ombudsperson throughout the year 2005 with both UNMIK and a number of Western European governments.

Nevertheless, agreements concluded with a number of Western European countries such as Germany permits the forced return of a limited number of Roma – mainly criminal offenders who have received prison sentences in their former asylum countries. The authorities of the host countries are however obliged to contact UNMIK first, which

conducts a screening involving a risk assessment on an individual basis. In case an individual case does not receive the prior approval of UNMIK, the host country may not expel this person to Kosovo.

Considering the large number of people who have already been forcibly returned to Kosovo in the last years, the scanty assistance provided to these people is deplorable. There are still no specialised offices or information centres for these people, neither on a central nor on a municipal level, nor are there any special medical or psychological treatment or language classes for the children, who often speak only the language of the former host country.

In some countries, the practice of sending back persons who are in the middle of medical or psychological treatment continues based on information from their liaison offices in Kosovo alleging that the same treatment can be provided in Kosovo. However, this information has now in some cases been successfully challenged by lawyers before the courts in host countries. The UNMIK Office of Communities, Returns and Minority Affairs still maintains the position taken in a note prepared together with the Ministry of Health in January 2005 and stating *inter alia* that there is a general lack of mental health professionals in Kosovo, in particular of such professionals who can assess people with special needs, insufficient financial resources and the inaccessibility of services for those living in rural areas, so that persons suffering from post-traumatic stress disorders should conclude their treatment in their host countries before returning to Kosovo in order to avoid a deterioration of their health.

In general, Kosovo's ability to welcome and absorb the huge number of refugees and IDPs who still have not decided whether to return or not remains limited. Much more must be done to prepare the ground for the many envisaged returnees so that they will be able to find their place in Kosovo society.

### **The protection of property rights in Kosovo and related aspects**

The inviolability of property rights is a precondition for the functioning of a legal and democratic system. As Kosovo, under the administration of UNMIK, is still in the process of building genuine democratic institutions, this must be one of the main pillars of those institutions, guaranteed through democratic legislation and administration, as well as an independent judiciary. With regard to the implementation of these principles in practice, however, the reality in Kosovo is that the insufficient level of protection for all people's property, in particular the property of people from certain minority communities, is alarming and reflects the inefficient functioning of the legal system in Kosovo and the irresponsibility of most administrative bodies.

This lack of responsibility is very apparent in the field of illegal construction, which is still widespread and persistently ignores the system of building permits and urban planning. Mainly in Prishtinë/Priština, but also in smaller cities and towns all over Kosovo, large apartment buildings shoot up like mushrooms and municipalities for the most part fail to apply the law to prevent such uncontrolled building. The municipalities

rarely address the problems of persons whose properties are damaged or obstructed by construction work on higher buildings in an adequate manner. So far, despite constant complaints from these persons, it is only in a few cases that the competent municipal inspectorates have demolished illegally constructed buildings.

When representatives of the Ombudsperson Institution raised this issue with the competent municipal inspectorate officials, these officials often admitted that, while knowing that certain constructions had exceeded the limits posed by building permits or were being built in the absence of such permits, they would not intervene to demolish them until the Kosovo Assembly passed a new Law on Construction. After the passing of this Law, new urban plans would be drafted and the compatibility of each of the above cases with these new urban plans would be reviewed on an individual basis.

When talking to representatives of the Ombudsperson Institution, municipal inspection officials also complain that illegal builders, despite municipal orders, continue with their construction work. At the same time, they allege that it is difficult to ensure that such orders be followed in the absence of an inspection police.

The above is only one of the problems in Kosovo indicative of a failure to implement the rule of law. But it is exemplary of the overall difficulties in implementing the rule of law – instead of stopping construction work that is not in compliance with the existing law, it is allowed to continue until a new law is passed. Even in those cases where there is a will to put an end to illegal practices, there are no proper mechanisms in place to guarantee an effective implementation of the rule of law.

Another example where municipalities fail to follow the rule of law and respect property rights is the expropriation of private properties, usually undertaken in order to construct public infrastructure, buildings, or other objects. According to the existing Law on Expropriation of the former Autonomous Socialist Province of Kosovo of 1978, municipalities must first determine the common public interest and inform the affected private property holder about their intention to expropriate and about available legal remedies. After the expropriation has taken place, municipalities are obliged to compensate the landowner, either financially or in kind.

Unfortunately, the procedures established by the above Law are rarely respected. Usually, municipalities fail to conduct any type of expropriation procedure when undertaking public works affecting private properties. They do not inform the affected property holders, do not sufficiently determine and explain the public interest and do not adequately compensate those affected. While there have been cases where private individuals have received compensation for lost property, these are exceptions to the general practice. In answer to requests for compensation, municipalities usually cite a lack of funds. Most municipalities appear to underestimate the gravity and lawlessness of this situation, where persons are deprived of their property and get nothing in return.

The situation is at its worst in certain cases where KFOR, after entering Kosovo in 1999, *de facto* expropriated certain properties by building roads in a number of municipalities in Kosovo. The most notable of these cases happened in Prizren, where the competent Municipality officials told the complainant to complain to KFOR, since they had built the



road. KFOR, on the other hand, told the complainant to address the Municipality of Prizren, since the road was built for and used by the Municipality. While both KFOR and the Municipality refuse to assume the responsibility for this expropriation, the property holder in question still has not received any compensation for the property that he lost, despite the Ombudsperson Institution's frequent interventions in this case.

Another category of complaints that the Ombudsperson Institution dealt with during this reporting period relates again, as in previous Annual Reports, to the work of the Housing and Property Directorate (HPD). The HPD was established in 1999 by UNMIK Regulation No. 1999/23 to deal with claims of persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who lost these rights as a result of discrimination. It has now issued decisions with regard to almost all of its complaints and will close office as soon as all remaining claims have been dealt with.

The last regular session of the HPD Claims Commission will be held in July 2006, but due to the impossibility of reviewing all the cases before the HPD in one session, the Claims Commission is expected to hold another extraordinary session in September 2006. The HPD will continue to operate until all of the Claims Commission's decisions have been executed.

One category of cases which proved to be very complex involved workers of former socially-owned enterprises who had received apartments from their employers by allocation in the 1980's, but who had been first dismissed from work and then evicted from the apartments in the nineties under the Milošević regime. The apartments were re-allocated to other workers, who then took possession of these apartments. In such cases, both the persons who had possessed the apartments first and the persons who eventually took possession of them in the nineties lodged claims with the HPD.

The HPD decided on these cases by granting possession of the apartments to one party and compensation to the other. The execution of the compensation decisions still poses problems, however, because the HPD could not decide to whom to grant compensation and, if so, how much. According to information received from the HPD, the SRSG has many times been asked to decide on this issue, but has so far failed to do so.

With regard to similar cases where the allocation-right holders were dismissed from their work places before they could take possession of the apartments, the HPD resolved the issue by deciding that these complainants should present requests for compensation to the Kosovo Trust Agency (KTA), the body which now is responsible for administering and privatising former socially-owned enterprises, or with the Special Chamber of the Supreme Court, which deals specifically with matters related to the KTA. However, it appears that so far, hardly any of the persons affected have actually lodged such compensation claims with the KTA.

Since the majority of those persons who actually lived in the allocated apartments in the nineties left Kosovo after mid-1999, the former allocation-right holders moved into the apartments that they considered to be rightfully theirs and have been living there for the last seven years. One by one, they have all been evicted from these apartments now by

the HPD, which referred the responsibility for finding shelter for these people to the various municipalities. Unfortunately, only a few municipalities have so far been able to provide such shelter – allegedly because of the limited financial means at their disposal, but more often than not because they simply do not consider this to be part of their responsibilities.

The lack of accountability for providing shelter or other forms of accommodation assistance has even more serious consequences for persons evicted by the HPD who have no other place to go since their homes, destroyed during the fighting in 1998-99, have still not been reconstructed. Immediately after UNMIK took over public administration in 1999, certain international organisations and NGOs provided assistance to reconstruct a number of such destroyed properties, but this assistance has now all been used up, posing a serious problem particularly to those persons who have been illegally occupying properties for temporary shelter since 1999. Despite repeated requests to the municipalities for the reconstruction of their properties, these individuals were not provided with any assistance for reconstruction or alternative shelter since the municipal officials considered that as these people were living somewhere, their shelter issue was resolved, at least for the time being. While some individual municipalities have addressed this issue, there is in most cases a clear lack of political will on the local and central level to tackle this problem.

In recent years, the Ombudsperson Institution has been receiving many complaints with regard to this issue. Currently, the Ombudsperson Institution is preparing a special report on the compatibility with international human rights standards of the respective authorities' lack of action on this issue.

The Kosovo government and municipalities, in cooperation with international donors, must act quickly to develop a housing strategy for the great number of people suddenly left homeless for the above reason. At the same time, rebuilding the homes and properties destroyed during the 1999 conflict should again become a priority for local and international actors, even if they are not under a clear legal obligation to do so.

The authorities in Kosovo are, however, under a clear legal obligation to reconstruct the homes destroyed during the riots in Kosovo in March 2004. However, not all of these houses have been rebuilt yet. In some cases where houses were reconstructed, there have been complaints that this was done in a qualitatively unsatisfactory manner. Further details on this can be found in this Annual Report's section on displaced persons in- and outside Kosovo and conditions for return.

In addition to these dramatic cases, the protection of ethnic minorities' property rights, especially those of Serbs and Roma, has been marked by constant problems since 1999, mostly related to these persons' inability to use or access their land. For a more detailed discussion of this issue, see the section on minority rights above.

After the HPD close of office, claims resulting from the events in 1998-99 with regard to private immovable property, including agricultural and commercial property, will be reviewed by the Kosovo Property Agency (KPA), an administrative agency functioning as an independent body pursuant to Chapter 11.2 of the Constitutional Framework on

Provisional Self-Government and based on UNMIK Regulation No. 2006/10 on the Kosovo Property Agency, promulgated on 4 March 2006. The tasks of the KPA will be to assist the courts in resolving conflict-related ownership claims with respect to private immovable property, including agricultural and commercial property, and claims involving property use rights with regard to the above kinds of property with regard to the time between 27 February 1998 and 20 June 1999. Decisions on the findings and conclusions of the Kosovo Property Agency will be made under the authority of the courts of Kosovo. Presumably, the KPA will be dealing with an enormous number of complaints, like the HPD before it.

In many cases pending before KPA, HPD and other bodies dealing with ownership claims, the respective parties' failure to consistently inform cadastral authorities about transfer of ownership renders the resolution of such claims very difficult. This leads to insurmountable difficulties in property disputes and devaluates cadastre registers as proof of ownership.

Another problem in this respect is the fact that cadastre offices often lack proper documentation from the Yugoslav period. Sometimes the documentation was destroyed and sometimes registers were taken to Serbia proper by previous staff of these offices upon leaving Kosovo in 1999. Contacting the competent persons in Serbia proper is difficult due to the current tense political situation, thus cadastre officials in Kosovo advise individuals to address their matters to the competent courts, which poses another problem in light of the usual delays in court procedures. Moreover, the large number of fraudulent documents circulating in Kosovo has led to considerable confusion regarding ownership. In some cases, three or four parties or individuals claim ownership of the same property.

As can be seen, there are many difficulties connected to the proper protection of property, often related to a lack of accountability and responsibility among municipal authorities, which often coincides with a weak judiciary. It is necessary that the central government take more effective and decisive action to resolve these issues.

### **Children's Rights in Kosovo**

The protection of children's rights is not a new issue for Kosovo's legislation. Although Kosovo, or rather UNMIK, is not able to sign the Convention on the Rights of the Child (CRC) since only states have that right, the Constitutional Framework for Provisional Self-Government obliges local institutions to protect these rights and apply the CRC directly in the territory of Kosovo, thus preparing the ground for applying international standards for the protection of the rights of children in Kosovo society. The CRC requires taking all proper measures to safeguard and ensure the protection, respect and promotion of all children's rights by passing relevant laws and establishing monitoring mechanisms. To implement this Convention in Kosovo, the competent authorities must take into consideration the following main principles: non-discrimination, the right of every child to life and development, the best interests of the child and the right of every child to express his/her opinion freely and to be heard. According to Article 1 of the CRC, a child is any person under 18 years of age.

As in other societies undergoing transition, certain factors in Kosovo make it very difficult to protect children's rights in practice. Examples of this are the poor economic situation, the large number of unemployed people and the low standard of living. Most importantly, a large number of persons and entities dealing with children including parents, legal guardians, teachers and most of all public institutions, have an insufficient level of information regarding the fostering of children's rights.

Bearing in mind the necessity of protecting the rights of children due to their special vulnerable status, the Ombudsperson Institution established a Children's Rights Team in 2004 to work on individual cases and general issues with regard to children's rights and also to raise awareness of the issue of children's rights.

When talking about more general legislation regarding children, it is important to mention the Kosovo Family Law No. 2004/32 entered into force on 20 January 2006 and replaced the Yugoslav Law on Marriage and Family Relations No. 10 – 84 from 1984. At the moment, however, both laws continue to be applied in practice. Social welfare centres all over Kosovo continue to apply the old law by deciding on matters regarding child custody and adoption as a first instance, even though such matters, according to the new Law, are under the exclusive jurisdiction of the Kosovo courts. In practice, however, many of the decisions taken by the social welfare centres are not executed, as since 1999, there is no executive organ on the municipal level to execute these administrative orders.

While it is positive that in legislation in general, children play a more important role than before, much remains to be done in terms of protection and enforcement of these laws. Also, more institutions need to be established that will be responsible for the protection and well-being of children and the work of existing institutions dealing with children, mainly the social welfare centres, needs to be improved. In Kosovo, the notion of the necessity to protect children's rights in practice through special institutions only came up in 2004 and has been developed and improved ever since. One positive development is the recent creation of Children Rights' Officers in different ministries in the PISG, which will hopefully assist in the protection of children in the future.

This is extremely necessary in Kosovo, bearing in mind that children here face a number of problems related to their development. There are daily reports of cases where children are forced to perform heavy labour, beg or leave schools. Many children are often also left without any parental care at all.

With regard to the problem of child labour, Article 32 of the CRC states that each child has the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or interfere with a child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. According to Section 3 of UNMIK Regulation No. 2001/27 on the Essential Labour Law in Kosovo, the minimum age for employment is eighteen, except with regard to light work, which also children aged 15 and over may perform if such work is not likely to be harmful to their health or development, and does not affect their attendance at school.

Although the most recent report of the International Labour Organisation from 2004 states that all over the world, the level of child labour is dropping, a UNICEF report issued in the same year states that in Kosovo, it is rising. In fact, it is not even necessary to conduct a special investigation into this matter to realise that children in Kosovo perform many tasks that are likely to be hazardous, such as selling cigarettes and other products on the street or in bars, cafes and restaurants, doing heavy physical or domestic labour, working in coal mines and quarries, doing wood-cutting and hard field labour or begging on the streets. Even children aged five or six are working the above jobs, often until late at night.

One main reason for the rise of child labour in Kosovo is the above-mentioned dire economic situation. Other contributing factors are the low level of education and awareness of the negative effects hard or dangerous labour could have on children's development.

The former Ombudsperson raised the issue of child labour in the last reporting period with the Prime Minister at the time, but never received an answer to his letter. During this reporting period, the Ombudsperson Institution dealt with a very serious case where a ten-year-old child from Mitrovicë/Mitrovica was supporting his entire family. The Ombudsperson Institution, through its good services, helped the parents in obtaining social assistance and invalidity pension. In addition, thanks to the assistance of a Swedish NGO, the family house, destroyed during the 1998-99 fighting, could be reconstructed.

There have, however, been certain developments towards improving protection of children's rights in the recent years. In March 2005, the Ministry of Labour and Social Welfare, with the support of the Prishtinë/Priština Office of the International Programme on the Elimination of Child Labour (IPEC), held preliminary discussions on the constitution and rules of procedure of the "Kosovo Commission for the Prevention and Elimination of Child Labour" with institutions and NGOs dealing with children's rights. This Commission was officially established with the Prime Minister's Decision No. 5/166 of 13 September 2005. The Commission will consist of one or two representatives from each Ministry, plus representatives of UNMIK Police, the Kosovo Police Service, NGOs working in children's rights and IPEC. The mandate of this Commission is to review and approve strategic and operational programmes of IPEC, decide on the programme policies and priorities, including the fields and sectors where action programmes will be developed, and obtain the Government's support and means for these programmes. Although Article 10 of Decision No. 5/166 stipulated that this Commission should, within 45 days from the entry to force of this decision, draft an Action Plan for the Elimination of Child Labour in Kosovo, which would then be implemented by an order of the Minister of Labour and Social Welfare, the Commission failed to do this within the determined deadline. Such a strategic plan, drafted and implemented by public institutions, would undoubtedly seek to alleviate the problem of child labour in Kosovo and would directly monitor and fight the causes leading to its high level of occurrence. It would also oblige the central administrative authorities to protect and respect children's rights, while ensuring that there will be sufficient financial means to realise this plan.

With regard to the more general issue of education, Kosovo legislation, as mentioned above, provides sufficient protection for children, but its implementation has so far been

insufficient. Examples of this are the Law on Primary and Secondary Education No. 2002/02 adopted by the Kosovo Assembly on 26 September 2002 (promulgated by UNMIK Regulation 2002/19 of 31 October 2002), the Law on Inspection of Education No. 2004/37 of 8 September 2004 (promulgated by UNMIK Regulation 2004/55 of 17 December 2004) and 68 Administrative Instructions issued by the Ministry of Education, Science and Technology (MEST) on the implementation of these laws. However, the proper well-being and development of children in accordance with international standards calls for not only legal protection, but also effective institutional protection and implementation of the relevant legal provisions into practice.

A particular obligation that the CRC imposes on competent authorities is that they should provide sufficient conditions for an effective education. This has so far not been achieved in Kosovo, where many schools suffer from inadequate facilities, so that classes are reduced from one hour to half an hour each and must be held in several shifts, often as many as three to four. In certain cases, children are obliged to attend classes in containers that do not have the basic conditions for such a purpose. The consequences of such a state of affairs are a lack of oversight over pupils increasing the potential for tensions amongst them and between pupils and the teaching staff. When addressed regarding this issue, the MEST refers to the small budget at its disposal.

Another very disturbing problem related to schools, namely the lack of proper drinking water, was already raised in the last Annual Report and still persists today. According to a report issued by the Water Sanitation Unit of the Public Health Institute (PHI) in Prishtinë/Pristina in 2002, the drinking water in 82.5% of the 40 schools visited all over Kosovo was considered to be contaminated and/or undrinkable, leaving only 17.5% of the schools with drinkable water. The MEST thereupon signed a Memorandum of Understanding on a School Program for the Promotion of Health in 2004 with the Ministry of Health and the Ministry of Environment and Spatial Planning (MESP). In this Memorandum, the above Ministries undertook to improve the conditions in those schools of Kosovo where there was no drinkable water.

The former Ombudsperson had raised this issue during the last reporting period. On 28 September 2005, the Ombudsperson again raised this issue with the Prime Minister of Kosovo, who responded with a letter on 7 October 2005 stating that the Prime Minister's Office, in cooperation with the MEST, had taken measures to establish a working team as soon as possible to address this issue by whatever means possible. According to recent information, however, the situation has remained unchanged, apart from the distribution of chlorine every three months to those schools where the situation was most critical. PHI officials state that the absence of drinking water and/or contaminated water in some schools in Kosovo could cause epidemics.

Direct contact with children in schools revealed that one of their main complaints was that a number of their classmates had to drop out of school due to their families' dire economical situation, which prevented them from buying the necessary schoolbooks. This situation is not only alarming but also in violation of Article 3.2 of the Law on Primary and Secondary Education in Kosovo, which stipulates that children attending primary schools up to the 4<sup>th</sup> grade should be provided with schoolbooks free of charge. The former Ombudsperson reacted to this situation in the last reporting period and the

Acting Ombudsperson took this issue up again in January 2006, asking both the MEST and the Prime Minister to undertake specific measure to ensure the implementation of these legal provisions and equal treatment for all children. While the Prime Minister's Office merely informed the Acting Ombudsperson that such issues should be addressed to the MEST, the MEST itself responded in February 2006, stating that the Ministry had requested 3.500,000 Euro from the Government for this purpose for the year 2006. However, the MEST had received only 2.000,000 Euro due to the lack of funds and hoped that they would be sufficient to provide school books for all orphans or poor pupils. The Ombudsperson Institution has continued to monitor the situation.

Another problem related not so much to the schools themselves but to their surroundings is the fact that many schools are built beside main roads, which often have no sidewalks or signs calling on drivers to pass slowly in the vicinity of these schools. Due to this problem, many school children have already been hurt or lost their lives on their way to or from school. The former Ombudsperson raised this issue with the MEST and the Ministry of Transport and Telecommunications (MTT) both in the last reporting period and in September 2005. The MTT responded by providing the Ombudsperson with a report on improvements and actions taken with regard to these "black spots" in traffic. The MEST answered by stating that this Ministry had set certain priorities with regard to the safety of children in traffic, namely asking municipalities to prioritise this issue when managing funds, to oblige Regional Education Offices and Municipal Directorates of Education to prioritise this matter on their promotion and fund-raising agenda and to ask the MTT to draft and implement projects and provide the legal ground for these constructions. Recent investigations of the Ombudsperson Institution reveal, however, that there are many dangerous traffic spots of great importance in Kosovo that have not been dealt with sufficiently and that more must be done with regard to such locations in order to guarantee more safety for children.

Education offered to children in the Correction Centre in Lipjan/Lipljan is also not on an adequate level – according to information received from the Ombudsperson Institution in 2005, there were only three teachers for all age levels. In October and December 2005, the former Ombudsperson raised this issue with the Minister of Education, Science and Technology, who has so far failed to respond. Considering the special need of education in particular for this category of children, it is important that this issue receive appropriate attention from the competent authorities.

With regard to judicial protection of children, child custody cases already pending before courts also suffer from the habitual case overload and backlog causing huge delays in Kosovo courts. Little regard is paid to the urgent nature of these cases, where the passing of time can lead to considerable estrangement between parents and children. It appears that courts do not comprehend the necessity to decide on such matters quickly and instead group them together with other cases, which constitutes a violation of the children's right to enjoy the company of both parents protected by the right to family under Article 8 of the European Convention on Human Rights.

One special category of children involves children with psychological problems, who are in need of specialised health care which the existing public institutions in Kosovo often cannot provide. While children with illnesses or in need of operations have the

opportunity to apply for financial assistance for medical treatment abroad with the Ministry of Health, the latter does not accept cases involving psychological or psychiatric treatment, since it considers that the special treatment required in such cases would be too long and too costly. According to information received by the Ombudsperson Institution, there are plans to have a special clinic in Kosovo for such cases, but as of yet, nothing concrete has been done.

In particular with regard to children, who are vulnerable in that they cannot protect themselves, all public institutions in Kosovo must endorse the principles set out in the CRC. So far, this has not been done in a satisfactory manner, but recent developments give cause to hope that the level of awareness raised in recent years with regard to children's rights will continue to rise. More priority must be given to the education of children, especially in the field of human rights and under conditions that are in keeping with international human rights standards, always bearing in mind what is in the best interests of children. While everyone is aware of the general lack of sufficient funds within the PISG, the Kosovo Government and other decision-making bodies should make sure that this lack of funding will not be to the detriment of children and their further development.

### **Different forms of discrimination in Kosovo**

The right to be free from discrimination is a fundamental principle of human rights law. By various instruments of international law, states are obliged to combat discrimination in all its forms. They have a responsibility to ensure that their laws and institutions address the causes and consequences of discrimination, and to secure adequate remedies for those who suffer violations of their fundamental right to equal treatment. Examples of where formulations of the non-discrimination principle can be found are the UN Declaration on Human Rights, the International Covenant on Civil and Political Rights and the European Convention on Human Rights. In Kosovo, the domestic counterpart to such international instruments is the Anti-Discrimination Law, passed by the Kosovo Assembly on 19 February 2004 and promulgated by UNMIK Regulation 2004/32 on 20 August 2004. The principle of non-discrimination can also be found in the Constitutional Framework Convention for Provisional Self-Government of 2001, through which the international treaties mentioned above are directly applicable in Kosovo, as well as in certain laws in Kosovo, for instance those related to employment or the civil service.

The term discrimination is often used in political discussions, but it is worth recalling what this term actually means: the different treatment of a certain person or group of persons who find themselves in truly similar, comparable or analogous situations. On the other hand, discrimination may also occur in the opposite case – when people who find themselves in completely different situations are treated the same. Measures taken in order to prevent or compensate for disadvantages caused to certain vulnerable persons or persons—so-called “positive discrimination”—are not considered to be discrimination in the above sense.



In order to improve the work of the Ombudsperson Institution in the field of non-discrimination, the Institution established a specialised Non-Discrimination Unit within its Investigations Department in March 2004.

In Kosovo, the issue of discrimination is a much-discussed topic and so far, in addition to the Anti-Discrimination Law, many public efforts have been made to fight various forms of discrimination and find solutions to this problem. However, in practice, these efforts have not had much success. In a society that still suffers from the after-effects of inter-ethnic fighting seven years ago, as well as from high unemployment and constant worries about the future, the idea of granting special rights to vulnerable groups to allow them a greater say in the decision-making process is not a top priority.

Nevertheless, there have been some developments. During 2005 and in the beginning of 2006, the Advisory Office of Good Governance within the Prime Minister's Office began to implement a project for the promotion of the above-mentioned Anti-Discrimination Law, which involved trainings and seminars for staff of central and municipal authorities, in particular in municipalities with ethnically mixed populations. Trainings were also organised for officers of the Kosovo Police Service and members of the Kosovo Protection Corps.

In May 2006, the Advisory Office of Good Governance within the Office of the Prime Minister of Kosovo issued an Administrative Instruction to facilitate the implementation of the Anti-Discrimination Law and promote its principles. Prior to its issuance, the Non-Discrimination Team of the Ombudsperson Institution, following an invitation of the above office, gave recommendations on the formulation of certain parts of the Draft Administrative Instruction.

Despite these efforts, however, the human rights principles inherent in the above law are rarely implemented on the ground. The most frequently discussed form of discrimination is currently ethnic discrimination, which, in particular in the aftermath of an ethnic conflict, acquires a political life of its own which often overshadows the real problems existing in this context. At the same time, the politicization of the issue in particular between the majority Albanian population in Kosovo and the largest minority group in Kosovo, that of the Kosovo Serbs, has become more and more heated in the last period, which was marked by status talks on Kosovo's future. In such a situation, it becomes even more important to recall the original idea of discrimination and the real problems it causes for individuals.

While there are differences depending on each ethnic minority in Kosovo, namely Serbs, Turks, Bosniaks, Roma, Ashkali, Egyptians and Gorani, members of all minority communities complain about discrimination in employment and the limited use of and regard for their respective language by public authorities. The lack of proper education in their own languages for their children, and of funding for this purpose, is also a topic often discussed with persons of Turkish, Bosniak, Roma and Gorani ethnicity.

The Serbian minority has been complaining that criminal attacks on them have not been investigated properly by the police. While it is difficult to assess where the real reasons for this inability to solve such cases lie, it is *de facto* true that the number of unresolved

cases where the victims are of minority ethnicity is higher than with other categories of cases.

A special issue with regard to discrimination relates to the alleged inability of persons of certain minorities, mostly Serbs, to participate in the privatisation of former socially-owned enterprises that they used to work for. According to UNMIK Regulation No. 2003/13 on the Transformation of the Right of Use to Socially-Owned Immovable Property, former employees of such properties were entitled to share in the proceeds of the privatised enterprises if they had been registered as workers of the enterprises at the time of privatisation and could prove that they had worked for the enterprise for at least three years. Since most of the Serbian complainants had left Kosovo by the time privatisation proceedings began, they could not be registered in the above way.

While it is always possible for persons allegedly excluded from the privatisation process to lodge their complaints with the Supreme Court of Kosovo's Special Chamber on Kosovo Trust Agency-Related Matters, any complaint can only be successful if the alleged discrimination can be proved. This principle of placing the burden of proof on the complainants is, however, contrary to relevant European standards, which have seen a shift of the burden of proof from the complaining party to the respondent party, whenever a *prima facie* burden of proof may be constructed. This shift in the burden of proof is also incorporated in Article 8 of the Anti-Discrimination Law. Both the former Ombudsperson and the Acting Ombudsperson raised this issue with the SRSG, recommending that the proceedings before the Special Chamber be amended in line with European standards in discrimination cases, so far with little success.

The discrimination against Roma may not always be as frequently debated in public as the problems faced by Serbs, but members of this community are submitted to the most frequent and regular pattern of heckling and insults. While this general discrimination also affects Ashkali and Egyptians, the situation is most difficult for the Roma, who rarely speak proper Albanian. They are regularly deprived of the most basic rights, such as the right to adequate housing, access to health services, economic situation or the right to education. In particular, the situation of Roma living in IDP camps in northern Kosovo built on land that was polluted by waste from a nearby lead mine was monitored closely by the Ombudsperson Institution in this and previous reporting periods. The Egyptian and Ashkali groups often suffer from similar problems with regard to living conditions, but not to such an extent. This issue is discussed in greater depth in the section on minority communities in Kosovo above.

But ethnic discrimination is not the only form of discrimination in Kosovo. While often treated as a separate body of law, the different treatment of men and women and other forms of gender discrimination should not be seen as such, but as a special form of discrimination. Gender equality continues to be an important issue, mainly due to deep-rooted traditional hierarchical patterns prevalent in many ethnic communities in Kosovo, which essentially deprive women of most of the rights granted to men. While in many cases women have been and still are regarded as inferior to men, awareness of this issue has improved somewhat, in particular following the passing of the Gender Equality Law 2004/2 by the Kosovo Assembly on 19 February 2004. This Law, promulgated by the SRSG by UNMIK Regulation 2004/18 on 7 June 2004, aims at establishing gender

equality as a fundamental value for the democratic development of the Kosovo society, providing equal opportunities for both female and male participation in the political, economical, social, cultural and other fields of social life.

After this Law entered into force, many steps have been taken in order to promote gender equality and raise awareness regarding certain kinds of gender discrimination. One of these was the Government's recent drafting of a programme for gender equality and the establishment of an office for Gender Equality within the Prime Minister's Office. The Directorate for Legislation within the Office for Gender Equality has until now commented on and reviewed several laws from the gender equality point of view.

It remains unclear how much can be achieved by such activities and laws if the real problem lies in traditional values and a lack of education. As a general rule, there are considerable differences between rural and urban areas in the perception of women and their rights. In rural areas, traditional laws and customs endure, the social position of women is often inferior to that of men and there is almost no knowledge or understanding of the principle of gender equality. There is greater equality of the genders in more urban areas, even if a considerable number of families living in urban areas continue to adhere to traditional values and customs. This difference is also reflected in the levels of education: in rural areas, over ten percent of the women are illiterate, while the level of literacy is much higher in urban areas.

Gender inequality is also reflected in employment rates. Unemployment is higher among women than men and the Ombudsperson Institution has received a number of complaints where women complain that they have been dismissed from a position merely because they were women.

All over Kosovo, women and children are also the main victims of domestic violence, a problem which is often not raised by the victims themselves for fear of negative consequences, in particular in rural areas. Domestic violence is a widespread problem, but was only recently brought to the proper attention of the public through media campaigns and other awareness-raising activities of UNMIK and local actors.

In many rural or traditional homes, the idea of women inheriting property is also not in line with traditional values. The Ombudsperson Institution was approached in a number of such cases and helped resolve some of them.

One special aspect of inferior treatment of women relates to custody and access of children after a divorce or the death of the children's father. According to Kosovo Albanian tradition, children born into a family are part of the extended family of the father, so that after a divorce or the death of her spouse, a woman can only continue to see them if she continues to live in the home of her former husband's family. Such practice often continues even in the face of court judgments granting full custody and access rights to the mother. Courts, in particular in more rural areas, have difficulties executing such judgments. Following a report issued by the Ombudsperson Institution in December 2005 on such a case, a court judgment was eventually executed and the mother now has access to her children.

Although it affects fewer people, discrimination against persons with disabilities is also a very serious issue in Kosovo. Many disabled persons are not able to obtain certain benefits that they are entitled to according to the Kosovo Assembly's Law on Disability Pensions. Examples of this are, among others, special access to public buildings, improved means of transport, reduced bills for electricity and other public utilities, certain tax exemptions and better access to cultural, sports and other events. Another issue that has been frequently raised with the Ombudsperson Institution involved the inability of disabled persons to obtain drivers' licenses, since there is no special law or facilities for testing their driving skills.

In Kosovo in general, public and media attention and dialogue mostly focus on blatant and apparent forms of discrimination, such as those in the areas of gender and ethnic minorities. But these and the problems of disabled persons mentioned above are not the only forms of discrimination existing in Kosovo society.

As often in a post-conflict environment where there is high unemployment, serious corruption and weak governing and law enforcement authorities, there is a general difference in treatment of individuals by public authorities. Benefits and other forms of assistance, are not distributed in an equal manner and within public administrative offices or organs, there is no written procedure to prevent arbitrary or discriminatory behaviour. In general, the law is not applied equally to people by executive bodies and the judiciary. Preference is given to individuals based on their financial situation, family ties, or political affiliation. The Prime Minister has announced a fight against corruption, the main cause for this discriminatory behaviour, but so far, there have been few results in this respect.

As in many other areas of human rights in Kosovo, the real problems thus lie not so much in the laws as in their implementation – or rather, the lack thereof. Since 1999, the principle of non-discrimination has been incorporated into numerous laws in Kosovo, most notably the Anti-Discrimination Law of 2004. Yet despite the legal provisions and numerous efforts by local and international actors to promote and implement them, residents of Kosovo in general and the public administration in particular have not yet understood or are not interested in applying the basic concept of equality of all individuals before the law. More must be done to promote education on and public awareness of both this fundamental principle and the various legal mechanisms now in place to defend it. As it is, the general ignorance of rights to equal treatment before the law leads to a situation where both the perpetrator and the victim of discrimination may have become so used to unfair and illegal practices by the public administration that they may both consider them normal or believe that nothing can be done to change such practices.

Both the authorities and the people in Kosovo must come to understand that the principle of non-discrimination is not a political or social issue, but a basic human right, safeguarded by local and international law.

## **Human rights and status talks**

Over the years since UNMIK took over the administration of Kosovo according to Security Council Resolution 1244 of 10 June 1999, the unresolved status of Kosovo has created practical difficulties for the population of Kosovo. A number of such difficulties encountered in the last reporting period were addressed in the previous Annual Reports and have continued to cause problems in this reporting period.

In the current phase of status talks between the PISG, the Serbian Government and the international community, politicians, international organisations, NGOs and local and international experts have dissected the political and policy aspects of these talks endlessly. The issues that still need to be resolved are manifold, examples are the lack of cooperation in prosecuting persons who committed crimes in Kosovo and are supposedly currently living in Serbia proper, the matter of compensation for damages caused during the fighting in 1998-99, privatisation and cultural heritage.

One of the biggest and most emotional unresolved issues in this context is the issue of missing people from mainly Albanian, but also Serbian and other ethnicities. The process of returning all known bodies found in Petrovo Selo, Batajnica and Bajna Bašta in Serbia proper to Kosovo has now been completed and according to information from the International Committee of the Red Cross of May 2006, 700 missing persons had been accounted for since the beginning of 2005. However, there are still over 2 200 persons missing. It is of utmost importance that there will be further discussions between the PISG, Kosovo leaders, the government of Serbia and the international community on methods of cooperating in order to obtain information on these missing persons.

As an independent institution dealing with human rights complaints, the Ombudsperson Institution has a unique perspective of the legal and practical consequences of issues discussed in the course of status talks and how they affect people's lives. Over the course of the reporting period, the Ombudsperson Institution has received a large number of complaints related to such matters.

There is an almost complete lack of communication between the authorities in Serbia proper and either UNMIK or the PISG. This creates obstacles on a daily basis, such as the inability of inhabitants of Kosovo to access documents from Yugoslav times still in the possession of authorities in Serbia proper. Serbian displaced persons living outside Kosovo also have problems accessing documents from the PISG. While individual lawyers and organisations like the Spanish NGO MPDL (Movimiento por la Paz, el Desarme y la Libertad (Movement for Peace, Disarmament and Freedom)) are able to obtain such documents through their own channels and systems, it is near impossible for individuals to do the same. The same is true for a number of cadastre registers from before 1999, which are also archived in Serbia proper.

This lack of cooperation and communication also prevents individuals from receiving pensions earned during Yugoslav times, as the relevant pensions funds are administered in Belgrade. Similar problems are faced by persons who once held savings accounts in

Jugobanka, the state bank of former Yugoslavia. This issue was discussed in the previous Annual Report and has still not been resolved.

The relationship between courts in Kosovo and courts in Serbia proper is also in need of great improvement in terms of the mutual recognition of legitimacy and information sharing. If a civil court in Kosovo wishes to send a document or summons to a party living in Serbia proper, it must go through the UNMIK Department of Justice, which will then attempt to reach the Serbian court. Serbian courts need to follow the same procedure through UNMIK to obtain documents from courts in Kosovo. This process of cooperating is not only over-complicated, but rarely successful.

Similarly, both UNMIK and the authorities in Serbia proper do not recognise each other's legitimacy to register cars from inhabitants of Kosovo. In the early years of its administration, UNMIK introduced its own car registration system, which no longer recognises license plates from Kosovo issued by the former Yugoslav regime as valid. The UNMIK system has in turn not been recognised by the authorities in Serbia proper, who continue to register cars bought in Serbia proper by inhabitants of Kosovo and assign them license plates under the old system. The car owners with vehicles registered in Serbia proper then encounter numerous difficulties when bringing their cars back to Kosovo: the KPS often confiscates these vehicles and their obligations under UNMIK's excise tax regime are unclear or misinterpreted by certain officials.

Finally, the question of succession must be resolved once and for all. It must be clear whether the existing PISG, mainly on a municipal level, can be held accountable for administrative actions or decisions taken by municipalities before 1999. This question has already been raised with UNMIK by certain municipalities, so far with little success.

These administrative and legal controversies demonstrate the practical problems of running the public administration through a temporary UN mission. These practical problems are often not taken into account during political discussions between the negotiating partners, yet they have a significant impact on the situation on the ground, which in turn affects the course of negotiations. The Ombudsperson Institution hopes that the expected resolution of Kosovo's political and legal status, whatever its outcome, will also facilitate the resolution of these heretofore intractable problems.

## **ACTIVITIES OF THE OMBUDSPERSON INSTITUTION**

In addition to pursuing the regular activities of the Institution, both the former Ombudsperson and the Acting Ombudsperson spent a significant amount of time managing the transitions engendered by the kosovanisation of the Institution. While the former Ombudsperson spent the last weeks of his tenure in Kosovo making final visits to the heads of local and international institutions, advocating for their continued support to the Institution after his departure, the Acting Ombudsperson had numerous meetings in the first half of 2006 with the heads of local and international organizations to establish positive working relationships with them.

The core work of the Institution remains investigation of and advocacy on human rights issues, as discussed in the introduction to this report. However, the Ombudsperson Institution engages in a variety of other activities, including commenting on the human rights aspects of laws and governmental policies, media relations and awareness-raising activities, and co-operation with programmes of the international community and of local authorities. The Ombudsperson Institution is actively engaged with local, regional, and international human rights organizations, to inform them of the situation in Kosovo, to identify areas of potential co-operation and to exchange best practices. This section presents an overview of all of the Ombudsperson Institution's activities throughout the reporting period, as well as operational issues like funding and internships.

### **Investigations, advocacy & mediation**

One of the Ombudsperson's most important functions is to advocate for the interests of residents of Kosovo. This is done mostly through intervention letters addressed to various public authorities but also through personal meetings between their staff and representatives of the Ombudsperson Institution. In special cases, the Ombudsperson may raise an issue with the media in order to draw wider public attention to it. Another of the Ombudsperson's key tasks is mediation and the offering of good offices. In fact, most of the Ombudsperson Institution's cases have some mediation aspects.

During the reporting period, one example of the Institution's mediation services occurred in May 2006, when a Deputy Ombudsperson and other representatives of the Ombudsperson Institution met with a group of prisoners in a detention centre in Northern Mitrovicë/Mitrovica who were on a hunger strike protesting the judicial system's handling of their cases. The representatives of the Ombudsperson Institution mediated a suspension of the strike on the condition that they would discuss the case with the UNMIK Department of Justice and the prisoners would write a letter to the Department requesting that it agree to have their cases reviewed by an international judge within 15 days. The UNMIK Department of Justice contacted the prisoners in mid-June and informed them that it had asked the District Court of Prishtinë/Priština to send the prisoners' files to the office of the main international judge in Kosovo. When this report went to press, the prisoners had not received any further notification and had returned to their strike. The Ombudsperson Institution continues to monitor the situation.

### **Examining legislation**

The Ombudsperson Institution also has an official mandate to comment on laws in Kosovo<sup>1</sup> and it can propose the adoption or amendment of laws or an improved implementation of applicable laws. The Institution is sometimes consulted by the Assembly of Kosovo during the planning and drafting of various laws or by other authorities regarding the implementation of laws. In such cases, the Institution may

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<sup>1</sup> Under UNMIK Regulation No. 200038, the Ombudsperson Institution had a mandate to comment on UNMIK Regulations. Under UNMIK Regulation No 1006/06, the Institution only has a mandate to comment on laws approved by the Assembly of Kosovo.

comment on various human rights aspects of these laws or on what the most appropriate role for the Ombudsperson Institution would be in a particular law or its implementation. This legal mandate and associated activities reflect the value of the Institution's unique perspective on legislative matters, given its close, frequent contact with members of all communities in Kosovo.

During the reporting period, the Ombudsperson Institution gave comments on the following laws:

- The PISG's Draft Administrative Instruction on Applying the Law against Discrimination (promulgated by UNMIK Regulation No. 2004/32), in March 2006 and at the invitation of the Office of the Prime Minister (the Administrative Instruction was later signed by the Prime Minister on 6 May 2006).
- The Assembly of Kosovo's Draft Law on Defamation and Insult, in April 2006 and at the invitation the Assembly of Kosovo's Committee for Judicial, Legislative Matters and Constitutional Framework.
- The Assembly of Kosovo's Law No. 2003/23 on Disability Pensions in Kosovo, in June 2006 and at the Institution's own initiative.
- The Assembly of Kosovo's Law No. 2004/32 on the Family Law (promulgated by UNMIK Regulation No. 2006/07), in June 2006 and at the Institution's own initiative.
- UNMIK Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo, in February 2006 and at the Institution's own initiative.

In addition, the Ombudsperson Institution called on the local and international authorities to write and pass a law on the need to provide a legal remedy for unreasonably long court proceedings.

During the reporting period, the Ombudsperson Institution was invited to participate in the following meetings discussing prospective legislation:

- The Working Group on a new UNMIK Regulation on the Ombudsperson Institution in Kosovo<sup>2</sup>, chaired by the OSCE. Other members of the Working Group included the Assembly of Kosovo, the Office of the UN High Commissioner for Human Rights, and the UNMIK Office of Returns and Communities.
- A roundtable on a procedure for the appointment of the Ombudsperson and Deputy Ombudspersons with the Assembly of Kosovo's Legislative Committee, at

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<sup>2</sup> The Institution was only invited by UNMIK to participate in the initial stages of this Working Group, up until September 2005, at which point a draft was passed on to the UNMIK Office of the Legal Advisor and the OIK was officially no longer involved



the invitation of the OSCE and with the participation of the Council of Europe and of representatives of the UN High Commissioner for Human Rights.

- The Assembly's Working Group on a draft law on the Ombudsperson Institution in Kosovo through the Assembly of Kosovo's Legislative Committee.

### **Activities of the Ombudsperson Institution's special teams**

The OIK also has special teams of lawyers responsible for investigating cases and raising awareness about issues in certain sensitive areas, particularly issues involving vulnerable groups. The Children's Rights Team (CRT) focuses on all issues related to children, including but not limited to matters regarding schools, domestic violence, childcare and child custody; the Gender Equality Unit (GEU) focuses on issues regarding gender-based discrimination in various areas and domestic violence. The Non-Discrimination Team (NDT) focuses on other areas of discrimination, particularly those based on disability and ethnic, religious, or national identity.

Each of the special teams cooperates with NGOs and other organisations working in the field of children's rights and gender equality. They attend many seminars and conferences organised within and outside Kosovo. Three organisations that have cooperated particularly closely with these teams and given much valuable support and assistance are the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM) and Save the Children.

### **Activities of the Non-Discrimination Team**

The NDT was established on 8 March 2004 in order to improve the work of the Ombudsperson Institution in the field of non-discrimination. The NDT conducts investigations into all forms of discrimination, including, but not limited to discrimination based on religion, origin, political opinion or association with national minorities or age.

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

Investigations of the NDT included the complaints of female students and teachers wishing to wear the Islamic veil in public schools, non-implementation of the Law on Pensions for Persons with Disabilities, the lack of opportunity for disabled persons to receive driving licenses, non-payment of civil service salaries to members of minority communities, lack of funding for multi-ethnic medical centres, discrimination against minorities within the Ministry of Communities and Returns, lack of elementary schooling in the Bosnian language for Bosniak children, inability to use the Bosnian language before courts, and discriminatory confiscation of cars with Yugoslav license plates.

Notable reports being prepared by the NDT look at complaints of discrimination against ethnic Albanian workers at the Trepça/Trepča mine in northern Kosovo and on the use of minority languages in the offices of central and local administration.

Another matter that was under active examination of both the former Ombudsperson and the Acting Ombudsperson were complaints received from former workers of socially owned enterprises of Serbian ethnicity who alleging that they had been excluded from the privatisation process. In two letters to the SRSG, both the former Ombudsperson and the Acting Ombudsperson recommended that the burden of proof in such discrimination cases be shifted from the former employee to the former employer, in accordance with European standards.

In the final months of the reporting period, the Non-Discrimination Team has developed a leaflet to raise awareness about discrimination issues and how the Ombudsperson Institution can help people who may have been discriminated against. The leaflet will be printed in the coming months.

On 1 March 2006, the NDT Coordinator gave comments to a Working Group on the PISG's Draft Administrative Instruction on Applying the Law against Discrimination (UNMIK Regulation No. 2004/32), at the invitation of the Office of Good Governance within the Office of the Prime Minister (the Administrative Instruction was later signed by the Prime Minister on 6 May 2006). She noted that while it would be appropriate for the Office of Good Governance within the Office of the Prime Minister to distribute informational material on the Ombudsperson Institution, it would not be appropriate for the Office of Good Governance to prepare such materials, since the Ombudsperson Institution is an independent institution.

### **Activities of the Gender Equality Unit**

Established on 2 July 2004, the Gender Equality Unity (GEU) focuses on case of gender discrimination and attempts to influence policies and processes which promote the analysis, prevention and monitoring of gender-based human rights violations. It is the only entity in Kosovo with a mandate to receive complaints about discrimination on the basis of gender by Section 6 of the Law on Gender Equality, promulgated by UNMIK Regulation No. 2004/18 on 7 June 2004. According to Section 6, issues of discrimination related directly to gender "shall be addressed by the Gender Equality Unit within the Ombudsperson Institution [...], which also has the responsibility for reviewing draft legislation, commenting on the implementation of this Law and on existing legislation as it relates to gender issues".

The GEU consists of one specialised lawyer, supported by the Institution's Deputy Director of Investigations. Since 1 February 2005, this team's work has been supported by generous donations from the government of Norway. Issues raised by complainants in this reporting period included: domestic violence, gender discrimination in public employment, financial and material support for single mothers, discrimination on the basis of sexual orientation and the rights of married couples to establish residence in Kosovo. The GEU held regular meetings with numerous local and international actors to

discuss issues of mutual interest, including with the UNMIK Office of Gender Affairs, the Office for Gender Equality within the Office of the Prime Minister, representatives of the foreign ministries of Norway, the Netherlands, and the UK, the UNMIK Office for Political Affairs and the UN Special Envoy for Status Negotiations.

In January and February 2006, a representative of the GEU worked with representatives of the Ministry of Public Services and two special offices from the Office of the Prime Minister (the Office for Gender Equality, and the Office for Good Governance) to prepare an action plan for improving the protection of women's rights in Kosovo. The action plan calls for efforts of the above-mentioned institutions to incorporate the protection of women's rights into their annual work plans and to organize and conduct trainings on women's rights through the Kosovo Institute for Public Administration (KIPA), as well as publish a handbook on international standards on women's rights. The preparation of the action plan was a prerequisite for participation in a regional programme on women's rights at the Raoul Wallenberg Institute (RWI) of Human Rights and Humanitarian Law in Stockholm, Sweden.

From 20 February to 17 March 2006, a representative of the GEU participated in the RWI programme, where she presented the above-mentioned action plan. She joined 24 other activists and official representatives from foreign governments, human rights NGOs from Eastern Europe and Central Asia in a series of lectures, study visits, and debates on the role of key international human rights law and institutions in the protection of women's rights. Presentations were given by experts from the RWI program staff, the European Court of Human Rights, SIDA, (the Swedish International Development Agency), UNHCR, and Amnesty International, as well as several Swedish universities and human rights institutions. At the end of the programme, the 24 participants each presented an action plan for her or his own country. The implementation of these plans will be discussed during a follow-up event in Kiev, Ukraine on 21-25 August 2006. The OIK's representative was able to attend thanks to the generous assistance of UNIFEM.

### **Activities of the Children's Rights Team (CRT)**

Established on 8 March 2004, the CRT pursues a wide-ranging approach to children's rights issues in Kosovo. It investigates individual complaints from children or those representing children, assesses general aspects of children's rights, conducts awareness-raising activities and participates in workshops and meetings with other children's rights advocates.

In this period, the CRT carried out investigations related to a variety of children's issues, including child custody cases, access to education and ill-treatment within homes and schools, as well as cases involving poor living and health conditions. The CRT has also been involved in cases concerning the lack of safe drinking water in schools throughout Kosovo, the need for more attention to psychiatric care for children and so-called "Black Spot" traffic sites, where children are exposed to particularly dangerous traffic areas. The CRT assisted Roma refugee children living in FYR Macedonia to get their documents from schools so that they can continue their education in FYR Macedonia.

The CRT also prepared reports on the right to family life of a mother denied access to her child.

Since its founding, the CRT has participated in the Forum for Children's Rights, a venue organized by UNICEF and the NGO Save the Children, at which representatives of both public institutions and civil society discuss children's rights issues. Other regular participants include CARE International, Catholic Relief Services, World Vision, Handikos, the Ministry of Labour and Social Welfare, Ministry of Education, Science and Technology and the Offices of Good Governance and Human Rights within the Office of the Prime Minister. The CRT also assisted in Save the Children's training on children's rights for the new coordinators for children's rights within the PISG's municipal administrations.

Throughout the reporting period, the CRT participated in numerous trainings and workshops, as explained above.

To increase awareness of both the CRT and children's issues, the CRT has made it a practice to distribute its posters, pamphlets, and other promotional materials at the various meetings and workshops it attends. Examples include meetings with the Department of Social Welfare of the Ministry of Work and Social Welfare in January 2006, the Office for Human Rights within the Ministry of Education, Science, and Technology (MEST), and the Kosovo Education Center (KEC). The KEC agreed to distribute them at one of its trainings of trainers and teachers and the MEST agreed to distribute them to Municipal Directorates of Education and schools throughout Kosovo.

The CRT arranged to advertise its activities 10 times over the course of 2006 (starting from March) in each of the following daily newspapers: the Albanian-language *Koha Ditore*, the Turkish-language *Yeni Dönem* and the Serbian-language *Jedinstvo*.

In addition, the CRT engages in special awareness-raising campaigns. In April 2006, for instance, the CRT launched a campaign to visit schools, distributing pamphlets and giving lectures to describe to students what their rights are and the legal mechanisms available to them. As part of this campaign, the CRT gave presentations in the following areas: Prishtinë/Priština, Podujevë/Podujevo, Gjilan/Gnjilane, Skenderaj/Srbica, Radivojc village (in Viti/Vitina Municipality), Barilevë/Barilevo village (in Prishtinë/Priština Municipality), Llaush/Lauša village (in Skenderaj/Srbica Municipality), Shushicë/Šušica village (in Gračanica/Gračanicë).

In 29 September 2005, the CRT launched a Kosovo-wide "Children's Rights Awareness Campaign" to coincide with the start of the 2005-2006 school year. As part of this campaign, the CRT organized a drawing competition in selected schools throughout Kosovo. The competition, whose goal was to promote the CRT and identify children's issues within Kosovo's schools, was titled "What problems do you have and how can the Ombudsperson help you?" At the beginning of each presentation, the CRT gave a lecture on children's rights and the work of the CRT and disseminated its posters and pamphlets. Then it asked the children to explain the problems they faced during their everyday life and render their opinion artistically as to how the Ombudsperson Institution could help them solve those problems. Schools from the following places participated in the

competition: Prishtinë/Priština, Pejë/Peć, Vushtrri/Vučitrn, Prizren, Plemetin/ Plemetina, Gračanica/Gračanicë.

In December 2005, the first round of this competition was concluded. The best drawings were selected by a Committee of three representatives of the Ombudsperson Institution for publication by UNICEF as postcards promoting children's rights in Kosovo and the work of the Ombudsperson Institution. The winners will be announced when the postcards have been published and the school of each winner of the competition will receive free books and other school materials. Since January 2006, the CRT has been consulting with UNICEF on the preparation and publication of these postcards to increase public awareness and understanding of the CRT's activities.

A special event for the CRT was the participation of one of its representatives in a televised debate on the subject of children's rights in Kosovo, focusing on street children. In the debate, which was broadcast on the local television station Kohavision (KTV), the CRT representative said that there was an urgent need for a strategic plan on children's rights in Kosovo in order for authorities to have a clear understanding of their responsibilities. The representative also noted the lack of funds dedicated to the protection of children's rights.

### **Cooperation with the international community**

Cooperation with different offices within UNMIK, in particular with the SRSG and his Deputies, continued throughout the reporting period but was greatly reduced after February 2006 because of the change in mandate brought about by UNMIK Regulation No. 2006/06. The Ombudsperson Institution continues to be in close contact with the OSCE, the OHCHR and UNMIK's Office of Communities, Refugees, and Minority Affairs.

A major part of the OSCE's support to the Ombudsperson Institution consists of its provision of special advisors in the areas of law, administration and media since January 2006. Previously, international advisors were employed directly by the Institution through funds donated by the OSCE.

During the reporting period, two major new institutions (a Ministry of Justice and a Ministry for Internal Affairs) have been established in the PISG, to which UNMIK will continue to transfer responsibility for many important tasks that used to be among its reserved powers. UNMIK's Pillar for Civil Administration and its Pillar for Police and Justice were dissolved and the remaining tasks in these areas are now under the direct responsibility of the SRSG.

Throughout the reporting period, the Ombudsperson Institution was in frequent contact with the UNMIK Police Commissioner and the Executive Director of the Housing and Property Directorate (HPD), as a large number of the Institution's open cases still concerns issues under their respective jurisdictions. The UNMIK Police Commissioner had appointed one police officer to deal with the Ombudsperson's requests and interventions, and the cooperation was initially very good, but recently, staff of the

Institution found it increasingly difficult to contact this focal point within UNMIK Police. In the meantime, however, many competences have been passed on to the Kosovo Police Service. With the HPD, cooperation was also traditionally very good, although in recent months it became difficult to arrange meetings with HPD staff due to their professed lack of time. The HPD officially closed its operations on 30 June 2006, handing over responsibility for new cases regarding property to a new Kosovo Property Agency (KPA). In June 2006, the Institution began discussing with the HPD procedures for the future handling of these cases.

The Ombudsperson Institution also maintained co-operation with the UNMIK Standards Coordinator, mainly by drawing attention to significant interventions, reports or letters addressed to UNMIK and the PISG. Although the Ombudsperson Institution does not have jurisdiction over KFOR, it held occasional meetings with KFOR, to discuss how to cooperate in resolving complaints involving KFOR.

As in previous reporting periods, the Ombudsperson Institution maintained regular contacts with the diplomatic missions of different countries both in Prishtinë/Priština and in Belgrade. The former Ombudsperson and the Acting Ombudsperson had regular mutual consultations with several bodies within the Council of Europe, its secretariat and its office in Prishtinë/Priština. In December 2005, the former Ombudsperson gave a speech to the Parliamentary Assembly of the Council of Europe, in which he provided an overview of his five years of work as Ombudsperson and gave an assessment of the human rights situation in Kosovo and the kosovanisation process of the Institution.

The Ombudsperson Institution continued to cooperate and communicate with certain other international organizations and NGOs working in or monitoring developments in Kosovo, particularly:

- The Centre for the Protection of Women and Children
- The Council of Europe (Office in Prishtinë/Priština and Parliamentary Assembly in Strasbourg)
- The EU Monitoring Mission
- HANDIKOS
- Human Rights Watch
- The Humanitarian Law Centre in Belgrade and its Prishtinë/Priština Office
- The ICRC Office in Prishtinë/Priština
- The “Movement for Peace, Disarmament and Freedom” a Spanish humanitarian NGO
- Save the Children
- The Swedish Helsinki Committee for Human Rights in Stockholm and with its Belgrade office
- UNHCR
- UNICEF
- UNIFEM

## **Cooperation with other authorities**

The Ombudsperson Institution continued to be in contact with the Head of the Coordinating Centre for Kosovo and Metohija of the Serbian Government. The former Ombudsperson further also continued the fruitful cooperation with the Offices of the High Commissioner for Human Rights in Belgrade and Prishtinë/Priština that had already begun in the previous reporting periods. In addition, towards the end of his mandate, he met with Serbia's President, Prime Minister and Foreign Minister, as well as Montenegro's Deputy Ombudsperson and the Acting Director of the Belgrade Fund for Political Excellence (a part of the Council of Europe's Network for Democracy Programme).

## **Cooperation with local authorities**

Throughout the reporting period, the former Ombudsperson and the Acting Ombudsperson had meetings with many representatives of the PISG on a central level including the President of Kosovo, the Prime Minister of Kosovo, the President of the Kosovo Assembly and the leaders of the main opposition parties in the Assembly, to discuss different human rights questions and the future of the Ombudsperson Institution.

The former Ombudsperson and the Acting Ombudsperson regularly addressed letters of intervention to Ministers in the PISG, bringing to their attention various human rights issues regarding the work of their ministries. Unfortunately, not all ministers were responsive to these interventions and those that were tended to provide information, but not substantive action. Kosovo's municipal authorities were even less responsive to the Institution's efforts to advocate or mediate remedies to various complaints from individuals under their jurisdiction. The most notable exception to this rule is the Municipality of Fushë Kosova/Kosovo Polje, which always responded promptly to the Ombudsperson's requests and recommendations. At the other end of the spectrum, the Municipality of Prishtinë/Priština failed to respond to even one of the letters it received from the Ombudsperson Institution from March 2004 to June 2006.

## **Internships**

In this reporting period, the Ombudsperson Institution awarded month-long internships to 30 students from the political science and law faculties of the University of Prishtinë/Priština. Internships at the Ombudsperson Institution were also awarded to two members of the winning team of the Kosovo Case Challenge 2006, a mock trial during which the participants were asked to simulate proceedings before the International Court of Justice. Finally, two 5-week internships were arranged for students from the European Regional Master's Degree in Democracy and Human Rights in South-East Europe, a joint programme of the University of Sarajevo and the University of Bologna financed by the EU and the Italian Ministry of Foreign Affairs. One of the internships took place in autumn 2005 and the other began in mid-June 2006.

## **Media relations and awareness-raising**

The Ombudsperson Institution continued to publish a Quarterly Information Sheet, which described the main activities of the Institution every three months. Published in English, Albanian, Serbian and Turkish, this Information Sheet was widely distributed in- and outside Kosovo. In English alone, 1500 copies were printed, and another 1500 copies printed in Albanian, Serbian and Turkish.

The Annual Report for 2004-2005 was distributed to senior officials in UNMIK and the PISG, including the SRSG, the President of Kosovo, the heads of major political parties, as well as the Secretaries-General of the United Nations and the Council of Europe.

In addition, the Institution published several pamphlets during the reporting period: one on its children's rights programme and one on the history and work of the Institution for the Assembly of Kosovo's Working Group on a new Law on the Ombudsperson Institution in Kosovo. A previously published pamphlet on gender equality was also revised and re-published. Finally, a new complaints form including information on the Institution has been developed and will be laid out and printed in the coming months.

The Ombudsperson Institution has maintained positive relations with local and international media and has occasionally raised matters of general interest with the press. In particular, the Institution's comments on the kosovanisation process and UNMIK Regulation No. 2006/06 received wide coverage in local media.

In September 2004, the former Ombudsperson began publishing columns titled "Off the Record" in the Albanian-language Kosovo daily "Koha Ditore", as well as in the Serbian daily "Danas" (the columns are available at <http://www.nowicki-off-the-record.net/archives.html>). These columns appeared every second Friday and covered different human rights problems in Kosovo. Subjects of these columns published during the first half of the reporting period included social assistance, human rights perspectives on international interventions, the problem of sustainable returns, the Institution's Open Days, the problems of Roma IDP's in northern Kosovo, and the kosovanisation process. From the beginning, these columns have been appearing regularly in English and French on many online news services dealing with Balkan issues such as Transitions Online and *Le Courrier des Balkans*.

From 15 June to 31 December 2005, on those Fridays on which "Off the Record" did not appear, the former Ombudsperson published extensive summaries of selected case law of the European Court of Human Rights that could be relevant for Kosovo in "Koha Ditore". These summaries were accompanied by a short analysis linking the subject matter to the situation in Kosovo prepared by one of the Institution's international legal advisors.



In April 2006, the Acting Ombudsperson continued the former Ombudsperson's practice of publishing opinion articles in *Koha Ditore*, under the title "Mes të tjerash" (Albanian for *inter alia*), addressing such issues as the lack of human rights protection mechanisms in Kosovo, corruption, and establishing the rule of law while Kosovo's political status remains uncertain.

The special investigative teams of the Ombudsperson Institution also undertake efforts of their own to publicize their work, including through the media. These activities are described below, under the descriptions of each special team's activities overall.

### **Collaboration with other ombuds institutions and similar complaints bodies**

During this reporting period, the Ombudsperson Institution has continued to cooperate closely with similar institutions in other countries in cases where the resolution of a complaint from a person in Kosovo required their engagement. Collaboration for such purposes took place with, for example, the Ombudsmen of Montenegro, Albania, FYR Macedonia, Croatia, Slovenia, Spain, Switzerland, Norway and Finland, as well as with the Petitions Committees of the German Bundestag. These cases mainly involved complaints of forced returnees, pension benefits or the conduct of national troops stationed in Kosovo as part of KFOR.

In October 2005, a delegation from the Ombudsperson Institution paid a visit to the Ombudsman Office in Skopje, Macedonia, to share best practices, particularly in the area of information and communications technology. This visit was paid for through the generous support of SIDA.

From 28 February to 3 March, a delegation from the Ombudsperson Institution visited the People's Advocate of Albania, to share best practices in both the legal and administrative sectors. This visit was paid for through the generous support of the United States government.

In April 2006, the Children's Rights Team paid a visit to the Ombudsman for Children in Oslo, Norway, to share best practices in the area of violation of children's rights and other issues related to youth. This visit was paid for through the generous support of the Norwegian government.

In addition, the Ombudsperson Institution hosted visits from other ombuds institutions, including the Deputy Ombudsman of Montenegro in December 2005 and the Ombudsman of the associated Municipalities of Valdinievole (in Tuscany, Italy) in June 2006. On these visits, discussions on best practices and experience in the field of management of the office and investigations were exchanged. The visit of the Italian Ombudsman was paid for through the generous support of the United States government.

In the first half of the reporting period, the international Ombudsperson maintained contacts with the Citizen's Office (Narodna Kancelarija) in Belgrade within the Office of

the President of Serbia. During the reporting period, the Institution sent some cases concerning problems related to the public administration in Serbia to the Citizen's Office.

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

### **Staff Trainings and Conferences**

During the reporting period, staff of the Ombudsperson Institution participated in a great variety of study visits, conferences, workshops and seminars, with the aim of exposing the Institution's staff to the best practices of other ombuds institutions and other human rights organizations, in nearby countries and throughout Europe.

#### **Kosovo Women's Initiative**

11 July 2005, a representative of the GEU participated in a roundtable organised by the Kosovo Women's Initiative on the topic "gender-based sexual violence". The roundtable, which took place in Prishtinë/Priština, kicked off a series of meetings hosted throughout Kosovo by the Kosovo Women's Initiative, in which representatives of various women's rights organisations and government institutions presented their perspectives on these issues. The GEU representative gave a presentation on the activities of the GEU and how to access its services.

#### **Helsinki Foundation for Human Rights**

In September 2005, two staff lawyers, and in June 2006 a lawyer participated in a one-week annual international human rights summer school, organized by the Helsinki Foundation for Human Rights in Warsaw, Poland. The summer school is attended by human rights lawyers and activists from countries in Central Europe and Central Asia.

#### **European Network of Ombudspersons for Children Conference**

21-23 September 2005, two CRT lawyers attended the 2005 Conference of the European Network of Ombudspersons for Children held in Warsaw, Poland.

#### **European Centre for Minority Issues (ECMI)**

25-27 September 2005, two staff lawyers participated in the seminar "Ombudsman Institutions towards prevention of interethnic conflicts and the combat against discrimination" in Sofia, Bulgaria.

#### **Conference of Ombudspersons for Children's rights in South-eastern Europe**

11-12 October 2005, a staff lawyer attended a Conference of Ombudspersons for Children's Rights in South-eastern Europe held in Thessaloniki, Greece, organized by the EUNOMIA Programme of the Greek Ombudsman, which operates under the auspices of

the Commissioner for Human Rights of the Council of Europe and provides support to South-East European Ombuds Institutions. On the second day, the CRT Coordinator chaired a session of this conference titled “Listening to Children’s voices in schools and institutions: experiences and best practices.”

### **Ombudsman of the Autonomous Province of Vojvodina**

19-21 October 2005, a Deputy Ombudsperson and a staff lawyer attended an international conference organized and funded by the European Centre for Minority Issues on the Role of the Institution of the Ombudsperson in Multiethnic Societies, held in Novi Sad (in Serbia proper).

### **Management trainings**

1-2 December 2005, top management staff of the OIK’s headquarters and field offices participated in a training on “Leading and Supervising a Team”. The training was funded and organized by the Ombudsperson Institution.

27- 28 March 2006, top management and administrative staff of the OIK’s headquarters and field offices participated in trainings on “Delegation” and “Project Management”. The trainings were organized by the Ombudsperson Institution and funded by the US grant.

### **SIDA**

8-10 December 2005, the staff lawyers attended training on ill-treatment and fair trial issues under the European Convention on Human Rights.

10-11 March 2006, the staff lawyers attended training on the right to respect for private and family life as protected under Article 8 of the ECHR

2-3 June 2006, the staff lawyers attended training on principles on non-discrimination and minority rights

### **Children’s Rights Conference in Tirana, Albania**

15 December 2005, a CRT lawyer participated in a national conference “All together for the Protection of Children’s Rights” in Tirana, Albania and organized by the office of the People’s Advocate in Albania.

### **Raoul Wallenberg Institute, Lund, Sweden**

20 February - 17 March 2006, a GEU lawyer participated in a regional programme on the equal status and human rights of women, organized by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Lund, Sweden.

### **Save the Children, Kosovo**

11 March 2006, a representative of the CRT participated in the workshop “Active Legislation for Children’s Rights in Kosovo” organised by Save the Children in Prishtinë/Priština. The workshop was also attended by the PISG’s Coordinator for

Children's Rights within the Office for Good Governance and municipal coordinators for Children's Rights.

### **Balkan Case Challenge 2006**

28 May – 1 June, an OIK lawyer and one OSCE international advisor to the Ombudsperson Institution participated as judges in the Law Moot Court competition that was held in Vienna, Austria, on the occasion of the Balkan Case Challenge 2006. The competition was organized by the World University Service (WUS) Austria.

### **IREX roundtable on the role of media and civil society in fighting corruption**

31 May 2006, a representative of the Ombudsperson Institution gave a presentation at the roundtable, describing the role of the Ombudsperson Institution in fighting corruption. The roundtable was organised by IREX (the International Research and Exchanges Board).

### **EUNOMIA Programme**

1-3 June 2006, a staff lawyer attended the seminar on "The Ombudsman's Oversight of the Police" in Syros, Greece. The seminar was organized and hosted by the EUNOMIA Programme.

### **Regional Youth Network**

4-7 June 2006, an NDT lawyer attended the seminar on "Human and Minority Rights and Advocacy" in Budva, Montenegro. The seminar was organized by the Civic Action for Human Rights-Priboj, a project supported by the Balkan Trust for Democracy.

### **Conference Cities for Peace and Democracy in Europe**

8-9 June 2006, the Deputy Ombudsperson attended a conference on "Europe at the Crossroad: Minorities Conflicts as a menace to Peace or as an Opportunity?" in Budapest, Hungary. The conference was organized by ALDA with the support of the Council of Europe and the European Union.

### **European Disabilities Forum**

15 June 2006, a representative of the NDT participated in a conference of the Coalition of Organizations for Persons with Disabilities, which was supported by the European Disabilities Forum. Participants in the conference discussed the role of umbrella organizations in advocacy for equal opportunities for persons with disability in Kosovo.

### **UN Training workshop in Sarajevo, Bosnia & Herzegovina**

29 June -1 July 2006, a legal assistant participated in the training programme on Conflict Prevention, organized by the United Nations System Staff College in collaboration with the office of the OHCHR in Sarajevo, Bosnia & Herzegovina.

## **FUNDING**

### **The financial future of the Ombudsperson Institution**

One of the most sensitive issues that both the former Ombudsperson and the Acting Ombudsperson have faced during the reporting period is how to secure the financial independence and sustainability of the Institution. On numerous occasions, the international Ombudsperson and the Acting Ombudsperson have stressed the principle that in any democratic system, one of the key guarantees of the independence of ombuds institutions is their financial independence. In addition, they have reiterated that the principle of independence also implies that the budget process must not interfere with the independence of such Institutions. This means that budgetary issues concerning the Ombudsperson Institution should be discussed between the Kosovo Assembly and the Ombudsperson Institution, but not with the Government or its the Ministry of Economy and Finance.

The above-mentioned principle has been raised many times and the Kosovo authorities and the SRSG have on several occasions been informed in detail about the economic needs of the Institution. Until December 2005, the Ombudsperson Institution was under the reserved powers of the SRSG, which means that up to that point, the SRSG was the only authority that could issue the final word on the budget proposal of the Institution. Still, the budget process did not respect the independence of the Institution and the KCB resources granted for the year 2006 did not take into consideration the financial requirements including certain costs that should be covered by the KCB according to the applicable laws in Kosovo.

The former Ombudsperson and the Acting Ombudsperson have constantly requested and tried to obtain sufficient funds in order to carry out the Institution's daily functions in an adequate manner and retain its human resources. As in previous fiscal years, also during this reporting period the financial sustainability of the Institution was only possible thanks to the generous supplementary contributions of international donors, which allowed the Institution to cover its gaps in funding. However, these international donations, which currently cover the expenses of certain activities of the Institution, and in particular the expenses for salaries of certain staff, are not a proper long-term solution. In the future, the KCB and competent local authorities should realize their obligation to support this important public institution by supplying it with sufficient funds.

Pursuant to Section 17 of UNMIK Regulation No. 2006/6 on the Ombudsperson Institution in Kosovo, the Ombudsperson Institution may draw the attention of the Assembly of Kosovo to the Institution's budgetary proposal; this provision in theory guarantees respect for the Institution's principle financial independence. A correct application of the above-mentioned Section 17 will thus ensure that following a discussion with the Assembly of Kosovo, the Government's budget proposal will not compromise the ability of the Institution to carry out its functions fully and

independently. At the end of 2003, the SRSG approved the current salary scheme of the Institution, which provides staff members with a salary which is at the level of the judiciary. The former SRSG's approval of the special Institution's salary system demonstrated his conviction that specialised human rights lawyers and other employees of this sort of independent institution must receive remuneration at an appropriate level in order for the Institution to retain highly-qualified professionals and to avoid any risk of corruption or inefficiency. The Institution hopes that the local authorities will realize that its present salary scheme needs to be maintained in the future as well and that the arguments for the Ombudsperson Institution's financial status continue to be valid.

### **Funding and in-kind support 2005-2006**

During the reporting period, the Ombudsperson Institution used funding from the Kosovo Consolidated Budget, from the Permanent Council of the OSCE and from the following bilateral donor countries: Austria, Belgium, Finland, Liechtenstein, Norway, Sweden, Turkey and the United States. Special projects were financed by the Council of Europe, UNICEF, UNIFEM, SIDA and other donors.

#### **List of projects:**

##### **SIDA**

In September 2005, the Ombudsperson Institution began to implement a three-year project funded by SIDA with the goal of providing the staff of the Institution with advanced education in the field of human rights, good governance, general administration and mediation. This project includes trainings in human rights and similar legal fields, administrative and office management trainings, English language courses, study visits to different ombuds institutions and summer school in subjects relevant to the project. The implementing partner of SIDA in this project is the Council of Europe, which has provided the Ombudsperson Institution's lawyers with trainings on different issues under the European Convention on Human Rights.

In March there were discussions on the IT and database structure with the Macedonian Ombudsman and the installation of a new database system at the Institution, through consultations with an IT expert from the Council of Europe.

In the spring of 2006, Courses on English legal terminology were organized for the Investigation Department's staff within the Institution.

In June 2006, SIDA funded the participation of a staff lawyer in a summer course on International Humanitarian Law organized by the International Institute of Humanitarian Law in San Remo, Italy, and in Geneva, Switzerland. In this month, with the financial support of SIDA, the Ombudsperson Institution received from the Council of Europe a package of books and other publications on the field of human rights, including language dictionaries and collections of extracts of judgments and decisions of the European Court of Human Rights. These books have been added to the Ombudsperson Institution's library.

## **AUSTRIA**

Following an agreement with the Austrian Development Agency of the Austrian Ministry of Foreign Affairs this donation, received in December 2004, was used to establish a field office in Gračanica/Gracanice to pay the salaries of the staff and the running costs of that office. The project is still ongoing.

## **BELGIUM**

Following a bilateral agreement with the donor in 2004, the Belgian fund was used to pay the salaries of two staff members and to publish the Quarterly Information Sheet in four languages. This fund was also used to pay for the international health insurance of local staff. The project funded by the Belgian government ended in December 2005.

## **FINLAND**

In accordance with a project funded by the Finnish Ministry of Foreign Affairs, this grant, received at the end of 2004, was assigned to pay the salaries of two highly qualified Senior Translators of the Ombudsperson Institution. The project is still ongoing.

## **LIECHTENSTEIN**

The Ombudsperson Institution received this donation in 2002 and used it to cover the general expenses of the Institution. During the reporting period, this grant was used to provide compensation for international interns' accommodation in Prishtinë/Priština. Following an agreement with the government of Liechtenstein, this fund has been assigned since January 2006 to remunerate the Institution's IT officer.

## **NORWAY**

Following a special project, the Norwegian donation received in the beginning of 2005 was used to pay for the salaries of two staff and to cover the costs of printing the Institution's publications. With a new project approved at the end of 2005, the OIK received an additional financial contribution to cover the salaries of three lawyers, some of the Institution's publications and the costs of the activities of the CRT. This project is still ongoing.

## **SWEDEN**

During the reporting period, the grant received from the Swedish Ministry of Foreign Affairs in 2001 was used to cover the costs of some of the Institution's publications. This fund was exhausted in December 2005.

## **TURKEY**

During the reporting period a Turkish fund, granted to the Ombudsperson Institution in 2001, was used to translate the Ombudsperson Institution's publication into the Turkish language. In May 2006, the Institution received an additional financial contribution from the Turkish government. Following a pledge letter of the donor, this new donation is assigned to cover the costs of the Ombudsperson Institution's publications into Turkish.

## **UNICEF**

As part of a specific project in 2005, UNICEF financed the salaries of a CRT lawyer and the activities of this team. The project ended in December 2005.

## **UNIFEM**

Throughout the reporting period, UNIFEM funded the publication of leaflets for the Institution's Gender Equality Unit. This special project ended in December 2005.

## **USA**

The contribution from the United States government was provided to the Ombudsperson Institution in 2001 for supporting general expenditures of the Institution and for paying for the remuneration of the former international Ombudsperson. In December 2005, following the guidelines of the US government, this fund was designated for the capacity-building of the Ombudsperson Institution. During the reporting period, this donation was used to finance a visit of the Institution's staff to the People's Advocate of Albania, an exchange programme with the Ombudsman of the associated Municipalities of Valdinievole (Tuscany, Italy) and a two-day training on "Delegation" and "Project Management". The managing partner of this fund is the OSCE Mission in Kosovo.

### **In-kind support:**

Throughout this reporting period, the Council of Europe funded consultative visits undertaken by the former Ombudsperson to Strasbourg and the participation of the Deputy Ombudsperson in the 9<sup>th</sup> Roundtable of European Ombudsmen in Copenhagen, Denmark.

Throughout 2005, the OSCE funded the Special Service Agreements of the international advisors to the Ombudsperson Institution.

Other organizations that hosted or sponsored seminar activities:

- ALDA (the Association of the Local Democracy Agencies)
- EUNOMIA programme of the Greek Ombudsman
- Helsinki Foundation for Human Rights in Warsaw, Poland



- OSCE
- The European Centre for Minority Issues
- UNICEF
- UNIFEM

## **OVERVIEW OF CASES AND STATISTICS**

### **Overview of cases**

During the reporting period, approximately 4116 people individually contacted the Ombudsperson Institution in Prishtinë/Priština and in the field offices to lodge formal complaints or to ask for advice and assistance. During the 78 Open Days that were held during the reporting period, approximately 1511 people met personally with the Ombudsperson or one of his deputies. The statistics below are divided into three categories of cases – CR cases, applications, and complaints – but their respective statistics are not always directly comparable.

Since 1 January 2006, all cases opened at the Ombudsperson Institution have been termed “complaints,” but in previous years the Institution termed them applications. Also before 1 January 2006, cases that did not require a formal investigation because the need for immediate intervention or mediation was considered paramount were termed “cases for reaction” (or “CR cases”). Cases for reaction were sometimes reclassified as applications if a full investigation was later required. Because the priority in managing cases for reaction was intervening as soon as possible, the Institution gathered fewer statistical data on these cases. Note that although the Institution has not differentiated between CR cases and applications since the end of 2005, it is still in the process of investigating and closing CR cases and applications opened before that time.

As in previous reporting periods, a large number of the cases that the Ombudsperson Institution investigated over the last 12 months concerned procedural issues (such as length of proceedings before the civil courts and the HPD), unresponsive administration, property issues, pensions and social assistance, complaints about abuses of authority, fair hearing issues, employment-related complaints or impunity issues.

### **Interim measures and reports**

When the Ombudsperson considers that immediate action by public authorities is necessary, he may formally request that the competent administrative body take or suspend a particular action as an interim measure, to prevent irremediable harm to complainants or their property. During the reporting period, the Ombudsperson Institution made 6 such requests to local and international authorities. See Annex 2 for summaries of the interim measures requested during the reporting period.

When intervention letters and attempts at mediation have not been successful, the Ombudsperson may issue a report, providing an in-depth analysis and public exposure of a violation of human rights or applicable law, complete with recommendations to the respective public or court administrator on how to remedy the violations. The Institution uses reports as a last resort method of advocacy and submits copies of the report to the offending public authority and to the Assembly of Kosovo (previously, pursuant to UNMIK Regulation No. 2000/38, the Ombudsperson Institution submitted its reports to the SRSG). See Annex 1 for summaries of the reports issued during the reporting period and of how public authorities have responded to those reports.

### **Statistical overview of cases<sup>3</sup>**

<b>Cases for Reaction (C.R. cases):</b>	400
(as of 31 December 2005)	
C.R. cases that have been closed as of 30 June 2006	
Declared inadmissible	191
Positively resolved	101
Other Reasons	87
<i>Total</i>	379
<b>Applications:</b>	133
(as of 31 December 2005)	
Ethnicity of applicant	
Albanian	88
Serbian	34
Other	12
Respondent parties	
Courts	74
Municipalities:	22
HPD	15
Government Ministries:	12
KPS	10
Other	8
UNMIK	4
KFOR	2
Cases closed as of 30 June 2006	
Declared inadmissible	157
Other reasons	91
Positively resolved	79

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<sup>3</sup> For an explanation of the classifications of CR, application and complaint, see the text at the beginning of this section.

<i>Total</i>		327
<b>Subject of application</b>		
Procedural and other fair trial issues (civil proceedings)		51
HPD issues		22
Administrative silence and related issues		20
Access to court (civil proceedings)		14
Property-related issues (other than HPD)		13
Abuse of authority		10
Impunity of authorities		8
Failure to investigate a crime		7
Fair hearing issues (criminal proceedings):		6
Employment-related issues		4
Right to liberty		2
Economic, Social and Cultural Rights		1
Other rights protected by the ECHR		1
<b>Complaints</b>		428
	(1 January – 30 June 2006)	
Ethnicity of complainants		
Albanian:		326
Serbian:		74
Other:		28
Respondent Parties		
Courts		114
Municipalities:		75
Other		74
Government Ministries:		68
HPD		51
KPS		37
UNMIK		9
KFOR		5
Cases closed as of 30 June 2006		
Declared inadmissible		43
Positively resolved		19
Other reasons		7
<i>Total</i>		69
<b>Subject of application</b>		
Administrative silence and related issues		112

Procedural and other fair trial issues (civil proceedings)	76
HPD issues	52
Abuse of authority	50
Economic, Social and Cultural Rights	50
Property-related issues (other than HPD)	41
Employment-related issues	36
Access to court (civil proceedings)	20
Fair hearing issues (criminal proceedings):	18
Failure to investigate a crime	18
Good Offices	15
Other rights protected by the ECHR	14
Impunity of authorities	8
Right to liberty	1

### **Investigations and reports**

(1 July 2005 - 30 June 2006)

Investigations opened	18
Reports issues by the Ombudsperson Institution	17
On behalf of complainants	11
Ex-Officio investigations	7
Requests from the Ombudsperson Institution for interim measures	5

Hilmi Jashari  
Acting Ombudsperson

## ANNEX I: REPORTS

Pursuant to his authority under Section 4 of the previously applicable UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo, Section 4 of the later UNMIK Regulation No. 2006/06 on the Ombudsperson Institution, and the Institution's Rules of Procedure, the Ombudsperson Institution issued the following reports during the reporting period. Under UNMIK Regulation No. 2000/38 (in force until 16 February 2006), these reports were submitted to the SRSG. Under UNMIK Regulation No. 2006/06 (in force since 16 February 2006), these reports were submitted to the Assembly of Kosovo.

### **Registration Number 1112/03 Concerning the length of proceedings in the case of Gani Thaçi**

*On 17 September 2004, the Ombudsperson issued Report No. 1112/03 "Concerning the length of proceedings in the case of Gani Thaçi." This case dealt with one of the issues raised in an earlier case involving the same complainant, namely his complaint that he had not been able to appeal against his dismissal from work by the Kosovo Protection Corps (KPC). The examination of this case had culminated in the publication of a report by the Ombudsperson on 17 April 2003. In this report, the Ombudsperson had found that the KPC, KPC disciplinary bodies and the then acting SRSG Michael Steiner (in his capacity as the final administrative authority over KPC matters) had all failed either to respond to the repeated requests of the complainant to be provided with a written reasoned decision on his dismissal from the KPC or to review his appeal against his suspension. The court competent to adjudicate on the substance of these matters had stated that it was unable to review the complainant's case until he exhausted all channels for administrative review, up to and including a decision of the SRSG. The Supreme Court, which has the jurisdiction to order the SRSG to issue the written decision required by law, had also failed to take the requisite action. This constituted a violation of the complainant's right to a court under Article 6 of the European Convention on Human Rights.*

*In the instant report, the Ombudsperson concluded inter alia that due to the Supreme Court's continued failure to decide on the complainant's request, the violation of the complainant's right to a court as guaranteed under Article 6 of the European Convention on Human Rights was still ongoing. The Ombudsperson recommended that the Supreme Court of Kosovo ensure that a decision on the complainant's request be issued without any further delay.*

*On 29 October 2004, the Ombudsperson received a letter from the Deputy SRSG for Police and Justice, replying that he had forwarded the report to the JIU within the Department of Justice, which had opened an investigation into the above-mentioned case.*

**On 28 July 2005**, the Ombudsperson Institution received a response from the Director of UNMIK's Department of Justice in which he explained that no judicial misconduct had been found in the case. According to the response, the delay in court proceedings was due

in part to the fact that the original Supreme Court judge handling the case had died in July of 2002. The Kosovo Supreme Court President had decided in 2002 not to re-allocate any existing or newly filed administrative law matters to other judges until an appointment could be made to replace the deceased judge. The replacement judge had only begun working in January 2003 and had been assigned to the case in February 2003. The Director's letter explained that the Supreme Court President's decision to wait and to give the case to the original judge's replacement was based on the perceived need to keep the caseload of the other judges on manageable levels, and that according to the JIU, the seven (7) months of inaction on the case did not constitute a neglect of judicial function. At the time when the replacement judge was given the case, 495 administrative law matters were pending before the Supreme Court of Kosovo. According to the Director, 400 administrative law cases had been assigned to other judges for completion in 2003, and Mr. Thaçi's case had been among those files re-allocated to another judge in August 2003. However, it had been re-assigned to the original replacement judge in October 2004, with the JIU concluding that there had still been no judicial misconduct. The Supreme Court panel's final decision on the case had been issued on 24 November 2004 and the Department of Justice considered the investigation closed.

**Registration Number 1063/04**  
**Regarding the length of proceedings in the case of Zenë Zahiti**

*On 28 October 2004, the Ombudsperson issued Report No. 1063/04 "Regarding the length of proceedings in the case of Zenë Zahiti." Inter alia, the Ombudsperson found that the Municipal Court in Prishtinë/Priština had failed to take the necessary action to ensure the resolution of the complainant's case involving the eviction of illegal occupants from his apartment within an adequate time. According to the Ombudsperson, this constituted a violation of the complainant's right to a fair hearing within a reasonable time as guaranteed under paragraph 1 of Article 6 of the European Convention on Human Rights.*

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

On **28 July 2005**, the Ombudsperson Institution received a response from the Director of UNMIK's Department of Justice in which he explained that there was insufficient evidence to establish judicial misconduct in the case. According to the letter, the JIU was unable to determine the reason for the delay in allocating the case to another judge other than the fact that there were 2361 outstanding civil cases before the Municipal Court in Prishtinë/Priština.

The Director contested the Ombudsperson's claim that the Municipal Court had taken until 23 October 2003 to hear the case. According to the JIU investigation, there had been one prior hearing on the case on 8 September 2003. The final hearing had been held on 2 December 2003. In this hearing, the presiding judge had issued a decision in favour of the

complainant's claim to the property and ordered the illegal occupants to vacate the premises.

As the JIU response to the Ombudsperson stated, the complainant's claim that the President of the Municipal Court of Prishtinë/Priština had actively delayed his case was unsubstantiated. Furthermore, the party that the complainant had claimed would potentially corroborate his claims could not be located, even after the JIU had interviewed all potential witnesses that matched the description of the corroborative witness. The Director of the Department of Justice also noted that the complainant had refused to assist the investigation in further attempts to establish the identity of the corroborative witness. Although no judicial misconduct had been established in the JIU investigation, the Director did note that the Department of Justice was developing initiatives to determine how best to remedy the excessive delays in civil proceedings that the Kosovo civil courts were currently experiencing. He stated that the Department of Justice considered the investigation closed.

**Registration Number 1082/03**  
**Regarding the length of proceedings in the case of Dobrivoje Micić**

*On 17 December 2004, the Ombudsperson issued Report No. 1082/03 "Regarding the length of proceedings in the case of Dobrivoje Micić." Inter alia, the Ombudsperson found that the failure of the District Court in Prishtinë/Priština to resolve the complainant's case within a reasonable time constituted a violation of the complainant's right to a fair hearing within a reasonable time as guaranteed under paragraph 1 of Article 6 of the European Convention on Human Rights.*

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

*Inter alia, the Ombudsperson recommended that the SRSG should take action no later than 2 February 2005 to ensure that the District Court issue a decision in the complainant's case without any further delay. The Ombudsperson further recommended that the SRSG appoint a sufficient number of judges to the District Court in Prishtinë/Priština or take other means necessary to guarantee the review of cases and delivery of judgments to all parties within a reasonable time.*

**On 18 August 2005**, the Ombudsperson received a letter from the Director of the Department of Justice, who said that, according to the JIU, the complainant's case was received by the District Court in Priština/Prishtinë in 2003 and assigned to one of its judges. However, at a later date, following the publication of the Ombudsperson's report,

the case was assigned to another District Court judge. In April 2005, the District Court judge began actively working on the case and on 27 April 2005 decided to overrule the first instance court and have the case set for re-trial.

According to the Director of the Department of Justice, only two months of the more than 16 months of delay were attributable to the new District Court judge, while for the rest of the time, the case had been with the court registry. The Director also explained that the case had been assigned on the basis of the date on which it was received, and that unfortunately, older cases had been given priority. The Director further stated that because no judicial misconduct had been established by the JIU investigation, the Department of Justice considered the case closed.

**Ex Officio Registration Number 46/05**  
**Regarding the allocation of apartments in the “Gj” building in the Municipality of Obiliq/Obilić**

*On 30 June 2005, the Ombudsperson issued Report No. 46/05 regarding the lawfulness of the decisions and the procedure concerning the allocation of apartments in the “Gj” building belonging to the Municipality of Obiliq/Obilić. The report was the result of an ex officio investigation prompted by complaints about irregularities in the allocation proceedings received from certain individuals and other information submitted to the Ombudsperson.*

*In the report, the Ombudsperson noted that a commission appointed by the Municipal Assembly to conduct the allocation proceedings had not followed the provisions on allocation proceedings in the applicable Law on Housing Relations of 1983, or any other legal principles, or indeed the criteria it had set for itself. It was also not held to report back to the Municipal Assembly or any other body, nor was there any provision regulating its composition and how large of a quorum would be permitted to take certain decisions. This commission had thus operated with near complete impunity and was not obliged to answer to any laws, procedures or supervisory bodies. Therefore, the allocation proceedings did not contain sufficient safeguards to prevent arbitrary behaviour on the side of the Commission. The Ombudsperson concluded that the rights of the persons applying to receive apartments by allocation decision were left without sufficient protection against discriminatory behaviour in violation of Article 14 in conjunction with Article 8 of the European Convention of Human Rights*

*The Ombudsperson recommended that the SRSG should, in cooperation with the Ministry of Public Services and the Ministry of Local Self-Government and by 1 September 2005 at the latest, ensure that the allocation proceedings in dispute be conducted anew, taking into consideration the international standards mentioned in the report. He also recommended that the SRSG and the above Ministries respond in an adequate manner to the allegations concerning irregularities in the allocation proceedings related to the “Gj” building in Obiliq/Obilić.*



On **23 September 2005**, the Ombudsperson received a response to Ex Officio Report No. 46/05 from the President of Obiliq/Obilić Municipality. In the response, he said that the complaints received by the Ombudsperson were simply those of disgruntled applicants, attributing their discontent to the fact that their apartments had been granted to them on a “lease” basis only. He restated his position that the above-mentioned Commission was set up as an “independent” body appointed by the Obiliq/Obilić Municipal Assembly to deal with the apartments, and that it had allocated the apartments following the criteria that it had set out itself. The Commission had allotted three apartments to members of the minority community, but ultimately the Commission could only give out apartments to three Bosniaks because they were the only persons of minority communities to apply. The letter acknowledged the huge number of ethnic Albanians, who, due to their financial situation and housing conditions, were granted two out of three apartments that were meant to be allocated to persons belonging to minority communities – reiterating again that the apartments were only given to the beneficiaries on a “lease” basis. The President of the Municipality concluded his response by emphasizing that there was no need to annul the decision of the Commission for allocation of apartments to the Municipal Administration employees because the process had been impartial and conducted in the fairest manner possible to all applicants.

**Registration Number 618/02**  
**F. G. against the Municipal Court in Vushtrri/Vučitrn and UNMIK**

On **25 October 2005**, the Ombudsperson released a report on Ms. F.G.’s complaint about the non-enforcement of a decision issued by the Municipal Court in Vushtrri/Vučitrn on 7 May 2002, ordering her husband, Mr. A.G., to pay a monthly alimony to the complainant and her children amounting to 1300 SFR until their divorce could be finalised.

A.G appealed against the above decision to the District Court in Mitrovicë/Mitrovica and later filed for divorce before the same court. Eventually, the District Court issued a divorce judgment that ordered A.G. to pay F.G. SFR 1200 monthly in alimony. The Municipal Court was unable to enforce the divorce judgment because A.G. had moved to Switzerland. The President of the Municipal Court thereupon asked the UNMIK Department of Justice to contact the Swiss authorities to enlist their assistance in executing the judgment.

The UNMIK Department of Justice contacted the Swiss authorities twice, once to inform them about the case and once to request information about A.G.’s ability to pay, since he claimed to be receiving social welfare benefits. After the second request, the President of the Municipal Court received no further information on the case from UNMIK, despite repeated requests for updates. As of the publication of the Ombudsperson’s report, the Municipal Court was not able to execute the divorce judgment and the complainant had never received any alimony payments.

In his report, the Ombudsperson examined the conduct of both the Municipal Court and the UNMIK Department of Justice. He concluded that the failure of the Department of Justice to effectively pursue the complainant’s case with the competent authorities in Switzerland had prevented the Municipal Court from executing the judgment ordering

alimony payment. The Ombudsperson noted that according to the case law of the European Court of Human Rights, the right of access to court also protects the execution of final and binding court decisions. Therefore, the delays caused by the Department of Justice's failure to take further action constituted a violation of the complainant's right to a court as guaranteed under Article 6 of the European Convention on Human Rights

The Ombudsperson recommended that the SRSG should, no later than 30 November 2005, take action to ensure that the UNMIK Department of Justice take all necessary action to ensure that the Municipal Court in Vushtrri/Vučitrn be able to execute its judgment awarding alimony to Ms. F.G.

On **28 December 2005**, the Ombudsperson Institution received a response to the report from the Coordinator of the JIU within the UNMIK Department of Justice, who said that the JIU had determined that the case did not meet the standard for them to start an investigation, because there was no evidence of judicial misconduct.

**Registration Number 1533/04**  
**Regarding the length of proceedings in the case of Jeton Veseli**

On **1 November 2005**, the Ombudsperson released a report on the above case. In this case, the Ombudsperson found that the failure of the District Court in Prishtinë/Priština to resolve the above case within a reasonable time constituted a violation of the complainant's right to a fair hearing within a reasonable time as guaranteed under paragraph 1 of Article 6 of the European Convention on Human Rights. In the instant case involving civil compensation for damages suffered by the complainant after he had bought a car with falsified car documents, the Ombudsperson noted that, following the forwarding of the defendant's appeal to the District Court on 23 December 2003, apparently no action had been taken by this court with regard to the complainant's case up to the date on which the Ombudsperson published his report. Recognising the case to be relatively non-complex and of great import to the complainant, who had lost a considerable amount of money by buying a car with false documentation papers, the Ombudsperson noted that the District Court had not attempted to justify the delay.

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

The Ombudsperson recommended that the President of the District Court in Prishtinë/Priština should, without further delay and no later than 1 December 2005, ensure that the District Court issue a decision on the defendant's appeal, given that the case had been pending before this court for almost two years. The Ombudsperson also recommended that the SRSG, no later than 1 December 2005, initiate disciplinary proceedings against those judges in the District Court who were involved in the complainant's case before the Kosovo Judicial and Prosecutorial Council. Finally, the Ombudsperson recommended that the SRSG promulgate a Regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human

Rights, providing both preventive and compensatory relief with respect to complaints about excessive length in civil cases.

On **8 December 2005**, the OIK received a response to this report from the Court Administrator of the District Court in Prishtinë/Priština, which stated that the case would be concluded within a month's time.

On **14 December 2005**, the Ombudsperson Institution received a response from the Coordinator of the JIU, who said that the JIU had opened an investigation into the matter and promised to inform the Ombudsperson Institution of the results of the investigation.

On **28 December 2005**, the case was concluded when the District Court ruled in the complainant's favour. Following the Ombudsperson Institution's request for further information, the District Court explained that this decision would be executed in early July 2006.

**Registration Number 1370/04**  
**Regarding the length of proceedings in the case of Enver Pllana**

On **29 November 2005**, the Ombudsperson released a report on the above case. In this case involving civil proceedings that had been initiated in 2001, the Ombudsperson noted that the Municipal Court in Prishtinë/Priština had taken one year and three months to forward the complainant's appeal to the District Court in Prishtinë/Priština, while the District Court had taken over two years to decide on the appeal. The case involved a labour dispute and was not very complex. With regard to the first delay, the Ombudsperson noted that there appeared to be no justification for it, nor had the Municipal Court offered any. With regard to the second delay, the Ombudsperson noted that the question before the District Court of whether the lawsuit had originally been filed within the statutory time limit was also not very complex and could have been resolved within a shorter time period. The District Court also had not offered any justification for this delay.

Bearing in mind the special diligence required by the case law of the European Court of Human Rights in labour disputes, the Ombudsperson came to the conclusion that both courts had violated their obligations under Article 6 of the European Convention on Human Rights, which provides that every person has the right to a fair hearing within a reasonable time.

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

The Ombudsperson recommended that the President of the Municipal Court in Prishtinë/Priština should, no later than 5 January 2006, take urgent steps to ensure that the Municipal Court issue a new judgment in the complainant's case without further delay. He further recommended that the SRSG take action, no later than 5 January 2006, to initiate disciplinary proceedings against those judges in the Municipal Court and District

Court who were involved in the complainant's case before the Kosovo Judicial and Prosecutorial Council. Finally, the Ombudsperson recommended that the SRSG promulgate a Regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human Rights providing both preventive and compensatory relief with respect to complaints about excessive length in civil cases.

On **14 December 2005**, the Ombudsperson Institution received a response from the Coordinator of the JIU within the UNMIK Department of Justice, who said that the JIU had opened an investigation into the matter and promised to inform the Institution of the results of the investigation.

**Registration Number 1420/04**  
**Regarding the right to family life of Ajete Maliqi**

On **20 December 2005**, the Ombudsperson released a report on the above case. In this case, the complainant had not had contact with her two children since her spouse's death, in large part due to the fact that the family of the deceased had taken care of the children since his death. The complainant had received limited access rights to her children in 2000 and custody proceedings that were initiated in 2001 were still pending before the Supreme Court at the time when the Ombudsperson's report was issued.

The Ombudsperson noted that while Article 8 of the European Convention on Human Rights protecting the right to family did not contain specific procedural requirements, a review of Article 8 issues should also look at the length of the local authority's decision-making process and of any related judicial proceedings. There was a danger that any procedural delay by the court could amount to a de facto determination of the issue. Cases involving the reunification of parents with children require urgent handling, as the passing of time could have irremediable consequences for the relationship between children and the parent who did not live with them. Applying these principles to the instant case, the Ombudsperson came to the conclusion that the fact that the District Court had passed the case back to the Municipal Court several times for re-examination constituted a serious deficiency in the quality and work of the local judiciary, in particular regarding the functioning of the hierarchy of this system. In general, by not properly following the applicable law and by not deciding on the case earlier, the competent courts had failed to meet the urgency of the situation and had prevented the complainant from seeing and exercising custody over her children. This amounted to a violation of her rights under Article 8.

The Ombudsperson recommended that the President of the Supreme Court in Kosovo take urgent steps, no later than 30 January 2006, to ensure that the Supreme Court decide on a request for review of a Municipal Court judgment in the case, as confirmed by the District Court, without further delay. The President of the Supreme Court should also ensure that in future, such cases be treated as priority cases.

At the same time, the Ombudsperson recommended that the President of the Municipal Court in Gjilan/Gnjilane should allow the complainant access to her children on a more

frequent basis, as a temporary measure until the Supreme Court would decide on the matter. He further recommended that the Municipal Court proceed in this way also in other similar cases. The Ombudsperson asked that the Court comply with his recommendations no later than 30 January 2006. Finally, the Ombudsperson recommended that the SRSG should, no later than 30 January 2006, ensure that the JIU within the UNMIK Department of Justice investigate the conduct of the judges involved in the case.

On **6 April 2006**, the Ombudsperson Institution received a letter from the JIU stating that the case involved multiple judges and the Ombudsperson's report did not make individual allegations of misconduct against any particular judge. The JIU noted that because there were no specific allegations, there were no grounds for it to open an investigation. The JIU further noted that the Supreme Court had finally issued a decision on 17 February 2006 and it had been executed on 22 March 2006, returning the children to the custody of their mother.

**Registration Number 1800/05**  
**Petko Mikarić against UNMIK Police and the KPS**

On **20 December 2005**, the Ombudsperson released a report on the above case. In this case, the complainant and his wife complained about ill-treatment by third persons that had allegedly taken place in 1999. The Ombudsperson noted that at the time, Serbia and Montenegro had not yet ratified the European Convention on Human Rights and UNMIK had not yet been established. Regardless of whether de facto, there was an existing police force in Kosovo at the time that could have prevented the attack, the Ombudsperson concluded that in the absence of any legislation obliging them to, the then existing public authorities on the territory of Kosovo were not internationally bound to behave according to the principles of Article 3 (freedom from ill-treatment) and the other articles of the Convention.

With regard to the question of whether the competent authorities had conducted proper investigations into the complainant's allegations of ill-treatment, the Ombudsperson noted that the police in Kosovo were under an ongoing obligation to investigate such cases and that since December 1999, the laws applicable in Kosovo obliged them to adhere to the principles of the Convention. Nevertheless, the police did not conduct proper investigations right after the incident and closed the case. In 2005, the police decided to reopen investigations, and therefore the Ombudsperson concluded that the earlier decision to close the case was taken too soon and had been done without a proper assessment of the facts. This did not reflect due diligence on the side of the police, which violated the complainant's and his wife's right to a proper investigation into their allegations under Article 3 of the Convention.

The Ombudsperson recommended that the SRSG should, no later than 30 January 2006, ensure that the competent prosecuting authorities actively conduct and pursue investigations into the allegations of grievous bodily harm raised by the complainant and his wife, with a view to indicting and prosecuting those responsible for these criminal acts. He further recommended that the SRSG ensure that UNMIK Police initiate

investigations into the conduct of those KPS officers who were first responsible for the investigation of the instant case.

The Ombudsperson Institution has not received any response to this report.

**Registration Number 694/02**  
**Beqir Querkezi against UNMIK Police and the KPS**

On **20 December 2005**, the Ombudsperson released a report on the above case. In this case, the Ombudsperson first examined whether the complainant's allegations that he had been beaten by an UNMIK Police Officer and several officers of the KPS in 2002 gave rise to a violation of Article 3 of the European Convention on Human Rights. Following correspondence with UNMIK Police, in the course of which UNMIK Police delivered conflicting information as to whether there existed a case file regarding the incident or not, the Ombudsperson eventually came to the conclusion that as there appeared to be no police file on the case, it was impossible to establish whether three years earlier, ill-treatment had actually taken place or not. However, the Ombudsperson did find that the competent police authorities' failure to initiate any investigations into the complainant's allegations of ill-treatment, despite having been informed about them several times, *inter alia* through the Ombudsperson Institution, constituted a breach of Article 3. This Article requires an effective investigation into allegations of grievous bodily harm that should be capable of leading to the identification and punishment of those responsible for such criminal acts. At the same time, the Ombudsperson noted that any action taken by the police against the UNMIK Police Officer allegedly involved in beating the complainant would, due to the immunity of UNMIK staff, be limited to an internal disciplinary police investigation. This would not be the same as criminal proceedings, which such serious allegations called for.

The Ombudsperson also observed that the absence of an effective remedy with respect to the complainant's claim of a breach of Article 3 (due to UNMIK Police's immunity) constituted a violation of the right to an effective remedy under Article 13 of the European Convention on Human Rights. Finally, he also stated that UNMIK Police's failure to cooperate with the Ombudsperson by sending him information earlier constituted a breach of Section 4.7 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution, which obliged the international authorities in Kosovo to cooperate with the Ombudsperson.

The Ombudsperson recommended that the SRSG ensure that in future, UNMIK Police investigate immediately and *ex officio* following allegations of ill-treatment by police officers. The Ombudsperson further recommended that the SRSG should promulgate a regulation or ensure that an appropriate legal act be adopted so that any individual suffering a violation of human rights or abuse of authority by a person acting in an official capacity in Kosovo, including UNMIK staff, would have an effective remedy at his disposal. Finally, the Ombudsperson recommended that the SRSG ensure that UNMIK Police continue to cooperate with the Ombudsperson Institution by providing relevant information, documents and files based on the applicable law.

On **30 May 2006**, the Ombudsperson Institution received a letter from the Commissioner of UNMIK Police, accepting the Ombudsperson's recommendation to open an *ex officio* investigation immediately. He said that his standing practice had been to investigate both allegations and perceptions of ill treatment by police. The Commissioner further noted that clear procedures facilitating cooperation between the Ombudsperson Institution and UNMIK Police had been established under his predecessor and the former Ombudsperson. Finally, the Commissioner said that representatives of the Ombudsperson Institution had already been allowed access to the UNMIK Police's files on the complainant.

### **Special Report No. 10**

#### **On the failure of the President of the Municipality of Prishtinë/Priština to cooperate with the Ombudsperson Institution in Kosovo**

On **20 December 2005**, the Ombudsperson released a report on the above case. In this report, the Ombudsperson examined whether the failure of the President of the Municipality of Prishtinë/Priština to react to letters, interim measures and other correspondence of the Ombudsperson was in violation of his obligations to cooperate with the Ombudsperson under Sections 3 and 4 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution.

The Ombudsperson noted that the above law required all public authorities to assist the Ombudsperson in his work and to respond to his requests for information or documents within a reasonable time. At the same time, he recalled that between March 2004 and October 2005, he had addressed a number of letters and other interventions to the President of the Municipality, but had not received a response to any of these letters. Given that even interventions on the side of UNMIK and the Minister of Local Self-Governance had not led to an improvement of the situation, the Ombudsperson came to the conclusion that such a persistent failure to cooperate constituted a violation of the above provisions of UNMIK Regulation 2000/38.

The Ombudsperson recommended that the Minister of Local Self-Governance, in cooperation with the SRSG should, no later than 30 January 2006, ensure that the President of the Municipality of Prishtinë/Priština respond without any further delay to the past and future requests and interventions of the Ombudsperson and that the Minister of Local Self-Government distribute copies of this report to all municipalities in Kosovo.

The Ombudsperson Institution has not received any response to this report.

**Registration Number 1133/03**  
**Shaban Lokaj against the Municipal Court in Deçan/Deçane**  
**and the District Court in Pejë/Peć**

On **5 January 2006**, the Acting Ombudsperson issued a report about the complaint of Mr. Shaban Lokaj, who claimed that a judgment issued by the Municipal Court in Deçan/Deçane in October 2002 had not been executed. The Municipal Court had found that Mr. Lokaj had been wrongfully denied a job by the Municipality of Deçan/Deçane and ordered the Municipality to appoint the complainant to the disputed post. The Municipality refused, even after its appeal to the District Court of Pejë/Peć was rejected.

The Municipality continued to refuse to execute the decision for several months, despite repeated orders from the Municipal Court. Eventually, the Municipal Court issued a fine to the Municipality, which then appealed to the District Court again. After 18 months, the District Court concluded that the Municipal Court had misapplied the law and annulled the fine. The District Court also instructed the Municipal Court to reconsider the employment dispute even though the District Court had already affirmed the final judgment on that case. Finally, in December 2005, the Municipal Court issued a new judgment, suspending the execution of its original decision from October 2002 and instructing the Municipality to object to the execution of the Municipal Court's own decision.

In his report, the Acting Ombudsperson found two separate violations of Article 6 of the European Convention on Human Rights (ECHR), which guarantees the right to a fair trial. The first violation was the Municipal Court's instructions to the Municipality to object to the execution of the Municipal Court's own decision. By instructing one of the parties in its own proceedings, the Municipal Court had violated the ECHR's requirement that courts remain impartial toward both parties. The second violation was the District's Court's 18-month delay in issuing its second decision. This unnecessary delay violated the ECHR's requirement that court proceedings be expeditious.

The Acting Ombudsperson concluded the report by recommending that the Municipal Court execute its original decision ordering the complainant's employment. The Acting Ombudsperson also recommended that the SRSG initiate disciplinary proceedings before the Kosovo Judicial and Prosecutorial Council (KJPC) against those judges in the Municipal Court of Deçan/Deçan and in the District Court in Pejë/Peć who were involved in the faulty decisions.

On **18 April 2006**, the Ombudsperson Institution received a letter from the Director of UNMIK's Department of Justice. The Director said the KJPC was being replaced by the Kosovo Judicial Council (KJC) and therefore was not accepting any new cases. He also said the allegation in the Acting Ombudsperson's report would be forwarded to the JIU for investigation and review and that the Department of Justice would inform the Ombudsperson Institution of the results of the investigation.



**Registration Numbers 1527/04 and 1730/05**  
**Sefedin Gashi and Osman Hyseni and others**  
**against the Municipal Court in Vushtrri/Vučitrn**

On **20 April 2006**, the Acting Ombudsperson released a report on two cases regarding 112 individuals from Vushtrri/Vučitrn who were still owed salaries by two Socially Owned Enterprises administered by the Kosovo Trust Agency. The Municipal Court of Vushtrri/Vučitrn had ordered the two companies, Kosova Enterprise and Vushtex Enterprise, to pay the complainants, but conflicts with existing policies of the Kosovo Trust Agency (KTA) prevented the payments from proceeding.

The complainants, one a former employee of Kosova Enterprise and 111 former employees of Vushtex Enterprise, alleged that their employers had not paid them for lengths of time ranging from months to years in the period 2000-2004. They brought their case to the Municipal Court, which ruled in their favour and ordered the relevant banks to pay the complainants from their employers' accounts. When the employees did not receive the court-ordered payments, they filed complaints with the OIK, which launched a formal investigation after a preliminary fact-finding period.

In the Kosova Enterprise case, the Acting Ombudsperson found that the problem was a conflict of laws. On the one hand, the bank was required by law to follow the Municipal Court's orders; on the other, the bank was told by the KTA that they could not take action until the cases were reviewed by the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters. In the Vushtex case, there was simply no money left in the company's bank account.

Regarding both cases, the Acting Ombudsperson concluded that while the Special Chamber had clarified certain matters of jurisdiction, it had not provided enough guidance on how to proceed with executing such judgments. The case law of the European Court of Human Rights provides that the right of access to a court under Article 6 of the European Convention on Human Rights also protects the execution of court judgments. Because the Municipal Court did not receive proper practical guidance, it did not know how to execute the above-mentioned decisions. Therefore it was the lack of guidance from the Special Chamber that led to the violation of the right of access to a court.

The Acting Ombudsperson recommended that the President of the Special Chamber ensure that the above Special Chamber urgently inform the Municipal Court in Vushtrri/Vučitrn and other courts facing similar problems on how to deal with the practical issues pertaining to the execution of the above-mentioned judgments

The report was formally submitted to the Assembly of Kosovo. Copies of the report were also sent to the SRSG, the UNMIK Standards Coordinator, the President of the Municipal Court of Vushtrri/Vučitrn, and the President of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters.

The Ombudsperson Institution has not received any response to this report.

**Registration Number 1406/04**  
**Ruzhdi Sefa against the Senior Public Appointments Committee (SPAC)**

On **25 April 2006**, the Acting Ombudsperson released a report on the complaint of Mr. Ruzhdi Sefa, a senior civil servant who had been promised a new post by the Senior Public Appointments Committee (SPAC) but never received it. (The SPAC is an organ of the Office of the Prime Minister that appoints certain senior officials within the Kosovo Provisional Institutions of Self-government (PISG) and, in consultation with the SRSG, may remove them as well). In the report, the Acting Ombudsperson found that because the complainant's legitimate expectation to receive a new position had not been met, his right to property under Article 1 of the First Protocol to the European Convention on Human Rights had been violated.

The complainant used to work for the Ministry of Environment and Spatial Planning as Permanent Secretary. In November 2003, following disagreements between Mr. Sefa and the Minister, the SPAC issued a decision to send him on paid leave. In January 2004, the SPAC issued another decision in which it decided that Mr. Sefa should be appointed to another position of a similar level and salary within the PISG. After this decision, the complainant stopped receiving his salary, but despite repeated requests and reminders, he never received a new post.

In June 2004, Mr. Sefa filed a complaint with the Ombudsperson, who duly opened an investigation and found a violation of Article 1 of the above-mentioned Protocol, which has been interpreted to protect not only property, but also legitimate expectations to property or to assets. By failing to implement its decision, the SPAC had effectively violated the complainant legitimate expectation to the asset of a salary and position commensurate with his previous one.

The Acting Ombudsperson recommended that the complainant be given the post promised to him by the SPAC's decision of January 2004, or that he be compensated if this was no longer possible. The report was formally submitted to the Assembly of Kosovo. Copies of the report were also sent to the SRSG, the UNMIK Standards Coordinator, and the Prime Minister and SPAC Chairman.

The Ombudsperson Institution has not received any response to this report.

**Ex-Officio Registration Number 42/2005:**  
**Regarding the question of possible discrimination in the granting of construction materials to repair houses that were categorized in category 4B, following the earthquake in the Gjilan/Gnjilane region, on 24 April 2002**

On **30 June 2006**, the Ombudsperson released a report on the above case. In this case, the Ombudsperson investigated complaints received from certain individuals dissatisfied with the Municipality of Gjilan/Gnjilane's failure to allocate construction materials to them. The Municipality had received funds from the Ministry of Finance to purchase and distribute construction materials to persons whose houses had been damaged or destroyed as a result of an earthquake that took place on 24 April 2002. The majority of complaints

were received from persons whose houses had been largely or completely destroyed (category 4B under the Municipality's triage system).

In his report, issued on 30 June 2006, the Acting Ombudsperson concluded that the commission formed by the Municipality to identify who would be eligible for this assistance had not drafted any rules of procedure to regulate its decision-making process. The commission was also not required to report to the Municipal Assembly or any other body, nor were there any other provisions to regulate its composition or to specify the conditions for a quorum. This commission had operated with virtual impunity, without any significant oversight or safeguards to prevent arbitrary decisions. The commission's proceedings thus failed to protect the complainants' rights to be free from all forms of discrimination. Since the material assistance promised to victims of the earthquake was a pecuniary right protected by the right to property under Article 1 of Protocol 1 to the ECHR, the Acting Ombudsperson concluded that there had been a violation of the complainant's rights under this article in conjunction with Article 14 of the ECHR, which states that all persons shall be free from all forms of discrimination.

The Acting Ombudsperson recommended that the Minister of Local Government Administration ensure that any more complaints of persons whose damages were categorized under category 4B and who consider that they should have received material assistance from the Municipality be reviewed and dealt with appropriately by the competent Appeals Commission set up for this purpose by the Municipality of Gjilan/Gnjilane.

The Acting Ombudsperson further recommended that the Minister ensure that in future cases where *ad hoc* commissions are set up in municipalities, in particular if they involve the distribution of financial assistance, the competent Municipal Assembly draft and approve an appropriate procedure for these commissions, as well as criteria on the basis of which such assistance should be distributed.

Finally, the Acting Ombudsperson also recommended that the Assembly of Kosovo draft a Law on Emergency Assistance that will address the concerns expressed by the Ombudsperson in this report.

#### **Ex Officio Registration Number 43/2005: Regarding the oral and written use of the Bosnian language in the Municipal Court in Pejë/Peć**

On **30 June 2006**, the Ombudsperson released a report on the above case. In this case, a person of Bosniak ethnicity complained that civil court proceedings involving a property dispute before the Municipal Court in Pejë/Peć had been held in Albanian and that he had not been informed of his right to an interpreter, as required by Article 102 para. 2 of the Yugoslav Code of Civil Procedure. The complainant appealed the decision *inter alia* on these grounds, after which the case was remanded to the Municipal Court, where an interpreter for the Bosniak language attended the first two hearings. At both hearings, the complainant was informed of his right to an interpreter but waived it at the second hearing, declaring that he understood Albanian.

In the report, the Acting Ombudsperson analysed the case from the perspectives of both domestic and international law. Regarding domestic law, the Acting Ombudsperson noted that the Municipal Court's initial failure to inform the complainant about his right to an interpreter violated Article 102 para. 2 of the Yugoslav Code of Civil Procedure. However, there had been a retrial following an appeal before the District Court in Pejë/Peć citing *inter alia* the Municipal Court's failure to apply Article 102 para. 2. In the retrial before the Municipal Court, the complainant had been informed of his right to an interpreter and such an interpreter was present until the complainant waived this right, and therefore the Acting Ombudsperson found that the Municipal Court was no longer in violation of the above provision of the Code of Civil Procedure.

Regarding international law, the Acting Ombudsperson noted that as there is no specific right to free assistance of an interpreter in civil proceedings, the issue at hand was related to the more general international principles of the right to an oral hearing in person and the right to equality of arms. He found that in terms of the right to an oral hearing, in this case it was sufficient that the complainant had been represented by a competent Albanian-speaking lawyer during court proceedings. In terms of the right to equality of arms, the Acting Ombudsperson found that based on international jurisprudence, the requirement of a fair hearing does not oblige a court to make interpreters available to persons who are capable of understanding and expressing themselves adequately in the official language used by the court. Also, it is not up to the parties to decide in which language court proceedings will be conducted and if a party has chosen to communicate with a court in an official language, he or she cannot claim to have been discriminated against on the grounds of language. Therefore, the Acting Ombudsperson concluded that the complainant's right to a fair hearing under international law had not been violated.

**Registration Numbers 1599/05 and 238/01**  
**Feriz Gërvalla and others,**  
**Zejnullah Pirraku and others**  
**against**  
**the Municipality in Glllogovc/Glogovac**

On **30 June 2006**, the Ombudsperson released a report on the above case. This case involved the demolition of business premises by the Municipality of Glllogovc/Glogovac despite an interim measure of the Municipal Court of Glllogovc/Glogovac in 2001 forbidding it to do so. The locations of these businesses had been allocated to the complainants by the Municipality during the period 1992-1997. The municipal authorities established by UNMIK considered that the businesses had been built without permission or had been built with the permission of the Serbian Government, which these authorities considered to be an occupying and therefore illegitimate force. The Municipality issued many orders to demolish these businesses, but the SRSG and various other representatives of UNMIK prevented their implementation. The businesses were eventually demolished in March 2005, despite the fact that the Municipal Court's interim measure decision was still in force.

The Acting Ombudsperson recalled the case law of the European Court of Human Rights, which had interpreted Article 8 of the ECHR, which protects the right to a home, to

extend to the protection of business premises. He concluded that the demolition of the complainants' businesses constituted a violation of this Article because although the Municipality has a right to destroy buildings that it considers to have been built illegally, it may not exercise this right in the face of a valid court decision ordering it not to do so.

In addition to, the Acting Ombudsperson found that the demolition was in violation of the right to property protected by Article 1 of Protocol No. 1 to the ECHR.

The Acting Ombudsperson recommended that the Kosovo Assembly should, in cooperation with the Government of Kosovo, discuss a strategy to ensure that all municipalities in Kosovo receive continuous education on their obligations to respect decisions of the judiciary and the rule of law in general.

The Acting Ombudsperson further recommended that the Municipality of Glllogovc/Glogovac compensate the complainants without further delay if a court issues judgments granting the complainants compensation for their destroyed businesses.

## **ANNEX II: INTERIM MEASURES**

### **A potential sale of joint property during divorce proceedings**

On **28 July 2005**, the Ombudsperson sent a letter to the President of the Municipal Court of Prishtinë/Priština, asking him to prevent, as an interim measure, the transfer of ownership of the property jointly owned by the complainant B.B.A. and her ex-husband. B.B.A. claimed to have information that her ex-husband had already made plans to transfer their common property to a third party and had in fact already transferred some of their common possessions. She had already submitted a request for interim measures to the Municipal Court of Prishtinë/Priština on her own on 9 December 2004. As of 28 July 2005, the Municipal Court had not decided on her request for interim measures and as a consequence, she was in danger of losing her rights to her part of the property. The Ombudsperson therefore asked the Municipal Court for immediate action to prevent irreparable harm to B.B.A. and to send him a copy of the relevant court decision.

On **1 August 2005**, the Ombudsperson received a letter from the President of the Municipal Court of Prishtinë/Priština, which stated that the recommended interim measures had been taken and that they would be in force until the final decision of the Municipal Court on the division of the common property owned by the complainant and her husband. The Ombudsperson therefore closed the case, considering it positively resolved.

### **A forceful removal of business premises in Glllogovc/Glogovac**

*On 29 December 2004, the Ombudsperson received a complaint about a decision issued by the Municipal Inspection Directorate within the Municipality of Glllogovc/Glogovac*

*concerning the execution of decisions involving the destruction and removal of business premises located on “Skënderbeu” Street in Glllogovc/Glogovac.*

*On 1 March 2005, the Ombudsperson sent an urgent request for interim measures to the Minister of Public Services asking her to ensure that the Municipality of Glllogovc/Glogovac suspend the impending destruction and removal of the complainants’ business premises. The Ombudsperson considered that such action would be contrary to an earlier court decision prohibiting, as an interim measure, the Municipality from demolishing the properties concerned until a final court decision had been issued on an alleged obstruction of their possessions by the Municipality of Glllogovc/Glogovac*

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

*On 5 May 2005, the Ombudsperson sent a reminder to the SRSG asking for information about any action taken or planned by UNMIK or the competent local authorities regarding this case.*

**On 12 August 2005**, the Ombudsperson received a response to the case from the DSRSG for Civil Administration. In the letter, the DSRSG concurred with the Ombudsperson’s findings that the demolitions in Glllogovc/Glogovac that had taken place on 2 March 2005 had occurred despite the fact that an interim injunction had been issued by the Municipal Court in Glllogovc/Glogovac on 7 May 2001, which was still in force. As well, the DSRSG confirmed the suspension of the demolition process, based on Executive Decision No. 2001/06, and pending review by the competent court and the Municipal Assembly. This was deemed by UNMIK to be a departure from the rule of law and a violation of the Rule of Law Standard #2, which aims to create a sound legal framework and effective law enforcement methods, compliant with European Standards. Additionally, the DSRSG had written to the Minister of Local Self-Government to give him the opportunity to respond appropriately to this case and to prevent similar situations from arising in the future. Finally, the DSRSG took no opinion on the merits of the civil case brought by the complainants, deferring responsibility for the case’s resolution to the Provisional Institutions of Self Government (PISG) and the relevant courts instead.

## **An attempt to expropriate private commercial property in Prizren**

*On 20 April 2005, the Ombudsperson received a complaint from a complainant facing the demolition of his business in Prizren Municipality in April 2005. The business premises in dispute had been built by the complainant on his own property, which in 1983 the Municipal Assembly of Prizren had decided to expropriate, although the expropriation had never been carried out. However, in June 2001, the Municipality issued orders for the property to be demolished. These orders were promptly challenged by the complainant before the Municipal Court, which ordered the suspension of all activities related to the parcel of land, pending the completion of the civil procedure. Nevertheless, on 14 April 2005, the complainant received a notice issued by the Directorate of the Inspections Unit of Prizren Municipality ordering the demolition of the property.*

*On 20 April 2005, the Ombudsperson sent an urgent request for an interim measure to the Minister of Public Services of Kosovo in order to suspend the implementation of the original demolition order of 11 June 2001 pending further investigations in the case. He noted that the Inspections Unit had scheduled the demolition for 21 April 2005 despite a court decision expressly forbidding such action and that the demolition could cause the complainant to suffer irreparable harm.*

**On 19 July 2005**, the Ombudsperson received a letter from the Minister of Public Services, in which she said that the ability to suspend the original demolition order of 11 June 2001 did not fall under the competencies of the Ministry of Public Services and was strictly a municipal decision. In case the municipal authority had issued an unlawful decision, the Minister said that the case should be referred to the Supreme Court of Kosovo. In accordance with Article 3 of UNMIK Regulation No. 2000/45 on the Self-Government of Municipalities, the SRSG could weigh in on the issue and suspend the demolition order, as it was his ultimate responsibility to decide whether the Municipal Directorates were functioning in accordance with the law.

**On 30 August 2005**, the Ombudsperson received a letter from the UNMIK Representative to the Ministry of Local Self-Government, confirming that UNMIK had raised the issue with the Acting Permanent Secretary of the Ministry of Local Self-Government, who had confirmed that he would look into the case and advise if action had been taken.

**On 23 September 2005**, the Ombudsperson received a letter from the UNMIK Representative to the Ministry of Local Self-Government, giving an update on court proceedings regarding this case.

## **Problems reconstructing a mined village**

*On 9 September 2003, H.N. had submitted a complaint to the Ombudsperson Institution on behalf of the villagers of Milaj in Prizren Municipality. They lacked access to their village, which had been destroyed and mined during the conflict in 1999, leaving 43 families homeless. In February 2004, a representative of the Ombudsperson Institution*

*was informed by the Director of Reconstruction in the Municipality of Prizren that reconstruction was impossible because 80% of the village was mined and the Municipality did not have enough money to both de-mine and reconstruct the village. On 19 July 2004, the Ombudsperson sent a letter to the Prime Minister of Kosovo, asking for a possible solution.*

*On 28 July 2004, the Senior Officer for Social Cases in the Coordination Secretariat of the Office of the Prime Minister (OPM) informed the Ombudsperson Institution that the OPM had limited responsibilities in this case but that it had forwarded the case to the Kosovo Protection Corps, who would look into the de-mining issue.*

*On 29 April 2005, the majority of villagers were still living in collective centres or on someone else's property, so the Ombudsperson sent an urgent request for interim measures to the SRSG, asking him to suspend a decision of the HPD to evict the villagers. The Ombudsperson recommended the establishment of a common commission of the Municipality of Prizren, the PISG and the HPD to find an adequate solution for the villagers.*

**On 24 March 2006**, the Acting Ombudsperson sent a letter to the Prime Minister, calling on him to take action to help the 43 families of the village Milaj rebuild their homes in Prizren Municipality. Since a considerable number of villagers had not solved their housing problems and had not received enough assistance from Prizren Municipality, the Acting Ombudsperson asked the Prime Minister to find a temporary solution for them until a better one could be found.

**On 6 April 2006**, the Ombudsperson Institution received a letter from the Senior Official for Social Issues, who explained that the OPM had forwarded the Acting Ombudsperson's letter to the Kosovo Protection Corps and the SRSG. The Senior Official recommended that the Ombudsperson Institution address future correspondence on mines to the Kosovo Protection Corps, the Kosovo Police Service, and KFOR, as they are the institutions responsible for clearing mines. She further recommended that the Institution contact the municipal authorities in Prizren regarding finding a place of residence for the villagers of Milaj.

### **Expropriation of private property for building the Kamaran-Carralevë/Komorane-Crnoljevo road**

**On 26 July 2005**, the Ombudsperson sent a letter for the Minister of Environment and Spatial Planning, requesting that he take urgent action to suspend the road construction project Kamaran-Carralevë/Komorane-Crnoljevo, in the Municipality of Lipjan/Lipljan, because inhabitants of Rusinovc/Rusinovce and Pjetershtice/Petrastica villages had complained that the project had been begun without initiating proceedings to expropriate the complainants' land.

**On 14 October 2005**, the Ombudsperson sent a reminder to the Minister, reiterating his request and concerns.



On **28 October 2005**, the Ombudsperson received a letter from the Minister, who explained that the Ministry was not responsible for this project and that the Ombudsperson should address his request to the Minister of Transport and Telecommunications.

On **10 November 2005**, the Ombudsperson sent a letter to the Minister of Transport and Telecommunications, conveying to him the above-mentioned concerns and request.

On **27 February 2006**, the Acting Ombudsperson sent a reminder to the Minister of Transport and Telecommunications. The Acting Ombudsperson reiterated the request and concerns listed in the Ombudsperson's letter of 10 November 2005.

On **10 March 2006**, the Ombudsperson Institution received a letter from the Minister of Transport and Telecommunications, explaining that the Ministry had signed a Memorandum of Understanding with all the municipalities of Kosovo regarding road infrastructure, according to which all municipalities are obliged to resolve any issues of legal ownership for the roads through their territory. The Minister further stated that it was therefore the responsibility of the municipalities of Glllogvc/Glogovac, Shtime/Štimlje and Lipjan/Lipljan to resolve the issues of land ownership in their respective territories and that the Ministry did not consider itself responsible for these matters.

According to recent information received by the Ombudsperson Institution, the Municipalities of Shtime/Štimlje and Lipjan/Lipljan have both set up special commissions to determine who should rightfully be compensated for the expropriations.

### **Neighbour disputes in Fushë Kosovë/Kosovo Polje**

On **1 June 2006**, the complainant M.Đ. sent a written request and all necessary documents to the Town Planning Inspection in Fushë Kosovë/Kosovo Polje to order, as an interim measure, his neighbour to immediately stop construction work affecting M.Đ.'s access to his house. The construction work was on part of a parcel of land of which M.Đ. was co-owner, but the work had begun without his previous consent. The disputed part of the parcel had been jointly used as a road by the complainant and his neighbour and the complainant had no other way to get to his house. Since the construction work began, the complainant had not been able to reach his house and property by car.

On **19 June 2006**, the Ombudsperson Institution received a complaint from M.Đ., who claimed that he had never received an answer to his request to the Town Planning Inspection in Fushë Kosovë/Kosovo Polje. According to the applicable law in Kosovo, the above Inspection and the Municipal Department of Town Planning, Geodesy and Cadastre were obliged to answer or to take action within fifteen days of the submission of M.Đ.'s request

On **23 June 2006**, the Acting Ombudsperson sent a letter to the President of the Municipality of Fushë Kosovë/Kosovo Polje, asking him to take urgent action to ensure that further construction on the land be stopped, pending the Acting Ombudsperson's further investigation into the matter.

On **29 June 2006**, the Ombudsperson Institution received notice from the complainant that the Municipality had halted the disputed construction in response to the request for an interim measure.

### **ANNEX III: SUMMARIES OF SELECTED INTERVENTION LETTERS**

#### **The alleged discrimination against Serbian journalists by UNMIK**

On **1 July 2005**, the Ombudsperson sent a letter to the Director of UNMIK's Department of Public Information (DPI), expressing his concern about UNMIK's restriction of Serbian journalists' access to a forensic site in Klinë/Klina.

On **18 July 2005**, the Ombudsperson Institution received a letter from the Director of DPI, who said that DPI regretted the fact that they had had to restrict access of journalists of all ethnicities to the site, but that concerns about safety (the site was a ravine) and the preservation of the crime scene had required them to limit the number of visitors. In the end, 6 Kosovan and 5 Serb journalists were granted access, chosen according to standard criteria applied to their respective media outlets – circulation and use as a primary news source. The Director further explained that she had offered to arrange access to the site to other journalists at other times, but that no one had expressed interest in this.

#### **Prishtinë/Priština Municipality's lack of responsiveness to the Ombudsperson Institution**

*On 17 March 2005, the Ombudsperson sent a letter to the Minister of Local Self-Government, explaining that the President of the Municipality of Prishtinë/Priština had refused to respond to any of the Institution's attempts to contact him or receive documents or other information from his office. The Ombudsperson asked the Minister to ensure that the President of the Municipality respond to the Institution's letters and other attempts to contact him, pursuant to UNMIK Regulation No. 2000/38. The Ombudsperson sent copies of this letter to both the DSRS for Civil Administration and the UNMIK Standards Coordinator.*

On **4 July 2005**, the Ombudsperson Institution received a copy of a letter sent by the Acting Municipal Representative of UNMIK to Prishtinë/Priština Municipality [Dmitry Pozhidaev] to two senior municipal officials in Prishtinë/Priština: the President of the Municipal Assembly and the Chief Executive Officer of the Municipality. In his letter, the Acting UNMIK Representative drew the officials' attention to the fact that the

Ombudsperson Institution had yet to receive a single response in all of 2005 to its various requests for information from them. He urged the Municipality to improve its response rate and give priority to communications with the Institution, as the Institution deals with many issues directly related to the implementation of the Standards for Kosovo.

There has been no response to this letter and the Municipality of Prishtinë/Priština still has not responded to any of the letters sent by the Ombudsperson Institution since the beginning of 2005.

### **Lack of remedy for members of and candidates for the Kosovo Civil Service**

Established through UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, the Independent Oversight Board (IOB) has several duties, including the examination of cases brought by members of and candidates for the Kosovo Civil Service against governmental employment and recruitment practices. Although it was established in 2001, the IOB did not begin reviewing complaints until mid-2005, and members of and candidates for the civil service had nowhere to take their complaints, since none of the regular courts had jurisdiction over such matters. In the last reporting period, the Ombudsperson Institution released a report about this issue, finding that the IOB's failure to process complaints regarding the Kosovo Civil Service violated complainants' right of access to a court under Article 6 of the European Convention on Human Rights.

*On 17 June 2005, the Ombudsperson sent a letter to the SRSG, noting that the IOB still was not operational, apparently due to the fact that work on the necessary Rules of Procedure had not yet been finalised. Noting that the number of persons referred to the IOB was constantly growing, the Ombudsperson asked the SRSG to inform him whether the Rules of Procedure had been or would soon be finalised.*

On **4 July 2005**, the Ombudsperson Institution received a letter from the Acting DSRSG for Civil Administration, explaining that the IOB already was performing two of its three functions: reviewing senior appointments in Kosovo's Civil Service and assessing compliance with civil service employment principles. As for the third function, hearing appeals from civil servants, the IOB's rules of procedure were still being prepared, but the Acting DSRSG claimed that they would be completed and the IOB would be fully operational by the end of August 2005.

### **Lack of potable water in Kosovo's schools**

*On 30 June 2005, the Ombudsperson sent a letter to the Prime Minister regarding the lack of clean drinking water in schools across Kosovo. The Ombudsperson pointed out that a study by the Institute of Public Health in Prishtinë/Priština in 2002 showed that the drinking water in 83% of Kosovo's schools was contaminated and/or not potable. In June 2004, the Minister of Education, Science and Technology, the Ministry of Environment and Spatial Planning, and the Ministry of Health had signed a Memorandum of Understanding, agreeing to coordinate efforts to improve schools' access to potable water. As of May 2005, though, no significant improvement had been*

*made. The Ombudsperson therefore asked the Prime Minister to take urgent steps to improve the situation.*

On **11 July 2005**, the Ombudsperson received a letter from the Permanent Secretary of the Ministry of Environment and Spatial Planning, which explained the obligations of this Ministry under the inter-ministerial Memorandum of Understanding, including training teachers on environmental awareness, lessons about the environment for students and support to schools in their environmental planning.

On **13 July 2005**, the Ombudsperson received a letter from the Minister of Education, Science and Technology, who said that his Ministry would respect the Memorandum of Understanding and that he hoped the Ministry of Health and the Ministry of Environment and Spatial Planning would do the same. He further affirmed that his Ministry would take all necessary measures to warn schools in which there is no drinkable water and threatened to close them if they did not comply.

On **28 September 2005**, the Ombudsperson sent another letter to the Prime Minister, informing him of the above-mentioned letters but explaining that unfortunately, these two Ministries' actions had not been sufficient to improve the situation. The Ombudsperson noted that he still had not received a response from the Prime Minister and repeated his request that the Prime Minister use his power over the responsible authorities to improve the situation.

On **7 October 2005**, the Ombudsperson received a letter from the Senior Official of the Coordination Secretariat of the Office of the Prime Minister (OPM), explaining that it had asked the two Ministries mentioned above to send their letters to the Ombudsperson and explain what actions they were taking. The OPM had taken measures to create a working group to coordinate with them, to do whatever was possible as soon as possible. The letter conveyed the Prime Minister's gratitude for the Ombudsperson's investigation into the matter.

The Ombudsperson Institution continues to monitor the situation, which has still not improved.

### **The forced return of certain minority refugees**

*On 4 March 2005, the Ombudsperson sent a letter to the Ministers of the Interior of Italy and Germany, as well as Sweden's Minister for Migration and Asylum Policy. The Ombudsperson expressed concern over reports that these three countries were planning to return refugees of Roma, Ashkali and Egyptian ethnicity to Kosovo. His concerns focused on the risks and hardships such returnees would face, including ethnically-motivated crimes and limited access to public services. The Ombudsperson received answers from the German and Swedish Ministers on 24 March 2005 and 12 April 2005 respectively.*

On **19 July 2005**, the Ombudsperson Institution received a letter from the Italian Minister of the Interior at the time, who claimed that the Italian Government had not returned and

did not intend to return any such refugees to Kosovo. The Minister further specified that the Ministry had instructed the relevant Services within his Ministry to faithfully implement the European Convention for the Protection of Human Rights and Fundamental Freedoms.

### **Lack of remedy for members of and candidates for the Kosovo Civil Service**

*On 28 June 2005, the Ombudsperson issued a report on the case of F.B.R., in which he found that the Independent Oversight Board's (IOB) continued inability to process complaints of members of and candidates for the Kosovo Civil Service violated F.B.R.'s right of access to a court under Article 6 of the European Convention on Human Rights. Among other things, the Ombudsperson recommended that the SRSG and the Ministry of Public Services ensure that the IOB be able to take up its work without further delay.*

On **20 July 2005**, the Ombudsperson Institution received a letter from the Acting DSRSG for Civil Administration, who re-affirmed UNMIK's commitment to working with the Ministry of Public Services to prepare the IOB's rules of procedure and make the institution fully operational by the end of August 2005.

### **Lack of clarity on UNMIK's policy on Yugoslav license plates**

*On 29 April 2005, the Ombudsperson Institution sent a letter to the DSRSG for Police and Justice, requesting clarification of the provisions of the Law on Car Registration regarding license plates in Kosovo. Because the Ombudsperson Institution had received a number of complaints regarding this issue, the letter did not mention a specific complainant or complaint, but rather requested a general explanation of UNMIK policy and KPS responsibilities under this law. The Ombudsperson had sent numerous other letters regarding specific cases to UNMIK customs and the KPS. In many cases, residents of Kosovo who had bought their cars in Serbia (which still assigns license plates under the old Yugoslav system, using the prefixes PR, PZ, et al. instead of KS) had had their cars confiscated by the KPS, who claimed that the owners had not paid the required customs taxes.*

On **28 July 2005**, the Ombudsperson Institution received a letter from the DSRSG for Police and Justice, detailing the rules on registration and taxing of cars and license plates in Kosovo. According to him, the Law on Car Registration says that car owners who have license plates with Yugoslav numbers may exchange these plates for KS plates but that Serbian residents may simultaneously retain their Yugoslav plates to facilitate freedom of movement into and out of Serbia and Montenegro. However, the Law further states that car owners with the Yugoslav plates do not need to pay customs tax (although they would still have to pay excise tax and VAT), since according to international law they do not have plates from another country.

Since this letter, the deadline for the exchange of Yugoslav license plates has been postponed several times and the Ombudsperson Institution has continued to receive

complaints regarding the KPS's implementation of these regulations. The Institution currently has five such cases still pending.

### **Inadequate institutional care for persons addicted to drugs**

On **29 July 2005**, the Ombudsperson sent a letter to the Minister of Health regarding the problem of inadequate institutional care for persons addicted to drugs.

On **4 August 2005**, the Ombudsperson Institution received a response from the Minister of Health, stating that care for drug addicts was the responsibility of a unit within the Psychiatric Clinic of the hospital in Prishtinë/Priština. The Minister noted that that unit was unable to provide adequate treatment for the rapidly rising number of drug addicts in Kosovo, due to limitations in the Ministry of Health's budget.

On **11 October 2005**, the Ombudsperson sent a letter to the Prime Minister at the time (Mr. Bajram Kosumi) regarding the problem of inadequate institutional care for persons addicted to drugs. The Ombudsperson urged the Prime Minister to take decisive and immediate action to launch projects to help these people and ensure that this growing problem receive the attention it required.

On **26 October 2005**, the Ombudsperson Institution received a letter from an official in the Office of the Prime Minister (OPM). The official affirmed the OPM's recognition of this problem and its commitment to finding an appropriate solution. The official further stated that the OPM had begun preparations to establish a Kosovo Committee for Intervention against Drugs and Psycho-active Substances.

On **30 June 2006**, the Acting Ombudsperson sent a letter to the Prime Minister, recalling the above-mentioned correspondence and outlining the above-mentioned concerns.

### **Allegations of violent abuse in a correctional centre**

On **29 July** and **19 September 2005**, a lawyer from the Ombudsperson Institution contacted the Director of the Lipjan/Lipljan Correctional Centre and asked for information on the allegations of complainant V.K., a detainee who claimed to have been beaten by a correctional officer in the Centre. On both occasions, the Director of the Centre promised to provide the requested information, but then failed to keep this promise.

On **27 October 2005**, the Ombudsperson sent a letter to the Director of the Centre, reiterating the previous request for information regarding V.K.'s case.

On **10 November 2005**, the Ombudsperson Institution received a response from the Director, with a medical report enclosed. The medical report stated that a medical examination had been conducted on V.K. on 26 July 2005, in which the doctor noted marks suggestive of injuries and attempted to document them but was unable to because the camera of the Medical Services was not working at the time.

On **5 December 2005**, the Ombudsperson sent a letter to the Head of Operations of the Penal Management Division, within UNMIK's Department of Justice. The letter recounted the above-mentioned facts and asked the Head of Operations to investigate the incident and take disciplinary actions if necessary.

On **4 January 2006**, the Kosovo Correctional Service (KCS, a part of the Penal Management Division) notified the Ombudsperson Institution that they had issued an internal report on the issue and had decided to re-locate the accused correctional officers to a different wing of the building. At the same time, they were adopting more flexible procedures to improve relations between prisoners and KCS staff. The KCS also issued an official clarification that abuse of authority would not be tolerated in the Kosovo Correctional Service.

### **Dangerous emissions from an oil depot**

*On 24 June 2005, the Ombudsperson Institution registered a complaint from M.B., a resident of Obiliq/Obilić in whose neighborhood an oil depot had been built by Kastriot Petroll. M.B. claimed that the location of Kastriot Petroll's facility was not proper because emissions from it posed a danger to the health of the residents of nearby neighbourhood. Furthermore, there was a significant danger of an accident due to the facility's proximity to a large electric power station. The complainant and his neighbours had raised this issue with Obiliq/Obilić Municipality and the Ministry of Trade and Industry and the Ministry for Environment and Spatial Planning through letters dated 6 April 2004, copies of which the complainant provided to the Ombudsperson Institution, but had never received a response.*

On **29 July 2005**, the Ombudsperson sent a letter to the Minister for Environment and Spatial Planning (MESP) asking what actions he had taken or planned to take regarding this issue. The Ombudsperson sent a copy of this letter to the Minister for Trade and Industry, as well as the President of Obiliq/Obilić Municipality.

On **11 August 2005**, the Ombudsperson Institution received a letter from the MESP which stated that he had sent a team of inspectors to Kastriot Petroll's oil depot, immediately upon receiving the Institution's letter. This inspection team had concluded that the investor had not obtained an environmental impact assessment as required by the Assembly's Law on Environmental Protection, promulgated by UNMIK Regulation No. 9/2003, and instructed him to apply for this Assessment.

On **4 October 2005**, the Ombudsperson sent a letter to the MESP asking whether he had taken further actions since those described in his letter dated 11 August 2005. The Ombudsperson Institution did not receive a response to this letter.

On **8 March 2006**, the Acting Ombudsperson sent a reminder to the MESP. The Ombudsperson Institution did not receive a response to this letter either.

On **4 April 2006**, a representative of the OIK met with the executive assistant of the Permanent Secretary of the MESP to discuss this case. During the meeting, the executive assistant stated that after the MESP's inspection team had completed their tour of Kastriot Petroll's oil depot, they had concluded that the facility did indeed pose a risk to nearby residents because of the proximity of the large power station. However, the MESP had never formally carried out an Environmental Impact Assessment, leaving the site's legal status uncertain. The executive assistant proposed holding a meeting with MESP, the Ombudsperson Institution and Obiliq/Obilić Municipality.

On **21 April 2006**, the Acting Ombudsperson sent a second reminder to the MESP, asking for them to respond in writing to the Ombudsperson's letter dated 11 August 2005.

Also on **21 April 2006**, the Acting Ombudsperson sent a letter to the President of the Obiliq/Obilić Municipality, asking him to explain the legal status of Kastriot Petroll's oil depot and the company that was operating it. A copy of this letter was sent also to the Prime Minister, the Minister of Trade and Industry and the Minister of Public Services.

On **11 May 2006**, the Ombudsperson Institution received a letter from the MESP, which explained that the owner of Kastriot Petroll had sent a request for an Environmental Impact Assessment to the MESP on 22 June 2005.

On **6 June 2006**, the Acting Ombudsperson sent a reminder to the President of the Obiliq/Obilić Municipality, which still had not responded to the Ombudsperson's letter dated 11 April 2005.

On **21 June 2006**, the Ombudsperson Institution received a letter from the President of the Municipality, which listed Kastriot Petroll's relevant legal documents. The President also enclosed copies of these documents, including: Kastriot Petroll's urbanistic permission (issued by Obiliq/Obilic Municipality, no 351-341/03 dated 15 August 2003), building permission (issued by Obiliq/Obilic Municipality, no 351-341/03 dated 19 August 2003), permission for building an oil depot (issued by the Ministry of Public Services, Department for Managing Emergences, Sector for Prevention and Protection from Fire, dated 5 August 2003), and the electro energetic permission from KEK (date 23 July 2003).

On **30 June 2006**, the Acting Ombudsperson decided to open an official investigation into the case.

### **The arrest and ill-treatment of protesters from the Vetëvendosje political movement**

*On 12 June 2005, members of the "Vetëvendosje" movement ("Self-Determination," a populist movement calling for the withdrawal of UNMIK and the immediate international recognition of Kosovo as an independent state) engaged in a continuous peaceful protest, in the course of which they wrote the slogans "Jo negocijata - Vetëvendosje" (No negotiations: Self-Determination) on the walls of public and private buildings. Apparently, the slogans on the private buildings were written with the consent of the*



owners. A number of the activists were arrested and fined or jailed for breach of public order. Following reports from the media, initial investigations by the Institution suggested that some of the activists had been exposed to ill-treatment and arrests as a result of their peaceful protest.

On **1 August 2005**, the Ombudsperson opened an *ex officio* investigation into the claims of ill-treatment and their implications for the freedom of expression of the Vetëvendosje activists. The investigation was to examine whether measures taken by KPS officers and UNMIK Police in certain cases involving protests organised by these activists amounted to an interference with their right to freedom of expression under Article 10 of the European Convention on Human Rights.

On **12 August 2005**, the Ombudsperson sent a letter to the SRSG, informing him that he had decided to open an *ex officio* investigation. The Ombudsperson said that Vetëvendosje's peaceful protest constituted a form of expressing their opinion that lay well within the limits accepted in democratic society and was therefore protected by the European Convention on Human Rights. The only difference between this and other public forms of expression was the potential for damage to public property, which was not being discussed at all by the relevant courts or law enforcement agencies.

The Ombudsperson urgently asked the SRSG to intervene in the above matter and take all necessary measures to stop further interference with the protestors' rights to freedom of expression in any similar future cases. In addition, the Ombudsperson asked the SRSG to instruct the UNMIK Police Commissioner to investigate the cases involving ill-treatment of the protestors and the proportionality of the police's response. The Ombudsperson further questioned the basis of the police's claim that arrests had been necessary to stop or prevent a breach of public order.

On **25 October 2005**, the Ombudsperson sent a letter to the Public Prosecutor for the Municipality of Prishtinë/Priština, asking him to consider opening a criminal investigation into the conduct of certain members of the Kosovo Police Service while making arrests during another peaceful public protest organised by the Vetëvendosje movement on 18 October 2005 demanding that UNMIK withdraw from Kosovo. During this protest, the Vetëvendosje activists had written the two letters F and D on UN vehicles in order to form the word "FUND" which is the Albanian word for "end". According to the statements of the arrested persons and a journalist, the protestors were arrested after their peaceful protest had been concluded. During the arrests and afterwards at a nearby police station, they were allegedly subjected to severe ill-treatment and verbal insults by the KPS officers.

On **25 November 2005**, the Ombudsperson Institution received a letter from an official in the Public Prosecutor's office in charge of the case, saying that she had raised the matter with the KPS Professional Standards Unit and that they had opened an investigation into the matter but had not yet made any final determinations. The official said she was interested in proceeding with the case but lacked information on the identities of the parties concerned. She asked the Ombudsperson Institution to provide her with any additional information and promised to keep the Institution apprised of the results of the

Professional Standards Unit's investigations as well as any action the Prosecutor's Office might choose to take.

The Ombudsperson Institution continues to investigate these events and the authorities' response to the Vetëvendosje movement more generally.

### **The failure to reconstruct certain houses damaged in 1999**

On **4 August 2005**, the Ombudsperson sent a letter to the Prime Minister regarding the reconstruction of houses damaged or destroyed in 1999. The Ombudsperson said that complaints from Mitrovicë/Mitrovica and other Municipalities across Kosovo showed that many houses that had been promised to be rebuilt – even those that had been completely destroyed – had still not been reconstructed. After the initial emergency phase of triage and priority reconstruction, many municipalities continued to claim throughout 2004 and 2005 that they did not have enough funds to support reconstruction. The Ombudsperson said one of the only positive examples was Prizren Municipality. The Ombudsperson therefore asked the Prime Minister to examine how the PISG could work with the international community to help people whose houses still had not been rebuilt since they were burned or otherwise destroyed in 1999.

There has been no response to this letter and the Ombudsperson Institution is in the process of preparing a report on this matter.

### **Lack of pensions for former employees of UNMIK Railways**

*On 29 February 2001, Administrative Instruction 2001/03 of the UNMIK Department of Transport and Infrastructure entered into force, terminating the employment of all UNMIK Railways employees who turned 60 during the year 2001 or who had at least 35 years of work experience. The Administrative Instruction entitled the workers to receive certain monthly benefits until they were entitled to receive regular pension benefits (usually not until they reached the age of 65), until 31 December 2003, as long as UNMIK Railways continued to have enough funds to do so. After 31 December 2003, this programme was extended because no other social assistance programme had been approved, but on 15 December 2004, the payments were terminated and UNMIK Railways claimed to no longer have enough money to continue them.*

On **4 August 2005**, the Ombudsperson sent a letter to the SRSG and the Prime Minister, expressing concerns about the above-mentioned workers, noting that some were over 60 years old, but not yet old enough to qualify for pension benefits, and would have great difficulty finding a new job. Such people were effectively left without any income at all. The Ombudsperson asked the SRSG and the Prime Minister to provide him with information about whether either UNMIK or the PISG planned to initiate any social assistance programmes for victims of large-scale dismissals.

There has been no response to this letter.

### **The JIU's findings in a length of proceedings case**

*On 17 December 2004, the Ombudsperson issued a report on the length of proceedings in a case involving the repossession of a piece of land allegedly owned by D.M. The Ombudsperson found that the failure of the District Court of Prishtinë/Priština to hear D.M.'s appeal of the Municipal Court's decision for over a year, allegedly due to the small number of judges working at the District Court and the backlog of cases before that court, violated D.M.'s right to a fair hearing within a reasonable time as guaranteed under Article 6 of the European Convention on Human Rights.*

On **17 August 2005**, the Ombudsperson Institution received a letter of response from the Director of the UNMIK Department of Justice, saying that the Department's JIU had conducted an investigation of the complaint and found that there was no misconduct in the handling of D.M.'s case. The Director noted that excessive delays in civil proceedings were a matter of concern to the Department, which had launched a number of initiatives to determine how best to remedy the problem.

### **Concerns about promotion policies in the Kosovo Correctional Service**

On **24 August 2005**, the Ombudsperson sent a letter to the Head of the Penal Management Division and Commissioner of the Kosovo Correctional Service (KCS), asking him to review the KCS's procedures regarding training and promotion of staff to management positions. The Ombudsperson enclosed a formal complaint he had received from Correctional Officers in Mitrovicë/Mitrovica and Lipjan/Lipljan alleging that management trainings were open only to employees actually working within the KCS's detention and correctional institutions and that promotions were made exclusively from these departments, even when the selected candidates lacked the necessary education and qualifications.

On **7 September 2005**, the Ombudsperson Institution received a letter from the KCS Commissioner, affirming that the trainings for and promotions to management positions were open to all KCS staff in accordance with applicable UNMIK Regulations. The Commissioner explained that management training was "offered to all correctional staff who display an interest in becoming Supervisors within the KCS." He concluded by stating that in order to rise from Supervisor to Senior Supervisor and then Deputy Director, staff must have accumulated sufficient management training and on-the-job experience at appropriate levels of the organization.

### **The confiscation of fraudulent travel documents**

On **2 September 2005**, the Ombudsperson sent a letter to the Ombudsman of FYR Macedonia (FYROM), referring to him a case wherein A.H. had his Italian travel documents confiscated by customs officers at the airport in Skopje. The complainant claimed that he had been detained for 24 hours and issued an official prohibition on entering the FYR Macedonia for 2 years because the customs officers believed that his travel documents were false. The Ombudsperson said that the case fell outside of his

jurisdiction because all the events had taken place in FYR Macedonia and asked that the Macedonian Ombudsman investigate the case.

On **11 November 2005**, the Ombudsperson Institution received a letter from the FYROM Ombudsperson, saying that he had found no violation of A.H.'s human rights. The letter explained that the FYROM Ministry of the Interior had determined that the travel documents were false and that A.H. had been notified of the conclusion of their investigation.

### **The establishment of a Bosnian-language pre-school**

On **14 September 2005**, the Ombudsperson sent a letter to the Minister of Education, Science and Technology, drawing attention to a group of parents of Bosniak ethnicity in Mitrovicë/Mitrovica who were having difficulty establishing a pre-school education class in the Bosnian language.

On **16 September 2005**, the Ombudsperson Institution received a letter from the Minister, who said it was his pleasure to explain that a pre-school education class for Bosnian children had already been established in the Bedri Gjina Primary School on 9 September 2005.

### **Unsubstantiated allegations of abuse in an elementary school**

*On 20 and 21 October 2004, the daily newspaper Lajm Ekskluzive published articles alleging that some teachers in the Selaman Riza elementary school in Fushë Kosovë/Kosovo Polje had beaten their students. Following the publication of these articles, the Ombudsperson sent a letter to the Minister of Education, Science and Technology on 29 October 2004, inquiring about what action the Ministry was taking in response to the allegations. On 5 November 2004, he received a letter from the Permanent Secretary of the Ministry affirming that the Ministry was investigating the situation.*

On **28 September 2005**, the Ombudsperson sent a letter to the Minister, explaining that he had not received any further information on this case. The Ombudsperson asked the Minister to provide an update on the progress of the case and any actions he was or would be taking, or, if an investigation had been concluded, what its conclusions had been.

On **28 October 2005**, the Ombudsperson received a letter from the Minister explaining that the Ministry had concluded an investigation into the allegations of mistreatment published in *Lajm Ekskluzive*. The investigation found that every one of the teachers and pupils interviewed denied the allegations of ill-treatment that had appeared in *Lajm*, but the Minister said he would appreciate notification of any evidence to the contrary.

### **Dismissals and protests within the Ministry of Public Services**

On **30 September 2005**, the Organisational Council of Employees of the Ministry of Public Services sent a letter to the SRSG, the Minister of Public Services (MPS), and the Ombudsperson Institution, expressing concern about the dismissal of a number of employees of the Ministry of Public Services.

On **26 October 2005**, the Ombudsperson Institution received a letter from the SRSG saying that the responsibility in this area had been transferred to the PISG. The SRSG said that he encouraged all employees to avail themselves of all existing appeal procedures within the employing authorities and to resort to the Independent Oversight Board (IOB), which is competent for these matters, if those other measures failed to address their concerns.

On **31 October 2005**, the Ombudsperson sent a letter to the Commissioner of UNMIK Police, asking him to confirm reports that KPS officers had arrested MPS employees on 5 October 2005 during a peaceful protest against the above-mentioned dismissals. The Ombudsperson also asked the Commissioner to explain the legal grounds for whatever actions the KPS officers had taken on that occasion.

The Ombudsperson Institution has not received any response to this letter.

### **Unpaid teacher stipends in Gračanica/Gračanice**

On **30 September 2005**, the Ombudsperson sent a letter to the Head of the Directorate for Education in the Municipality of Prishtinë/Priština, concerning a complaint received from five schoolteachers in Gračanica/Gračanice stating that they had not received their salaries in over a year. They had continued to work at the music school “Stevan Mokranjac” without payment in those twelve months, although they had received no notification or explanation for the cessation of their salary payments. The Ombudsperson asked the Head of the Directorate to ensure that the teachers obtain their salaries without further delay.

On **24 October 2005**, the Ombudsperson Institution received a response from the Head of the above Directorate, who said that the music school had been given prior written notice that its staff would be reduced.

On **3 February 2006**, the Acting Ombudsperson sent a letter to the Head of the same Directorate, noting that his investigations showed that only two of the five former employees had received notice prior to the cessation of their payments from the PISG and reiterating his request that the Head of the Directorate ensure that the teachers obtain their salaries without further delay.

On **28 February 2006**, the Ombudsperson Institution received a response from the Head of the Directorate, who said that the employees concerned had never signed a contract with the Directorate and therefore only received a stipend, not a salary. The Head of the Directorate further stated that the teachers had been removed from the school's payroll

because the Municipal budget could not support that many teachers at the school, even though there were only 11 teachers in the whole school. He noted that since the music school had very few students, it did not need many teachers or administrative staff.

On **19 May 2006**, the director of the music school asked the Ombudsperson Institution to close the case since all the staff of this school had refused to accept any more money from the PISG; the case was duly closed.

### **The payment of electric bills for illegal occupants**

On **10 October 2005**, the Ombudsperson sent a letter to the Managing Director of the Electric Corporation of Kosovo (KEK) regarding the issue of persons returning to their apartments after the eviction of illegal occupants. Some of these returnees were being billed for electricity used by the illegal occupants, although according to UNMIK Administrative Directive No. 2004/04, owners whose properties were usurped after the 1999 conflict may not be held liable for bills incurred by illegal occupants. The Ombudsperson requested that KEK's Managing Director issue a general decision to ensure that all competent services within KEK throughout Kosovo respect the above-mentioned Administrative Directive. This letter was a follow-up to a similar one the Ombudsperson had already sent to KEK on 4 November 2004.

There has been no response to this letter.

### **Inadequate education for detained juvenile offenders**

On **10 October 2005**, the Ombudsperson sent a letter to the Minister of Education, Science and Technology, expressing concern that juveniles detained in the Correctional Centre in Lipjan/Lipljan were not receiving adequate education. An investigation by the Ombudsperson Institution found that there were only three teachers for all the age groups in the detention centre. The municipal education authorities within Lipjan/Lipljan Municipality and the Director of the High Professional School said they were ready to support the correctional centre's educational programme, but they also said it would be better if the Ministry itself would take direct action. Therefore, the Ombudsperson requested that the Minister take urgent measures in order to enable the juveniles staying at the correctional centre to complete their education in accordance with the existing law.

There has been no response to this letter.

### **A de facto expropriation of land by KFOR**

*On 16 May 2005, the Ombudsperson sent a letter to the SRSG concerning M.G.'s complaint against Prizren Municipality and KFOR for expropriating his land in order to build a road without any formal legal act or compensation. The Ombudsperson requested that M.G.'s land be declared expropriated land for the public interest and that M.G. be duly compensated in accordance with the relevant provisions of the Law on*

*Expropriation. This letter was a follow-up to a letter the Ombudsperson had sent the SRSG on 30 December 2004. That earlier letter noted that both KFOR and Prizren Municipality had refused to recognize M.G.'s request for redress, each claiming that the other should be responsible for compensating M.G..*

On **11 October 2005**, the Ombudsperson Institution received a letter from the UNMIK Regional Representative for the south-western region of Kosovo. The Regional Representative said that UNMIK had discussed M.G.'s request with the Chief Executive Officer of Prizren Municipality, who had explained that KFOR had undertaken the reconstruction and maintenance of the road and that the Municipality had not been involved. The UNMIK Representative further explained that following a request from UNMIK, Prizren's Board of Directors had agreed to reconsider M.G.'s case and suggest a way forward, and that the Chief Executive would keep the Ombudsperson Institution apprised of new developments.

On **17 October 2005**, the Ombudsperson Institution received a response letter from the UNMIK Regional Representative, who referred to a decision of the Municipality dated 31 August 2005, advising M.G. to file a lawsuit against German KFOR with a competent court, despite the fact that there is no court with jurisdiction over KFOR.

Despite repeated attempts to contact M.G., the Ombudsperson Institution has not had further contact with the complainant.

### **The illegal occupation and use of agricultural land**

On **12 October 2005**, the Ombudsperson sent a letter to the SRSG, asking him to meet with representatives of several Serb villages from central Kosovo to discuss their concerns regarding their agricultural land. The villagers were concerned that usurpers were cultivating farm land that rightfully belonged to them, that their irrigation canals had been buried by construction work on a nearby bridge, and that a road that they used to travel from village to village, each with a Serb majority, was now going to be developed for wider commercial use and would therefore no longer be a safe route for them.

On **25 October 2005**, the Ombudsperson Institution received a letter from the President of the Municipality of Fushë Kosovë/Kosovo Polje, saying that he had not heard any complaints from the villages about the bridge. He said the bridge had been repaired at a cost of about EUR 10 000 and could now be used. The President of the Municipality expressed his hope that in the future, Serbian citizens would feel free to address their complaints directly to municipal institutions without going through the Ombudsperson Institution first.

The complainants chose not to pursue the case any further, and therefore the case was closed.

## **The living conditions of Roma IDPs in northern Kosovo**

On **12 October 2005**, the Ombudsperson sent a letter to the SRSG, describing the miserable conditions of internally displaced persons (IDPs) from the Roma community living in three camps in northern Kosovo and urgently asking that UNMIK do everything in its power to find a solution to the situation. The Roma had been living in these lead-contaminated camps since 1999.

In deploring the IDPs' living conditions, the Ombudsperson drew attention to the widespread presence of garbage, the lack of heating and essential sanitary-hygienic facilities, and the prevalence of serious diseases among the residents, including tuberculosis, rheumatism and asthma and other respiratory problems. The Ombudsperson drew particular attention to the IDP settlement of Žitkovac, whose proximity to the waste dump of the Trepča/Trepça lead mine appeared to have led to the lead poisoning and hospitalization of several children.

On **10 February 2006**, the Acting Ombudsperson sent another letter to the SRSG regarding the situation of these Roma communities. UNMIK had been preparing to relocate the communities to a former French KFOR base in Osterode, in North Mitrovicë/Mitrovica, but many Roma were resisting the relocation. The Acting Ombudsperson explained that many Roma were hesitant to relocate because they were afraid that once they had been moved to a safer environment, their return to the Roma Mahalla in Southern Mitrovicë/Mitrovica, their former home before it was destroyed in 1999, would no longer be a priority for UNMIK and other organisations. From their perspective, given the years they had already spent in the contaminated camps, another couple of months would not pose that much additional risk and might be worthwhile for them if it meant they would return to the Mahalla sooner.

The Acting Ombudsperson said that although he agreed it was important to remove the community members from the dangerous lead exposure as soon as possible, he did not believe that this should be done at the expense of preparing for the communities to return to the Roma Mahalla. The Acting Ombudsperson recommended convincing the Roma to move to Osterode by providing them written guarantees concerning the Mahalla, and he offered the good services of the Ombudsperson Institution as a potential mediator to any such agreement.

On **15 June 2006**, the Ombudsperson Institution received a letter from the Director of UNMIK's Department of Civil Administration. She apologized for the delay in responding and reported on UNMIK's progress in dealing with these issues. She said that 62 families had already moved to Camp Osterode voluntarily and 81 were still slated to move there. The Director noted that much of the data concerning the effects of lead contamination was not available in 1999 and that the sites for all three camps had been chosen because no other municipal land had been available at the time. She further noted that UNMIK had signed a letter of Agreement with Roma leaders on 21 April 2006 over commitments of the international community to upgrade services at Camp Osterode, including specific provisions for addressing the medical needs of children who had lead poisoning. Finally, the Director said that efforts to move Roma households to Camp Osterode were redoubling.



Before and after this last letter, the Deputy Ombudsperson and other representatives of the Ombudsperson Institution attempted to visit the Roma IDPs that had relocated to the Osterode camp. While their first visit was cut short by security guards who ordered them to leave and told them they could not visit the camp without prior permission from the camp management. All attempts since then to talk directly with the camp manager have proved unsuccessful.

### **The strike of the Union of Education, Science and Culture**

On **14 October 2005**, the Ombudsperson sent a letter to the Prime Minister, drawing his attention to the issue of a strike organized by the Union of Education, Science and Culture. The Ombudsperson said that the continuation of the strike was preventing children all over Kosovo from exercising their right to education and encouraged the Prime Minister to ensure that all parts of the Government involved in this issue cooperate in an effective manner to ensure its quick and adequate resolution.

On **21 October 2005**, The Ombudsperson Institution received a letter from the Senior Official of the Coordination Secretariat of the Office of the Prime Minister (OPM) acknowledging receipt of the Ombudsperson's letter. The letter stated that the Government was in dialogue with the protesters, seeking to find a suitable solution acceptable to both parties. The letter suggested that the union should think more realistically about the resources at the Government's disposal. Finally, the OPM thanked the Ombudsperson for his commitment to children's right to an education.

### **Difficulties in ordering a bank to execute a civil court judgment**

*On 17 December 2004, the Ombudsperson had sent a letter to the Coordinator of the JIU in UNMIK's Department of Justice raising concerns that the Municipal Court of Rahovec/Orahovac had failed to execute its decision of 29 November 2001, which had obliged the NBI Company to pay a fine of EUR 1 968 to E.K. The Ombudsperson requested that the JIU inform him of any actions it would take to resolve the issue as soon as possible.*

On **18 October 2005**, the Ombudsperson Institution received a letter of response from the Director of UNMIK's Department of Justice. He said that the JIU had found that the Municipal Court had ordered the appropriate bank to withdraw the money for the fine from NBI's account, but that the bank had refused to comply. The JIU found that the failure of the relevant bank to comply with the Court's decision could not be attributed to the Court. The JIU had closed the case because it had found no evidence that the judge dealing with the case had committed misconduct.

### **A request to transfer a prisoner from Serbia proper to Kosovo**

On **7 November 2005**, the Ombudsperson sent a letter to the Director of the UNMIK Department of Justice, asking that his Department reply to the request of T.B., defence

lawyer of A.L., an ethnic Albanian, to have his client transferred from a prison in Serbia proper to a prison in Kosovo. A.L. had been accused of committing war crimes during the fighting in 1999.

On **20 March 2006**, the Ombudsperson Institution received a letter of response from the Director of UNMIK's Department of Justice, explaining that his Department was reviewing the case and that he would notify T.B. as soon as any action was taken.

The Ombudsperson Institution has not received any further notification from either UNMIK or T.B. on this case.

### **The ABC load-shedding programme of Kosovo's Electric Corporation**

On **8 December 2005**, the Ombudsperson sent a letter to the Electric Corporation of Kosovo (KEK) regarding the implementation of its ABC load-shedding programme, which reduces available power to electricity consumers in Kosovo on a rotating geographical basis and according to the percentage of households paying their electricity bills in each area. The Ombudsperson expressed concern that the specific implementation of the ABC programme was tantamount to a system of collective and indiscriminate punishment.

On **6 January 2006**, the Ombudsperson Institution received a letter from the Managing Director of KEK, who defended the ABC programme. He noted that the ABC programme applied the same principles as previous electricity distribution plans and that it had greatly improved payment rates. The Managing Director further stated that giving preferential treatment to the most loyal customers was standard practice in the private sector, and is not the same as a collective punishment regime. He noted that improving KEK's cash collection rates was essential to attracting foreign investment and aid, which itself would be essential to maintaining a steady supply of electricity in Kosovo given the large number of repairs and improvements KEK's facilities require.

### **The interruption of proceedings to evict an illegal occupant**

On **14 December 2005**, the Ombudsperson sent a letter to the Director of the UNMIK Department of Justice, requesting information about actions taken or planned in the case of B.M., involving the execution of a decision of the Municipal Court of Prishtinë/Priština to remove an illegal occupant from his business premises. On 14 November 2005, the execution of the judgment in the case had allegedly been interrupted by an assault upon the competent judge and threats to the complainant while they were attempting to execute the eviction order.

On **22 February 2006**, the Ombudsperson Institution received a letter of response from the Director of the Department of Justice, saying that his Department had taken a number of actions in this case, including supporting the appointment of both an International Prosecutor and an International Judge. Also, a request had been filed with the Police Commissioner to investigate the conduct of the Kosovo Police Officers involved in the

case. Finally, the Director said that the Department would continue to monitor developments in this matter.

### **Lack of notification of victims regarding criminal investigations**

On **19 December 2005** and **22 March 2006**, the Ombudsperson and the Acting Ombudsperson sent letters to an International Prosecutor, raising the complaint of R.R. that he had never been notified of a decision by International Prosecutor M.H. to dismiss his case against a KPS officer who had allegedly shot R.R.'s son.

On **12 April 2006**, the Ombudsperson Institution received a letter from the Director of UNMIK's Department of Justice, explaining that after M.H. had dismissed the case, another suspect was identified, convicted, and sentenced to a prison term of three years and six months. The Director further stated that the case file revealed that M.H. had communicated an Albanian translation of his decision to the family of the deceased via personal service by the police and had recommended that the family be provided with counselling services according to the guidelines set by the Department of Justice's Victim Advocacy and Assistance Unit. The Director said he considered that all appropriate measures in the case had been taken.

### **The burden of proof regarding alleged discrimination in the privatisation process**

On **21 December 2005**, the Ombudsperson sent a letter to the SRSG regarding numerous complaints that the Ombudsperson Institution had been receiving regarding the obstacles some complainants, mainly of Serbian ethnicity, had been experiencing when attempting to participate in the privatization of former socially-owned enterprises. Among other things, the Ombudsperson requested that the legislation on privatization matters be amended to comply with common European standards on complaints of discrimination.

On **10 February 2006**, the Acting Ombudsperson sent a reminder to the SRSG, reiterating the concerns listed by the former Ombudsperson in his letter of 21 December 2005.

On **27 June 2006**, the Ombudsperson Institution received a response from the DSRSG for UNMIK's economic reconstruction pillar, who explained that the Presiding Judge of the Special Chamber of the Supreme Court of Kosovo had raised similar concerns, and that they had been addressed in a clarification signed by the SRSG on 11 January 2006. According to this clarification, which the DSRSG enclosed with his letter, the Anti-Discrimination Law (UNMIK Regulation No. 2004/32) set a lower standard of evidence for proving discrimination than the earlier law on privatization (UNMIK Regulation No. 2003/13 on the Transformation of the Right of Use to Socially-Owned Property, promulgated on 12 May 2003). Since it was promulgated later, the Anti-Discrimination Law superseded the privatization law. Accordingly, individuals claiming discrimination in the privatization process would have to "clearly establish ... that they were excluded from the list of eligible workers for reasons of discrimination, on the basis of statistical evidence or by providing other evidence." The DSRSG confirmed that the Kosovo Trust

Agency, a part of UNMIK's economic reconstruction pillar and the entity mandated to implement the privatization process, would act in accordance with this body of law.

### **Accommodation for the homeless**

On **11 January 2006**, the complainant R.S. filed a complaint with the Ombudsperson Institution, alleging that the Municipality of Pejë/Peć had failed to execute its decision of 12 May 2005 to have the Kosovo Protection Corps provide R.S. with a camper for housing. R.S. had been homeless since the conflict in 1999.

On **20 January 2006**, the Acting Ombudsperson sent a letter to the Chief Executive Officer of the Municipality, asking why the decision had not been implemented.

On **6 February 2006**, the Ombudsperson Institution received a letter from the Director of the Civil Protection and Emergency Directorate (CPED) of the Municipality of Pejë/Peć. The Director explained that the CPED Board of Directors had approved the purchase of a camper for R.S. and that the Kosovo Protection Corps had assumed responsibility for finding a location for the camper. Delays in implementation of the CPED Board of Director's decision were caused by some property disputes as well as difficulties in finding and purchasing an appropriate camper.

On **21 February 2006**, R.S. informed the Ombudsperson Institution that the Municipality had executed its decision and resolved the issue. The Acting Ombudsperson therefore closed the case, considering it positively resolved.

### **Delays in civil proceedings where one party resides in Serbia proper**

The following case exemplifies the obstacles that Kosovo's unresolved status has on some of the most mundane administrative matters. The lack of cooperation between the authorities of Kosovo and of Serbia proper can lead to insurmountable difficulties or merely excessive delays, as in this case, which involves civil proceedings in Kosovo where one of the parties lives in Serbia. Such problems cannot be addressed through international law because under international law, Kosovo and Serbia are not separate states, and they have not signed any bilateral agreements to fill the legal gaps.

On **13 January 2006**, the Acting Ombudsperson sent a letter to the Department of Justice, requesting information on action taken or planned regarding the execution proceedings in the case of F.I. against the Municipal Court of Gjilan/Gnjilane. F.I. had filed a lawsuit with the Municipal Court of Gjilan/Gnjilane for compensation for damages because of the injuries that he had suffered when he was shot by B.P. during the conflict in 1999.

On **20 March 2006**, the Ombudsperson Institution received a response from the Director of the UNMIK Department of Justice, explaining the actions the Department had taken to pursue the case, including sending court documents to Serbia's Ministry of Justice and Local Self-Government along with a request for service. The Director said that, despite

repeated subsequent requests for information, the Department was still waiting for a response from the above-mentioned Ministry.

On **16 June 2006**, the Ombudsperson Institution received a letter from the Director of the UNMIK Department of Justice. He noted that the Department had forwarded the requests of the Municipal Court of Gjilan/Gnjilane on 22 December 2004, 5 October 2005, and 9 March 2006, to the Ministry of Justice and Local Self-Government of Serbia, but had not received any answer. The Department had also written to the Municipal Court 12 December 2005, providing an update of its activities on this case. He said his office was unfortunately not in a position to guarantee that the requested authority process the request for mutual legal assistance within the requested period. Finally, he said he would keep the Ombudsperson Institution and the Municipal Court apprised of further developments in the case.

### **Lack funds for staffing a medical centre in Fushë Kosovë/Kosovo Polje**

On **14 January 2006**, the Ombudsperson Institution received a complaint from the staff of the Main Family Medical Centre “Dr. Fatmir Krasniqi” in Fushë Kosovë/Kosovo Polje regarding the Centre’s failure to extend their contracts because of a lack of funds received from the 2006 Kosovo Consolidated Budget.

On **18 January 2006**, the Acting Ombudsperson sent a letter to the Minister of Health, asking him to reconsider the decision not to prolong the medical workers’ contracts and to search for funds to pay them, so that they would be able to keep their posts and continue to work.

On **19 January 2006**, the Acting Ombudsperson sent a letter to the President of the Municipality of Fushë Kosovë/Kosovo Polje, asking for information on what the Municipality was doing to resolve this issue and reminding him of the importance of ensuring that there were sufficient employees in the health sector and that their ethnic composition be compatible with that of the residents of the Municipality.

On **9 May 2006**, the Acting Ombudsperson sent a letter to the Prime Minister, recounting the above-mentioned correspondence and saying that he had not received any answer to his last letter. The Acting Ombudsperson further said that because this medical centre was the only multiethnic health institution in the Municipality of Fushë Kosovë/Kosovo Polje in which workers of both Serbian and Albanian ethnicity were employed, the situation undermined all the efforts undertaken by the Municipality to create a functioning multiethnic society, as well as its efforts to fulfil the standards for Kosovo.

The Ombudsperson Institution has not received any response to any of the above-mentioned letters.

### **Lack of response for old age and disability pensions**

On **19 January 2006**, the Acting Ombudsperson sent a letter to the Director of the Kosovo Pensions Administration in the Ministry of Labour and Social Welfare, regarding a complaint of R.T. about not receiving any response to her request for old-age pension.

On **19 January 2006**, the Ombudsperson Institution sent a letter to the Director of the Kosovo Pensions Administration in the Ministry of Labour and Social Welfare, regarding a complaint of I.B about not receiving any response to his request for a disability pension.

On **3 February 2006**, the Ombudsperson Institution received a letter from the Head of the Kosovo Pensions Administration's Payments Division, explaining that the requests of both I.B. and R.T. had been approved but that R.T.'s payment was waiting for the official opening of a bank account. The Division Head also promised that the pensions would be paid by the end of March 2006.

On **17 March 2006** and **28 March 2006**, the Acting Ombudsperson sent letters to R.T. and I.B, respectively, informing them that their pensions would soon be paid and that he had closed their cases and classified them as positively resolved.

### **Irregularities in the post-March 2004 reconstruction process**

Over the last 12 months, the Ombudsperson and the Acting Ombudsperson sent numerous letters to the Central Inter-Ministerial Commission for Reconstruction, which is responsible for organizing the reconstruction of houses and apartments destroyed during the riots in March 2004. The letters recommended that reconstruction begin on three apartments in Prishtinë/Priština and one house in Obiliq/Obilić, all of which had been destroyed in March 2004. They also recommended that compensation be paid to these complainants for damage caused to the movable property that had been in these houses.

The Ombudsperson sent letters regarding this issue on the following dates:

- 1 July 2005 (one letter)
- 13 July 2005 (one letter)
- 14 October 2005 (two letters)

The Acting Ombudsperson sent letters regarding this issue on the following dates:

- 21 April 2006 (two letters)
- 19 May 2006 (two letters)
- 16 June 2006 (one letter)

On **19 January 2006**, the Ombudsperson Institution received a letter from the Commission, which said that it was not taking decisions about reconstruction, but merely implementing the decisions of the Municipalities with respect to two of the cases mentioned above.

The Ombudsperson Institution did not receive a response to any of the letters regarding the other two cases.

In February 2006, a representative of the Ombudsperson Institution visited Local Community Officers of the Municipalities of Prishtinë/Priština and Obiliq/Obilić. These Officers said that they had sent a complete list of all houses destroyed in their respective municipalities and that the Commission had removed the names of the complainants from those lists, saying the houses not destroyed during the March riots themselves, but days afterwards.

On **17 February 2006**, the Acting Ombudsperson sent letters to the Commission asking it to reconsider the cases and recommending that it rebuild the houses in question and compensate the owners for damage caused to their movable property.

On **7 April 2006** and **16 June 2006**, the Acting Ombudsperson sent reminders to the Commission.

On **30 June 2006**, the Acting Ombudsperson sent a letter to the Prime Minister, bringing these cases to his attention and asking him to use his powers to ensure that the Central Inter-Ministerial Commission for Reconstruction review these cases and respond to the Ombudsperson Institution's recommendations and requests for information.

### **Lack of schoolbooks for poor and orphaned children**

On **30 January 2006**, the Acting Ombudsperson sent a letter to the Minister of Education, Science and Technology regarding the issue of the implementation of the Law on Primary and Secondary Education in Kosovo, which requires that free schoolbooks be distributed to pupils in elementary and secondary schools. The Acting Ombudsperson said that he had received information that fewer schoolbooks had been distributed to orphans and poor children this year and that more children had dropped out of school because of the lack of books. The Acting Ombudsperson asked the Minister to resolve the matter and ensure that all children in Kosovo have the opportunity to exercise their right to education, regardless of their socio-economic background. In his letter, the Acting Ombudsperson referred to correspondence that the former Ombudsperson had had with the Ministry in 2004 concerning clarifications of its responsibilities to provide schoolbooks under the law.

On **7 February 2006**, the Ombudsperson Institution received a letter from the Permanent Secretary of the Ministry. The Permanent Secretary said that the Ministry had spent over EUR 157 000 on distributing free schoolbooks to poor and orphaned students but that, given its resources, this was all that the Ministry could accomplish. He said that the Ministry had done everything in its power to implement the law.

### **A request to return to a municipal position held before UNMIK**

On **3 February 2006**, the Acting Ombudsperson sent a letter to the President of the Municipality of Gjilan/Gnjilane concerning the request of J.B. to return to the position that he had held in the Municipality before UNMIK arrived in 1999. The Acting Ombudsperson asked for information on the current status of the case and what actions the Municipality planned to take in this case, in accordance with the rule of law.

On **14 April 2006**, the Ombudsperson Institution received a letter from the President of the Municipality, saying that the Municipality had been reorganized after the conflict and that no provision had been made to reserve positions for previous employees. Furthermore, in accordance with applicable law, all employees of the Municipality needed to pass a specific application procedure in order to qualify for a position. According to the President of the Municipality, J.B. had already applied several times and failed to be recommended by the Municipality's Recruitment Commission. Finally, the President said that the Municipality had no open positions at that time and could not take on any new employees.

### **A request to transfer a prisoner from Germany to Kosovo**

On **7 February 2006**, the Acting Ombudsperson sent a letter to the Director of the UNMIK Department of Justice supporting the request of S.Ç. for help in getting her brother transferred from a prison in Germany to a correctional facility in Kosovo.

On **23 May 2006**, the Ombudsperson Institution received a letter from the Director of the UNMIK Department of Justice saying that S.Ç.'s brother had apparently been sentenced by a court in Spain as well. The Director explained that if he needed to return to Spain upon the completion of his prison term in Germany, UNMIK would not be able to process a request for him to be transferred to Kosovo.

### **Complaints of irregularities in admissions to a post-graduate programme**

On **21 February 2006**, the Acting Ombudsperson sent a letter to the Rector of the University of Prishtinë/Priština, drawing his attention to a complaint from certain students applying to the post-graduate programme in the Psychology Faculty of the University of Prishtinë/Priština. The complainants had participated in a competition for enrolment in the post-graduate programme on 13 December 2005. They claimed that the Faculty's rejection of their applications violated both the University's internal regulations and the registration criteria for registration for post-graduate studies.

On **7 February 2006**, the students had filed a complaint with the Rector of the University and the Dean of the Philosophical Faculty. According to the complainants, the Dean had responded positively to their complaint and had recommended to the Rector that they be accepted to the Psychology Faculty, but the Rector refused.



In his letter, the Acting Ombudsperson asked the Rector to inform him of the legal basis of his decision to reject the Dean's recommendation.

The Ombudsperson Institution's activities on this case were suspended pending the appointment of a new Rector of the University.

### **Concerns raised with UNMIK about the new UNMIK Regulation on the Ombudsperson Institution in Kosovo**

On **22 February 2006**, the Acting Ombudsperson sent a letter to the SRSG regarding his concerns about UNMIK Regulation No. 2006/06, promulgated on 16 February 2006. The Acting Ombudsperson expressed his concern that since the Regulation removed the Institution's jurisdiction over UNMIK, the international administration was no longer subject to any formal mechanism of human rights protection. Furthermore, this change in jurisdiction called into question what would be done with the Ombudsperson Institution's remaining open cases against UNMIK, as well as what could be done with complaints from northern Mitrovicë/Mitrovica, where the PISG do not operate and UNMIK is the only legitimate public authority. The Acting Ombudsperson also pointed out several ambiguities in the text of the Regulation, including provisions regarding the Institution's relationship to detention centres.

Finally, the Acting Ombudsperson said that the new Regulation left unanswered important questions regarding the financial future of the Institution. The Regulation appeared to incorporate the Ombudsperson Institution into the PISG's civil service, making its budget entirely dependent on the Kosovo Consolidated Budget (KCB). However, the Regulation did not specify certain details of budgetary procedures, such as whether the Institution could determine its own pay scales within its allotted budget, which some European Ombuds institutions are allowed to do.

After detailing his concerns, the Acting Ombudsperson requested a meeting with the SRSG to discuss the provisions of the regulation in need of clarification, especially the issue of the unresolved cases concerning UNMIK.

While there have been follow-up meetings with the OSCE regarding these issues, there has been no response to this letter from the SRSG or the UNMIK Legal Advisor.

### **Concerns raised with the UNHCHR about the new UNMIK Regulation on the Ombudsperson Institution in Kosovo**

On **23 February 2006**, the Acting Ombudsperson sent a letter to the United Nations High Commissioner for Human Rights, expressing concerns about ambiguities in the language of UNMIK Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo.

On **21 March 2006**, the Ombudsperson Institution received a letter from the High Commissioner thanking the Institution for keeping her informed of these developments. The High Commissioner affirmed that she would raise the Institution's concerns through appropriate channels and would urge clarification of the Institution's questions regarding

interpretation of the Regulation. She further noted that her representative in Prishtinë/Priština would continue to liaise with the Institution on these and related matters.

### **Complaints concerning the relocation of an elementary school**

On **1 March 2006**, the Ombudsperson Institution received a complaint from the village of Kabash/Kabaš and the Morinë/Morina neighbourhood of Kuzhnin/Kužnin village, which used to share an elementary school in Kabash/Kabaš. Representatives of these communities complained that in 2005, the Municipal Directorate for Education in Prizren had built a new school in the upper part of the village of Kuzhnin/Kužnin and closed the school in Kabash/Kabaš, forcing the students to walk an unreasonably long distance to attend their lessons.

On **22 March 2006**, a representative of the Ombudsperson Institution visited the two communities and confirmed that 215 children from Kabash/Kabaš village and Morinë/Morina neighbourhood were not going to school because the residents of the two communities were unhappy with the Municipality Directorate's decision. They said that the distance the children had to walk to the new school was unreasonable.

On **24 March 2006**, the Acting Ombudsperson sent a letter to the Minister for Education, Science and Technology, recommending that his Ministry resolve this situation without further delay and offering the Ombudsperson Institution's services as a mediator.

On **19 April 2006**, the Ombudsperson Institution received a letter from the Minister of Education, Science and Technology, who stated that the old school had been reopened and the complaint had been resolved. The 215 children were already attending intensive lessons (some at the new school and some at the old one) to make up for the time lost. He further stated that the Ministry would be ready to support the request of the parents concerned for their children to attend a separate school unit in the village of Kabash/Kabaš, provided that they supply 50% of the expenses for the school, that the teacher meet certain professional standards and that all the classes have a minimum of 21 students.

On **27 April 2006**, a representative of Kabash/Kabaš informed the Ombudsperson Institution that the situation had been resolved to both communities' satisfaction.

### **Reductions in public utilities fees for persons with disabilities**

On **24 March 2006**, the Acting Ombudsperson sent a letter to the Deputy Managing Director of the Electric Corporation of Kosovo (KEK), asking for an explanation of why Article 13.7 of Law No. 2003/23, which allows people with disabilities to pay reduced electricity fees, had not been implemented. Copies of these letters were also sent to the Ministers of Mining and Energy and of Labour and Social Welfare, as well as to the KEK Manager for the Ferizaj/Uroševac region.

On **21 April 2006**, the Acting Ombudsperson sent a reminder to the Deputy Managing Director of KEK, reiterating the concerns raised in his letter of 24 March 2006.

On **4 May 2006**, the Ombudsperson received a response from the Deputy Managing Director of KEK, who stated that KEK would implement Article 13.7 as soon as the competent Ministries would issue the necessary the Administrative Instructions, as called for in Article 13.8 of the same Law.

On **19 May 2006**, the Ombudsperson received a response from the Director of the Kosovo Pension Administration Department (which is under the Ministry of Labour and Social Welfare), stating that the Ministry of Mining and Energy and the Ministry of Finances and Economy had been informed well in advance that they would need to issue Administrative Instructions for the implementation of this law, but that the Kosovo Pension Administration Department still had not received any such instructions from the above-mentioned Ministries.

On **12 June 2006**, the Acting Ombudsperson sent a letter to the Prime Minister, saying that the lack of Administrative Instructions for the Law No. 2003/23 on Disability Pensions in Kosovo had the effect of denying a vulnerable category of citizens the benefits awarded them by this Law. The Acting Ombudsperson asked the Prime Minister to intervene with the relevant ministries to ensure that they issue, without further delay and with retroactive effect, the legal sub-acts for the implementation of all of the benefits enumerated under Article 13 of Law No. 2003/23 on Disability Pensions in Kosovo. The Ombudsperson sent copies of this letter to the President of the Assembly of Kosovo and the Ministers competent for this issue.

### **Complaints against the municipal garbage collection service**

On **21 April 2006**, the Acting Ombudsperson sent a letter to the President of the Municipality of Pejë/Peć, raising his concerns about allegations of the residents of Belo Polje/Bellopojë village that the Municipality garbage collection service was dropping parcels of garbage on their land, which prevented them from growing crops there. The residents had demanded that the Municipality should take responsibility for removing the garbage from their lands and returning it to an arable condition. In a meeting with the Acting Ombudsperson on 7 March 2006, the President of the Municipality had proposed the formation of a special commission to review the issue and recommend a solution.

In his letter, the Acting Ombudsperson asked the President of the Municipality what actions he had taken on this case since that meeting.

The Ombudsperson Institution has not received a response to this letter.

## **The failure to provide social assistance to civilian invalids injured during World War II**

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

**On 2 May 2006**, the Acting Ombudsperson sent a reminder to the Prime Minister, reiterating the concerns listed in the former Ombudsperson’s letter of 10 June 2005. He noted that on 24 February 2006, the Kosovo Assembly had adopted the “Law on the Status and Rights of Families of Martyrs, Invalids and KLA War Veterans and Civilian Victims of War” but that this law had failed to include civilian invalids from World War II as beneficiaries. The Acting Ombudsperson reiterated the former Ombudsperson’s request that the Prime Minister intervene on behalf of the rights of the above-mentioned civilians.

## **The repeated failure of HPD and UNMIK to evict an illegal occupant**

*On 5 May 2004, the Ombudsperson issued a report on the case of S.K., in which he found that the continued inability of the HPD and UNMIK Police to evict an illegal occupant of S.K.’s property violated S.K.’s right to a home under Article 8 of the European Convention on Human Rights.*

*On 11 August 2004, the Ombudsperson Institution received a letter from the DSRSG for Civil Administration, who said that the HPD had effectively executed and re-executed the ordered eviction. The DSRSG said that it was only events that occurred after the eviction that had prevented S.K. from accessing his home. He argued that the HPD could not assume responsibility for protecting the property after eviction and concluded by agreeing with the Ombudsperson’s recommendation that S.K. take his case to the public prosecutor.*

*On 14 September 2004, the Ombudsperson sent a letter to the DSRSG, asserting that once the HPD had executed an eviction, it had a certain responsibility to make sure that repeated re-occupations be investigated by police and public prosecutors. The Ombudsperson emphasised that after 1999, the position of property owners was often weak compared to that of illegal occupants, and he urged the HPD to support the legal position of property owners.*

**On 12 May 2006**, the Acting Ombudsperson sent a letter to the Commanding Officer of KPS Police Station No. 3, inquiring whether his Police Station would open a criminal

investigation against the illegal occupant of S.K.'s house. S.K. had filed a complaint with the Ombudsperson Institution on 4 April 2006, alleging that the illegal occupant had been evicted and returned to his house several times in the past few months, dating back to an eviction on 8 November 2005. S.K. had further alleged that KPS had not responded to his requests about whether they were pursuing a criminal investigation or not.

On **30 May 2006**, the Ombudsperson Institution received a letter from the Commissioner of UNMIK Police, which enclosed a memo that explained the actions the police had taken in response to S.K.'s case. On 8 November 2005, a KPS unit had assisted in the execution of an eviction ordered by the HPD and the Commissioner claimed that the KPS had not received any complaint since then from S.K. or anyone else regarding reoccupation of or damage to the property in question. However, on receiving the Acting Ombudsperson's letter on 17 May 2006, the KPS had sent a community police unit to S.K.'s house to find out the real situation. There, they had found that the illegal occupant had returned and claimed to have reached an agreement to buy the house from complainant S.K. On 19 May 2006, a KPS police unit met with the complainant and the illegal occupant in Çagllavicë/Čaglavica, and found that they had indeed reached an agreement regarding future occupancy of the property. The Commissioner concluded that the police had taken all appropriate actions with regard to the property owned by S.K.

### **The lack of translation for instructions and labelling of imported medicine**

*On 6 May 2005, the Ombudsperson Institution registered a case regarding the sale of imported medical products in pharmacies throughout Kosovo. A number of these medical products did not have instructions, dosage and/or package labelling translated into any of the official languages of Kosovo.*

*On 18 May 2005, the Ombudsperson sent a letter to the Minister of Health, expressing his concern regarding the sale of imported medical products whose instructions, dosage, and other labelling had not been translated into any of the official languages of Kosovo. Among other things, the Ombudsperson pointed out that consumers of the above-mentioned medicines usually do not understand the language in which the instructions are written, and must rely on the instructions given to them orally by pharmacists or even clerks working in pharmacies. The Ombudsperson referred to the Kosovo Assembly's Law on Medical Products and Medical Devices, promulgated by UNMIK Regulation No. 2004/23, which states that authorization to market and sell medical products shall require, inter alia, "the accurate and validated presentation of labelling, summary of Product Characteristics and Package Leaflet (Patient Information Leaflet) of the medical product for usage in Kosovo". The Ombudsperson asked the Minister to inform him of the steps that the Ministry of Health intended to take in order to resolve this problem.*

*On 7 June 2005, the Ombudsperson Institution received a letter from the Minister of Health, who informed the Ombudsperson that the Ministry had asked medical companies that were attempting to register their medical produce in Kosovo to translate the labels and instruction leaflets for their medications. However, the Ministry found that there were many mistakes in the translations and therefore, could not allow them to be*

*published. Therefore, the Ministry was working with the Kosovo Agency for Medical Products (which is part of the Ministry of Health) to prepare a contract for another organisation to edit these materials. Such an organisation could only be selected through a formal tender process, which requires evaluating at least three applications. Finally, the Minister pointed out that in those cases where the print materials of companies selling medical products had not been translated, the companies had only been granted temporary authorization to market and sell their medical products in Kosovo, in accordance with the Ministry's Administrative Instruction 2003/09.*

On **15 June 2006**, the Acting Ombudsperson sent a letter to the Minister of Health, asking him for information on any further actions that the Ministry had taken on this case, noting that the situation appeared not to have changed in the 12 months since his last letter.

Since then, a representative of the Ombudsperson Institution has tried repeatedly to contact the Ministry of Health and determine if it had selected any organisation to edit the labels. Unfortunately, those attempts have so far not been successful.

### **The simultaneous applicability of Yugoslav and PISG laws**

On **15 June 2006**, the Acting Ombudsperson sent a letter to the President of the Assembly of Kosovo, raising concerns about the Assembly's Law on Family No. 2004/32. The Acting Ombudsperson pointed out that previously, the field of family relations in Kosovo was regulated by the 1984 Yugoslav Law on Marriage and Family Relation No.10/84 but that the Assembly's law did not contain any provision stating that the Yugoslav Law would be superseded by the new law. In addition, the new law states that Kosovo's Courts shall have jurisdiction over cases of child custody and adoption, yet the social work centres and other administrative bodies who were competent for these cases under the Yugoslav law continued to decide on such cases and no cases had reached the courts yet. The Acting Ombudsperson said this created significant legal ambiguity, which weakened the rule of law, and urged the President of the Assembly to take measures to address the issue.

### **The retroactive application of tax legislation**

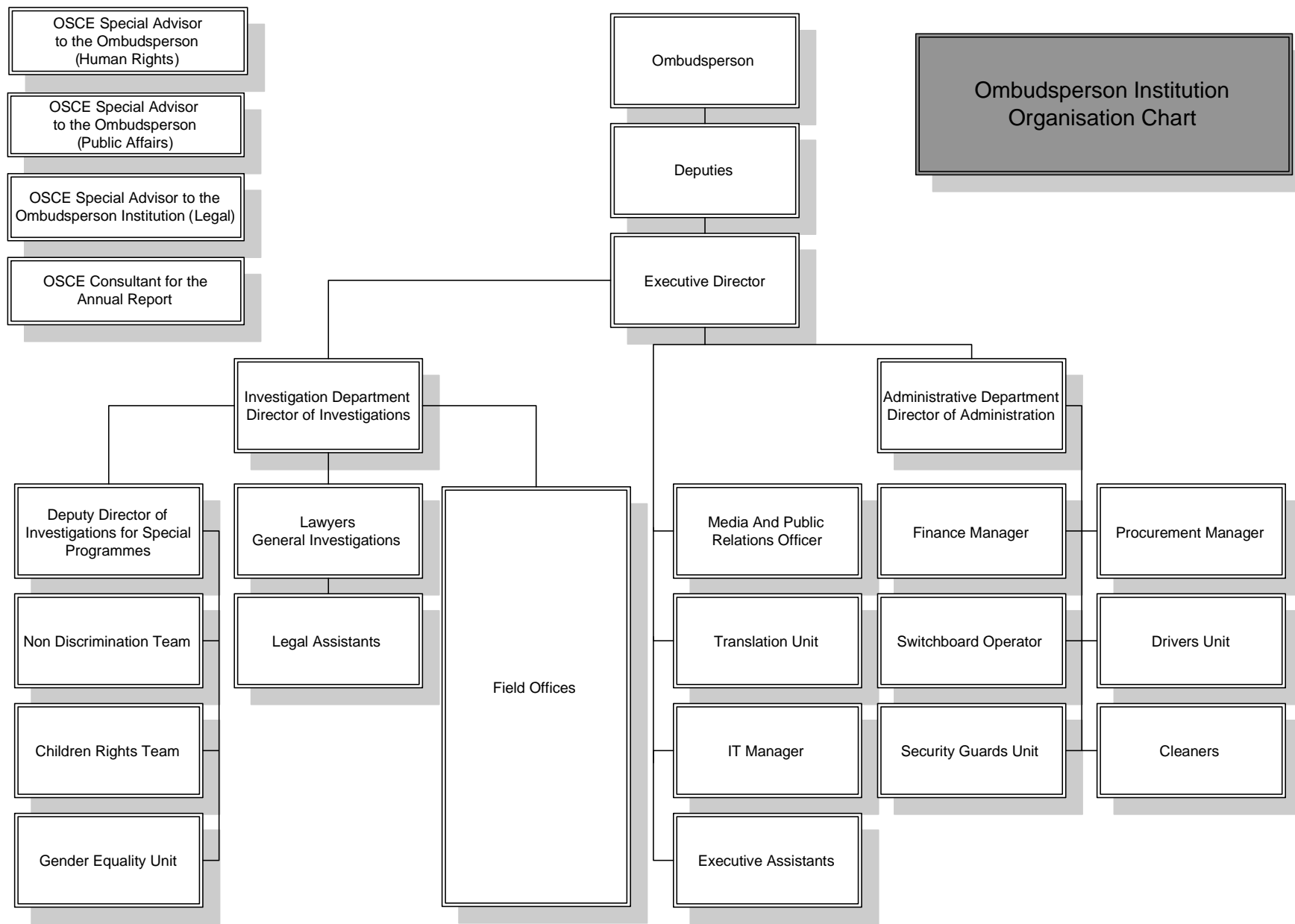
On **30 June 2006**, the Acting Ombudsperson sent a letter to the Head of UNMIK Customs Service, raising his concerns about four complainants' allegations that their cars had been confiscated by Customs' illegal retroactive application of an UNMIK regulation (UNMIK Regulation No. 2005/32 on the Excise Tax Code of Kosovo), which entered into force on 1 July 2005 and which required habitual residents of Kosovo to pay Excise Tax and VAT prior to registration of their vehicles. The Acting Ombudsperson drew special attention to one case where a complainant had attempted to pay these taxes but still had not been allowed to retrieve his car because according to the Customs official he spoke with, all their other car confiscation cases needed to be resolved first. The Acting Ombudsperson asked to be informed of the Customs Service's analysis of the legal aspects of this case.

### **The delay in court proceedings due to lack of expert opinions**

On **30 June 2006**, the Acting Ombudsperson sent a letter to the Director of the UNMIK Department of Justice, raising concerns about the case of Q.B. Q.B. complained that three times the Municipal Court of Gjakovë/Djakovica had asked the UNMIK Office on Missing Persons and Forensics to facilitate its investigation into the death of Q.B.'s daughter by providing various expert opinions, but the Court had not received any response since 20 December 2005. The Acting Ombudsperson asked for information on any actions that the Office on Missing Persons and Forensics had taken on this case.

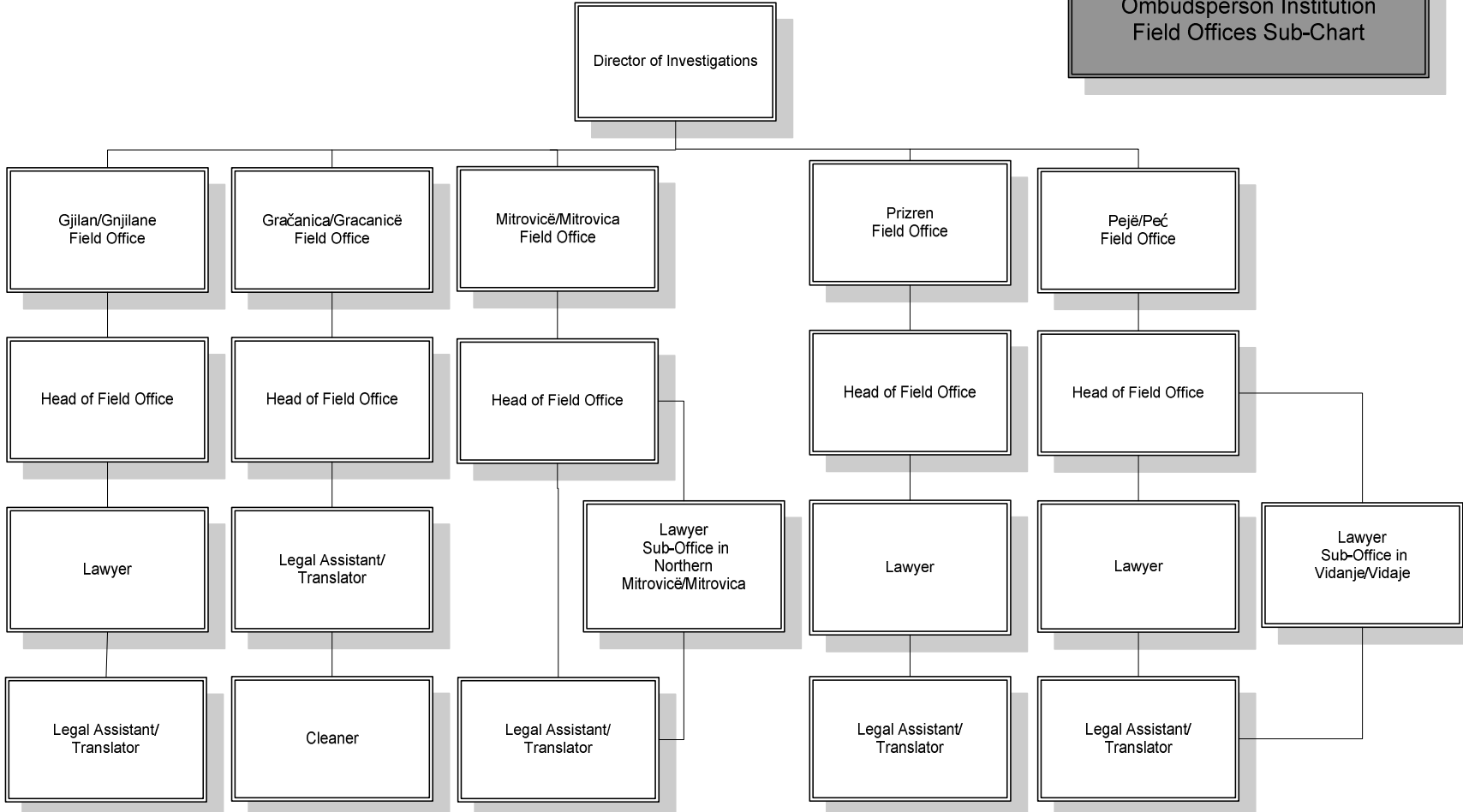
### **Ambiguities in the Law on Disabilities**

On **30 June 2006**, the Acting Ombudsperson sent a letter to the Minister for Labour and Social Welfare, bringing to his attention the plight of the many complainants who had alleged to have been wrongfully denied social benefits for persons with disabilities. The Acting Ombudsperson noted that various subsections of Law No. 2003/23 on Disability Pensions in Kosovo left unclear the definition of the term "fully disabled." The Acting Ombudsperson recommended that the Minister resolve this issue by proposing revisions of the sub-sections in question to the Assembly of Kosovo.





Ombudsperson Institution  
Field Offices Sub-Chart



## ANNEX V: LIST OF STAFF

### Staff members (update 30 June 2006)

Deputy Ombudsperson/Acting Ombudsperson	Hilmi Jashari
Deputy Ombudsperson	Ljubinko Todorović
Director of Investigations	Veton Vula
Deputy Director of Investigations for Special Programmes	Violeta Krasniqi Rexha
Senior Lawyer	Avni Hasani
Senior Lawyer	Gjylbehare Murati
Senior Lawyer	Iirjana Çollaku
Head of the Field Office in Gjilan/Gnjilane	Goroļjub Pavić
Head of the Field Office in Gračanica/Gracanice	Aleksandra Dimitrijević
Head of the Field Office in Mitrovicë/Mitrovica	Naim Krasniqi
Head of the Field Office in Pejë/Peć	Hasie Islami
Head of the Field Office in Prizren	Murlan Prizreni
Lawyer	Agron Kelmendi
Lawyer for CRT	Thëllënza Arifi
Lawyer for GEU	Luljeta Domaniku
Senior Lawyer for NDT	Dragana Rodić
Senior Lawyer for NDT	Merita Syla
Lawyer, Gjilan/Gnjilane	Isuf Sadiku
Lawyer, Northern Mitrovicë/Mitrovica	Miljana Scekić
Lawyer, Pejë/Peć	Shqipe Ibraj-Mala
Lawyer, Prizren	Hunaida Pasuli
Lawyer, Vidanje/Vidaje	Vlado Prođović
Director of Administration	Përparim Vula
Media and Public Relations Officer	Ibrahim Arslan
IT-Manager	Flamur Gogolli
Procurement Manager	Gëzim Latifi
Finance Manager	Beqir Musliu
Chief of Translators	Isak Skenderi
Senior Translator	Lirak Hamiti
Senior Translator	Alban Stafai
Translator	Safete Sadrija
Translator	Marko Djekić
Translator/Legal Assistant, Gjilan/Gnjilane	Meliha Brestovci
Legal Assistant, Gračanica/Gracanice	Dušan Dimitrijević
Translator/Legal Assistant, Mitrovicë/Mitrovica	Merita Gara
Translator/Legal Assistant, Pejë/Peć	Aida Nela
Translator/Legal Assistant, Prizren	Abdullah Kryeziu
Executive Assistant	Arta Ibrahimimi
Executive Assistant	Shqipe Paçarada

Legal Assistant	Venera Rizvanolli
Legal Assistant	Labinot Sheremeti
Chief of Drivers	Shpëtim Reçica
Driver	Tamer Gas
Driver	Sami Kuqi
Driver	Goran Stević
Chief of Security Guards	Bekim Bunjaku
Security Guard	Hakif Imeri
Security Guard	Muhamet Jahiri
Security Guard	Mentor Myftari
Security Guard	Avni Osmani
Security Guard	Besim Osmani
Cleaner	Nekibe Hoxha
Cleaner	Gëzime Lepaja
Cleaner, Gračanica/Gracanicë	Vesna Cvejić

**Persons who left the Ombudsperson Institution during the reporting period**

International Ombudsperson	Marek Antoni Nowicki
Executive Director	Naser Krasniqi
Deputy Director of Investigations for Field Offices	Sefadin Blakaj
Senior Lawyer	Dragana Ristić
Lawyer	Enis Shatri
Lawyer, Pejë/Peć	Besim Tafa
Lawyer, Pejë/Peć	Armend Ademaj
Lawyer, Prizren	Atdhe Berisha
IT-Manager	Hekuran Latifi
Special Assistant to the Ombudsperson	Leonora Visoka
Chief of Translators	Branislava Stojilović
Translator/Legal Assistant, Gračanica/Gracanicë	Milan Prljinić
Legal Assistant	Xhafer Tahiri
Switchboard	Bedri Kamberi
Security Guard	Arben Plakaj

**International Advisors (update 30 June 2006)**

OSCE Special Advisor to the Ombudsperson (Human Rights)	Antonella Ingravallo
OSCE Special Advisor to the Ombudsperson (Public Affairs)	Richard Medić
OSCE Special Advisor to the Ombudsperson Institution (Legal)	Alice Thomas
OSCE Special Advisor to the Ombudsperson (Public Affairs) until 15 May 2006. OSCE Consultant for the Annual Report from 16 May 2006	Joshua Wright

**International Advisors who left the Ombudsperson Institution during the reporting period**

OSCE Special Advisor to the Ombudsperson (Public Affairs)	Jackson Allers
International Advisor for Special Programmes	Francesca Marzatico
International Advisor to the Ombudsperson on Media and Public Relations	Katalin Mester

## **ANNEX VI: LIST OF ABBREVIATIONS**

CRT	Children's Rights Team within the Ombudsperson Institution in Kosovo
DSRSG	Deputy Special Representative of the Secretary-General
FYROM	Former Yugoslav Republic of Macedonia
GEU	Gender Equality Unit within the Ombudsperson Institution in Kosovo
HPD	UN Housing and Property Directorate
IDP	Internally displaced person
JIU	Judicial Inspection Unit
KEK	Kosovo Electric Corporation
KFOR	Kosovo Force [of NATO]
KJPC	Kosovo Judicial and Prosecutorial Council
KPS	Kosovo Police Service
MEST	Ministry of Education, Science and Technology (under the PISG)
NATO	North Atlantic Treaty Organisation
NDT	Non-Discrimination Team within the Ombudsperson Institution in Kosovo
NGO	Non-Governmental Organisation
OSCE	Organisation for Security and Cooperation in Europe
PISG	Provisional Institutions of Self-Government of Kosovo
RTK	Radio Television Kosovo
SIDA	Swedish International Development Cooperation
SRSR	Special Representative of the Secretary-General
UNHCR	UN High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women

UNMIK United Nations Mission in Kosovo

WHO World Health Organisation