



**REPUBLIC OF KOSOVO
OMBUDSPERSON INSTITUTION**

EIGHTH ANNUAL REPORT

2007–2008

addressed to

the Assembly of Kosovo

21 July 2008

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FOREWORD

While I was writing this foreword and contemplating the period since last year's report, it was almost impossible not to recollect all the concerns that my fellow workers and I had the privilege of listening to, and on behalf of protecting human rights, the honor of recommending to the government necessary measures to protect these rights.

This is the eighth consecutive report since the establishment of the Ombudsperson Institution, and the third one sent to the Assembly of the Republic of Kosovo, since its transfer to local management. At this time, as this report is being submitted to the representatives of the people in the Assembly of the Republic of Kosovo, we are accomplishing one of the most important parts of the mandate of the Ombudsperson Institution in Kosovo, by acting as the mechanism of the above authority which has oversight of the government and holds it accountable for upholding human rights and freedoms.

The democratic system of a country is built on the basis of the free vote of the people and is exercised based on the principles of the division of powers, while the independent mechanism of control plays a particular role in guaranteeing a balance between the powers, but also in overseeing the way in which these powers are exercised. It has been proven that the Ombudsperson Institution plays a special role in constructing this system and in consolidating democracy.

However, this year, as in previous years, the Ombudsperson Institution in Kosovo continues to face different challenges, such as the failure to appoint an Ombudsperson for Kosovo, still delayed after two and a half years, and the altered mandate of this mechanism in regard to the international structures present in Kosovo.

I remain hopeful that this report will give representatives of the people a chance to review the current state of human rights in order to improve conditions for the citizen of this country in the days to come.

Traditional and moral values of justice are deeply embodied in the Kosovan culture and have always had a strong influence on social and political developments. However, the vigorous and ample adoption of legal instruments and the necessity to adopt best practices in achieving internationally recognized standards for the protection of human rights has led to development of political goals ahead of practical actions.

We all have to work with the highest commitment for fairness and justice, and with the profound understanding that the protection and promotion of human rights constitutes the fundamental basis of political stability, which is a precondition for achieving good governance.

Human rights, adopted by the Republic of Kosovo, should be enjoyed by the people for whom they are dedicated. The best way to do this is by keeping the government accountable for the commitments they have made and the enforcement of international mechanisms for the protection of human rights, including protection of the rights of vulnerable groups of society, namely the rights of women, children, minorities, people with disabilities and detainees. This also can be achieved by strengthening the role of and the support for independent oversight

mechanisms and by increasing the capacities for cooperation with international human rights mechanisms, such as the Council of Europe and the EU.

*Hilmi Jashari,
Acting Ombudsperson
July 2008*

INTRODUCTION

This Annual Report is issued in accordance with Article 135 para. 1 of the Constitution of the Republic of Kosovo which requires the Ombudsperson to submit an annual report to the Assembly of the Republic of Kosovo, and 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 Eighth Annual Report covers the seventh full year of operations of the Institution, from 1 July 2007 to 30 June 2008. The report is comprised of three main sections. The first section is an introduction to the Ombudsperson Institution, its staff and its work. The second section consists of a survey of human rights issues in Kosovo as seen from the perspective of the Ombudsperson. The third section describes the activities and operations of the Ombudsperson Institution during this reporting period.

Introduction to the Ombudsperson Institution

The Ombudsperson Institution in Kosovo was established by UNMIK Regulation No. 2008/38 on the Establishment of the Ombudsperson Institution in Kosovo, thereby creating an independent institution with a mandate to address issues dealing with alleged human rights violations or abuses of authority by both international and local public authorities in Kosovo. The Ombudsperson Institution officially opened office on 21 November 2000 in Prishtinë/Priština. It started out with 18 employees. At that time, all senior employees were internationals. As the office expanded and field offices were opened, the Institution's staff swelled to 50 and gradually, international employees were replaced by local staff. Since its establishment, the Ombudsperson Institution's staff was multiethnic; today, the majority of the staff is of Albanian ethnicity, whilst the other staff members are of Serb, Turk and Roma ethnicity.

From mid-2000 until December 2005, the Institution was led by an International Ombudsperson, while his two deputies, a team of human rights lawyers and administrative support staff were Kosovan. In December 2005, the International Ombudsperson departed and one of his deputies was appointed as Acting Ombudsperson until the appointment of a new Ombudsperson.

In February 2006, the United Nations Special Representative of the Secretary-General (SRSG) promulgated UNMIK Regulation No. 2006/06 on the Ombudsperson Institution to replace UNMIK Regulation No. 2000/38. Since the promulgation of the above-mentioned UNMIK Regulation, there has been some confusion regarding the Institution's competences to investigate complaints against UNMIK. Indeed, following the promulgation of UNMIK Regulation No. 2006/06, it appeared that the Ombudsperson Institution's competences had been limited to dealing with complaints against the PISG. This was confirmed in a letter sent to the Acting Ombudsperson by the former PDSRSG in August 2006, in which it was stated that the Ombudsperson Institution should focus on complaints against PISG structures and that UNMIK's Human Rights Advisory Panel, established through UNMIK Regulation No. 2006/12, was mandated to deal with alleged human rights violations committed by UNMIK. By mid-2007,

there was nevertheless a growing confusion on whether the Institution had really lost its competences over UNMIK or not. In a letter sent to the Acting Ombudsperson in January 2008, the SRSG finally clarified that UNMIK interpreted the relevant provisions of UNMIK Regulation No. 2006/06 to mean that until a new local Ombudsperson had been appointed, the temporary leadership of the Institution retained jurisdiction over complaints against UNMIK.

UNMIK Regulation No. 2006/06 also prescribes a new organisational structure: the leadership of the Institution is now made up of one local Ombudsperson, one Principal Deputy Ombudsperson and three other Deputy Ombudspersons, all of whom are to be appointed by the Assembly of Kosovo.

Following a first unsuccessful round of voting in December 2006, this Regulation was amended by UNMIK Regulation No. 2007/15, which simplified the procedure for appointing a new Ombudsperson. On 22 June 2007, the Kosovo Assembly approved amendments to its Rules of Procedure for the Appointment of the Ombudsperson and Deputy Ombudspersons.

On 28 June 2007, the Kosovo Assembly again issued a vacancy announcement for the position of Ombudsperson, but the announcement was annulled after being criticized by different local and international human rights NGO's about the selection of short-listed candidates for the position of Ombudsperson.

In March 2008, for the third time, the Kosovo Assembly issued a new vacancy announcement for the position of Ombudsperson in Kosovo. A short-list of candidates was prepared, but the Assembly of the Republic of Kosovo decided to postpone the selection of Ombudsperson for an indefinite period of time, without giving any clear reason for this.

The Mandate of the Ombudsperson Institution

Both UNMIK Regulation No. 2000/38 and UNMIK Regulation No. 2006/06 provided the Ombudsperson with a mandate to accept and investigate complaints from anyone in Kosovo who believes that his/her 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; 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. In cases where 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 Kosovo Assembly.

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 and does not deal with disputes between private individuals.

UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution of Kosovo and UNMIK Regulation No. 2006/06 have set out the values and principles under which this Institution functions. As with every independent institution, the most important values and principles in this respect are independence, impartiality, professionalism and confidentiality.

The main challenge for the Ombudsperson Institution is the fact that through its engagements, it aims to influence and balance the relations between the public administration and the people whom that administration is meant to serve. In this context, one of its main objectives is to foster a so-called culture of good governance, namely proper administration, transparency and accountability of the public administration towards the public, as well as a general strengthening of the rule of law.

The existence of the Ombudsperson Institution generally has a positive impact on the administration, for the simple reason that the latter is brought to understand that there is a third party observing its performance in relation to the individual. In this aspect, the more the Ombudsperson Institution works and becomes engaged, the more people realise that they can submit complaints to the Institution by way of a simple procedure which is free of charge. Such complaints may concern actions or decisions of the administration that the complainants find unjust or unfavourable to them, or the lack of actions by the administration, or even the fairness of court proceedings. When receiving complainants or daily visitors, the actions of the Ombudsperson Institution have involved: legal advice, obtaining information from different sections of the public administration, courts and other public institutions, monitoring certain procedures as well as informing the administration of certain events and their incompatibility with the law applicable in Kosovo. In rare urgent cases, the Ombudsperson Institution may issue requests for interim measures. The kind of action and the method applied will usually vary depending on the circumstances of each individual case.

The Acting Ombudsperson

Following the departure of the International Ombudsperson Mr. Marek Antoni Nowicki in December 2005 and the passing of a new UNMIK Regulation on a local Ombudsperson, appointment proceedings for a new Ombudsperson have several times been postponed by the

Kosovo Assembly. Until the next Ombudsperson has been appointed, one of the current Deputy Ombudspersons, Mr. Hilmi Jashari, is functioning as Acting Ombudsperson concurrently with his Deputy Ombudsperson duties.

Mr. 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. 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 a lawyer'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 another SRSG in July 2005. Based on a decision of Mr. Søren Jessen-Petersen dated 1 January 2006, Mr. Jashari was appointed Acting Ombudsperson until a new Ombudsperson is selected.

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.

Until March 2008, the Deputy Ombudsperson was Mr. Ljubinko Todorović, born in 1951 in Gračanica/Gračanice. 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. In March 2008, Mr. Todorović left the Ombudsperson Institution and his position now remains vacant until the Kosovo Assembly will appoint new Deputy Ombudspersons.

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/Gračanice. The field offices are generally staffed 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, from Monday to Thursday between 10:00 and 14:00. The field offices in Gjilan/Gnjilane, Pejë/Peć, Mitrovicë/Mitrovica and Gračanica/Gračanice receive complainants twice a week, on Mondays and Thursdays between 10:00 and 14:00. The field office in Prizren receives complainants on Mondays and Wednesdays. In urgent cases, complainants may approach the Ombudsperson Institution outside visiting hours.

The lawyers of the Ombudsperson Institution regularly visit municipalities, enclaves and areas with substantial non-Albanian populations. 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 located 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 for prisoners or detainees to use in formulating complaints or requests and raise awareness about their rights and the mandate of the Ombudsperson Institution.

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

In order to offer better access to citizens who would like to discuss human rights issues with Ombudsperson representatives, the Institution regularly holds Open Days at which complainants may personally meet the Ombudsperson or another staff member appointed to replace him. These Open Days take place once or twice a month in all largest centres in Kosovo. The Ombudsperson is always willing to meet interested citizens while they preliminarily should submit a request for such a meeting. 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 by posting them 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. 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 or, to a lesser extent, in Montenegro continues to be facilitated through the cooperation with Spanish humanitarian NGO *Movimiento por la Paz, el Desarme y la Libertad* (Movement for Peace, Disarmament and Freedom, or MPDL) which became the local NGO CLARD (Centre for Legal Aid and Regional Development). The Institution and MPDL continue to cooperate following an agreement signed during the previous reporting period, in which the MPDL agreed to assist complainants in filling out complaint forms and in contacting the Ombudsperson Institution.

SELECTED HUMAN RIGHTS ISSUES IN KOSOVO

General Issues

This reporting period has seen one major development that changed the status of Kosovo on the European and International plane. On 17 February 2008, after years of negotiations between Vienna and New York, the Kosovo Assembly held a session during which it adopted a Declaration of Independence and proclaimed Kosovo an independent and sovereign State. While the majority of the ethnic Albanian population was celebrating throughout Kosovo, the Serb minority, concentrated in enclaves and in the Northern part of Kosovo, welcomed the announcement of this political development with concern and turned to Belgrade for support. To date, 43 States members of the United Nations have recognized Kosovo, among which 20 States members of the European Union. Serbia however stated that this declaration represented a forceful and unilateral secession of a part of its territory.

The Constitution of the Republic of Kosovo was later approved by the Kosovo Assembly on 9 April 2008. Soon before the highest legal act of the new sovereign State entered into force on 15 June 2008, the Secretary General of the United Nations sent two letters to the President of Kosovo and to the President of Serbia underlying that the Security Council Resolution 1244 (1999) remained into force and explaining his plans for the reconfiguration of the UNMIK mission in Kosovo in the coming months.

For the vast majority of the population who celebrated on 17 February, the Declaration of Independence was not only a moment they had been waiting for several decades; it also carried the promise of new opportunities for the future and the improvement of their daily life. The focus of the new State is logically on establishing a dynamic economic development and improving the conditions for investments in Kosovo. However, achieving this goal will remain a challenge due to the weakness of the rule of law in Kosovo. The partial lack of implementation of Laws and Regulations applicable in Kosovo, the lack of legal certainty and execution of court decisions, the complexity of the legal framework, along with the widespread corruption, the existence of organized crime and the general lack of accountability of judges, prosecutors and authorities at central and municipal level, etc. do not only reflect badly and even impede the future economic prospects of Kosovo and its integration in the European Union. They constitute and contribute to the ongoing human rights violations of the Kosovo population.

Of course, not all inhabitants of Kosovo are affected in the same manner by the weak state of the rule of law. The most vulnerable among them, poor people, disabled people, women and children remain the most concerned by the arbitrariness and the general lack of accountability. Further, it is now a crucial time for the new State inhabited by a majority of ethnic Albanian to show its willingness and commitment to improve the life of the various minorities that are composing the Kosovo population and to integrate all of them in a society where they can enjoy their human rights and access to employment, transport, education, health etc. in a secure and peaceful environment.

As mentioned above, another major development during this reporting period was the adoption of the Kosovo Constitution that dedicates its entire Chapter II to the protection of human rights and fundamental freedoms. The Constitution foresees that they are the basis of the legal order of

the Republic of Kosovo and that they should be interpreted consistent with the court decisions of the European Court of Human Rights. The Constitution's Chapter III also guarantees the rights of communities and their members and its Chapter VIII provides for the creation of a Constitutional Court that will be the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution. There is a dire and urgent need to establish such a Court whose decisions will bind and guide lower courts in how to apply the law properly and thus improve the implementation of the rule of law in Kosovo.

Further, a number of international human rights instruments continue to be directly applicable, as provided by the Constitution. Kosovo already reports on the implementation of some of them, for the moment through UNMIK, and will hopefully be able to directly ratify these instruments in the coming months and interact directly with the relevant International and European bodies.

In this challenging context, the Ombudsperson Institution will continue to monitor the human rights situation in Kosovo and to cooperate with all Kosovo's public institution to increase the level of human rights protection. Over the years, the Ombudsperson Institution managed to secure the trust of the Kosovo population and of members of the minority communities as well. The cooperation with the local institutions and authorities has improved, although much more still needs to be done to adequately implement the recommendations of the Ombudsperson Institution. In particular, the Ombudsperson Institution hopes that this coming reporting period will see the strengthening of its relations and cooperation with the Assembly of Kosovo, and that this present annual report will be discussed before the Assembly, for the benefit of the whole Kosovo population.

Developments in the Legal Sector

The rule of law constitutes the cornerstone of every democratic society where human rights principles are respected. Failure to implement the rule of law generally leads to failure to implement human rights principles and to guarantee the enjoyment of freedoms.

The approval of the Kosovo Constitution on 15 June 2008 is an important step in terms of building up the legal system by guaranteeing rights and freedoms in harmony with International and European standards. It however remains to be seen what impact this will effectively have on improving a proper rule of law system in Kosovo, and whether this will be sufficient to bring a practical response to the long-standing issues that Kosovo legal system is facing. Indeed, as underlined in all previous annual reports, the legal system in Kosovo remains confusing and often inconsistent with elementary rule of law principles.

Following the recommendations made by the Special Envoy of the United Nations in the Comprehensive Proposal for the Solution of the Kosovo Status (Ahtisaari's Plan) that was submitted to the Secretary General of the United Nations on 26 March 2007, the President of the Republic of Kosovo established a working group (Constitution Commission) for the design of the first draft of the Kosovo Constitution.

Keeping in mind the importance of public involvement in the process of drafting and finalizing the Draft-Constitution, and in order to promote the participation of the public in the decision making process, the Constitution Commission prepared a public information plan to be developed in two phases. During the first phase, from 28 January 2008 until the publication of

the Draft-Constitution, the Constitution Commission organized discussions with the population in the municipalities throughout Kosovo to familiarize people with the importance of the Constitution drafting process.

After the publication of the Draft-Constitution on 17 February 2008, the Constitution Commission started the second phase of the public information plan, which aimed at involving the population in the drafting of the Constitution and offering different possibilities to comment on the Draft-Constitution.

During this phase, the Ombudsperson Institution sent its comments and suggestions with regard to the Constitution of the Republic of Kosovo in a letter to the President of the Constitution Commission on 28 February 2008. The Ombudsperson Institution representative also participated in the debate organized on 29 February 2008 by the Constitution Commission concerning Chapter XII on Independent Institutions.

The comments prepared by the Acting Ombudsperson in the above-mentioned letter sent to the Constitution Commission suggested the amendments of a number of articles of the Draft-Constitution (for detailed information, refer to the Annex “Selected Intervening Letters”).

The second phase of the information and public’s involvement in the process of drafting the Constitution ended on 2 March 2008 and the Constitution Commission started to consider all the comments it had received on the Draft Constitution, in order to incorporate some changes. On 2 April 2008, the Constitution Commission adopted the final text of the Draft-Constitution, which was certified on the same day by the International Civil Representative, as per his competences foreseen in the Ahtisaari’s Plan. On 9 April 2008, the Assembly of the Republic of Kosovo approved the Constitution of the Republic of Kosovo, which entered into force on 15 June 2008.

Yet, even after the Kosovo Declaration of Independence and the entry into force of the Constitution, which is by definition the highest legal act in a sovereign state, it is still unclear how this Constitution will in practice cohabitate with Security Council Resolution 1244 that was taken based on Chapter 7 of the UN Charter and which is still in force. However, the Ahtisaari’s Plan foresaw that at the end of the transition period, UNMIK’s mandate shall expire and all legislative and executive authority vested in UNMIK shall be transferred *en bloc* to the governing authorities of Kosovo. In line with this, Article 84 of the Constitution foresees that the President of Kosovo promulgates laws approved by the Assembly of Kosovo.

On 12 June 2008, the Secretary General of the United Nations sent letters to the President of Kosovo and to the President of Serbia explaining to them his plans for the reconfiguration of UNMIK mission in Kosovo. However, it is not clear at the time of publication of this report, how long UNMIK will remain in Kosovo, what mandate it will have and the nature of the UNMIK Office of Legal Affairs’ role after the reconfiguration period. Furthermore, the letter sent to the President of Serbia mentioned that additional local and districts courts serving Serb-majority areas may be created and that they will operate within the Kosovo court system under the applicable law within the framework of Resolution 1244 (1999).

The domestic legal system of Kosovo continues to be characterized by the lack of legal certainty and transparency. Indeed, even professional, lawyers, judges, prosecutors etc. who deal with the application of the law are very often confused about which law to implement in a given case.

UNMIK Regulation No. 1999/24 on the Applicable Laws in Kosovo, later amended by the UNMIK Regulation No. 2000/59, provides that the applicable laws in Kosovo are the Regulations promulgated by the Special Representative of the Secretary General and the subsidiary instruments issued to implement them, and the Law in force in Kosovo on 22 March 1989. Further, this Regulation specifies that if a subject matter or situation is not covered by the laws mentioned above, but is covered by another law in force in Kosovo after 22 March 1989 which is not discriminatory, then the Yugoslav law can be applied. However, it was until now up to each court to determine which of these laws it considers to be discriminatory.

This Regulation as well as all other UNMIK Regulations promulgated by the SRSG, including Administrative Directions and Executive Decisions issued by the SRSG, and promulgated laws adopted by the Assembly of Kosovo will remain in force as long as they do not enter in conflict with the Constitution and the Ahtisaari's Plan and until they are revoked or replaced by legislation regulating the same subject matter that would supersede them.

Further, on 15 June 2008, the President of Kosovo promulgated by decree 44 laws foreseen as necessary to implement the Ahtisaari's Plan.

The Mandate of the International Civil Representative (ICR) is to supervise the implementation of the comprehensive Ahtisaari's Plan and to assist and advise the Kosovo Government in this regard. Ahtisaari's Plan foresees that the ICR is the final authority in Kosovo regarding interpretation of the civilian aspects of this Settlement and that he should take corrective measures to remedy, as necessary, any actions taken by the Kosovo authorities that the ICR deems to be a breach of Ahtisaari's Plan or seriously undermine the rule of law, or to be otherwise inconsistent with the terms or spirit of this Settlement. The Ahtisaari's Plan further provides that such corrective measures may include, but are not limited to, annulment of laws or decisions adopted by Kosovo authorities. It remains to be seen how these provisions will be implemented in practise, in light of the current political developments.

The legal system in Kosovo suffered since the promulgation of the Constitutional Framework through UNMIK Regulation No. 2001/9 that the Special Chamber of the Supreme Court for Constitutional Matters foreseen in Chapter 9.4.11 of the Constitutional Framework was never constituted.

To remedy this situation, Chapter VIII of the Constitution of the Republic of Kosovo foresees the establishment of the Constitutional Court which will be the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.

The Ombudsperson Institution recommends that the Constitutional Court be established as soon as possible as this institution will play a fundamental role in bringing clarity and transparency in the legal system in Kosovo, provided it declares itself competent not only to review the compatibility of new laws and new legal acts to the Constitution, but also to examine the compatibility of UNMIK Regulations, sub-legal acts and old Yugoslav laws with the new Constitution and the principles enshrined in it.

The lack of the commentaries written by academic scholars that would help for the interpretation of the most important laws remains an issue in Kosovo that has been criticized in the last Ombudsperson Institution's report. As previously mentioned, there are many situations where individuals, administrative offices, and courts are unsure as to how to apply certain legal provisions, especially when they introduce new concepts and structures with which they might

not be familiar. Preparation of such commentaries would be a great step to improve legal certainty and clarity concerning a large number of provisions of the laws applicable in Kosovo.

The transparency of the legal system can only be guaranteed if the population is aware of its rights and obligations. The question of the general public access to the regulations, laws and other sub-legal acts in Kosovo remains a concern, although there have been improvement in this area after the creation in April 2006 of the Office for Management and Administration of the Official Gazette. This Office was created to implement the Kosovo Assembly's Law on the Official Gazette that was promulgated by UNMIK Regulation No. 2005/25. However, Kosovo laws are not available at libraries or other public places and only selected public institutions receive Kosovo's Legal Gazette. Until January 2008, the Official Gazette was also distributed in PTK but this was discontinued due to the small number of requests to buy the Official Gazette. Moreover, while the Official Gazette is supposed to be translated into five languages, inaccurate translation into the different versions has been a major problem and there is no guarantee that the translation in all versions is exactly the same, which is detrimental to the legal certainty of the law applicable in Kosovo.

There are still difficulties to have access to certain old Yugoslavian laws that are still applicable in Kosovo. Furthermore, the websites of many Ministries are either not functional or not updated and it remains difficult to have access to the sub-legal acts adopted by these institutions.

The database created by the Kosovo Judicial Council was supposed to contain all applicable laws in Kosovo, the case law of higher courts in Kosovo, international human rights instruments, legal documents of the European Union, as well as academic legal articles. Although this database is operational since September 2007, it is not fully updated, as it does not contain all the applicable laws foreseen by UNMIK Regulation No.1999/24 on the Applicable Law in Kosovo, later amended by UNMIK Regulation No. 2000/59. Nevertheless, this initiative is a good step towards enhancing legal transparency.

An issue that was continuously raised in the previous annual reports is the constant lack of *vacatio legis* in almost all the laws adopted by the Assembly of Kosovo and UNMIK regulations promulgated during the reporting time. *Vacatio legis* is a period of time between the promulgation of a law and its entry into force, with the aim of giving the public and the authorities applying the law the chance to adjust and prepare for the new legal situation. The recommendations of the Ombudsperson Institution in this regard have so far not been taken into consideration as UNMIK Regulations and Assembly Laws continued to enter into force immediately after their promulgation. As a result, most institutions are not prepared to implement the new legislation and both the local administration and the judiciary find themselves so overwhelmed with the great amount of regulations and laws promulgated within a relatively short period of time that they either fail to implement them properly, or do not implement them at all. This is particularly dramatic, especially considering the general lack of implementation of the laws in Kosovo. However, some of the laws adopted by the Assembly of Kosovo on 15 June 2008 foresee that the law should enter into force 15 days after the day of the publication of the law in the Official Gazette of Kosovo.

An example of a law that has not been implemented in a proper way because the institution that was meant to be created by the law has not been established after several years, is the UNMIK Regulation No. 2001/4 on the Prohibition of Trafficking in Persons. Almost four years after the entry into force of the UNMIK Regulation, the SRSG promulgated the Administrative Direction

No. 2005/3 implementing the above-mentioned Regulation. The aim of this Administrative Direction was to clarify the responsibilities of a Victims Assistance Coordinator and to establish funds to provide financial assistance and reparation to victims of trafficking. However, as mentioned in the previous annual report, the necessary funds have still not been secured whereas the Ministry of Justice failed several times to appoint the Victims Assistance Coordinator.

The implementation of the Law on the Environmental Protection, promulgated on 15 April 2003 by UNMIK Regulation No. 2003/9, still poses problems. The aim of this law is to establish a basic legal framework that would promote the development of a healthy environment for the people of Kosovo and gradually bring environmental standards in Kosovo in harmony with those of the European Union. According to the Ombudsperson Institution's investigations during the reporting period, certain provisions of this law continue to remain unimplemented even after the adoption of the secondary legislation necessary for its implementation. During the investigations conducted by the Ombudsperson Institution following the submission of complaints and also after the initiation of *ex officio* investigations, the Institution established the inefficiency of the competent authorities with regard to the implementation of the above-mentioned Law and also the Law on Water in Kosovo promulgated on 14 October 2004 by UNMIK Regulation No. 2004/41.

The two Annexes of the Administrative Instruction No. 2004/9 on the Assessment of the Impact on the Environment determine the nature of projects to be subjected to an Environmental Impact Assessment. However, the investigations of cases by the Ombudsperson Institution during the reporting period showed that certain industrials or economic activities were not subjected to such an assessment, and continued their work despite the fact that they were not meeting the criteria to obtain an Environmental Consent.

Likewise, the enjoyment of the Water Right is regulated by the provisions of the Law on Water. However, the cases that the Ombudsperson Institution investigated during the reporting period established that certain industrials activities continued to use the water resources or to discharge the substances produced by their activities, although they failed to obtain a Water Permit or a Water Concession.

During the reporting period, the Ombudsperson Institution sent recommendations following investigations of certain cases to the Minister of Environment and Spatial Planning and made an attempt to draw the attention of the Ministry and the Inspectorate of Environment (established by Administrative Instruction No. 2/2004 on the Establishment of the Inspectorate for Environmental Protection) about the correct implementation of the Law on Environmental Protection and the need to fulfil their obligations to ensure that the rights of people in Kosovo are guaranteed and effectively protected (for concrete examples, see the Annex of "Selected Intervention Letters" of this Report).

During the reporting period, the Ombudsperson Institution also considered cases that demonstrated the competent authorities' negligence and the shortcomings in the implementation of the Law No. 2003/22 on the Sanitary Inspectorate of Kosovo, promulgated on 17 December 2003 by UNMIK Regulation No. 2003/39. The aim of this law is to establish legal grounds for the regulation and advancement of food quality control, the implementation measures for fighting and eliminating contagious diseases, as well as performing the hygienic and sanitary control of industrial food facilities, public facilities and public dwellings, with the aim of

protecting the health of the population of Kosovo. During the investigations conducted by the Ombudsperson Institution on complaints dealing with these issues, it was noticed that even after the inspections are carried out by the competent sanitary inspectors in certain facilities, and remarks are formulated to avoid the shortcomings that were observed during the sanitary inspections, no concrete actions were taken by the Sanitary Inspectorate and other competent authorities responsible for the implementation of the provisions provided by the above-mentioned law and by the sub-legal acts subsequently adopted. Failure to impose corrective and punitive measures against the offenders results in the lack of implementation and de facto non-functionality of the present law.

Another example of the failure to implement existing legislation by the competent authorities has also been observed with the Law on Expropriation. The new Law on Expropriation, although approved by the Assembly of Kosovo on 8 February 2007, has still not been promulgated by the SRSG and is yet to enter into force. As a result, the Law on Expropriation of the Autonomous Socialist Province of Kosovo of 1978 remains applicable. As observed in the previous annual report, many cases investigated by the Ombudsperson Institution have revealed that municipalities and central governmental authorities are not implementing this law properly or totally ignore it and do not follow any kind of expropriation procedure, although such expropriation procedure is foreseen in the applicable law. Persons whose property is seized for the general interest are still not compensated and other cases demonstrate a potentially discriminatory application of the law. This leads to a constant series of violations of the right to property and related human rights. And UNMIK failed to react to such important issue in accordance with its powers at the time.

Likewise, as mentioned in the previous annual report, the Kosovo Assembly's Anti-Discrimination Law, promulgated by UNMIK Regulation No. 2004/32 on 20 August 2004, and the Law of the Assembly of Kosovo for Gender Equality, promulgated by UNMIK Regulation No. 2004/18 on 7 June 2004, are still almost completely ignored, mainly because the lack of awareness of the population towards these two laws that are introducing new concepts in the legal system. For more details with regard to this issue, refer to the parts of this Report that deal with Non-Discrimination and Gender Equality.

However, the complete failure to apply an existing law is an exception in Kosovo. Usually the problem lies with the selective application of the provisions enshrined in the law. An example of this can be found with the implementation of the Kosovo Assembly's Law No. 2004/15 on Construction, promulgated on 14 October 2004 by UNMIK Regulation No.2004/37. It appears that the competent authorities apply this law in an arbitrary manner and illegal construction continue to be the rule in Kosovo rather than the exception, while municipalities and courts usually refuse to involve themselves and intervene in many cases.

The same inconsistencies have been observed concerning the implementation of Kosovo Assembly's Law No. 2004/32 on Family that entered into force on 20 January 2006. Although this law was passed to replace the Yugoslav Law on Marriage and Family Relations, it does not cover certain issues regulated in the old law and as a result, both laws continue to be applied in practice, thus causing continuous confusion. For more information on those two Laws, see the parts of this Report that deal with the Property and Housing Issues and Children's Rights in Kosovo.

Investigations conducted by the Ombudsperson Institution during the reporting period have demonstrated that there was no progress concerning the implementation of the Kosovo Assembly's Law No. 2004/17 on Consumer Protection, promulgated on 19 October 2004 by UNMIK Regulation No. 2004/42. This law determines, regulates and protects the rights of consumer in their business dealings, in services and other forms in the free market. The law also seeks to protect the health, environment and economic interests of consumers.

Likewise, the issue of the implementation of the Law No. 2003/26 of the Assembly of Kosovo on Medical Products and Medical Devices, promulgated on 7 July 2004 by UNMIK Regulation No. 2004/23, and of the Law on Market Inspection No. 02/L-1 promulgated on 31 May 2005 by UNMIK Regulation 2005/29, that was raised in previous annual reports, remains unchanged.

Concerning the implementation of the Kosovo Assembly Law No. 2003/12 on the Access to the Official Documents, promulgated on 6 November 2003 by UNMIK Regulation No. 2003/32, the Ministry of Public Services issued Administrative Instruction 2006/03 to implement this important law that guarantees the possibility of the access to public documents. However, the practice shows that the large majority of the municipalities are not aware of this sub-legal act and do not know how to implement it. The competent authorities should thus pay special attention to the establishment of archive offices in each municipality to ensure the proper implementation of this law.

In a certain number of cases, the lack of adoption of necessary sub-legal acts makes the effective implementation of the law impossible. During the reporting period, the Ombudsperson Institution received complaints dealing with this issue concerning the implementation of the Regulation No. 2001/27 on the Essential Labour Law promulgated on 8 October 2001 and of the Kosovo Assembly's Law No. 2002/9 on the Labour Inspectorate in Kosovo, promulgated on 21 February 2003 by UNMIK Regulation No. 2003/4. The Ombudsperson Institution established that the lack of normative sub-legal act foreseen by the Law on the Labour Inspectorate causes confusion concerning the legal basis needed for the labour inspectors to impose punitive measures towards the offenders of the above-mentioned legal provisions. In practice, the labour inspectors continue to impose fines based on the provisions of the Regulation No. 2001/27 on the Essential Labour Law, however sometimes they refuse to do so arguing that they lack the legal basis to impose a fine. This arbitrary and inconsistent interpretation of the law goes against the principle of legal certainty (for more detailed information, see the Annex "Selected Intervention Letters").

In the private sector, there are also a considerable number of employers who recruit manpower on the black market to avoid signing any work contract that would protect the employees' rights. The competent authorities responsible for the implementation of the above-mentioned laws have not taken any effective steps in order to stop this illegal practice. Failure to implement punitive measures towards these violations fails to deter employers to continue to violate their employees' rights. The Acting Ombudsperson, in a letter addressed to the President of the Assembly of Kosovo on 6 March 2008, recommended him to use his influence to put pressure on the competent authorities in order to issue sub-legal acts without any further delay, and to ensure that the above-mentioned laws are fully implemented. Moreover, keeping in mind that the UNMIK Regulation No. 2001/27 on the Essential Labour Law regulates employment in Kosovo but does not adequately cover a number of issues such as the protection of children's rights, the Acting

Ombudsperson also recommended to speed up the process of adopting a new Labour Law that has been ongoing for some time in the Assembly of Kosovo.

Not all necessary sub-legal acts have been adopted to ensure the implementation of all the legal provisions of the Kosovo Assembly's Law No. 2003/23 on Disability Pensions in Kosovo, promulgated on 17 December 2003 by UNMIK Regulation No. 2003/40. In particular, Article 13 of the Law concerning the benefits foreseen for persons with permanent disabilities remains an issue. The implementation of this law was already discussed in the previous annual report of the Ombudsperson Institution, but the competent Ministries have not taken into consideration the various recommendations made by the Acting Ombudsperson concerning the necessity to issue the relevant sub-legal acts to ensure the implementation of this law. Although the Ministry of Labour and Social Welfare has now issued several sub-legal acts, the failure of the majority of the competent Ministries to issue the secondary legislation for more than four years now constitute an ongoing violation of the principles of good governance and respect of human rights. Thus, in February 2008, the Acting Ombudsperson raised again the above-mentioned issue in a letter addressed to the Prime Minister of Kosovo.

In some cases, laws should be adopted to regulate certain situations. The necessity to provide for the existence of a legal remedy in case of excessively long court proceedings has been raised in various reports released by the Ombudsperson Institution, which found that certain court proceedings had been so long that they violated a person's right to have his case decided within a reasonable time. However, the recommendations addressed to UNMIK and the Assembly of Kosovo to establish such a legal remedy were not taken into consideration over the last six years and there was no action taken in order to promulgate such a law.

One of the main problems of Kosovo legislation is not so much its quality but rather the lack of its proper implementation. The reasons for this lack of implementation are different. In some cases, the administration and the judiciary are simply not aware of the laws due to the huge number of UNMIK Regulations and Laws that have been adopted over the last eight years and that often introduce new concepts in the Kosovo legal framework. In some other occasions, most or parts of the provisions of a law are ignored because the persons responsible for implementation do not feel accountable for their proper implementation, or because the necessary sub-legal acts have not been adopted, maybe also precisely for this reason. In this regard, the Kosovo Assembly needs to oblige the Ministries to report more regularly on the implementation of the Kosovo Assembly Laws.

Indeed, no matter how well drafted and compliant to European Standards a law is, its level of implementation in practice and the steps taken to achieve this are the real indicator of the rule of law in a democratic society. This is also true of various strategies and actions plans that are developed, especially in the human rights field. Last but not the least, adequate financial resources should always be foreseen while adopting laws and strategies to guarantee their full and timely implementation.

The Judiciary in Kosovo

Although some efforts have been made to improve the Kosovan judicial system, little progress has been achieved and the judiciary continues to suffer from important shortcomings that affect

concretely the life of the population and the trust in the rule of law in Kosovo. Deeply rooted problems such as the lack of independence and proper functioning of the judicial system, a rampant corruption that still needs to be adequately tackled and a lack of coherence in the administration of justice, coupled with the lack of execution of many decisions issued by these courts, require the urgent establishment and effective functioning of sustainable structures at the investigative and enforcement level.

Despite the creation of the Ministry of Justice in December 2005 and the Kosovo Judicial Council, UNMIK Department of Justice continued to play a role in the development of the judiciary in Kosovo through both judicial reforms and the development of institutions. International judges also continued to assume responsibilities over sensitive cases and dealt with serious crimes, including organised crime, terrorism, political assassination, inter-ethnic violence, corruption and war crime cases.

The previous annual report, while underlining the need of support received by the Kosovo judiciary from international judges, also highlighted the lack of clarity and transparency as to which cases are assigned to these judges and which ones to local judges. It is likely that the same problems will arise with the establishment of the EULEX mission under the UNMIK umbrella and the deployment of European judges and prosecutors. It is unclear now whether UNMIK Department of Justice will retain any responsibilities after the reconfiguration of UNMIK, especially as the EULEX's main focus will precisely be to assist judicial authorities and law enforcement agencies in building the rule of law in Kosovo.

As mentioned above, in the framework of the EULEX mission, the judicial system will continue to be supported by a new contingent of international judges and prosecutors. Initially, over forty judges and around eighteen prosecutors have been deployed all over Kosovo, and it is expected that more will be deployed in the near future. They will be subordinated to the President of the Assembly of EULEX judges and the Chief of the EULEX prosecutors acting under the Head of the Justice Component. The EULEX judges will have jurisdiction and competence over any case investigated or prosecuted by the Special Prosecution Office of Republic of Kosovo (SPORK). The President of the Assembly of the EULEX judges is competent to assign, or not, a EULEX judge to the respective stage of the criminal proceedings investigated or prosecuted by the SPORK. Such wording does not provide for much clarity and transparency as to what type of cases European judges will be in charge of and the nature of their cooperation with their local colleagues.

Although the judges are supposed to be fully integrated in the Kosovo judicial system, they will be acting under and responding to a separate authority, the Head of the Justice Component. Nevertheless, the initial phase proves that they have already started to cooperate with the Kosovo Judicial Council, especially to provide technical support.

It is important to stress that the same kind of concern arises regarding the appointment procedure of EULEX judges, much like their UNMIK colleagues who were directly appointed by the SRSG. The very procedure of the EULEX judges' appointment lacks transparency, since the final decision on such matters seems to lie with the Head of the EULEX, the highest executive authority of the mission. EULEX judges are appointed through an EU procedure in Brussels and are subjected to one year renewable terms of office. The period for which judges are appointed is a matter of concern as a one year appointment is insufficient to guarantee these judges'

independence and impartiality and bears the risk of negatively influencing the quality of the administration of justice due to the high turnover in the field.

Besides, the selection criteria are also quite basic. Even if the candidates are submitted to some form of quality testing or extended interview, the detailed procedure within the EU for selecting these judges is invisible to the outside world for the time being. It remains to be seen whether the EULEX judges and prosecutors are going to be subjected to quality control or to a supervisory body in cases of alleged misconduct of judges.

It is important that the new EU mission takes into account all UNMIK shortcomings and gaps to try to build an accountable and transparent mission. To this extent, there should be more clarity as to the selection criteria of judges and a more open procedure for nominating and appointing judges that involves not only the Head of the EULEX Mission, but also an independent outside body such as the European Court on Human Rights, which has already been involved in the appointment procedure for members of the UNMIK Human Rights Advisory Panel.

The Kosovo Judicial Council (KJC), a body consisting of members of the judiciary, the Kosovo Assembly and the Kosovo Chamber of Advocates, as now provided by the Kosovo Constitution, is responsible inter alia for conducting judicial inspections, judicial administration, developing court rules in accordance with the law, hiring and supervising court administrators, developing and overseeing the budget of the judiciary, determining the number of judges in each jurisdiction and making recommendations for the establishment of new courts. As provided by the Kosovo Constitution, the President of the Republic of Kosovo is responsible to appoint, reappoint, and dismiss local judges upon the proposal of the KJC. This also raises concerns since, although the nomination process would seem to guarantee the independence of the judiciary, the final decision to appoint or not a judge is still taken by the Head of the executive branch under the Kosovo Constitution. This situation goes against the principle of separation of the three branches of power, the executive, legislative and judiciary, and is an obstacle to an independent judiciary in Kosovo.

The Ministry of Justice continued to develop policies and strategies with regard to the administration of justice, in particular improving access to justice, pursuant to the five year Strategic Plan 2007-2012 adopted in March 2007 foreseeing objectives, plans and strategic goals to be achieved within this period.

During the reporting period, the Ministry of Justice also focused on drafting laws related to the Ahtisaari Plan and that were adopted with the Constitution on 15 June 2008, such as the Law on Special Prosecution Office 03/L-052 and the Law on Jurisdiction, Case Selection and Case Allocation to the EULEX Judges and Prosecutors 03/L-053. Furthermore, Article 109 of the Constitution foresees the creation of the State Prosecutor, institution that will have the authority and responsibility for the prosecutions of persons charged with committing criminal acts and other acts specified by the law. Article 110 provides for the creation of a Kosovo Prosecutorial Council that will recruit, propose, promote, transfer, reappoint and discipline prosecutors in a manner provided by law.

Moreover, two draft laws are still being prepared by the Ministry of Justice: a law on the declaration of property of senior public officials and a law for supplementation and amendment of the law on the execution of penal sanctions.

However, the justice system still lacks key laws such as the Draft Law on Courts that has been in preparation for over three years and a Bar Law. In the previous annual report, the importance of enacting a law on Courts was highlighted, as a new law would clarify the roles of the judiciary, the Ministry of Justice and the Kosovo Judicial Council and contribute to the clarification of the court competencies, improve the functioning of the court administration and include detailed proceedings on the appointment of judges and disciplinary measures in cases of misconduct etc.

Another problem arises from the application of the old Bar Law which is not in harmony with European standards. In order to overcome this situation, a new law should be enacted to enable, inter alia, the proper regulation of the categorization of lawyers authorized to appear before primary and appellate courts and before the Supreme Court, the status and public competencies of lawyers, the licensing system, the accountability of lawyers in cases of abuse of authority in court, and of their clients' trust, the Code of Conduct and self-regulation, remuneration and the self-regulatory system of internal control etc.

In the previous annual report, the issues pertaining to the independence of judiciary were already discussed at length and unfortunately, no major improvement has been noticed in this regard. The general concept that a judge should be free from any pressure or interference from the parties to the case, from the executive branch, the media, local politicians or anybody else, is largely abstract and theoretical in today's Kosovan society. If a genuine rule of law system is to be established in Kosovo, the administration of justice and the applicability of the law should remain free from political considerations and the judiciary itself should respect this principle. In this regard, a strict court rule should be adopted to prevent judges from improperly communicating with parties (*ex parte* communications) concerning pending cases.

The creation of an independent judicial system is the best guarantee of Kosovo's stability and judges should have the capability to make sound and independent interpretations in order to establish not only respect for human rights but also for the rule of law.

During the reporting period, the Ombudsperson Institution continued to receive complaints alleging widespread practices of corruption within the judiciary.

Although UNMIK Department of Justice created a mechanism to promote accountability and responsibility for all types of misconduct, the Judicial Inspection Unit (the "JIU"), responsible for conducting inspections, audits and investigations within the Kosovo judicial system, has only rarely taken disciplinary measures or concluded that a judge should be removed from office. Following the debates whether the JIU should become part of the Ministry of Justice or of the Kosovo Judicial Council, the Constitution of Kosovo foresaw that the JIU should be placed under the Kosovo Judicial Council.

In addition, the Anti-Corruption Agency in Kosovo (hereinafter "the Agency") created by Kosovo Assembly Law in mid-2005, proved to be more active comparing to the previous year. There is indeed an indication that the number of cases involving alleged acts of corruption within the judiciary referred to the Agency has notably increased in comparison with the previous year. Although the Agency demonstrated its commitment to fight corruption by improving the efficiency of the investigation of alleged complaints, it continued to face many obstacles in completing its mission. Lack of cooperation with the competent bodies, in particular the Prosecutorial Office and police authorities, has caused delays to the whole process. In order to overcome this situation, on 30 December 2007, the Agency signed a Memorandum of

Understanding with the Prosecutorial Office of Kosovo, in order to enhance inter-institutional cooperation. To this extent, they agreed that District Prosecutorial Offices, within their territorial jurisdiction, should carry out an efficient investigation into the cases presented by the Agency, and should keep the Agency informed about the outcome of their investigations. In addition, the Memorandum of Understanding requires prosecutors to carry out investigations with the highest discretion.

Consequently, the Agency submitted a number of cases to the prosecution for extensive investigations. Nevertheless, only a small number led to disciplinary measures or removal from office, which calls into question the efficiency of the Agency's work.

In this context, the issue of corruption requires to undertake more strategic approaches. To achieve the eradication of corruption, there is a need to involve not only judicial organs, but also all relevant stakeholders, actors of the executive and legislative branches, politicians, the media and civil society.

Curbing judicial corruption would require specific measures to be undertaken such as enhancing judicial independence, decreasing opportunities for corruption, increasing transparency, accountability and efficiency and improving the effectiveness of law enforcement in investigating and prosecuting corruption cases.

The insufficient remuneration received by local judges continues to be a serious problem and is often the fundamental cause for their acceptance of bribes, succumbing to threats and other forms of corruption. Thus, the salaries paid to the judges and court administrative staff must be significantly raised. Without fair remuneration, there is not much hope that the traditional system of paying "tips" to the judges can be abolished. Moreover, police protection or security guards should be granted to judges who work on sensitive cases and who are likely to be threatened.

The Kosovo judiciary not only continues to be underpaid. Judges generally face very inadequate working conditions that reflect badly on the quality of courts decisions and judgements and the speed in which they are delivered. There is a general lack of staff and insufficient infrastructure as well as poor quality of translation of documents and oral interpretation during courts hearings, which has continuously been mentioned in previous annual reports. The case backlog continues to grow and there is a lack of case management, as it often takes courts years to appoint a panel to deal with a certain claim

The lack of judges not only caused delays in delivering court decisions, but also results in the impartiality of judges being compromised, in particular during the retrial procedure when the districts courts send cases back to the same municipal court composed of the same panel of judges for retrial. There is always a risk that one or more of the judges have already formed an opinion in the case during the first instance procedure, and may therefore not be impartial during the retrial. Also, there is a danger that the panel which issued the original decision will not interpret the case in a different manner, even if asked to do so by the respective district court. Such cases are not so much examples of partiality than examples of an erroneous assessment of the law and of how to implement it in practise. Some cases can go back and forth between municipal courts and district courts for many years.

A possibility to avoid this situation could be to adopt internal procedures within the courts system to ensure, as appropriate, the rotation and regular change of the assignment of judges to different municipal and district courts. Previously, the Kosovo Judicial Council had already transferred judges from one court to another to meet the challenges posed by the insufficient number of judges in certain courts.

Another major problem is that, unlike in most legal systems, there is no higher court case law that binds and guides lower courts in how to apply the law properly. Even if the Supreme Court issues a decision in a certain case, such case law is never quoted and often not disseminated to the lower courts. Thus, there are situations when not only have different municipal courts issued different and contradicting decisions in similar cases, but also when the same municipal court issued different and contradicting decisions in similar cases. This leads to a lack of coherent and harmonised administration of justice in Kosovo and generate great frustration among complainants who simply do not trust their judicial system. Hopefully, the situation will improve with the creation of the Constitutional Court foreseen by the Kosovo Constitution and that has competence to interpret the Constitution and review the compliance of laws with the Constitution.

To add to the confusion, many judges appear to be unaware of a number of applicable laws, reticent to implement new laws or simply uncertain about which law to apply in a given case due to the complexity of the Kosovo legal framework. Furthermore, Article 53 of the Kosovo Constitution foresees that human rights and fundamental freedoms guaranteed by the Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights. However, most of the judges remain largely unfamiliar with the case law of the European Court of Human Rights and they would need to receive many more trainings from the Kosovo Judicial Institute before being expected to refer to and apply this case law.

The backlog of pending cases involving property disputes that has been accumulated over the years continues to grow and consequently, many cases remain pending for five to ten years. The Strategy and Action Plan for the Reduction of Judicial Property Backlog, published on 16 March 2007 by a working group which included the Kosovo Judicial Council, representatives of the OSCE, the UNMIK Department of Justice, the European Union Planning Team, the Kosovo Property Agency, the Ministry of Justice, the Ministry of Environment and Spatial Planning and the National Centre for State Courts, identified existing property backlogs, possible ways to reduce them, and actions to prevent such cases in the future. However, it appears that the implementation of this Strategy by the Kosovo Judicial Council is going too slowly as there has been little or no progress achieved so far.

Furthermore, the application of old laws such as the Civil Procedure Code, the Law on Non-contentious Procedure and the Law on Execution Procedure are causing delays in delivering justice as they contain provisions which do not establish deadlines for certain procedural actions which enable judges to handle cases in the manner they find appropriate. This often results in the postponement of the hearings dates, which causes unnecessary delays to the case proceedings.

The problem of lengthy and complicated enforcement procedures is a part of the general backlog issue. The newly introduced reforms did not have the expected impact on the backlog. One possibility to relieve courts from the non-contested civil claims and minor penal cases is to consider the possibility to introduce simplified procedures in order to handle those cases separately from the ordinary proceedings. To apply such measures, it would be necessary to modify the existing legal framework and to restructure the court system by establishing special sections within the courts that would only handle cases involving payment order proceedings.

The same could apply for the majority of the minor penal cases and as such would avoid burdening the courts.

However, such a system needs to be supported by a well functioning notification system, and a proper IT system. Besides, some alternative means such as the use of arbitration and mediation and other methods used for promoting settlements can have a positive impact on the backlog.

An additional backlog has been created by the lack of execution of court judgements. The number of civil cases pending before the municipal courts is growing substantially. As already mentioned in the previous report, there are several factors contributing to this backlog, such as the lack of court bailiffs to ensure that execution takes place. In addition, it happens frequently that delays are generated because public authorities disregard the court judgments. Certain municipalities avoid executing particular judgments without any justification because they simply do not consider themselves obliged to respect court judgments and adhere to the rule of law.

In the last annual report, particular consideration was given to the difficulties concerning the enforcement of judgments in cases involving former socially-owned enterprises, which until recently were administered by the Kosovo Trust Agency (KTA). No major progress has been achieved in this regard. The number of these cases substantially increased throughout this reporting period. The situation remains the same as the courts continue to deliver judgments in the complainants' favour, while on the other hand, banks continue to oppose execution of the court decisions alleging that the respective bank accounts are empty.

In addition, there was a lack of cooperation between the Special Chamber of the Supreme Court on KTA related matters and regular courts, in particular concerning the issue of jurisdiction. According to Regulation No. 2008/4, the Special Chamber has primary jurisdiction over the cases against socially owned enterprise administered by KTA. This lack of cooperation led to the failure of the courts to appropriately assess over which cases they had jurisdiction and accordingly refer cases to the Special Chamber. Consequently, regular courts declared themselves competent to hear these disputes although it was outside of their jurisdiction, and as such acted in breach of the law.

Another reason explaining the length of court proceedings and the backlog of several hundred cases waiting to be processed, among them a certain number relating to war crimes trials, is the lack of experts and equipment necessary to prepare serious expert opinions. The existing UNMIK Medical Examiner's Office is still functioning with only one forensic expert responsible for conducting autopsies and physical examinations of victims and providing expert opinions to courts. As the needs of both the courts and the prosecutorial office are too important, this person is not in a position to respond in a timely manner to all these demands. Therefore, autopsy reports are submitted with delay, which leads to lengthy investigations and delays the initiation of criminal court proceedings. Furthermore, courts continue to follow the same practice with regards to the testimony procedure of the forensic expert regarding the autopsy report. Frequently, instead of summoning the expert who has prepared an autopsy report, the court decides to summon an expert who had previously worked for the Medical Examiner's Office to testify, even though he now works in a private capacity. In civil cases as well, there is a considerable lack of experts available to submit opinions in fields involving inter alia property and geodesy issues, traffic accidents or construction matters. As mentioned in several previous annual reports, establishing a special institute responsible for preparing expert opinions during

proceedings (in particular for criminal courts and prosecutors) would help overcome the current problems. This would however imply the allocation of significant financial means.

Lack of financial means is clearly one of the main impediments to carrying out proper judicial reform and a large part of the process relies on foreign donations, sometimes channelled through the Kosovo Judicial Council. In particular, USAID continues to play an important role in rebuilding the judicial system and provided expertise on drafting of laws and secondary legislation. Also, several training sessions for judges and judge's assistants have taken place.

The European Agency for Reconstruction (EAR) was also involved in a long-term project concerning the establishment of an Information System on Case Managing (ISCM) for all courts in Kosovo. The project has been completed and an automated court management system has been established in all five district courts for the management of penal cases. Furthermore, district courts were equipped with witness protection equipment and ISDN links have been installed to increase the security level in terms of witness's protection. But despite these improvements, there are some indications that very frequently prosecutors do not request and judges do not use such measures. There is an insufficient awareness among prosecutors and judges of the benefit that witness protection measures can have on the outcome of the proceedings. Therefore, Ministry of Justice and the Kosovo Judicial Council should undertake appropriate steps for the proper implementation of this system in practice.

There is still a lack of a witness protection programme that would adequately protect people and their families who face grave dangers if they agree to testify. The Ombudsperson Institution continued to receive information regarding witness intimidation in many criminal cases which generally delays or prevent the investigations into serious crimes and hampers a proper administration of justice. In a country as small as Kosovo, relocation of witnesses outside Kosovo is often the only appropriate solution, but due to the lack of financial means and political willingness of foreign governments to accept these witnesses, this solution has only rarely been successful.

Parallel courts located in Serbian enclaves in Kosovo, in the northern part of Mitrovicë/Mitrovica region and in certain towns in Serbia continue to function, to apply the law applicable in Serbia and to be remunerated by the Government of Serbia. The courts in Kosovo do not recognise their judgements and the parallel courts do not recognise either as legally binding the decisions issued by the courts in Kosovo. Their existence continues to lead to great confusion and has a direct impact on the rights of individuals and the rule of law. The letter addressed by the UN Secretary General to the Republic of Serbia on 12 June 2008 indicated that additional local and district courts serving relevant Serb-majority areas might be created. The letter mentioned that they would operate within a Kosovo court system under the applicable law within the framework of Resolution 1244 (1999). An improvement of the situation in this regard is crucial to improve the administration of justice in Kosovo.

The Ombudsperson Institution continued to receive complaints concerning the conflicting judgments issued in property cases because of falsified documents and falsified contracts obtained from the parallel courts as it appears that some judges working for the these courts accept bribes to register sales contracts with incorrect dates (prior 1999) and using the Yugoslav stamp. In such cases, courts in Kosovo have no proper procedure in place to verify the authenticity of documents submitted to evidence property transfer and as a result, it happens that the same property is sold several times to different individuals.

Following the protests organized against the Kosovo declaration of independence, the courthouse and prosecutor's office in Mitrovicë/Mitrovica North were occupied for several days. After the intervention of UNMIK police and KFOR forces, the premises have been released, but the court and prosecutor's work have still not resumed due to the security situation. On 30 April 2008, the Acting Ombudsperson sent a letter to the Special Representative of the Secretary-General (SRSG) drawing his attention to the implications arising from the lack of the functioning of the courts and prosecutors' offices in the Mitrovicë/Mitrovica region. The Acting Ombudsperson stressed that the created situation is a serious human rights violation as it directly affects the right of a number of citizens of Mitrovicë/Mitrovica area, which includes one town and forty nine villages, to access to court and to see their disputes settled. He further requested that a solution must be found in a timely manner and urged to take appropriate measures in order to ensure people access to court services.

In any democratic society, the judiciary is the main pillar that supports the rule of law and this is the reason why important financial means should continue to be dedicated in Kosovo to developing an independent judicial system. It is necessary to focus on building the legal capacity of judges and on creating safeguards against the corruption and pressures they might be subjected to, as well as to develop effective mechanisms against the misconduct of judges. At the same time, there is an urgent need to improve the functioning of the courts themselves, the efficiency and impartiality of the cases managements and the speed of delivery and execution of the courts decisions. The failure to improve the situation can only lead to further confusion and the general lack of trust of the population in the judiciary, which is detrimental to the society as a whole.

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

Human rights protection in Kosovo has generally improved with the entry into force of the Constitution, the growing obligation of UNMIK and the Kosovo Government to report on the human rights situation and about the implementation of international human rights instruments in Kosovo on one hand, and also with the set up of the Human Rights Advisory Panel and the creation of human rights units at municipal level. However, it is still questionable whether the protection afforded to human rights is effective. Indeed, if human rights protection mechanisms exist, but are not effective, or if a large part of the population are not aware of both what their human rights are and how to protect them, the whole idea of human rights protection loses its pertinence.

This part will thus outline international and domestic human rights instruments and the level of awareness of such instruments within the general population. Also, it will focus on human rights protection mechanisms and how effective they are in practice.

A number of international human rights instruments have been a part of the domestic law in Kosovo since 1999 and the Constitution of the Republic of Kosovo that entered into force on 15 June 2008 also guarantees the direct applicability of the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights and its Protocols; the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; the Council of Europe Framework Convention for the Protection of National Minorities; the

Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; and finally the Convention on the Rights of the Child.

In February 2006, UNMIK, in cooperation with the then PISG, submitted a report on the human rights situation in Kosovo since June 1999 to the UN Human Rights Committee that issued its final recommendations on the report in July 2006. The Human Rights Committee also requested UNMIK, in cooperation with PISG, to submit information on the follow-up given to the Committee's recommendations concerning the issues of the investigations of all outstanding cases of war crimes, crimes against humanity and ethnically motivated crimes committed before and after 1999 and the implementation of effective witness protection programmes; the investigations of all cases of disappearances and abductions of persons who continued to be reported as missing as of May 2006; and finally the issue of sustainable returns of displaced persons.

UNMIK submitted its response to the Human Rights Committee in March 2008 and these issues will be further discussed in a session foreseen in July 2008.

The UN Committee on Economic, Social and Cultural Rights also asked UNMIK, in cooperation with PISG, to prepare a report about the enjoyment of economic and social rights in Kosovo since June 1999. The report has been submitted with several months delay in October 2007 and was followed in May 2008 by a list of issues prepared by the UN Committee to be taken up in connection with the report. The issues in question are related, inter alia, to the preparation and dissemination of the UNMIK report; the reason why the Covenant has been omitted from Chapter 3 of the Constitutional Framework for Provisional Self-Government in Kosovo and from article 22 of the Constitution of the Republic of Kosovo; the nature of the measures taken to ensure that the recommendations of the Ombudsperson Institution are being implemented by the PISG and the KPS; the issue of the independence of the Human Rights Advisory Panel; and others issues relating to the implementation of general and specific provisions of the Covenant. UNMIK is expected to tentatively send its response by August 2008 to allow the report to be presented and discussed in the session of the UN Committee in November 2008. To this date, the civil society has not yet submitted to the Committee a much needed shadow report in the implementation of the International Covenant for Economic, Social and Cultural Rights (ICESCR).

It should be emphasized that the fact that the ICESCR has, despite the criticism of international human rights experts and NGOs, still not been integrated in Article 22 of the Constitution of the Republic of Kosovo as an international human rights treaty that is directly applicable in Kosovo, continues to be a constant concern for the Ombudsperson Institution. This means that some of the rights contained in the ICESCR, such as the right to adequate housing, the right to adequate working conditions and a number of social and economic rights continue to lack a proper and consistent legal protection.

In June 2007, the Committee on the Elimination of Discrimination against Women in its concluding observations on the report submitted by the Republic of Serbia requested UNMIK, in cooperation with PISG, to report on the implementation of the Convention in Kosovo since 1999, by 1 June 2008. However, it appears that UNMIK has asked for an extension of its deadline for

the submission of the report that is currently being compiled by the Kosovo Agency for Gender Equality.

In June 2008, the Committee on the Rights of the Child in its concluding observations on the report submitted by the Republic of Serbia, also requested UNMIK to provide information on the implementation of the Convention of the Rights of the Child in Kosovo.

The Constitutional Framework for Provisional Self-Government in Kosovo and the new Kosovo Constitution both foresee the direct applicability in Kosovo of the Council of Europe's Framework Convention on the Protection of National Minorities (FCNM). Following the signature in August 2004 of an Agreement between the Council of Europe and UNMIK related to the monitoring of the Framework Convention, UNMIK submitted in June 2005 its report which was also followed by the submission of a shadow report compiled by the civil society in September 2005 and the subsequent opinions and recommendations of the FCNM Advisory Committee on the implementation of the FCNM in Kosovo issued in March 2006.

The implementation and the monitoring of the FCNM is a particularly challenging task in Kosovo and the Council of Europe Secretariat of the FCNM asked UNMIK, in cooperation with the PISG, to provide a follow-up report in July 2007 on the implementation of the Advisory Committee's recommendations. To this date, the follow-up report has not been submitted by UNMIK to the Council of Europe.

In the meantime, the Advisory Office for Good Governance within the Prime Minister's Office, with the technical help and support of the Ministry for Communities and Return, the Council of Europe and the OSCE Mission in Kosovo, has initiated in June and July 2007 a round of discussions with the human rights units in all the Ministries to allocate the responsibilities of each Ministry in the implementation of the FCNM Advisory Committee's recommendations, as well as to identify the objectives and actions that each Ministry should undertake to ensure an effective implementation of the recommendations. The result of these discussions has been reflected in a set of matrixes that was meant to be further discussed within the various departments of each Ministry, commented and amended, and finally endorsed and implemented by the Ministries. However, a new round of discussions took place in April 2008 and revealed that the level and speed of implementation of the actions plans and matrixes has varied across the respective Ministries.

It should also be underlined that the implementation of some recommendations does not come under the responsibility of Ministries but rather independent institutions such as, inter alia, the Kosovo Judicial Council or the Independent Media Commission, who very often remains unaware of their obligations under the FCNM and of the Advisory's Committee recommendations.

In August 2004, an agreement between UNMIK and the Council of Europe granted the Council of Europe's Committee for the Prevention of Torture the right to access all facilities where people are deprived of their liberty in Kosovo in order to monitor the implementation of the European Convention for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This agreement has not been implemented pending the outcome of negotiations with NATO. In July 2006, an agreement between the Council of Europe and NATO finally defined the modalities of the inspections to NATO run detention facilities. The Committee conducted its first official visit to Kosovo detention facilities at the end of March

2007, when it visited prisons and other detention facilities and mental health facilities. After having provided the competent authorities with preliminary observations at the end of its visit, the Committee submitted its report to UNMIK and NATO in July 2007. UNMIK's observations to the report are still pending and the later is still not public yet, preventing for more than one year many international and local relevant actors in the field of human rights protection in Kosovo from the benefit of the Committee's observations.

Although the preparation of the reports on the implementation of these various international instruments is an important first step towards fostering the perception of accountability of both international and the local structures with regard to the human rights protection in Kosovo, many aspects remain problematic.

The repetitive delays in submitting the reports and responses by UNMIK undermine the relevance of the recommendations made by the various Human Rights Committees that slowly loose of their impact and strength as the time passes by, and circumstances change.

As mentioned earlier, the Committee on Economic, Social and Cultural Rights, in its list of issues to be taken up in connection with the Kosovo report on the implementation of the ICESCR, pointed out the issue of the translation into Albanian and Serbian, and to the extend possible, into languages of minority communities in Kosovo, of reports submitted by UNMIK, concluding observations presented by the various UN Committees and other relevant documents on the human rights situation in Kosovo. This comment would also be relevant, to a certain extend, to the Council of Europe Conventions, related reports and observations.

Indeed, there have been some important delays in the translation of keys documents and reports in Albanian and in Serbian, when some other documents are still not translated at all, which poses serious limits on the circle of potential readers. It concretely prevents the local authorities from being aware of the content of the findings of the reports and the recommendations, as well as from developing a sense of ownership over the issues at stake, which is eventually detrimental to the effective implementation of those recommendations. This is without mentioning the situation faced by members of the civil society whose participation in the reporting process is *de facto* undermined by the lack of available information in a local language.

Likewise, the majority of the Kosovan population, including the public administration, many judges and lawyers, is still not aware of these instruments and is not familiar with the rights that they guarantee. The same holds true for domestic and specialized laws protecting human rights such as the Anti-Discrimination Law and the Law on Gender Equality, the Law on the Use of Languages and the Law on Freedom of Religion.

Further, many lawyers and judges are not at all familiar with the case law of the European Court for Human Rights. In practise, they can not be expected to review and analyze the human rights principles enshrined in the new Constitution and in other laws or sub-legal acts in light of the jurisprudence of the European Court, although it is foreseen in Article 53 of the Constitution.

Most people have only a very vague idea of what human rights actually are and in public, the term is usually used in political debates which often have very little do to with human rights as such.

This lack of knowledge is largely because these laws are not readily available to the public. Most of them are available on the internet, although it is still a laborious exercise to find them. Further, Kosovo laws and international instruments are not available at libraries or other public places and only selected public institutions receive Kosovo's Legal Gazette. Moreover, while the Official Gazette is supposed to be translated into five languages, inaccurate translation into the different versions has been a major problem and there is no guarantee that the translation in all versions is exactly the same. To add to the confusion, there were some major issues with the inaccurate or total ignorance of amendments to the laws made by the promulgating UNMIK regulations, with the mention in the Official Gazette of the date of adoption of laws by the Assembly of Kosovo rather than their date of promulgation, and finally with the lack of order in the listing of laws.

In such a situation where even the public administration and large parts of the judiciary are not aware of what human rights are and how they are guaranteed and protected internationally and domestically, it is not surprising that these laws are not being implemented properly.

The general lack of awareness, the lack of documents translated at least in Albanian and in Serbian, the inherent complexity of the human rights protection system, the lack of certainty of the law itself and of its applicability, create in Kosovo a general feeling of mistrust of the population towards the general legal framework as well as towards human rights protection mechanisms.

With the entry into force of the Constitution, a new Law No.03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo has been adopted by the Assembly and one can only hope that its proper implementation will address the rights of minority communities in Kosovo.

The Constitution of the Republic of Kosovo also entirely dedicates its Chapter II to listing guaranteed Fundamental Rights and Freedoms and its Chapter III to the Rights of Communities and their Members. Article 112 foresees that the Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.

The joint strategy for the integration of Roma, Ashkali and Egyptian communities in Kosovo initialized in autumn 2006 and developed by the Office of the Prime Minister, the OSCE Mission in Kosovo and the Kosovo Foundation for an Open Society, was finalized in June 2008. The strategy was developed in co-operation with relevant ministries and Roma, Ashkali and Egyptian representatives addressing key areas for integration such as education, employment, housing, health, political participation, return, registration, gender, culture and media. It is regrettable that the Ministry of Communities and Returns failed to ensure its active participation throughout the development of this strategy. As mentioned in the previous annual report, the Government of the Republic of Kosovo will need to actively demonstrate its willingness, including the allocation of the needed budget, to implement this strategy in order to secure its success.

However, the drafting of the Human Rights strategy for Kosovo, coordinated by the Advisory Office for Good Governance and developed with the support of the Council of Europe, the Office of the High Commissioner for Human Rights and the OSCE Mission in Kosovo has been ongoing for more than three years now and has still not been finalized within the present reporting period, which is a growing concern for the Ombudsperson Institution.

The proper implementation of domestic human rights protection laws continues to be monitored by various international organizations operating in Kosovo. The OSCE Mission in Kosovo is the pillar of the UNMIK structure responsible for human rights monitoring, and various international and local NGO's also conduct such monitoring.

The Advisory Office for Good Governance, Human Rights, Equal Opportunities and Gender Issues that operates within the Office of the Prime Minister of Kosovo since 2002 is the Kosovo government's main human rights office. Due to this Office's broad mandate, it is involved in all governmental human rights policies, action plans and strategies prepared and implemented by the government. This Office also coordinates the work of the human rights units and the Office's Director functions as the Government's Human Rights Coordinator. Given its broad mandate and its limited capacity, this Office faced difficulties to effectively protect human rights in Kosovo. At that stage, it is however unclear to what extent the mandate of the Advisory Office for Good Governance will change with the creation of the new Office of Communities Affairs within the Prime Minister's Office. It would certainly be advisable to avoid a situation of confusion such as the one faced by the Office in its relation with the Agency for Gender Equality.

Based on Administrative Instructions No. 8/2005 and No. 4/2007, human rights units now exist in all ministries and continue to receive extensive capacity building support from the OSCE. It remains unclear whether they will also exist in the new Ministries created after the Declaration of Independence and the entry into force of the Constitution. The human rights units are competent to follow up human rights issues, to advise and to monitor the compliance towards human rights within the ministries. While in some ministries, these units have begun to receive the necessary support and have started to advise and monitor the ministries' work from a human rights point of view; others still have limited to no office space, are not functioning properly and are not involved in the everyday work of the ministries. One problem in this context is the fact that many human rights officers are obliged to fulfil other tasks within the ministries, which does not allow them to devote their full attention to these positions, besides creating conflicts of interest in some cases. But the crux issue is the lack of support devoted in some ministries by the permanent secretary to the human rights unit and also, in some occasion, the limited capacity of the members of the human rights unit themselves to deal with human rights protection and related issues.

It seems important, especially in light of the creation of human rights units at municipal level, to ensure not only the mere presence of such units at central and municipal level but also the effective capacity of their members and the undivided support from their hierarchy.

As mentioned above, in August 2007, the Ministry of Local Government Administration (MLGA) issued Administrative Instruction No. 2007/08 on the Creation of Human Rights Units at Municipal Level. After the promulgation of Regulation No.2007/30 on Self-Government of Municipalities, MLGA issued Administrative Instruction No. 2008/02 amending No. 2007/08, to ensure its compliance with Regulation No. 2007/30.

Administrative Instruction No. 2008/02 foresees that each municipal human rights unit will have three officers with a full-time contract, adequate office, and equipment. By May 2008, twenty six municipal human rights units had been created throughout Kosovo but in the four municipalities in the Northern part.

While the above units are governmental and municipal human rights monitoring and protection organs, the Ombudsperson Institution continues to be the only independent human rights protection mechanism in Kosovo that holds the Kosovo Government accountable by law and that is specifically mandated to investigate human rights complaints and to monitor general situations from a human rights perspective.

Originally, the Ombudsperson Institution, under the leadership of an international Ombudsperson, was also competent to examine human rights complaints against UNMIK. At the end of 2005, the mandate of the international Ombudsman ended and a new UNMIK Regulation No. 2006/06 was passed, which foresaw a limitation of the Institution's jurisdiction to cases against the local administration. The Ombudsperson Institution came under the temporary leadership of an Acting Ombudsperson until the appointment of a new local Ombudsperson.

The Acting Ombudsperson repeatedly requested guidance from UNMIK on how to proceed with pending cases against UNMIK, but did not receive a response until half a year later, when the then Principal Deputy SRSG confirmed that all cases against UNMIK should be dealt with by the newly established Human Rights Advisory Panel. This panel was created to examine human rights complaints directed against UNMIK, in line with UNMIK Regulation No.2006/12 on the Establishment of the Human Rights Advisory Panel.

By mid-2007, there was nevertheless a growing confusion on whether the Institution had really lost its competences over UNMIK or not. In a letter sent to the Acting Ombudsperson in January 2008, the SRSG finally clarified that UNMIK interpreted the relevant provisions of UNMIK Regulation No. 2006/06 to mean that until a new local Ombudsperson had been appointed, the temporary leadership of the Institution retained jurisdiction over complaints against UNMIK. As a result of the long unresolved question of whether the Institution had jurisdiction over UNMIK or not, more than 50 cases against UNMIK had not been processed for over a year.

Once it had become clear that the Institution still had competences over complaints against UNMIK, the question arose of how to divide competences between the Ombudsperson Institution and the Human Rights Advisory Panel, which was appointed in January 2007 and held its inaugural session in November 2007, one and a half year after it had been established by UNMIK Regulation No. 2006/12. In meetings between the Ombudsperson Institution and members of the Human Rights Advisory Panel, both organs decided to resolve this question by cooperating closely with one another and agreed that the Ombudsperson Institution would advise complainants who had claims against UNMIK about the option of introducing a new complaint with the Human Rights Advisory Panel.

The Human Rights Advisory Panel is mandated to examine complaints from any person or group of persons claiming to be victims of human rights violations by UNMIK. It however can only deal with complaints related to alleged violations of human rights that occurred since 23 April 2005 or arising from facts that occurred prior to this date where these facts give rise to a continuing violation of human rights.

The Panel is composed of three impartial members who have been appointed by the SRSG several months after their nomination by the President of the European Court of Human Rights. One of the three original Panel members resigned to take up another post in March 2008, and

was replaced by a new member who was sworn in and began participating in the session held in May 2008.

The Panel has received over thirty cases to date, claiming violations, inter alia, of the right to peaceful enjoyment of property, access to court and effective remedy relating to the decisions of the Housing and Property Claims Commission and its successor organization, the Kosovo Property Agency, and the Kosovo Trust Agency. Several complaints relate to the procedural and substantive aspects of the right to life.

The Panel has found seven complaints inadmissible on the basis that the complaint falls outside the time limit for submission of complaints or the subject matter of the complaint does not fall within the Panel's competence. The Panel has also communicated a number of complaints to the SRSG, inviting him to submit, on behalf of UNMIK, comments on their admissibility and merits, as foreseen in the process provided by the Regulation establishing the Panel and the Panel's Rules of Procedure. The latter were largely based on the Rules of the European Court of Human Rights.

In the absence of any response from the SRSG, the Panel has found eleven complaints admissible and again communicated these complaints to the SRSG for comments on the merits, still following the process established in the Regulation and Rules of Procedure. To date the Panel has not received any responses from the SRSG in relation to the complaints that have been found to be admissible, despite the expiration of the 20 day deadline (set by Section 11.3 of the Regulation). Thus, until now, it has not yet adopted an opinion on the merits. The remainder of the cases is being considered by the Panel or awaiting further information requested from complainants.

The Human Rights Advisory Panel's administrative placement within UNMIK may affect negatively the perception of the Panel as an independent body, especially considering the administrative and practical constraints encountered by the members of the Panel whose contracts are with UNMIK, while the Panel is resourced with a budget and secretariat staff from UNMIK.

At the same time, as mentioned earlier, the Panel's members are nominated by the President of the European Court of Human Rights and are all of high morality and impartiality which is a guarantee for the independence of the operations of the Human Rights Advisory Panel and its deliberations.

However, the Human Rights Advisory Panel can only issue findings and recommendations and has no power to enforce its recommendations while the SRSG has the exclusive authority and discretion to decide whether to act on its findings, which could eventually impede on the nature of the Panel's findings.

Nevertheless, as Section 1.3 of UNMIK Regulation No. 2006/12 requires that the decisions and recommendations of the Panel are to be made public, there will be serious monitoring and scrutiny of the SRSG's response to such recommendations.

Although the final configuration of UNMIK and its relation with EULEX after the entry into force of the Constitution still remains undecided, it is clear by now that the UNMIK will remain in Kosovo for a still undetermined time and that a decision will need to be taken to ensure the accountability of EULEX. There are discussions whether the Human Rights Advisory Panel or the Ombudsperson should be competent to examine the potential complaints against EULEX, or

whether a third mechanism should be created specifically for EULEX. This will need to be further discussed and legally clarified during the reconfiguration period and after the effective deployment of EULEX.

As mentioned above, apart from the problems that arose due to the unclear question of its mandate, the Ombudsperson Institution has also been subjected to the much more wide-reaching lack of clarity with regard to its leadership. While its daily work of receiving and investigating human rights complaints continues as before, continuing delays in the process of appointing a new Ombudsperson create a sense of insecurity within the Institution.

At this point, the Ombudsperson Institution has been under temporary leadership following the expiration of the International Ombudsperson's mandate in December 2005. This reporting period alone has seen two attempts on the side of the Kosovo Assembly to appoint a new Ombudsperson, both of which failed for different reasons. The latest suspension of appointment proceedings in June 2008 was the third one in a row of unsuccessful attempts to appoint a new Ombudsperson.

Following the first attempt in December 2006, which failed because none of the short-listed candidates obtained the required number of votes, the Kosovo Assembly issued a new call for nominations in April 2007, which was re-issued in June 2007 to comply with the amendments made by UNMIK Regulation No. 2006/15 of April 2007 to the existing UNMIK Regulation No.2006/06 on the Ombudsperson Institution, clarifying and simplifying the appointments proceedings before the Assembly. After this call for nominations, around twenty candidatures were received and by October, the competent selection committee within the Kosovo Assembly had presented a list of three short-listed candidates. However, the results of the selection procedure, its lack of transparency and the arbitrary questioning and assessment of the candidates during the interviews resulted in considerable public criticism of the process as a whole, mainly by the international community (notably the UN High Commissioner for Human Rights' Office in Prishtinë/Priština, the Council of Europe's Office and the OSCE Mission in Kosovo), by local and international NGOs (among which Human Rights Watch, Amnesty International, Norwegian Helsinki Committee) operating in Kosovo and by the former international Ombudsperson. As a result of this pressure, the Assembly Presidency decided to suspend the entire process until the manners and criteria for selecting the three short-listed candidates had been reviewed.

After elections in autumn 2007, the new Assembly Presidency decided that it did not want to continue the flawed selection process initiated by its predecessors and issued a new call for nominations in March 2008. Three candidates were short-listed by May 2008, but on 9 June 2008, the Assembly Presidency decided not to put the issue at vote without further explanation or indication of the reasons that motivated its decision. To date, the Assembly Presidency has still not rescheduled the vote.

While these constant delays in appointing new leadership have not damaged the work of the Institution as such, they have created a constant uncertainty about its future, which the Ombudsperson Institution, especially in these times of transition, does not need.

One factor which has been hampering the work of the Ombudsperson Institution so far is its relatively weak mandate, which does not allow it to initiate or take part in disciplinary or court

proceedings in cases where it finds that respondent public authorities have violated an individual's human rights. As opposed to other Ombudsperson Institutions, which may initiate legal proceedings or even impose fines on uncooperative public offices, the Institution's strongest and final measure has so far been publishing a report stating that there has been a violation of human rights based on the information at its disposal, and to inform the Kosovo Assembly and/or the media.

Unfortunately, to complete its examination of cases and also to ensure that it has sufficient funding, the Institution needs to rely very much on the cooperation of the very public authorities that it is targeting in its reports, which under the current UNMIK Regulation No. 2006/06 are not even obliged to justify any failure to cooperate or to follow the recommendations of the Ombudsperson.

The new Kosovo Constitution, which entered into force on 15 June 2008, indicates a strengthening of the role of the Ombudsperson by allowing him/her to initiate proceedings before the Constitutional Court to address the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, of regulations of the Government, and of municipal statutes. The Constitution also foresees in its Article 132-3 that "every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law".

The Draft Law on the People's Advocate is still at the drafting stage in the Government and was not sent to the Kosovo Assembly for review and approval within the reporting period.

The extent of the cooperation of both international and local authorities varies greatly, depending on policies of the individuals working in various offices and institutions. In some cases, the cooperation with the Institution is excellent, letters are responded to in time, and officials are always willing to meet with the Ombudsperson Institution representatives to discuss certain cases. In other cases, the Ombudsperson Institution either receives no response to its requests for information, or it receives incomplete or inadequate responses. In those cases where there is little cooperation, the examination of complaints can drag on for years. Due to the still weak government structures in Kosovo, complaining to the respective supervisors of such unwilling counterparts often has little to no effect.

It should be noted that in December 2007, the SRSG started appointing two temporary Human Rights Advisors and that as of May 2008 a Senior Human Rights Advisor has been permanently appointed to the SRSG. As a result, the cooperation with UNMIK has improved considerably and at the beginning of 2008, the Institution suddenly received responses to letters written several months or even years earlier. This has been a very positive development, which has helped the Ombudsperson Institution conclude many cases that had been pending for years.

As discussed earlier, the Ombudsperson and the Human Rights Advisory Panel are the only specialized human rights protection mechanisms in Kosovo today. As outlined above, they both have inherent weaknesses in their mandate – while the former suffers from the fact that it can only be successful if it receives cooperation from public authorities, the latter is a part of UNMIK and is, as its name already says, of an advisory nature (see Section 1.3 of UNMIK Regulation No. 2006/12).

These weaknesses could be balanced out if there were a proper independent judicial body in Kosovo competent to examine human rights complaints and able to issue binding court decisions that may, if necessary, be executed by force. The Constitutional Court foreseen by the Constitution will not examine individual human rights complaints. While courts in Kosovo, when debating civil or criminal cases, automatically need to take into consideration the rights and freedoms of individuals, there is as yet no specialized human rights court. Such a judicial body would be of crucial importance in Kosovo since, as mentioned in previous report, its territory remains one of the few areas in Europe where the European human rights protection mechanism of the Council of Europe does not apply. Of course, this would imply that there would be judges sufficiently familiar with the jurisprudence of the European Court of Human Rights and reasonably competent to analyze a case in light of the legal human rights principles developed by the European Court. Moreover, although Kosovo declared its independence and has been recognized by a large number of European states, its possibility to sign a convention that is essentially a multilateral treaty between states remains unclear at the time and will hopefully be clarified in the near future.

An ideal human rights protection cycle starts out with laws guaranteeing human rights and freedoms. These laws and the individuals benefiting from such rights are then protected by a human rights protection mechanism based on the law. Ideally, individuals may thereby approach a designated body and complain about human rights violations. This body, be it an independent institution or a court, will then ensure that the violation stops or that the affected individual is compensated for damages incurred.

In Kosovo, most of the rights and freedoms of individuals are set out in the law, either in domestic laws or in the international instruments that are directly applicable. However, the legal basis for the two human rights protection mechanisms, the Ombudsperson and the Human Rights Advisory Panel, already have inherent weaknesses that prevent either body from ensuring that a violation stops. These weaknesses are not balanced out by the courts in Kosovo, since the regular courts suffer from alleged corruption, mismanagement and a huge backlog and there is no specialized court for human rights complaints.

For the above reasons, while human rights violations are raised and may also be discussed in the media, the mechanisms in place still do not have the power to actually prevent or remedy human rights violations. At the same time, the majority of the population is not fully aware of their rights and thus often do not even complain, because they have come used to the situation as it is or believe that nobody can help them anyway. Under such circumstances, the actual protection of human rights depends more on fate and on the actual circumstances of each individual case than it normally should. Ensuring equal protection for all people in Kosovo should thus primarily be the priority of all powers in Kosovo, the legislative, executive and judiciary. The Ombudsperson Institution has no mandate to act as a substitute of these powers as it only intervenes once there is an alleged breach of human rights.

Minority Communities in Kosovo

While the repartition of the general population in Kosovo has not changed, with ethnic Albanians representing around 90 % of the whole population against 10% made up of Serbs, Roma, Turks, Bosniaks, Gorani, Askalis, Egyptians and Croats, this reporting period has been characterized by the political developments concerning the Kosovo's status issue, and the subsequent Declaration of Independence by the Kosovo Government on 17 February 2008. This increased the divisions among the different ethnic communities in Kosovo as the ethnic Albanian population welcomed and celebrated the Declaration of Independence, hoping for a better future and an improvement of the economic situation, whereas the minority communities proved to be divided by their stance regarding the independence of Kosovo. The Serbian community and a part of the Roma community refuse to acknowledge the new situation. Instead, they strengthen their support and consolidate their ties and dependence towards the parallel institutions administrated by the Republic of Serbia in Kosovo, especially in the northern part of Kosovo. On the other hand, members of the Gorani, Bosniak, Turk, Ashkali and Egyptian communities and parts of the Roma community acknowledged the independence of Kosovo as a reality. Some of them accordingly chose to integrate in the Kosovo society while some of them continue to use parallel structures financed by the Republic of Serbia.

The Declaration of Independence of Kosovo has furthermore been accompanied by numerous incidents in the northern part of Kosovo. While peaceful protests had been organized within enclaves in other parts of Kosovo, the Declaration of Independence triggered great indignation in the northern part of Kosovo and the situation escalated soon after 17 February when protesters set fire to and destroyed border crossings with Serbia in Jarinje/Jarinje in the Municipality of Leposavić/Leposaviq and Bërnjak/Brnjak in the Municipality of Zubin Potok. Following these incidents, UNMIK Police and parts of the peace-keeping force KFOR took control of these border crossings.

One month after the Declaration of Independence, on 17 March 2008, some elements of the population took control of the premises of the Municipal Court in the northern part of Mitrovicë/Mitrovica. KFOR soldiers and UNMIK Police apprehended and removed the occupants from the premises and the situation soon escalated to turn into a riot like situation. Many demonstrators and UNMIK police officers were seriously or lightly injured, and one UNMIK police officer and one demonstrator lost their lives. After these events, the situation in the northern part of the town calmed down.

Albanian and Serbian communities continued to essentially live separate lives and the situation has even worsened after the Declaration of Kosovo's Independence. The cooperation between the two communities has now shred down to a minimum, although traditionally, in areas where Albanians are a majority, there was little to no contact with their counterparts of the Serbian, Roma and to certain extends Bosniak and Gorani communities. It should also be mentioned that Albanian are in a minority situation in the northern part of Kosovo.

Next to political tensions and disagreements over status, the issue of language represents another major obstacle to restoring cooperation between Albanians and a number of minority communities. Serbs, Bosniaks, Gorani and Roma residing in Serbian-speaking areas do not speak the Albanian language. The same occurs when displaced persons return to an area where the majority of the population is ethnic Albanians, which prevents them from integrating in the

society. This issue has continuously been raised by the Ombudsperson Institution over the last years and was also discussed by the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) in its opinion on the implementation of the FCNM in Kosovo. As in the previous reporting periods, however, the competent public authorities have made little efforts to offer free Albanian language courses to the members of minority communities who would wish to learn. The main example of success story worth mentioning is the organization of Albanian language lessons for the Turkish community by the Turkish agency TIKA. At the same time, one has to admit that whenever a public administration would offer such possibility, very few people would show interest in learning Albanian. In this regard, there is a need for a strong will to be demonstrated both by the public authorities of Kosovo and the members of minority communities to bridge the gap between communities and live together rather than aside in Kosovo. Language is of course one of the element that will bring people to understand each other.

It is also worth mentioning that there are cases where members belonging to minority communities were not employed in public service positions due to the fact that they could not speak Albanian. Such an example was reported in the Municipality of Prizren, where the entire announcement procedure for vacant positions in KEK was conducted in Albanian. Members of the Bosniak and Gorani communities complained that they did not entirely understand the questions asked to them during the interviews.

Many dwelling places inhabited by minority communities, in particular the Serb and Roma enclaves, are still not being visited regularly by municipal officials. At the same time, the responsible municipalities do not allocate funds to improve their infrastructure.

Also, the Bosniak community continues to face problems in the valley of Zhupë/Župa in the Municipality of Prizren. The problem arose some time ago when the Municipality decided to build 400 weekend cabins in this picturesque valley with the plan of selling them or renting them out later. The construction of such cabins would not only disturb the peace and quiet in this valley, but also deprive the nearby Bosniak villages of their access to potable water since their water supplies is coming from this valley and there is not enough water supply to distribute to both the villages and the weekend cabins. Thanks to the commitment of the Ombudsperson Institution to this problem, there are indications that the situation in the valley of Zhupë/Župa may improve.

In May 2008, the Ombudsperson Institution issued a report stating that the Municipality of Prizren had violated the applicable law (the Law on the National Park of “Sharri Mountain”, the Spatial Planning Law as well as the Law on Nature Conservation) by constructing these cabins in the location of Prevala/Prevalac, which is considered to be a national park. In this report sent to the President of the Assembly of Kosovo, the Acting Ombudsperson recommended that the Government of Kosovo undertake immediate measures to discontinue further construction. The Ombudsperson Institution also recommended the Assembly of Kosovo to establish a special committee, which, in cooperation with relevant institutions, including the Ombudsperson Institution, should make an overall assessment of the situation created in this national park. This committee should also report to the Assembly of Kosovo concerning the irregularities committed and the necessary measures to be taken to protect the national park and ensure that the situation is reversed.

At the beginning of June 2008, the Municipality of Prizren decided to stop the construction of the cabins in Zhupë/Župa, where by dozens of cabins had already been built. The Ombudsperson Institution will continue to monitor whether the decision of the Municipality of Prizren is implemented and will react in accordance with the situation.

Tensions between the Albanian and Serbian communities continued to lead to interethnic incidents, even if there were less incidents of this nature in this reporting period compared to previous years. The stoning of busses transporting mainly Serbs to and from enclaves in Skenderaj/Srbica Municipality and returnees in villages in the Pejë/Peć region continued to occur during this reporting period. In July 2007, two Serbs' houses were burned in Rahovec/Orahovac Municipality. Due to the delayed reaction of the fire brigade, the houses were completely burned to the ground. In August 2007, unknown persons wrote anti-Serb messages on the walls of the Orthodox Church in Gjilan/Gnjilane, whose premises were being used as a school for Serbian students. Also in Gjilan/Gnjilane, in December 2007, a Molotov cocktail was thrown into the house of a Serbian family. Fortunately, nobody was injured or wounded. By the end of September 2007, two priests at a Church yard in the village Binaç were gun fired but were not wounded. In December 2007, a Serbian house was attacked in Obiliq/Obilić Municipality and according to the statements of KPS officials, the investigation of this case is still ongoing.

In January and February 2008, two armed attacks occurred against passengers travelling with the company "Adio Tours" from Dragash/Dragaš and Gračanica/Gračanicë to Belgrade. Masked and armed individuals stopped the bus and asked passengers to show their identification cards. The northern part of Mitrovicë/Mitrovica, while mainly inhabited by Serbs, also has Albanian and Bosniak neighbourhoods. In January and February 2008, a house in the Bosniak neighbourhood in the northern part of Mitrovicë/Mitrovica was burned down and two other houses were stoned.

In April 2008, two armed attacks from the Albanian village Muhagjer were directed at the Serbian village of Bërnjak/Brnjak, near the village Suhadoll I Banjës/Banjski Suvi Do in northern Kosovo. When KPS officers and KFOR arrived at the scene, they were also shot at with automatic gun fire.

In May 2008, an old man of Serbian ethnicity who had recently returned in Deçan/Dečani, was beaten up. This incident was also confirmed by KPS officers, but the perpetrators have not yet been arrested. Further, in May 2008, a special KPS unit beat up a minor from Gračanica/Gračanicë, following a verbal dispute. This incident spread fear among young people living in this enclave in the central part of Kosovo.

Despite these incidents and the continuing fragility of the general situation in Kosovo, the freedom of movement for Serbs and Roma generally continued to improve, although after the Declaration of Independence it became even more problematic to travel from the northern part of Kosovo to the other locations in Kosovo.

As mentioned in previous reporting periods, public transport indeed remains problematic for Serbs and Roma, whereas Turks, Bosniaks, Gorani, Askali and Egyptians have generally no problem moving around in the area they live. The usual public transport operating in other parts of Kosovo does not operate in enclaves inhabited by Serbs and Roma. The only remaining means of transportation are private transport or minibuses used by members of the above-mentioned

communities travelling from the central to the northern part of Kosovo. Since January 2007, the Ministry of Transport and Telecommunications and the Ministry for Return and Communities took over responsibilities to provide special humanitarian bus transport from the UNMIK Department of Public Administration. It is, to date, the only service provided by the Kosovo Government specifically to the minority communities and in particular to the Serbian community. Humanitarian transport includes 16 bus lines in the entire territory of Kosovo, covering mainly enclaves and villages inhabited by Serbs and Roma. According to various survey realized by OSCE, this service has proven to be a success in terms of number of users, quality of the service, passenger satisfaction levels and access to basic rights. However, in June 2008, OSCE also raised serious concern about the government incompliance with the legal and administrative provisions regulating the service, in particular concerning the choice of the provider of this service which was until now a Kosovo Serb company trusted by passengers. OSCE underlined that the change of provider might undermine the users' fragile confidence in the Kosovo authorities. It would be logical to eventually include this kind of transport into the general transportation system but it is far to be the case at that stage.

Prior to the Declaration of Independence, the railway line running from Fushë Kosova/Kosovo Polje to the northern part of Mitrovicë/Mitrovica functioned without any problem. However, in March 2008, the public enterprise "Serbia Railway", upon its own initiative, took control of railway traffic in the northern part of Mitrovicë/Mitrovica, and consequently, the UNMIK and Kosovo Railway took the decision to stop the railway traffic from the north to the central part of Kosovo. This decision had for consequence to leave minority communities living in enclaves in central Kosovo without this kind of transportation, which in some villages was the only means of transport and communication with the northern part of Kosovo.

Members of the Serbian and Roma communities living in areas surrounded by the Albanian majority population still suffer from the fear of being attacked, be it real or perceived. Even after their houses, destroyed during the armed conflict of 1999 and the riots in 2004, are reconstructed, many of the owners do not dare to return to their homes and live there, mainly due to the lack of opportunities for economic development and also because of their perceived fear. They very often sell their houses and move to Serbia or Montenegro or to other enclaves in Kosovo where they feel safer because they live with members of their own communities and they are physically less isolated due to the lack of transport.

Concerning the reconstruction of houses of Roma, Ashkali or Egyptian, destroyed during or after 1999, this reporting period has at last seen some positive progress, in particular with regard to the Roma neighbourhood (Roma Mahalla) in the southern part of Mitrovicë/Mitrovica. During this reporting period, the return of Roma to the southern part of Mitrovicë/Mitrovica continued. After the return in 2006 of a first group of 23 Roma families, in October 2007, 11 Roma families have returned from Serbia and Montenegro, while 14 Roma families have returned from camps in Osterode, Cesmin Lug and Leposavić/Leposaviq. A large number of the Mahalla inhabitants lived for more than six years in Northern Kosovo in improvised houses under very bad health conditions.

In 2005, following pressure from the international press and the Ombudsperson Institution, UNMIK started to plan the transfer of the members of the Roma community from the Žitkovac and Kablare camps, as well as from the other temporary camp Cesmin Lug. This followed the

publications of some analyses results in which independent experts and the World Health Organization concluded that inhabitants of these camps were affected by lead poisoning, in particular children, as the camps were situated in toxic areas close to a waste dump of the Trepça mining complex containing high amounts of lead.

UNMIK thereupon began reconstructing and refurbishing the former KFOR camp “Osterode” in the northern part of Mitrovicë/Mitrovica in order to allow most of the internally displaced persons to move. At the time, various organizations including the World Health Organization (WHO) and independent experts indeed confirmed that Osterode camp provided better health, hygiene and living conditions as the land on which the camp was built was covered in concrete. According to the allegations of representatives of Osterode, assistance in food and necessary medication for treatment against lead poisoning decreased after people had moved to the camp and later on ceased altogether. The residents of these camps now only receive assistance from the Serbian Red Cross.

Also, due to the lack of funds, the health centre that functioned inside the camp had to be closed, which provoked negative reactions from the inhabitants of this camp. However, the camp is visited on a daily basis by a nurse from the Health Centre in northern Mitrovicë/Mitrovica, while once a week the camp is visited by a medical team. According to the information available to the Ombudsperson Institution, a women’s centre and a youth centre are expected to start functioning soon in this camp.

Representatives of the camp allege that the results of the blood analyses conducted in 2005 by the representatives of the WHO on the children living in camp Osterode were never shared with the children’s families. Recently, representatives of the camps Osterode and Cesmin Lug requested the Public Health Institute in the northern part of Mitrovicë/Mitrovica to conduct blood analyses of children living in the camps. The results have shown very high levels of lead in the children’s blood, in certain cases much higher than the critical limit. They also demonstrated that the lead poisoning of the children in Cesmin Lug and Osterode is at a similar level. These allegations and the ensuing tests raise serious doubts as to the reliability of UNMIK’s statements that Osterode camp is a safer place to live than the other existing camps.

The responsibility for the management of Camp Osterode was handed over from UNMIK/DCA to Ministry for Communities and Returns (MCR) on 1 May 2008. On 12 May, the Permanent Secretary of the MCR and the NGO Norwegian Church Aid (NCA) signed a Memorandum of Understanding (MoU) for the continued management of Camp Osterode for Roma, Ashkali and Egyptian displaced persons in Mitrovicë/Mitrovica through December 2008.

The MoU includes provisions which outline the responsibilities of MCR and the implementing partner NCA in working towards permanent housing solutions for the camp inhabitants, as well as in preventing the harmful practice of illegal lead smelting within the camp.

Many efforts have been realized by UNMIK to close down the camps Cesmin Lug and Leposavic/Leposaviq but they remained unsuccessful even if a considerable number of families from Cesmin Lug were relocated to camp Osterode. Even if the living conditions in the camps are very difficult, many remaining Roma persistently refuse to relocate.

The IDPs camp Plemetina/Plemetinë near Obiliq/Obilic in central Kosovo, was managed by UNHCR from 1999 until 30 June 2007 when the camp premises was officially handed over to

the Obiliq/Obilic Municipality. The last IDP family moved out of the camp in October 2007 after the finalization of the construction of their house, and the camp has since then been considered officially closed.

However, 7 families did not accept the durable solutions identified by UNHCR and the Municipality relocating them outside of the camp and decided to remain in the solid barracks of the old camp, which are used by the Municipality of Obiliq/Obilic to host social cases. These families decided to integrate locally mainly because of social (marriages, children at school) and economic reasons (more job opportunities in Plemetina/Plemetinë than in Magure/Magura). All other wooden barracks were demolished and the school and cultural centre facilities were donated by UNHCR to the Municipality which allocated them to the Roma, Ashkali and Egyptian communities.

Unemployment is a problem which affects all communities in Kosovo in general. However, because they are more vulnerable and/or sometimes not integrated in the society, many communities, especially the Serb and Roma communities, have very limited access to the regular Kosovo employment market. The unemployment rate within the Serbian community is as high as 70%; in some Serbian returnee villages, it may even reach 100%. The issue of unemployment deteriorated after a considerable number of Serbs working in the Kosovo institutions left their jobs temporarily or permanently. There were various reasons reportedly motivating this situation. Some people, especially those coming from the northern part of Kosovo were subjected to social pressure and therefore afraid to be stigmatized after crossing the bridge. Some people wanted to protest against Kosovo's Declaration of Independence, and the Government of the Republic of Serbia also promised to pay the salaries of many persons and even to employ them in government structures as long as they were to leave their jobs with what was formerly the Provisional Institutions of Self-Governance (PISG).

Serbs and Roma in enclaves and in northern Kosovo who do work, are often employed in parallel institutions of administration, education and health care financed by the Government of the Republic of Serbia. However, for a large number of members of these communities, the main source of income continues to come from agriculture, when their agricultural lands are located close to their villages. Agricultural lands that are further away generally remain not cultivated, either because the owner of the land has a real or perceived fear for his safety or because it is occupied by third persons. Therefore, a considerable number of people from these communities rely on social assistance and, to a lesser extent, on humanitarian assistance by international organizations and organizations financed by the Republic of Serbia.

Poverty is still a common phenomenon all over Kosovo which affects in particular the Roma, Ashkali and Egyptian minority communities. There is indeed a very high level of unemployment within these communities, which is far higher than the general level of unemployment in Kosovo and reaches circa 98%. This high level of unemployment is partly a consequence of the fact that many people lost their jobs after the armed conflict in Kosovo in 1999. But the lack of adequate education and qualifications of many members of these communities who very often drop out school at an early age, in particular young girls, also plays an important role. The majority of the members of these communities live at the margins of society from occasional day work and social assistance or collect of metal and other discarded materials in order to survive.

There are many places in Kosovo inhabited by Roma, Ashkali and Egyptians where the competent authorities have so far taken no sufficient measures to improve the lives of the people living there. One such example is the Kolonia settlement in the municipality of Gjakova/Đakovica, which is mostly inhabited by members of the Egyptian community. The living conditions in this settlement are very concerning and people lack basic hygienic conditions as well as drinking water and adequate shelter. As a consequence of the inactivity of the municipality and other authorities throughout the years, the living situation of the inhabitants of this settlement deteriorated dramatically. However, recently the municipality promised that it would take relevant actions to improve the situation on the ground.

Parallel health care institutions, financed and managed by the Ministry of Health of the Republic of Serbia, continue to offer health care services in areas inhabited by members of the Serbian community or communities living in these areas. Most of these parallel institutions offer basic health care, although there are few specialized hospitals in Gračanica/Graçanicë, Laplje Selo/Lapllasellë and the northern part of Mitrovicë/Mitrovica that are equipped to perform surgical interventions. These parallel structures are of course not recognized by UNMIK or by the Government of the Republic of Kosovo and there is absolutely no cooperation between parallel health institutions whose staff get paid by the Serbia Ministry of Health and the official one run by the Kosovo Ministry of Health whose staff get paid under the Kosovo Consolidated Budget.

Lack of civil status registration of Roma, Ashkali and Egyptians continues to present one of the main obstacles to these persons' enjoyment of their rights to health care and social assistance. In 2006, UNHCR assessed that many might even face the risk to become stateless as, in some situation, entire generations of a family remained unregistered, mainly due to lack of awareness of the importance to be registered. In May 2006, in order to address the problem, the Office of the Prime Minister issued recommendations to municipalities to ensure the registration of unregistered members of the above-mentioned communities within the six coming months and exempted them from paying administrative fees required to do so. UNHCR also initiated a programme for a civil registration and legal assistance campaign which continues to be funded by the US State Department BPRM. The main implementing partner of this programme, an NGO called Civil Rights Programme Kosovo (CRPK), began implementing this campaign in September 2006. According to officials of CRPK, although a large number of requests have been processed, the registration programme needs to continue first because there are still a large number of unregistered people in Kosovo and also taking into account the fact that approximately 70% of Roma, Ashkali and Egyptians left Kosovo in 1999 and only a small number of them returned. Further, although UNHCR has continuously advocated a flexible and harmonized approach in compliance with the law in all municipalities in Kosovo, the situation faced in various municipalities by members of the Roma, Ashkali and Egyptian communities when it comes to civil registration is still very challenging. The practice indeed shows that most of the relevant offices in the municipalities were not aware and therefore did not implement the recommendations of the Prime Minister's Office issued in May 2006. Many of them never exempted members of the Roma, Ashkali and Egyptians to pay late administrative fees and still refuse to do so. Further, there still is a different interpretation and application of the relevant laws across the municipalities in Kosovo.

In June 2008, UNHCR initiated a new project still implemented by CRPK and funded under the EU CARDS programme. This project aims at promoting and, when necessary, facilitating the

social inclusion of and access to human rights (civil, social and political rights) of members of the Roma, Ashkali and Egyptian communities in the Western Balkans i.e. not only in Kosovo but also in Serbia, Bosnia and Herzegovina, FYRoM and Montenegro.

The joint strategy for the integration of Roma, Ashkali and Egyptian communities in Kosovo initialized in autumn 2006 and developed by the Office of the Prime Minister, the OSCE Mission in Kosovo and the Kosovo Foundation for an Open Society, has been finalized in June 2008. The strategy was developed in co-operation with relevant ministries and Roma, Ashkali and Egyptian representatives addressing key areas for integration such as education, employment and economic empowerment, housing, health, political participation and representation, the specific situation of displaced persons and refugees, the return of failed asylum seekers, registration, the situation of women, discrimination, culture and media. As mentioned in the previous annual report, the Government of the Republic of Kosovo will need to actively demonstrate its strong willingness, including the allocation of the needed budget, to implement this strategy in order to ensure its success. At that stage, the Advisory Office for Good Governance is still finalizing the action plans to implement the strategy.

The situation with regard to education is in general similar to that of the health sector, as two education systems continue to co-exist in Kosovo. In areas inhabited by members of the Serbian community and parts of the Roma and Gorani communities, the Serbian school curriculum is followed and the staff and the schools are now exclusively financed by the Ministry of Education of the Republic of Serbia. The curriculum used in Serbian schools is considerably different from the curriculum and education system applied in the schools and higher education institutions in most parts of Kosovo. Since the Kosovan curriculum differs from the curricula in Serbia and Bosnia-Herzegovina and is not recognized in either place, students wishing to pursue higher education there or in the university in north Mitrovicë/Mitrovica can only do so if they follow the Serbian curriculum.

Schools and universities which work following the Kosovan curriculum do not offer lessons in Serbian, but only in Albanian and in some areas of Kosovo in Turkish and Bosnian languages. Turks, Bosniaks, Ashkali, Egyptians and to a lesser extent Roma, who live in areas in Kosovo inhabited by the majority Albanian population, are completely integrated into the educational system of Kosovo. Some Roma, Ashkali and Egyptians follow the curricula in Albanian language, while Turks and Bosniaks may follow primary and secondary school curricula in their mother tongue. Turks and Bosniaks are, however, not satisfied with the number of higher education institutions that students from these communities can attend in their own languages. The Turkish community has a higher education facility in its own language in Prizren and there is a class for orientalist and Turkish language at the University of Prishtinë/Priština. Bosniaks can follow higher education in their language at the higher business school in Peja/Peć and a faculty for education in Prizren. In addition, there are also private universities where members of these two communities can follow higher education in their own languages.

Roma, Ashkali and Egyptian communities still faced a very low level of education and high rate of school drop-outs. The factors leading up to this situation are numerous, but the ones that should be mentioned here are poverty, which in many cases leads parents to push or at least to not prevent their children from dropping out of school, as they often find themselves unable to finance their children's education. Another problem in this regard is the fact that many children are working in order to ensure the existence of the families. Also, the parents' generally very low

level of awareness of the importance of education also contributes to a higher level of school drop-outs by children at very early ages, especially of young girls. However, one of the most important problems, especially for Roma children, is the lack of an adequate level of knowledge of the Serbian or Albanian languages when entering school. This usually leads to bad results in school and ensuing drop-outs from school.

At the same time, there are near to no schools in the Roma language for students of the Roma community. In order to improve the situation in this field, some parallel schools in Kosovo working with the curricula of the Republic of Serbia have introduced the subjects of Roma language and culture, aimed at helping Roma children develop or improve their knowledge in that field. This is not yet the case in schools that function with the Kosovo curricula. However, the Kosovo Ministry for Education, Science and Technology has established working groups to develop a curriculum in the Roma language. The action plan for the implementation of this curriculum has been drafted and also addresses the high rate of drop-out of Roma, Ashkali and Egyptian children.

Gorani teachers, pupils and parents still refuse to integrate into the Kosovo education system, above all because of the impossibility to pursue higher education in the Serbian language within the scope of the Kosovan education system. Members of the Gorani community thus also follow the curricula used in Serbia. Gorani teachers receive salaries from the Government of the Republic of Serbia, even if officially the schools they teach at are managed by the Ministry of Education, Science and Technology of Kosovo.

The use of minority communities' languages remains problematic, despite that fact that the Kosovo Assembly promulgated a Law in October 2006 on the Use of Languages in Kosovo, according to which the Albanian and Serbian languages and alphabets are official languages and have an equal status in all institutions in Kosovo. The Turkish, Bosniak and Roma languages have the status of official languages in those municipalities where more than 5% of the population speak those languages. In addition, Turkish was introduced as an official language in the municipalities of Mitrovicë/Mitrovica, Vushtrri/Vučitrn, Gjilan/Gnjilane and Prishtinë/Priština by decisions of the municipal assemblies and following a request by the Turkish community. Furthermore, in the Municipality of Prizren, which is inhabited by a considerable number of members of Turkish community, the Turkish language was also introduced as an official language. It should be mentioned that the Advisory Committee of the Framework Convention for the Protection of National Minorities assessed that this current legal framework is overly complex and fails to spell out sufficiently clearly the operative regulations concerning language use.

Practice however shows that Kosovo institutions do not adequately respect and implement all provisions of this law. Various reports issued by the OSCE and the NGO Humanitarian Law Centre on the implementation of the Law on the Use of Languages confirmed that both at central and municipal level, although the situation varies depending on the municipalities, the translation of laws, regulations, municipal decisions and various other documents is still far to be adequate and often of poor quality, thus preventing member of minority communities from an active participation in the work of their institution in their own language. It is also rare for municipalities to respect the spelling of names in the Serbian, Bosniak and Turkish languages,

which can have long time bearing consequences when it comes to the spelling of the name of a new born in a civil status registry book.

The situation regarding postal and telephone services remains similar as the one prevailing in the last annual report. The members of the Albanian, Bosniak, Turkish, Ashkali and Egyptian communities use the services offered by Post and Telecommunications Kosovo, while members of the Serbian and Roma communities in the enclaves and central, north and south-eastern Kosovo use the Serbian postal service. Regarding mobile telephony, in November 2006 the Kosovo Agency for Telecommunications disconnected and confiscated the equipment of two mobile telephone operators that exclusively covered areas inhabited by members of the Serbian community. The signals of these operators now function only in northern Kosovo and in enclaves in central and south-eastern Kosovo. The main users of these operators are generally members of the Serbian community for whom this is the only connection with Serbia and other parts of Kosovo where these operators are still functioning, as they have no access to land lines.

It is clear that, for the most part, the situation faced by Kosovo's minority communities has not improved substantially since the last reporting period. There are also no indicators to show that this will happen in the near future. The opinions of members of the Albanian and Serbian communities in Kosovo are diametrically opposed when it comes to the issue of the Kosovo independence. Members of the Serbian Communities in Kosovo still largely continue to rely on Serbia and follow what is happening in Belgrade rather than to see their future and integrate in Kosovo. Thus, consequences of this situation are the still existing parallel institutions, which have grown stronger instead of weaker, keeping the Serbian and certain members of the Roma and Gorani communities from integrating into the Kosovo society. The future will show how the Ahtisaari's plan on the supervised independence of Kosovo will be implemented with regard to the integration of communities. The plan refers to the sustainability of minority communities through decentralization and the strengthening of their rights. The implementation of the new Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo and the Chapter III of the Constitution dedicated to the Rights of Communities and their Members will hopefully have a positive impact on the protection and living situation of minorities in Kosovo.

At the same time the importance of the role of the Albanian leadership should be underlined. Not only is it crucial that responsible actors at municipal and central level reach out towards the Albanian population and raise awareness on the legitimate rights of minorities, it is also time for them to reach out towards members of minority communities, move from their traditional and largely unconvincing rhetoric in order to show that they want to solve the concrete problems faced by the members of the minority communities and to integrate them as an active part of the Kosovo society.

The Situation of Displaced Persons and Conditions for their Voluntary and Forced Return

Almost nine years after the end of hostilities in 1999, there is still a large number of displaced persons living inside and outside Kosovo.

The right of all refugees and displaced persons to return in a safe and dignified manner to their places of origin is an internationally recognized right. According to UNHCR's estimates, a small number of displaced persons and refugees who left Kosovo following the NATO military intervention in 1999, returned to their place of origin during the reporting period. The biggest challenge remains the return of minority communities, above all the Serbian, Roma, Ashkali and Egyptian communities, but the forced returns of potentially thousand of people, in majority Albanians, to Kosovo might also start to attract more attention in the coming years.

According to UNHCR's estimates, 245 353 displaced persons from the Serbian, Roma, Ashkali and Egyptian communities were displaced after the end of hostilities in 1999; 207 069 fled to Serbia, 16 284 went to Montenegro, and 22 000 remained in Kosovo. UNHCR's statistics show that only 18 114 displaced persons and refugees belonging to minority communities returned voluntarily to their places of origin in Kosovo between 2000 and the end of April 2008. Last year, only 1 453 people returned, which is the smallest number of returnees in one year over the last four years.

Indeed, displaced persons generally suffer from a real or perceived fear for their safety when considering return and their decision to return remains largely affected by the lack of economic prospect due to Kosovo's difficult economic situation. The recent political developments and the Kosovo Declaration of Independence only add to the general tension and make it very difficult for displaced persons to assess whether or not sustainable return to their homes is possible and whether they can foresee their future in Kosovo. Despite these considerations, many internationally funded projects continue to be initiated to ensure that people, if they choose to do so, can return not only to their homes but also to places other than their homes where they feel more comfortable to live, often because they are then living among members of their community.

Most of the displaced persons belonging to minority communities still live with family or friends in Serbia, while a small number of them, especially from the Roma community, continue residing in collective centres under disastrous living conditions. At the same time a number of displaced persons from Serbian and partly Roma communities, who fled their homes in 1999 and also during the riots in March 2004, continue to live in Serb-majority areas in Kosovo, as well as in containers and collective centres in the municipalities of Gračanica/Graçanicë, Fushë Kosovë/Kosovo Polje, the municipalities in northern Kosovo, the municipality of Štrpce/Shtërpce and in villages around Prizren.

The situation of displaced persons residing in Serbia, mainly from Kosovo's Serb and Roma communities but also Ashkali and Egyptians, has not improved since the last reporting period. These people are still prevented from adequately enjoying their human rights, as the Serbian government still sees them as temporally displaced persons rather than refugees, while at the same time refusing to take measures to fully integrate them in Serbia and to assist them to do so. Thus, displaced persons from Kosovo do not benefit from the refugee status that would grant them a certain number of rights recognized by international instruments, and are also treated differently than Serbian citizens. This discrimination is reflected in the enjoyment of their rights

to social assistance, health care, receiving civil documentation, education, access to the legal system, housing and employment and is generally carried out by the local population or by administrations and local authorities. Thus, complicated bureaucratic procedures and discrimination are the greatest challenges faced by these people who often do not receive support from the Serbian government and humanitarian aid agencies and face poor living conditions. In addition to this, there is a lack of initiative and willingness of the Serbian authorities to encourage massive returns of displaced persons to Kosovo, either to their place of origin or to other places where potential returnees would feel safe and better integrate in the society.

Furthermore, the lack of documentation is widespread among the Roma, Ashkali and Egyptian displaced persons in Serbia and in Montenegro, where the situation of displaced persons is generally hardly better than in Serbia. Many of these people have no civil documentation at all as they were never registered in Kosovo or they lost their documentation when they fled their homes. They thus find it impossible to obtain a citizenship certificate in these countries. They also face the risk to be stateless and to be denied from the enjoyment of their basic civil, economic, social and political rights.

A protocol on the voluntary and sustainable returns of IDPs to Kosovo, signed between the then PISG, UNMIK and the Government of Serbia on 6 June 2006, have had so far a very limited impact. Even if this protocol helped to establish contacts and cooperation between the authorities in Serbia and the authorities in Kosovo, it did not manage to increase returns from Serbia to Kosovo and has not been implemented at all after Kosovo's Declaration of Independence in February 2008. Due to Serbia's decision not to recognize Kosovo as an independent country, displaced persons in Serbia remain the hostage of the current political situation. For the moment, there are little to no perspective for their return, while the cooperation between Serbia and the central and local institutions in Kosovo has been discontinued, without any indication that it would resume in the near future, at least concerning this issue.

The destroyed properties of displaced persons of minority communities who fled their homes during the March riots in 2004 have now for the most part been reconstructed by the Kosovo Government or by International Organizations and NGOs. However, many displaced persons do not feel safe enough to return to their homes and therefore they either visit their houses occasionally or try to sell them. Likewise, many displaced persons and refugees who fled in 1999 decide to sell their property after it has been reconstructed or after they managed to regain their usurped property. They usually go back to Serbia and sometimes to other enclaves in Kosovo where they feel more comfortable to live and where they have access to services entirely dedicated to Serbian speakers.

At the same time, four years after the violent events, some of the victims of the March 2004 violence are still waiting for the reconstruction of their houses and apartments or for the completion of the compensation proceedings for their damaged and destroyed furniture and other movable properties. Such cases involve citizens whose property is in the municipalities of Fushë Kosovë/Kosovo Polje, Prishtinë/Priština and Obiliq/Obilić. These people, although included in the list for reconstruction and compensation of damages, have not received compensation yet despite the fact that the Ombudsperson Institution has been asking for more expeditious compensation proceedings in four such cases. Indeed, since 2005, the Ombudsperson Institution has been requesting that the competent central and local authorities compensate these people or

reconstruct their properties, but so far, the authorities have not taken any action nor provided adequate responses to these requests.

The Kosovo's Ministry of Communities and Returns (MCR) is responsible for all matters pertaining to voluntary returns and minority communities. However, almost three years after its creation, this Ministry remains notoriously characterized by its lack of efficiency and capacity. On the positive side, the MCR plans to realize three major organized returns projects for displaced persons of minority communities by the end of 2008. It indeed plans to build three apartment buildings in the village Laplje Selo/Llapllë Sellë in the Municipality of Prishtinë/Priština for 60 displaced families who currently live in Serbia. The Ministry also plans to build 18 houses in the village Kllobukar/Klobukar in the Municipality of Novo Brdo/Novoberdë. The intention of the MCR is to build 15 houses for Serbian returnees and three houses for social cases from the Albanian community of this village. A third project, to be implemented by the end of 2008, consist in the construction of 14 houses for returnees of the Serbian community in the village Sinajë/Sinaje, in the Municipality of Istog/Istok.

Besides these three projects, the MCR also provides funds for projects providing assistance and support to municipalities to help them integrate returnees, develop small businesses, reconstruct infrastructure, and implement projects related to culture, sports, education etc. However, municipalities often complain that they do not receive guidance and support from the MCR.

So far, there has not been much return to urban areas in Kosovo and the initiatives taken by MCR and various organizations involved in the return process have mainly been focused on returning people of minority communities to rural areas, despite the fact that some displaced persons have expressed interest to return in urban areas. Returns to urban areas are indeed much more delicate to organize due to the higher tensions that they are likely to generate. According to the MCR, the return to certain urban areas is often obstructed by the competent municipal authorities.

For example, last year the MCR took the initiative to return 46 Serbian families from Pejë/Peć, whom had been living in Montenegro for nine years. These families had expressed their wish to return to their homes, but the municipal authorities in Pejë/Peć still refuse to cooperate with the Ministry of Communities and Returns on this issue. The MCR faces the same problem when it comes to returning people to the city of Prishtinë/Priština.

The MCR has recently taken the lead in the Steering Group for Returns, which was established in 2006 and previously led by the Ministry for Local Government Administration. This Steering Group deals with issues related to Standards 3 and 4, respectively standards on Freedom of Movement and Sustainable Returns and the Rights of Communities and their Members. This Steering Group drafted an Action Plan, according to which the Group should meet once a month, submit reports about these standards and their progress in relevant municipalities. The Ombudsperson Institution participates in the work of the Steering Group as an observer. This Steering Group has recently intensified its work but it is not clear whether it has been successful in improving the implementation of Standards 3 and 4 over those past years.

Despite these initiatives, the sustainability of the voluntary returns in locations where Serbian displaced persons are a minority living among the ethnically Albanian majority remain problematic due to the overall lack of employment opportunities, primary health care institutions

and education facilities, the difficult access to occupied agricultural land and the occasional provocations and intimidations. Such incidents lead many returnees to doubt whether it is possible for them to enjoy security, and they only occasionally come to visit their reconstructed houses. This is for example the case of returnees in the village Srpski Babuš/Babushi in the Municipality of Ferizaj/Uroševac. As mentioned earlier, returnees, Serbs and Roma in particular, generally feel more comfortable to return in places where they can live with people from their community because they have families, social network and better access to services in their own language. However, it should be underlined that the general security situation and freedom of movement has improved over the past years, despite the continuous occurrence of sporadic, and sometimes dramatic, incidents that then have a very strong impact on displaced persons and returnees belonging to minority communities.

The OSCE Mission in Kosovo published a report in October 2007 assessing that municipalities in Kosovo had so far not done enough to adequately implement the existing Manual for the Sustainable Return of IDPs adopted in July 2006. In this report, the OSCE concluded that a lack of funds, access to public services and lack of coordination between the actors responsible for returns are the main factors that interrupt the process of returns. In addition to this, the report also stated that not all municipalities have developed strategies for the return of displaced persons, while those who already developed such strategies have only partially implemented them.

In the last reporting period, the Ombudsperson Institution raised the issue of the return of displaced persons from the Roma and Egyptian community in the village of Rudesh/Rudeš in the Municipality of Istog/Istok. This village was destroyed following the NATO intervention in 1999 and its inhabitants have been living in collective centres in Montenegro for the last nine years in very difficult living conditions. These displaced persons expressed their wish to return to Kosovo and this request has been supported by the municipal authorities in Istog/Istok, UNHCR and also initially by UNMIK. However, the decision to allocate land of the village Rudesh/Rudeš to the construction of settlements for the Roma and Egyptian returnees was suspended in mid-2007 by UNMIK. The suspension of this decision was related to the fact that in the comprehensive proposal for the Kosovo Status Settlement prepared by the United Nations Secretary General's Special Envoy for Kosovo (UNOSEK), this village became part of the protective zone around the nearby Gorioč Monastery. The SRSG thus suspended the return of these people to their place of origin despite the initiatives of the municipal authorities in Istog/Istok, the OSCE and many international non-governmental organizations dealing with human rights protection. According to information received by the Ombudsperson Institution, the Roma and Egyptian families from Rudesh/Rudeš have been offered to return to a new location in the village Serbobran/Srbobran in the Municipality of Istog/Istok. The families have agreed to this proposal. It remains to be seen when these people will be able to return to the Municipality of Istog/Istok.

The previous annual report already described the plight of refugees forcibly returned to Kosovo from their various host countries, under the so-called repatriation process. Most of these forced returnees are ethnic Albanians who were fleeing from the tensions and the conflict in the nineties and seeking asylum and protection in western countries. While many of them came back after 2000, not all of them chose to do so although they lost their right to stay legally in western countries, and consequently many host countries decided to sign agreements with UNMIK to organize their forced repatriation. UNMIK however, generally following the March 2005

UNHCR position paper assessing the need of international protection of individuals from Kosovo continues not to accept forced returnees from the Serbian and Roma communities and of ethnic Albanians coming from places where they are in a minority situation. Further, members of the Ashkali and Egyptian communities are only accepted if a prior screening has shown that returning to their place of origin will not violate their human rights. However, the practice has shown that UNMIK accepted the forced returns of some members of the Roma, Ashkali and Egyptian communities in occasions where the enjoyment of their human rights in Kosovo was not fully assured.

On 31 October 2007, the Government of Kosovo adopted the Kosovo's Readmission Policy, which has been approved by the SRSG on 28 November 2007. As of 1st January 2008, UNMIK continued to directly manage the repatriation of Kosovars denied legal status in third countries, but the Ministry of Internal Affairs started to establish the origins of persons proposed for repatriation.

While a substantive amount of money has been dedicated since 2000 to the voluntary returns of displaced persons, assistance and support for people forcibly returned to Kosovo has been until now practically non existent and mainly provided by UNHCR and IOM right after the forced returns of these people. Many forced returnees indeed do not have a house anymore, are unemployed, their children do not have a good level of Albanian enabling them to follow the curricula in schools in Kosovo and they generally have a difficult time reintegrating in a society they left long time ago.

As mentioned in the previous annual report, a Steering Group was formed to draft a Strategy for Reintegration of Repatriated Persons, intending to help ensure that forced returnees will have adequate access to information, civil documentation, assistance and social services and that they can reintegrate in their places of origin and rebuild their lives. On 10 October 2007, the Government of Kosovo approved the Strategy for Reintegration of Repatriated Persons that foresees a certain number of obligations for various Ministries. The Steering Group, which elaborated this Strategy, was composed of representatives of the Kosovo Government and several international organizations, including UNMIK, OSCE, IOM, UNHCR and other organizations. An Action Plan was also finalized to plan the budgetary implication of this Strategy for each relevant Ministry and was sent to the Office of the Prime Minister for review in April 2008.

The above strategy foresees the forcible repatriation of 5 000 people per year. According to the same document, the number of people from Kosovo with no legal residence title in third countries is estimated to approximately 100 000 persons, 53 000 of whom live in Germany alone. 38 000 of these persons are presumably belonging to the Roma, Ashkali and Egyptian communities.

UNMIK reports that only in 2007, the overall number of forcibly repatriated persons reached 3.125, while the largest group of deportees, 896 persons, came from Germany alone.

Kosovo authorities still need to take more responsibility for the plight of displaced persons and returnees, both voluntary and forced returnees. They also need to show their commitment towards the sustainable integration and reintegration of these returnees in the Kosovo society. A serious and coherent approach needs to be developed and adequate funds should be dedicated in order to ensure such integration, both at the central and local level. Indeed, many municipalities

do not foresee in their budget the necessity to assist forced returnees who are in most cases left to themselves.

Property and Housing Issues

Property and housing rights remain one of the most complex issues that illustrate the shortcomings of the rule of law in Kosovo. No matter how many legal instruments have been approved by the Assembly of Kosovo and UNMIK in order to protect property rights, eight years after the establishment of UNMIK in Kosovo, there is still no adequate and effective protection of property rights. The public authorities continue to fail to guarantee the implementation of these laws and there are widespread allegations of nepotism, corruption and links with organised crime.

One of the most frequent phenomena illustrating these allegations is the field of illegal constructions throughout Kosovo. The competent authorities apply the Kosovo Assembly's Law No. 2004/15 on Construction, promulgated on 14 October 2004 by UNMIK Regulation No.2004/37, in an arbitrary manner. Thus, illegal constructions continue to be the rule in Kosovo rather than the exception, while municipalities and courts usually refuse to involve themselves in many cases.

Many constructions companies that arbitrarily occupy lands in order to construct, do not implement principles of urban planning and very often do not possess the documentation and necessary building permit that should have been issued by the competent municipal authorities prior to start construction. Although such constructions are illegal and should be destroyed under applicable laws, it appears that in the majority of the cases, the competent public authorities failed to implement the law.

As a result, hundreds of illegal constructions have been carried out in urban areas for years throughout Kosovo, spreading over rural areas at the expense of agricultural lands. In Prishtinë/Priština alone, it seems that everyday a new construction starts while no space is reserved in the city for the creation of new parks and green areas for children and adults who would like to breathe in a suffocated city. Municipalities have failed to develop a coherent urban planning and urban development policies in order to prevent illegal constructions and ensure the promotion and improvement of the existing dwelling places, as well as the normal development of the infrastructures.

Furthermore, there are a growing number of constructions without permit in non-urbane areas because of the negligence and corruption of responsible municipal authorities, who failed to prevent such neighbourhoods from being illegally constructed. Thus, because people constructed houses in zones not foreseen as constructions zones in the urban spatial planning of the municipalities, they are unable to enjoy public services, have access to roads, water supply, sewage, electricity etc.

Apart from the difficulties created by illegal constructions, there are cases when constructions started once all permissions and necessary building permits have been obtained and it appears only after the finalisation of the construction that the construction company had not respected the technical requirements foreseen by the urban planning. For example, buildings newly constructed would end up being higher or wider than initially foreseen in the construction permit.

Construction companies also very often do not respect the requirements of the urban planning for green areas, parks, and parking places, thus creating an unpleasant living environment for the inhabitants of these buildings.

In most cases, even if a property owner complains because a new building has been built less than one meter away from his house, municipal inspectorates would rarely address this complain adequately. In August 2005, the Ombudsperson Institution received a collective complaint from the inhabitants of the Aktash neighbourhood in Prishtinë/Priština. In this neighbourhood, municipality officials, police officers and courts have failed so far to undertake adequate measures to prevent illegal constructions and to impose and collect the fines that are due because of the construction of high buildings in an area where the urban planning foresees that it is illegal to construct buildings higher than two floors. The Ombudsperson Institution addressed the issue to the municipal authorities but the Director of Municipal Inspection justified the situation by stating that one of the representatives of the Aktash neighbourhood had built an illegal building. He also admitted that they failed to take appropriate measures and to impose fines..

In some cases, public authorities themselves have proved to be the main responsible actors of the violation of applicable laws. One emblematic example is the “Sharri Mountain” case. On 19 May 2008, the Acting Ombudsperson issued a report sent to the President of the Assembly of Kosovo concerning the issue of the “Sharri Mountain” National Park. The case involved the violation of the provisions of the Law on the National Park of “Sharri Mountain” (SAPK Official Gazette No.11/86), the Spatial Planning Law (No.2003/14) as well as the Law on Nature Conservation (No.02/L-18) by the Ministry for Environment and Spatial Planning (MESP). The Acting Ombudsperson observed in his report that the National Park of Sharri was gradually being destroyed by illegal deforestation followed by illegal constructions and that on 4 September 2006, MESP approved the request of the Municipality of Prizren concerning the Regulative Plan of Prevallë/Prevala. However, based on the provisions enshrined in the above-mentioned laws, MESP’s decision on the Regulative Plan of Prevallë/Prevala was illegal because the Ministry had no authority to approve the Plans for the National Park. Indeed, the Ministry was only entitled to submit the drafts Plans of the National Parks to the Government for a preliminary approval, whereas the Assembly of the Republic of Kosovo had to give the final approval.

The Acting Ombudsperson found violations of the provisions of the Law on the National Park of “Sharri Mountain”, the Law on the Spatial Planning and the Law on Nature Conservation, and urged for the improvement of the situation in compliance with these laws. He also warned that if urgent measures would not be taken to prevent such actions in the future, the consequences and damages caused by the destruction of the natural resources would be irreparable.

The Acting Ombudsperson recommended to the President of the Assembly of Kosovo to instruct the Government of Kosovo to immediately take measures to prevent such activities to take place in the Sharri National Park and to annul MESP’s decision approving the Municipality of Prizren’s request for approval of the Regulative Plan of Prevallë/Prevala. The Acting Ombudsperson further requested the Assembly of Kosovo to form a special commission that would, in cooperation with other relevant institutions, including the Ombudsperson Institution, conduct a general evaluation on the created situation in the National Park and would report to the Assembly of Kosovo concerning the irregularities committed and the necessary measures to be taken to protect the National Park and ensure that the situation is reversed.

To date, the Municipality of Prizren acted upon the recommendation made by the Acting Ombudsperson to the President of the Assembly of Kosovo and stopped the construction in Prevallë/Prevala, although the formal decision taken by the Minister of Environment is still in force. Moreover, on 10 June 2008, the Assembly's Committee for Agriculture, Forestry, Rural Development, Environment and Spatial Planning discussed this issue along with various parties concerned and the Acting Ombudsperson. On 17 June 2008, a Special Committee went to Prizren and Prevallë/Prevala to conduct an on site visit and assessed the situation. They requested the municipal officials to submit all relevant documentation as soon as possible to allow the Commission to raise the issue in the Assembly in the sessions when the issue of the implementation of the laws will be discussed.

As in previous reporting periods, the Ombudsperson Institution continued to investigate cases dealt by the Housing and Property Directorate (HPD) and its successor organisation the Kosovo Property Agency (KPA) that started to be operational in January 2007. Unlike HPD whose mandate was to deal with claims involving residential property only, KPA was established pursuant to the UNMIK Regulation No. 2006/10 and is competent to assist the courts in resolving conflict-related ownership claims relative to private immovable property, including agricultural and commercial property and claims involving property user's rights to the above forms of property for the time between 27 February 1998 and 20 June 1999.

New cases regarding private immovable property were introduced before the KPA and dealt with 38 000 agricultural and commercial registered property. It is expected that in a near future, the KPA Commission will issue decisions concerning 2000 complaints.

The HPD Commission had the power to decide on first instance and appeal level on cases, thus depriving complainants of their rights to obtain a legal remedy before local courts against the possible arbitrary decisions taken by the above-mentioned Commission. This raised serious concern with regard to the access to courts which is guaranteed by international human rights instruments applicable in Kosovo. Fortunately, UNMIK Regulation No.2006/10 on the Establishment of Kosovo Property Agency provides for the complainants' right to lodge an appeal against first instance Commission's decisions before the Supreme Court in Kosovo within the legal timeframe.

A panel within the Supreme Court in Kosovo, consisting of three judges, two internationals and one local, appointed by Special Representative of the Secretary General (SRSG), should review these complaints in appeal. However, so far the SRSG did not appoint such a panel to review complaints.

Out of all the conflict-related residential property claims inherited from HPD, there are 11 HPD Commission decisions that remain unimplemented by KPA and that have mainly to do with dwelling places situated in the northern part of Mitrovicë/Mitrovica. This situation is caused by the lack of cooperation by the police authorities that do not show any willingness to enforce the 11 above-mentioned decisions in north Mitrovica. Further, 19 other cases should be reviewed by a special KPA commission which has not been established yet.

In this regard, the Acting Ombudsperson denounced a *de facto* discrimination and called for the equal treatment of all citizens of the Republic of Kosovo who are in the same position. Indeed, until now, all those who own a property in Kosovo had the possibility to lodge a request for repossession of their properties with HPD or KPA and in most cases they managed to repossess

their properties or decided to leave them under KPA's administration. However, concerning properties own by Albanians in the northern part of Mitrovicë/Mitrovica, HPD and its successor organisation KPA have been unable to solve the problem and ensure that their decisions be enforced.

4.646 properties inherited from HPD are under KPA's administration of residential properties. Such administration involves renting apartments or houses to third persons, collecting the rent and forwarding it to the respective owner of the property. According to KPA's statistics, 304 properties under KPA's administration do not meet the established criteria, therefore their legal owners can not secure leases from their properties. There are 3.861 leased properties with the mediation of KPA under this rental scheme. According to KPA's officials, they have managed to contact 2971 property owners so far, and 2727 of them signed a request to authorise KPA to establish lease contracts. During the procedure of preparation to include the properties in the rental scheme, KPA informs the current residents of those properties about the lease criteria. Accordingly, KPA has informed 2.517 current residents so far, however it only managed to collect the rent from 933 residents.

There are 622 properties under KPA's administration in the town of Mitrovicë/Mitrovica: out of 242 properties in the southern part of Mitrovicë/Mitrovica, KPA collects rents in 105 cases, whereas out of 360 properties under KPA's administration in the northern part of Mitrovicë/Mitrovica, KPA is able to collect the rent only in 8 cases. The Ombudsperson Institution raised this issue with the KPA which responded that it did not have the adequate support from the police to collect the rents in the northern part of Kosovo. KPA also claimed that it had informed all competent authorities about this problem but did not receive any response or support. However, the Ombudsperson concluded that KPA did not use or did hesitate to use all institutional or legal paths in order to find ways to execute these decisions.

The Regulation No.2006/10 on the Establishment of the Kosovo Property Agency foresees that providing shelter for humanitarian cases do not fall under KPA's competence (likewise, it was not part of HPD's mandate). According to the competent KPA officials, all residents that are social cases and have no possibility to pay the amount of the rent to KPA are to be evicted from their dwelling places in a thirty-day time limit. Afterwards, the municipal assemblies are responsible to find shelters for those evicted persons, although they usually do not consider themselves responsible to do so. The majority of these cases are residents in Mitrovicë/Mitrovica South.

As mentioned in previous reports, HPD and KPA also dealt with claims of property holders who were deprived of their property or right to property due to the discriminatory practises of the Milosevic regime in 1989-1999. This concerns the compensation of the 143 category A claims of previous employees of socially owned enterprises, who had been granted dwelling flats by their employers in the eighties, and who had been firstly dismissed from their jobs and later on expelled from their dwelling flats. The HPD commission decided positively on these cases and foresaw the possibility of a legitimate compensation of the complainants. However, the decisions of the Commission have so far not been executed. KPA justified this situation by explaining that there is still no competent appointed Board to determine the level and amount of compensation that should be received by the complainants.

In some other cases which have been categorised as A1 claims by HPD, complainants had been dismissed from their jobs before they had taken possession of the dwelling flats granted to them. HPD then decided that the complainants should be filing requests for compensation with the Kosovo Trust Agency (KTA), a body which is responsible for administration and privatisation of former socially owned enterprises.

However, it appears that the Special Chamber of the Supreme Court on KTA related matters did not decide on any of these introduced complaints. Besides, it is not clear when these pending complaints will be solved. Indeed, as of 30 June 2008, KTA is non-operational anymore, following a decision taken in Brussels to discontinue the functioning of UNMIK Pillar IV, and thus of KTA. Nevertheless, the mandate and cases dealt by the above-mentioned agency should be transferred to the Privatization Agency of Kosovo, although there are serious concern about the lack of continuity between the two agencies and the consequences that the expected lack of cooperation by the Serb community will bear on the successful achievement of its mandate.

In addition, there was a lack of cooperation between the Special Chamber of the Supreme Court on KTA related matters and regular courts, in particular concerning the issue of jurisdiction. According to Regulation No. 2008/4, the Special Chamber has primary jurisdiction over the cases against socially owned enterprise administered by KTA. This lack of cooperation led to the failure of the courts to appropriately assess over which cases they had jurisdiction and accordingly refer cases to the Special Chamber. Consequently, regular courts declared themselves competent to hear these disputes although it was outside of their jurisdiction, and as such acted in breach of the law.

In June 2008, the Deputy Executive Director of the KPA initiated a complaint before the Public Municipal Prosecutors Office in Prishtinë/Priština against 26 cases where false documents had been presented to support complaints registered with the HPD. This practise had been denounced by the Ombudsperson Institution in previous annual reports. This initiative contributed in increasing the confidence of the population towards this agency.

The houses of those who fled after the fighting in 1998-99, mostly Serbs and Roma, have in general been reconstructed depending on their willingness to return to Kosovo and the cost of these reconstruction is usually covered by international donors funds operating through international organisations or NGOs.

Many houses of ethnic Albanians who were displaced during the fighting but returned home were reconstructed after the NATO bombing in 1999, a time when Kosovo was receiving substantial international donor funds. However, a substantial number of home-owners have never benefited from these donations and while municipalities throughout Kosovo repeatedly promised to reconstruct these houses, they lacked budget to do so. Very often, municipalities simply do not foresee the cost for reconstruction in their annual budget. Moreover many of the people who were illegally occupying abandoned property following repossession claims submitted to the HPD and KPA, have now been evicted.

At the same time, most of the municipalities do not foresee either in their annual budget the cost of construction of social housing and very often totally lack a strategy in this respect.

There is thus a serious lack of social housing places. 1400 families approached Prishtinë/Priština municipality asking for humanitarian shelter, but the municipality was only able to assist 24 families by placing them into “containers” while promising that it will start the construction of collective shelter buildings. However, according to officials from the Directorate for Social

Welfare in the Municipality of Prishtinë/Priština, the collective shelter buildings will only have the capacity to shelter 48 families.

The new Law on Expropriation, although approved by the Assembly of Kosovo on 8 February 2007, has still not been promulgated by the SRSG and is yet to enter into force. As a result, the Law on Expropriation of the Autonomous Socialist Province of Kosovo of 1978 remains applicable. As observed in the previous annual report, many cases investigated by the Ombudsperson Institution have revealed that municipalities are not implementing this law properly or totally ignore it and do not follow any kind of expropriation procedure, although such expropriation procedure is foreseen in the applicable law. Municipalities continue to expropriate people before determining the common public interest that justify such measures. Persons whose property is seized for the general interest are only rarely compensated, although they are deprived of the enjoyment of their property. As a result, people are expropriated by their municipalities without reason or compensation due to the discriminatory application of the law. Although the Ministry of Local Government Administration urged the municipalities to comply with the existing law at the beginning of 2007, the situation has not improved much and unlawful interference with individual property rights continue to be a common practice.

During the reporting period, many complainants approached the Ombudsperson Institution concerning expropriation they had been subjected to. One case involves the Prishtinë/Priština municipality that occupied the complainant's land for landfill purposes without completing expropriation procedure. The complainant received an expropriation decision three years ago but as of today's date, the expropriation procedure has still not been initiated despite many requests addressed by the complainant to the Prishtinë/Priština municipality, which is *de facto* depriving the complainant from his right to an effective remedy.

Moreover, in cases involving minority community members, the expropriations are even more discriminatory as the lawful owners are very often not even aware of the expropriation of their property.

The majority of municipalities in Kosovo generally do not protect their historical and cultural heritage, although in 99 locations spread throughout Kosovo, there are 412 residential houses, 1570 towers, 288 mosques, 23 mejtepe (old Muslim schools), 19 catholic churches, 20 orthodox churches, 30 masjids (turbe), 104 mausoleums, 114 cemeteries, 11 monasteries and 1 hotel that have a cultural value. All these monuments represent the cultural heritage of Kosovo although very little has been done so far by the municipalities and the Ministry of Culture, Youth and Sports to protect, restore or reconstruct those monuments and ensure that their cultural and historical destination is respected. However, it should be mentioned that with the support of the European Agency for Reconstruction, the Ministry of Culture, Youth and Sports has initiated and almost completed the reconstruction of monuments and churches destroyed in 2004.

After the conflict in 1999, 20% of textual data and 30% of cadastral maps from various municipalities were dislocated in Serbia, and a certain amount of registers were also destroyed. Thus, cadastre offices in Kosovo often lack proper documentation from the Yugoslav period and the ownership of an important number of properties can not be corroborated. Obtaining such documentation (either documents stating the ownership right or the cadastral plan) is still difficult and can only be effected informally through the help of lawyers working in the Court Liaisons Offices and through local legal aid NGOs such as CRPK in Kosovo or Praxis in Serbia. Taking the matter to the competent courts will often lead to lengthy proceedings due to the

difficult collaboration on these matters between UNMIK, the former PISG and the Courts in Serbia. There are little chances that the situation will improve after the Declaration of Independence, thus making the selling and buying of properties even more difficult.

Furthermore, prior to 1999, many property transfers were realised but not included in the cadastral records due to the costs associated with the record proceedings in the cadastral registers. As a result, a property could be sold three times and still be registered under the name of the initial owner. Officials working at the cadastral offices refuse to accept the validity of such transfers if they are not documented in the cadastral records. This is the case even if the property is not in dispute and the property transfer can be proven by cadastral documents stamped by the city archives. Such issues could be resolved if more flexible guidelines were applied by cadastral offices allowing for other forms of evidence to prove that property transactions took place.

Members of Roma, Ashkali and Egyptian communities have difficulties to provide documents to prove their property rights as traditionally they either never registered their property in the registers or constructed their houses on municipal lands without obtaining prior authorization and without paying particular concern about ensuring that their property rights over their houses is guaranteed. In such cases, it is usually considered that they only have a right to the possession of their houses. It is thus more difficult for municipalities to be likely to recognise the right of property in such cases and there is a need to regularise these informal settlements, especially in the cases of displaced persons who want to return to Kosovo and hope for the reconstruction of their destroyed houses.

Further, in Kosovo, there is no adequate public notice and review procedure to protect displaced persons when changes in the immovable property rights register take place. Thus, as mentioned earlier, properties could be sold without the displaced owner in Serbia knowing about it. In this regard, there is a need to improve the cooperation between the Republic of Serbia and the Republic of Kosovo in the area of immovable property rights registration.

The protection of property rights is an area in which the weakness of the rule of law in Kosovo is still the most apparent, as there is a general lack of accountability of all competent authorities at central and local level, courts and relevant administrations. This is also an area where the majority of the population lacks complete trust in the authorities and shows disbelief that the situation can be improved on the short run. There is however no time to loose to improve the situation. Indeed, if the anarchy of the illegal constructions and expropriations without compensation continues at this pace for the next ten years, most urban, rural areas and protected zones will be disfigured while unlawful interferences with individual property rights would become widespread.

Children's Rights in Kosovo

The protection of children's rights still represents a great challenge in Kosovo. Despite the fact that there is a good legal framework for the protection of children's rights, there is still a lack of effective institutional protection and no adequate implementation of the pertinent legal provisions.

The Kosovo Constitution foresees in its Article 22 the direct applicability of the Convention on the Rights of the Child (CRC), which contains the basic principles of the international protection of children's rights that were already applicable in Kosovo under the Constitutional Framework for Provisional Self-Government. Article 50 of the Constitution is also dedicated to children's rights.

The CRC requires public authorities to undertake all measures to guarantee the protection, respect and promotion of all children's rights through the promulgation of relevant laws and the creation of controlling mechanisms. In order to achieve an effective implementation of this Convention in Kosovo, the competent authorities should consider the CRC's core principles, which are, inter alia, non-discrimination of children, every child has a right to life and development, the best interest of children, every child has the right to free expression of thought and the right to be listened to.

Since 1999, a number of governmental institutions were established at local and central level to deal with the protection of children's rights, such as the Inter-Ministerial Committee for Children's Rights, which was established in October 2006. This Committee is chaired by the Prime Minister and aims at communicating and coordinating policies, programs and processes dealing with the protection of children rights in Kosovo.

The government is still in the process of preparing a National Plan for Children's Rights, in order to ensure the adequate implementation of the legal framework protecting children's rights, as well as to coordinate government institutions' work on the effective protection of children's rights for the period 2008-2011. In June 2007, the Permanent Secretary of the Prime Minister's Office issued a decision on the establishment of working groups for the preparation of a National Plan for Children's Rights and they started their work in spring this year.

The Kosovo Assembly's Law on Family No. 2004/3, which entered into force on 20 January 2006, is the primary law that regulates children's rights issues, thereby replacing the Yugoslav Law on Marriage and Family Relations. However, the new Law does not cover certain issues that were regulated in the previous law and the administrative instructions necessary to ensure the implementation of the new law have not been issued yet. Therefore, in some circumstances, the Yugoslav Law on Marriage and Family Relations is still being implemented. This is the case with certain procedural issues related to access and custody rights when parents are separated or divorced, with adoption issues and with custody issues when children were born out of wedlock. Officials working at centres for social work and in the Ministry of Labour and Social Welfare have been instructed to continue implementing both laws until the Law on Regular Courts has been promulgated. Naturally, this situation generates difficulties and confusion not only for the officials who are implementing the law, but also for individuals whose rights are being regulated by these laws.

Also, difficulties and lack of transparency still prevail in cases where the new law does not clearly determine which bodies are competent to decide on which issues. The situation is particularly unclear concerning adoption cases and thus, these cases are in practice being dealt with by municipal and district courts as well as centres for social work, as provided by the former Yugoslav law.

The protection of children's rights is also generally hindered by a lack of efficiency in the implementation of administrative and court decisions as well as by lengthy court proceedings in cases involving access or custody rights.

The Children's Rights Team (CRT) within the Ombudsperson Institution continues to function as the only independent and institutionalized mechanism that investigates individual cases, deals with general children right's violations and tries to raise awareness in this field. During the reporting period, the CRT continued to receive complaints about the non-implementation of final court decisions on access to children as well as lengthy court proceedings involving custody rights, which sometimes can lead to very difficult situation for the children and their parents. The CRT thereupon intervened with the relevant authorities to ensure that these decisions be implemented.

The issue of child labour is still very concerning in Kosovo as it impairs the wellbeing of children and constitute a violation of Article 32 of the CRC which provides for the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development. According to studies carried out by UNICEF, most of the children working on the black labour market suffer from health problems caused by hard work, collecting cans in the garbage, and selling cigarettes and different other small items until late in the evening. These children are also endangered because they can be attacked as well as sexually abused while working late hours in the evening.

The number of working children in Kosovo is constantly increasing, while the public institutions that deal with children's rights issues do not have any data on the number of children working in Kosovo today. The difficult economic situation in Kosovo and the high level of poverty are the main reasons why these children are being obliged to work to contribute to the family budget. Despite some actions taken by governmental and non-governmental organizations to combat this phenomenon, the issue of child labour will not disappear or decrease without the development and implementation of an adequate strategic plan. At the same time, the overall economic situation in Kosovo would also need to improve if such a strategy is to be successful.

The Ministry of Labour and Social Welfare (MLSW), with the support of the Committee for the Prevention and Elimination of the Child Labour, has taken some steps to draft a strategic framework to protect children under the age of eighteen from performing dangerous labour. Recently, the above-mentioned Committee had prepared a List of Dangerous Work for Children in Kosovo, which was then delivered to the Working Group of the MLSW to be finalized in the form of an administrative instruction that would strengthen the practical implementation of this principle by the Local Action Committees.

The Local Action Committees are consisting of officials of the municipal departments of social welfare, health, education, culture and youth, as well as people working for NGOs engaged in the protection of children's rights, community policing officials, labour inspectors, and parent-teacher counsellors. These committees, together with teachers, will be leading the process of monitoring child labour throughout the municipalities.

Moreover, keeping in mind that the UNMIK Regulation No. 2001/27 on the Essential Labor Law does not adequately cover the issue of the protection of children' rights, the Acting Ombudsperson recommended to speed up the process of adopting a new Labor Law that has been ongoing in the Assembly of Kosovo.

In this context of monitoring child labour and the responsibilities of governmental institutions in the protection of children from dangerous labour and violence, the Ombudsperson Institution has been investigating the case of some Ashkali children who were allegedly abused by members of the Kosovo Police Service (KPS) while they were begging on the street. The Ombudsperson Institution addressed this issue to the responsible KPS authorities, asking them to take necessary action to investigate this case. The Institution was informed by the Investigation Department of the Police Inspectorate of Kosovo (PIK), that although the necessary investigation and disciplinary action had been taken with regard to this issue, the “PIK had not found sufficient evidence to prove disciplinary violations” and “was not able to identify the police officer” involved in the abuse of the children. The PIK therefore terminated the investigations procedure. However, this did not prevent the Acting Ombudsperson from deciding to continue the investigation of the case.

The difficult economic situation in Kosovo is not only influencing children to work but also to drop-out school. Another factor resulting in drop-outs is the distance of some schools from children’s homes and the lack of implementation of school reforms. According to statistics received from the Ministry of Education, Science and Technology (MEST) in 2006/2007, 2431 pupils (grades 1-9) dropped out of schools. This is more than in 2005/2006, when according to the Institute of Statistics of Kosovo, 2195 children (grades 1-9) dropped out of schools. When this report was issued, there was still no information on the drop-out rate for 2007/2008. Based on the information available to the Ombudsperson Institution, and according to information received from some other institutions, it would seem that the exact number of pupils who dropped out of schools is unknown, not only for grades 1-9 but also for grades 10-13.

The MEST, immediately after the promotion of a campaign against pupils dropping out of school, announced a competition to select an organization that would design a survey to assess school drop-out rates and research the causes of pupils’ dropping out of school. This survey should focus on the transition phase from primary to secondary school and pay special attention to the situation of women and non-Serbian minorities.

According to statistics issued by the Kosovo Statistical Office for 2006, only 50% of ethnic Albanian girls of the age 15-18 continued their education after primary school. Ethnic Albanian boys also abandoned school, mainly in order to start working, while only few members of the Roma, Ashkali and Egyptian communities continued their education. Children from the above-mentioned communities indeed faced more challenges than others when it comes to school attendance not only because of the difficult economic situation faced by their families but also because of the low awareness of the importance for the children, especially young girls, to go to schools.

Because of the challenging situation of the education of the Roma, Ashkali and Egyptian communities, a strategy was drafted for the integration of the above-mentioned communities in the education system, as a comprehensive component for the integration of these communities in Kosovo. This strategy was drafted under the supervision of the Kosovo Prime Minister’s Office and has been finalized in June 2008. The preparation of this strategy in the area of education was sponsored by the MEST and supported by the Kosovo Foundation for Open Society (KFOS).

This strategy aims at improving the participation of these communities in the education system, preventing discrimination and segregation in the education system, and enhancing the effective cooperation between institutions and relevant organizations for the education of these communities. The non-governmental organization Civil Rights Program/ Kosovo (CRPK) is

helping to facilitate the registration of children of these communities in the civil registry so that they can then be enrolled at schools.

Further, the MEST has established working groups to develop a curriculum in the Roma language. The action plan for the implementation of this curriculum has been drafted and also addresses the high rate of drop-out of Roma, Ashkali and Egyptian children. A draft framework for monitoring whether the strategy will ensure the integration of the above-mentioned communities in the education system is being developed, while civil society has engaged in following up on developments in this field.

On July 2007, representatives of the Ombudsperson Institution visit the Plemetina/Plemetinë camp that was closing to enquire about the issues faced by its inhabitants concerning the education of their children. The representative of the Ombudsperson Institution enquired about the possibility for the integration of very young children in the schools together with the children of other communities. However, the parents did not want their very small children to go to classes in other schools, and preferred to keep a separate schooling within the camp. They however agreed that older children who had finished the low level of education could join their peers from other communities.

In October 2007, the representative of the Ombudsperson Institution again intervened with the officials of MEST to ensure that the children of the primary school's low level living in the Plemetina/Plemetinë camp be provided with school books for free (for more information on Plemetina/Plemetinë camp or on the education of children from minority communities, see the "Minority Communities" part of this report).

As mentioned above, many pupils drop out of school due to distance between their schools and their homes. The distance that a child must cover to reach a nearby education facility involves not only access to education but also the child's right to security, which is a basic human right. The Ombudsperson Institution initiated an *ex officio* investigation in a village in Kosovo on such issue. Indeed, the Acting Ombudsperson learned that six children from a village had lost their lives and three others had become permanently disabled as a result of traffic accidents. Pupils walking along the road leading to the school in the neighbouring village constantly risked being victims of traffic accidents. In order to avoid this risk, these children were taught in containers in their village for a certain time. Although the municipal educational authorities asked the children of the village to return to classes in the neighbouring village, parents had their children boycotting school since the road between the villages had not improved in terms of road safety. The Acting Ombudsperson referred this issue to the Prime Minister of Kosovo and requested him to find a solution to the problem. He asked the Prime Minister to ensure that more action be taken to inform and educate the public on traffic safety and impose speed limits. The government should also invest more on building crossings in the vicinity of schools. It is encouraging that the Ministry of Transport and Post-Telecommunication begun constructing crossings in critical spots in the vicinity of schools along some of the roads in Kosovo.

Based on interviews conducted with pupils, teachers and other persons working in the field of child's protection, it appears that violence is still present within schools in Kosovo. Violence in schools takes various forms and as such, is used by teachers against pupils, by pupils on other pupils and even on some occasion, violence is used by pupils against teachers.

To demonstrate its awareness of this situation and in order to prevent the institutionalization of this phenomenon, the Ministry of Education, Science and Technology, in co-operation with the Ministry of Internal Affairs, the Ministry of Justice, the Ministry for Labour and Social Welfare, as well as the Kosovo Judicial Council, signed a Memorandum of Understanding on 27 May 2008. This memorandum obliges these institutions to establish an institutional mechanism to prevent and sanction such negative phenomena in the schools of Kosovo.

The Ombudsperson Institution, in order to support the prevention of violence in the schools of Kosovo, participated in various meetings with representatives of schools and other institutions: for example, the CRT participated in the teacher's meeting with parents of the pupils who are in the grades 5-9 in the primary school "Pjetër Bogdani".

The Ombudsperson Institution has also investigated some cases dealing with the alleged use of corporal punishment against some pupils by their teachers. The Ombudsperson Institution has been informed that, in one of the cases, disciplinary measures had been taken against the responsible teacher.

Aside from violence in schools, domestic violence is another important issue in Kosovo. Although under Article 19 of the CCR, the maltreatment of children within the family is completely prohibited, in the overwhelming majority of cases, victims of domestic violence are both women and children, indirectly or directly involved. Domestic violence occurs within the family and is often not reported as it is considered a private issue. This makes it even harder to fight as in such cases even government authorities responsible for the protection of children are hindered or deprived of the possibility of undertaking adequate measures in time in order to protect children at risk.

However, despite these obstacles and difficulties, the State is still obliged to effectively prevent domestic violence and punish the perpetrators. Domestic violence and violence at schools bear serious consequences to the intellectual, emotional, and social development of children, especially since the violence happens in places where children should usually feel safe.

The number of cases reported to the Ombudsperson Institution concerning domestic violence has increased during this reporting period (for more information on this issue, see this report's section on "Gender Equality").

The CRT worked on a case of domestic violence where the victim was a mother of three children. Upon the victim's request, the District Court in Prishtinë/Priština, based on the UNMIK Regulation No. 2003/12 on Protection against Domestic Violence, had issued a protection order, based on which she had been allowed to return to her house from where she had been expelled by her husband, and her husband had been prohibited to use violence against her. Although the victim's request was filed on 8 December 2006, the Court had only decided on 19 January 2007 but not within the time-limit foreseen in Regulation No. 2003/12. Indeed, pursuant to UNMIK Regulation No. 2003/12, the request for protection order should be decided within a fifteen-day period following the date of reception of the request by the Court.

Moreover, since the husband had not fulfilled his obligations as determined by the Court's decision, the victim asked the Municipal Court in Prishtinë/Priština to execute the decision. After intervention of the Ombudsperson Institution, the decision was executed on 1 October 2007, although the victim had submitted her request for execution on 5 May 2007.

As raised in previous annual reports, this example shows that courts often do not meet their obligations to protect victims from domestic violence by exceeding the statutory legal time-limits

when deciding on requests for protection orders in accordance with UNMIK Regulation No. 2003/12. Indeed, in 2006 the Ombudsperson Institution issued a report and came to the conclusion that the majority of courts to which the victims addressed their requests for protection orders had not done so within the time-limit foreseen in Regulation No.2003/12. The Institution concluded that this constituted a violation and neglect of the court's obligation to protect the victims in accordance with international human rights principles.

Domestic violence and overall damaged family ties often push children to leave their homes and put them at risk of becoming victims of human trafficking, especially young girls. Trafficking is not only a part of organized crime, but it is also a violation of human rights and a violation of children's rights. Trafficking is one of the most serious and traumatic experiences children have to live through. Traffickers often use violence - they beat up children, threaten them and exert pressure on them so that they will earn money by stealing, begging or prostitution. According to information received from the Sector of Investigation on Human Trafficking (SIHT) of the Kosovo Police Service in 2007, it appears that there was a slight increase of trafficking in comparison to 2006. During 2007, the SIHT identified 11 victims who were girls. Eight of them were from Kosovo. During the period January-June 2008, the SIHT identified four victims who were children, three of which were also from Kosovo.

The Ministry of Internal Affairs, in co-operation with other institutions dealing with the issue of trafficking, is preparing a strategic plan to fight human trafficking for the period 2008-2011. In order to fight and prevent this phenomenon by offering assistance, in particular to victims who are minors, these various public authorities will need to start implementing this plan very quickly after it is adopted. Policies which address the prevention, protection and re-integration of trafficked children will need to be drawn up, and a special fund will need to be created in order to assist them. Also, institutions, international and local organisations combating child trafficking will need to co-operate and co-ordinate more. Trafficked children and those who are in danger of being trafficked should be assisted to return to schools, while those who have not completed their compulsory education should be offered the alternative of professional qualification, should they prefer that.

With regard to the right to education in Kosovo in general, it appears that the Law on Primary and Secondary Education and the Law on Pre-school Education passed by the Kosovo Assembly in 2001 were not implemented adequately during this reporting period due to the lack of necessary funds and, as a consequence, the lack of respective equipment. The low motivation of teachers due to low salaries, poor attendance of classes, limited municipal transport to schools, inadequate school infrastructure etc. also hinder a proper implementation of the above-mentioned laws.

Although Article 3 of the Law on Primary and Secondary Education stipulates that textbooks for the first primary school level are free-of-charge, this was never implemented fully in practice. According to statements from officials of the Ministry of Education, Science and Technology, textbooks were distributed free-of-charge only to children whose families are social cases, due to the shortage of financial means for the school year 2006/2007.

There is, however, a positive development as it appears that parts of the budget for the upcoming year have been allocated to providing all pupils of the first-level of primary schools with free-of-charge textbooks.

There is still a lack of adequate infrastructure in the schools of Kosovo. The majority of schools, in particular those in rural areas, lack even the minimal conditions to offer proper education and there are an excess number of pupils which means that classes are still conducted in four or five shifts. Some schools in Kosovo offer miserable hygienic conditions, whereas in other schools there is no drinking water.

In order to improve the school infrastructure in some schools, the Ombudsperson Institution has sometimes addressed the issue in writing and representatives of the Institution also met in person with the responsible authorities. For example, we can mention the involvement of the Ombudsperson Institution in the case of a primary school in Prishtinë/Priština that had premises in various locations. The CRT intervened and gave concrete recommendations to the school authorities to improve schooling conditions.

With regard to the Law on Pre-School Education, the Ministry of Education, Science and Technology (MEST) issued administrative instructions to implement this law. Pre-schooling includes taking care of children in institutions from 9 months old up to 5 years old, as well as pre-school services within primary schools for children who are 5-6 years old.

These administrative instructions *inter alia* regulate the way pre-school curricula are selected by children's parents and the co-operation with the municipality about the inclusion of children in pre-school institutions. The administrative instructions also foresee the progress of the work in these institutions and their responsibilities to inform parents about the organization of education in pre-school institutions.

Despite the fact that overall, the inclusion of children in pre-school institutions in Kosovo is not common and is conducted on a voluntary basis, this year the MEST continued to take measures in order to improve the implementation of the law.

Moreover, the MEST, in co-operation with the American NGOs "Search for Common Ground" and "Save the Children", is currently implementing a bilingual programme called "Mosaik" in order to promote a new educational model which would be oriented around the children and would integrate children from various ethnicities, languages and cultural background to ensure mutual respect and understanding among them.

Since 2007, pre-school education has been provided successfully in two pre-school institutions in Gjilan/Gnjilane, whereas it lately started to be implemented in Peja/Peć. Although the objective is to have pre-school education provided in other places as well, this cannot be achieved at the moment due to the lack of financial means. As a result, there is no pre-school education in many municipalities, such as for example Prishtina/Priština. There are also no public kindergartens in Deçan/Deçani, Malishevë/Mališevo, Shtërpcë/Štrpce and Shtime/Štimlje. Moreover, most primary schools lack adequate and sufficient facilities for pre-school education.

The overall situation of children with special needs also necessitates more attention. The Ministry of Education, Science and Technology, in order to improve the situation of these children in the field of education, has continued to reform special schools in resource centres that are in favour of the inclusion process. The Ministry also continued to integrate children with special needs (children with physical and mental disabilities) into regular schools and started implementing individual plans for children with special needs. The MEST also began including children with special needs in pre-school education facilities in some municipalities.

There are a considerable number of children with special needs in regular schools; however, there are no statistics about their exact number since not all of them have been diagnosed with a physical and mental disability.

As part of the Ombudsperson Institution's policy to promote the position of persons with special needs in Kosovo society, the Acting Ombudsperson, during this reporting period, visited the Resource Centre "Përparimi" in Prishtinë/Priština where children with special needs attend classes. During interviews with children and teachers, they stressed the difficulties that children with special needs are facing in the process of education, such as: a lack of school premises and adequate conditions to attend classes, inadequate transportation, and insufficient commitment of relevant institutions to offer them more opportunities. All of these factors make their integration in the overall education system in Kosovo more difficult and puts them in a discriminatory position in comparison with others.

In general, children, as a naturally vulnerable group, suffer most from the lack of proper treatment in hospitals. With regard to the situation of health services provided to infants, Kosovo continues to have one of the highest rates of infants' mortality in Europe due to lack of proper medical equipment and medicine.

All the challenges faced by the Kosovo population, deficient health system, lack of proper housing, difficult economic situation, domestic violence etc. have of course a greater impact on children who are affected more negatively as they can not defend themselves. Articles 26 and 27 of the UN Convention on the Rights of the Child foresees that the main responsibility for children's welfare lies primarily with the family, but that if the family is not able to ensure a child's welfare, it should be the government's responsibility. Thus in Kosovo, the authorities need to continue to seriously focus on the protection and promotion of children's rights by allocating more funds to ensure the healthy development of children of all communities in a secure environment. Education in Kosovo is a major challenge and more financial resources should be devoted to improve the situation in schools and to ensure equal access of all children from all communities to school, including children with special needs. Kosovo authorities should indeed keep in mind that today's schools are preparing the next generations of adults.

Discrimination in Kosovo

Non-discrimination, equality and equal protection before the law are fundamental and general principles of human rights. However, the different treatment of people facing similar situations, due to their background, financial and social status, ethnicity, gender, physical capacity or appearance remains a critical problem in Kosovan society. This occurs in the public institutions as well as private sector and there have been no positive signs of improvement during the last reporting period due to the continuous general lack of accountability of central and local authorities, leading to the arbitrary implementation of the rule of law, and unequal treatment of vulnerable groups and less privileged persons.

The Kosovan society is characterised by its diversity, not only because of its numerous ethnicities and vulnerable groups, but also by the coexistence of people living in a very different

economic situation that leads them to apprehend the institutional, judicial, health, educational system etc. in a different manner. Discrimination is so widespread in Kosovo that most people do not relate their situation with an actual discrimination against which they could complain, only because they are used to face this kind of situation. Moreover, even if they were to lodge a formal complaint, many people would not truly expect a remedy to their situation. Most of the time, people are not aware of the concept of discrimination itself, which is rather distressing considering that allegations and complaints of discrimination are very often used in public and political debates.

At the same time, not every difference in treatment is discrimination. Discrimination only exists where people in a similar situation are treated differently for objectively unjustifiable reasons, such as those foreseen in Article 2-a of the Anti-Discrimination Law: “sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status”.

The existing Anti-Discrimination Law passed by the Kosovo Assembly and promulgated by the SRSG in 2004, as well as the subsequent administrative instructions adopted afterwards to implement the Law, have created a solid legal basis which foresees definitions on what discrimination is, in which forms and under which circumstances it may arise and how and where to complain about it. Article 8 of the Law also provides that it is up to the alleged offender to prove that discrimination has not taken place.

Until now, domestic courts have received very few cases alleging discrimination and they still do not seem to have issued any decision based on the provisions of the Anti-Discrimination Law.

Next to the domestic courts, the Anti-Discrimination Law names the Ombudsperson Institution as an extra-judicial body competent to receive and review discrimination-related complaints in both the public and the private sector. During the reporting period, the Ombudsperson Institution continued to conduct awareness-raising campaigns throughout Kosovo. Through these campaigns, the representatives of the Ombudsperson Institution’s Non-Discrimination Team (NDT) have constantly and in various ways tried to inform Kosovo citizens about examples of discrimination in both the public and the private sector, the competences of domestic courts and the Ombudsperson Institution according to the Anti-Discrimination Law, and also about the existing procedures to lodge a complaint.

The Ombudsperson Institution has also signed a Memorandum of Understanding with the Movimiento per La Paz, El Desarme y la Libertad (MPDL), a Spanish NGO that provided free-of-charge legal assistance and that localised in March 2008 to become the Centre for Legal Aid and Regional Development (CLARD). Through this organisation, two complaints dealing with alleged discrimination were received and investigated. In one case, court proceedings were initiated, while in the other case concerning the decision to end a person’s contract, administrative proceedings were initiated and the complainant was reintegrated in her previous working place.

The NDT established to deal with such complaints received only a small number of complaints alleging discrimination during the reporting period. This confirms that a large part of the population in Kosovo remains unaware of the principles enshrined in a law that, four years after it entered into force, remains characterised by its lack of implementation.

Indeed, it seems that the comprehensive action plan for the implementation of the Anti-Discrimination Law adopted in November 2005, the administrative instruction signed by the Prime Minister in August 2006 followed by a number of administrative instructions adopted by various Ministries to implement the law also had a limited impact on raising awareness in the population.

As mentioned in the previous annual report, if no concerted effort is made to meet the specific requirements of a specific and vulnerable group of people, they will continue to be discriminated against on daily basis.

This is the case in Kosovo of the disabled persons who have mainly been supported by the local NGO “Hendikos” that established an active network within local communities and groups of disabled persons, while they received very little support from the Government. A National Council of Disabled Persons in Kosovo was also established and did not receive proper support from the Government.

Persons with disabilities in Kosovo continue to face massive difficulties with access to public premises and infrastructures, although the Municipality of Prishtinë/Priština began to make some improvements with regard to access to the roads for disabled persons in wheelchairs. Likewise, deaf-mute disabled persons have had continuous problems communicating with all public institutions. The Acting Ombudsperson has been raising this issue since January 2008 with the Ministry of Public Services, but to date, there has been no response from the Ministry and no progress in this field.

Persons with physical and mental disabilities also face discrimination because of the lack, or limited access to, specific educational programmes within the general public education system that would guarantee their needs are met. Only few schools have special classes for disabled children. More detailed information on this issue can be found in the “Children’s Rights” part in this annual report.

The Law No. 2003/23 on Pensions for People with Disabilities entitles all persons from 18 years old onwards who are permanently disabled to receive a pension. Despite this, some disabled persons are deprived from the right to receive disabled persons’ pensions, which is the case of persons who are residents of nursing homes, deaf-mutes and persons whose eyesight is not 100% damaged. To date, the only assistance provided to them by governmental institutions is an exemption from payments for certain medicine. Further, Article 13 of the above-mentioned Law foresees that people with disabilities who are eligible to this pension right, are also entitled to various benefits such as, inter alia, free access to public transport, remissions of custom taxes and reduced tariffs for electricity. However, the sub-legal acts necessary to start implementing this Law, and in particular Article 13, have so far not been drafted by the relevant Ministries. During the reporting period, the Acting Ombudsperson sent a letter to the Prime Minister requesting him to use its authority to ensure that the necessary measures be taken to implement all provisions of the Law. Further, the Acting Ombudsperson continued to receive complaints regarding the inability of disabled persons to receive the pension benefits they are entitled to by law.

The Ministry of Health, supported by the World Health Organization, drafted a mental health strategy for the period 2008-2013. The implementation of the above-mentioned strategy will

hopefully improve the situation of mentally disabled persons in Kosovo. Finally, a Working Group on Drafting the National Disability Action Plan has just been established by the Prime Minister in April and started to meet in June 2008.

Another example of a form of discrimination is the fact that age limitation appears more and more in employment advertisements and in the selection of individuals who apply for vacancy positions, which is in contradiction with the Anti-Discrimination Law and other international standards. In 2006, the Ombudsperson Institution published a report on this issue but during the reporting period, a number of employment competitions and vacancy positions published in daily newspapers still mentioned age limitations.

In March 2008, the Acting Ombudsperson issued a report sent to the Minister of Education, Science and Technology, in which he expressed concerns that the decision refusing to select some complainants for teaching assistants' positions was solely based on age limit, as prescribed by Article 185-3 of the Statute of the University of Prishtinë/Priština. The Acting Ombudsperson observed that such decision contained element of discrimination based on age and breached the concepts of non-discrimination and equality enshrined in international and national human rights instruments. However, to date, the Minister did not respond and has not taken any further step to eliminate this discriminatory element.

To illustrate another discrimination based on age, we can mention that the Ministry of Labour and Social Welfare (MLSW) requested elderly people to ascertain that they are alive in order to continue receiving their pension by presenting themselves at the MLSW offices, which are usually located in private houses in suburban neighbourhoods, disregarding their difficulty to use public transport and their very limited financial resources. The Acting Ombudsperson raised this issue with the MLSW but the later first invoked lack of budget. However, following a close cooperation with the responsible officials of the MLSW, the location of the offices has been changed to allow elderly people to simply walk to these offices, without paying for transportation.

During the reporting period, the Ombudsperson Institution received a large number of complaints from high school students who were wearing head scarves in schools as a way of expressing their Muslim faith. These high school students had not been allowed to attend classes by the schools authorities. The Acting Ombudsperson concluded, inter alia, that they were discriminated on the basis of their religion or belief and underlined that their fundamental right to exercise their religion was protected by local and international human rights standards.

Also, as mentioned in various parts of this report, the fact that many public documents at local and central level are not available for people who do not speak one of the official languages of Kosovo remains a form of discrimination. Further, ethnic discrimination is a concern raised by many members of minorities, especially Serbs and Roma, but also Ashkali and Egyptians living in Kosovo, as well as returnees to Kosovo, who claim that they face discrimination in all areas of their daily life such as employment, health, education, right to property, access to justice and right to diligent investigation, fair trial etc. Members of the Serb community also complain that they are still excluded from the privatization process of socially-owned enterprises for which they used to work.

It is important to underline that aside from the Anti-Discrimination Law, other international instruments applicable in Kosovo are also protecting individuals from discrimination and other human rights violations, such as those mentioned in Article 22 of the Kosovo Constitution. However, the general awareness of these instruments in local and central level and in the general population remains quite poor due to the lack of diffusion of these instruments in Albanian and Serbian languages.

Furthermore, Article 24 of the Constitution also provides that “no one shall be discriminated against on grounds of race, colour, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status”. The wording and grounds of potential discriminatory behaviour are slightly different from the Anti-Discrimination Law and its compliance to the Constitution will certainly need to be reviewed.

The need to continue to raise awareness by all possible means about what discrimination actually entails and what can be done against it remains important in Kosovo. Nevertheless, no matter how many trainings, public information campaigns and roundtables are organised on the topic, if people do not witness a strong will to improve the accountability of central and local institutions and see that the administrative, executive and judicial structures are responsive to discrimination-related complaints, the lack of implementation of the Anti-Discrimination Law will not improve.

Gender Equality in Kosovo

Gender equality reiterates the principle of equality before the law for people of different genders. It is a fundamental prerequisite of democracy and a requirement for the achievement of social justice and for the elimination of all forms of gender-based discrimination.

As mentioned in other parts of this report, the Constitution of Kosovo foresees in its Article 22 the direct applicability of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), which was already applicable in Kosovo under the Constitutional Framework for Provisional Self-Government. Article 24 of the Constitution also foresees that everyone enjoys the right to equal legal protection without discrimination.

Gender equality is regulated by the domestic Law on Gender Equality of 9 February 2004 that entered into force on 7 June 2004 and which adopted the principles contained in the above-mentioned Convention. In compliance with Article 6 of the Law, the Ombudsperson Institution established a Gender Equality Unit (GEU) in order to receive and deal with complaints alleging gender-based discrimination as well as to promote and monitor gender equality.

In August 2005, the Government established in accordance with the Law on Gender Equality and under the auspices of the Office of the Prime Minister, the Office for Gender Equality. The Office was mandated to work on the implementation of the Gender Equality Law and the Action Plan for the Achievement of Gender Equality that was adopted in April 2004. In September 2007 the Office became the Agency for Gender Equality. The Agency is responsible for compiling and drafting the report on the implementation of the CEDAW. The Agency is also drafting a comprehensive Kosovo Program for Gender Equality which foresees a budget to finance interventions in six specific areas, i.e. education, integration of women in economy, work and social welfare, culture, media and health.

Also, in 2002, Municipal Gender Officer positions were established on all municipalities in Kosovo except in the municipalities in the northern part of Kosovo. Most of these Municipal Gender Officer positions should be incorporated in the Municipal Human Rights Units created by the Ministry for Local Government Administration in May 2008. Hopefully it will increase their outreach capacity at the local level and reinforce their positions within the Municipalities. It should also be mentioned that there is generally one Gender Officer in the Human Rights Units in each Ministry and that the Assembly of Kosovo established a Gender Equality Commission in 2002.

The Millennium Declaration, signed by members of the United Nations in 2000, foresees the obligation of the signatory States to respect common principles and values based on peace, development, protection of living environment, human rights and democracy. The Millennium development goals set by the Declaration have the following objectives: to eliminate extreme poverty and hunger, enable basic education for all, promote gender equality and strengthen the position of women, lower the death rate of children, raise the reproductive health level of women, combat AIDS and other illnesses, ensure sustainable living environment and also growth of global partnership for general development. The representatives of Kosovo authorities signed the Millennium development goals, which should be fulfilled by 2015. By doing so, the Kosovo authorities took the responsibility to accomplish certain deeds and also to allocate funds in order to implement these measures.

This sophisticated institutional framework has not proven to be sufficient to overcome the numerous gender issues generated by the various traditional and social factors still prevailing in Kosovo that create obstacles to the proper implementation of the laws, action plans and other programs dealing with gender equality.

Numerous awareness raising activities, trainings, roundtables and seminars have been and continue to be organised since 1999 by the international and local relevant actors, including NGOs operating in Kosovo, but it remains uncertain whether enough has been done to reach out women living in rural areas, sometimes uneducated, most of the time living in poor conditions, and almost always subjected to the strong influence of traditions.

Kosovo is indeed a multiethnic country, where traditions and culture have an important impact on women and men's behaviour and are deeply rooted in the society's collective conscience. Kosovo's women are brought up in a patriarchal society where they are taught that ministering their family and house, caring for their children's education and growth are priorities in their daily life. The myth of men as family's invulnerable authority determines relationships between men and women and is transmitted from one generation to the other. The Kosovo contemporary woman increasingly realises that her authority in the family, public, political, economic, legislative and executive life has been marginalised as, indeed, decisions are usually taken by men without further consultation.

The difficult socio-economic situation and the high rate of unemployment in Kosovo have largely impacted on the women's level of dependence on their husband and family and have even sometimes marginalised them, especially in rural area and among Roma, Ashkali and Egyptians communities. As long as a large majority of women are not able to have their own economic resources, they will remain unable to truly empower themselves. For example, the

extreme dependence of women on their husband causes many of them to refrain from asking for a divorce that very often would put them in an extremely precarious situation, not only financially, but also towards their birth family and their children.

Moreover, women have not only difficulties to compete on the employment market, they are also less likely to be hired, especially for senior positions, even if they are equally competent compare to men candidates. Logically, the unemployment rate remains higher for women than for men and their salaries remain significantly lower than those of men.

Further, employers are reluctant in hiring young women because they fear that women could be more absent from work than men due to the women's right to maternity leaves and to other recurrent leaves taken when children grow up. Women, however, do not often denounce this situation in public and they do not complain about discrimination or other abuses which they may be victims of in order not to lose their job.

The GEU also received complaints from women working in public institutions who have been dismissed from their jobs few years before their retirement. Naturally, their age represents an obstacle to find a new employment which generates a great apprehension for these women.

According to the information available to the Ombudsperson Institution, most women are traditionally employed in the education, health sector and more generally the services sector, whereas a substantial number of men work in the trade, manufacturing and construction sectors. Only few women work in the heavy industry, trade and agriculture field.

It is estimated that out of the total number of inhabitants in Kosovo, women comprise 52% of the population. Compared to other countries, the extent of women's involvement at the political level in Kosovo appeared to be satisfactory since female representatives hold 30% of the seats in the Assembly of Kosovo and two ministers in the new Government are women. No matter how good this looks on paper, it should not hide the fact that men dominate largely the political life, decision-making process and all management positions at central and local level.

Women are generally less educated than men when it comes to primary education and there is a phenomenon of illiteracy among women which is more pronounced than for men. Some communities are more vulnerable than others in this regard, such as Roma, Ashkali and Egyptians among which there is a high rate of school drop-out of young girls who are usually expected to take care of the household and get married at a very early age, which will lead them to a life of dependence on their husband. Further, it would seem that since 1999, there is a growing phenomenon of girls dropping out of primary and secondary schools, especially in rural area.

Women, as a particularly vulnerable group of the Kosovo society, especially those with limited financial resources, have been negatively affected by the rationalisation in health care that led to the decrease of services and medicines covered by health insurance, whereas the number of patients in need of a medical treatment has increased. Consequently, many poverty-stricken women have no access to both health care and insurance.

Another very important field from the gender equality perspective is the reproductive health which is very much affected by the phenomenon of poverty and high mortality rate. In a report

“Perinatal mortality in Kosovo” issued by the Ministry of Health, WHO and UNFPA, it is stated that the death rate of pregnant women was 7 per mille for the period 2000-2007. Based on the 2007 Annual Report of the Clinic for Obstetrics and Gynaecology in Prishtinë/Priština, the mortality rate of babies in 2007 was 17 per mille for 2007. Medical services are offered in five regional hospitals and 280 medical centres and the large majority of these centres are under equipped and understaffed which reflects negatively on the quality of the health services delivered to the population. Therefore, in extreme cases, people tend to try to find a way to receive an adequate treatment abroad. During the reporting period, the Ombudsperson Institution received complaints where the Ministry of Health of Kosovo decided that certain persons needed to be treated abroad whereas the Ministry of Economy and Finance denied the release of the funds for such medical treatment outside Kosovo. This demonstrates the lack of coordination between these two Ministries and resulted in the violation of the right to health of persons who are severely sick.

Another difficulty faced by women in Kosovo is the fact that many of them do not usually own private property or real estate. According to the law in Kosovo, both men and women have equal rights to heritage of property, but in practice when it comes to such heritage, women are far more discriminated than men, as by tradition and culture a man is considered as the sole heir of his family’s property in most communities in Kosovo. This practise is however stronger in rural areas and the situation is evolving in urban areas. There are still cases of women who are victims of physical and psychological threats from their spouse or other male family members when they claim the right to their part of property.

It should be emphasized that there are important differences between the urban and rural areas when it comes to the role of women in society, their relation with their husband and other men of the family, their relation with their children, the exercise of their rights etc. Unlike villages, in towns the population is much more aware of gender equality concept and simply more modern, thus less in need to refer to traditional values. However, families that moved from villages to towns still preserve traditions and customs of the rural life and hence keep their vision of the role of women in the society.

Domestic violence, mostly affecting women and children remains a great problem among all communities in Kosovo. Unfortunately, most of the cases of violence are not reported to the competent authorities for various reasons. In rural and poor areas, where women are less educated, domestic violence is very often not perceived as a violence that should be reported to the police but rather as an internal family matter. Moreover, women are sometimes victims of pressure from the family and they do not always feel well received by the police officer in charge of their case, which prevents them from reporting the domestic violence. Even when the case of violence is reported to the competent authorities, the victim sometimes faces revenge, moral prejudices and other forms of abuse. Often, relatives and friends do not wish to witness in court proceedings thereby compelling the victim to drop the charges.

Cases of psychological violence remains also unreported and are not recognised as domestic violence by the Centres for Labour and Social Welfare or by police officers who don’t consider that there are elements constituting a criminal act as opposed to repeated cases of physical violence that could then be registered as a minor or serious body injury by the police officers. Such attitudes are discouraging for traumatised victims.

UNMIK Regulation No. 2003/12 on Protection against Domestic Violence foresees the possibility for the victims to make a request to the court to issue a protection order against the

perpetrator of the domestic violence. The aim of such protection measure is to stop the domestic violence, to secure indispensable health assistance and to ensure that the victim is not subjected to new acts of violence. As mentioned in the previous annual report, the Ombudsperson Institution issued in November 2006 a report that concluded that most courts called upon by victims of domestic violence to issue protection orders had not done so within the time-limit specified in the UNMIK Regulation. There was no indication during this reporting period that the situation has improved or changed at all.

Most of the times, women who find the courage to report domestic violence and leave their house after a protection order has been issued will need to find temporary housing and shelter for their children. Unfortunately, there are very few safe houses in Kosovo. They are exclusively run by NGOs and receive very little support from public authorities, if any.

It has been observed that when violence has been used against the victim over a longer period of time and adequate protection has not been offered, there is a high risk that a victim will suffer from psychological trauma and consequently will lose her job and her children's custody.

In 2007, the Ombudsperson Institution received a complaint concerning a case of domestic violence involving a Kosovo Police Service (KPS) officer. The wife of the officer was maltreated physically and psychologically and many times threatened with a knife and his police gun. The case was reported but the police took no actions, and therefore the Acting Ombudsperson requested the KPS to inform him about the measures taken in the above-mentioned case. The KPS's response revealed that KPS had only opened an administrative investigation regarding the above-mentioned case, arguing that it was following the opinion of the Municipal Prosecutor's Office. The representative of KPS further mentioned that KPS will also conduct an investigation regarding this negligence. However, the victim later informed the Ombudsperson that she was withdrawing her complaint against her husband. This case illustrates the kind of pressure the victims are subjected to.

On several occasions during this reporting period, representatives of the Ombudsperson Institution have intervened to organize shelter in safe houses for victims of domestic violence. In particular, the Institution closely cooperates with the Centre for the Protection of the Mother and Child.

Another issue specifically targeting women and young girls is the trafficking in human beings. Many victims of trafficking in Kosovo are women coming from poverty-stricken European countries but many victims are also coming from Kosovo and forced to prostitution.

As mentioned in previous annual reports, UNMIK Regulation No. 2001/4 on the Prohibition of Trafficking in Persons has not been fully implemented yet. The Regulation indeed envisages the appointment of a Victim Assistance Co-ordinator to coordinate the implementation of the Regulation, and the allocation of funds to ensure financial assistance to the victims of trafficking. The SRSG also promulgated the Administrative Instruction No. 2005/3 detailing the responsibilities of the Co-ordinator. The Ministry of Justice has several times started the procedure to appoint the Victim Assistance Co-ordinator but the position is still vacant, which delays the implementation of the UNMIK Regulation and its subsequent administrative instruction.

In order to improve the existing situation in the field of gender equality in Kosovo, it is indispensable that competent authorities and institutions in Kosovo show a greater commitment to combat such phenomena as domestic violence and trafficking. Construction and financial support to safe houses and shelters is greatly needed and should be envisaged in the development of actions plans and programme drafted by the Agency for Gender Equality and other relevant actors.

More generally, a focus should be put on education of young girls and on raising awareness towards the importance of equal treatment at work and before the law. In this regard, the promotion of gender equality principles among the population should be one of priorities of the public institutions, as well as the ongoing training of persons dealing with gender equality at central and local level.

ACTIVITIES OF THE OMBUDSPERSON INSTITUTION

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, 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 their field of interest. They attend numerous seminars and conferences organised within and outside Kosovo. Some organisations, including NGOs that have cooperated closely with these teams and given valuable support and assistance during this reporting period are the UNDP, OSCE and the NGOs "Youth Initiative for Human Rights" and the Kosovo women's NGO "Medica".

Activities of the Children's Rights Team

The objectives of the Children's Rights Team (CRT) are to monitor, protect and investigate children's rights violations by public authorities. Founded in March 2004, the CRT, among other things, aims to protect the interests of children by addressing their needs to the official authorities. This team also aims to raise the awareness of the Kosovo society on children's rights and how important it is to protect them.

Currently, the CRT is staffed by one lawyer, whereas it is co-ordinated by the co-ordinator for special programmes within the Ombudsperson Institution's Department of Investigation.

During the reporting period, the activities of the CRT have led to some tangible results. The number of complaints before the Ombudsperson Institution related to children's rights violations has increased considerably. During the reporting period, the CRT has continued its awareness-raising campaign on children's rights issues. The CRT continued distributing posters, pamphlets and promotion materials at various meetings and workshops it attends.

In order to raise awareness on the need to respect children's rights, but also to inform children about the existence of the CRT within the Ombudsperson Institution, the CRT, during the reporting period, visited schools in the Municipalities of Gjilan/Gnjilane, Ferizaj/Uroševac, Kaçanik/Kaçanik, Fushë Kosovë/Kosovo Polje, Podujevë/Podujevo, Vushtrri/Vučitrn and some schools in the Municipality of Prishtinë/Priština. During these visits, the CRT lawyer distributed pamphlets and conducted presentations on children's rights and on the possibility of complaining to the Ombudsperson Institution in cases of alleged human rights violations by the public authorities.

During the reporting period, the CRT lawyer and the Deputy Director of Investigation coordinating the team participated in several meetings and conferences abroad on children's rights.

In April, June and September 2007, the CRT lawyer attended training of trainers organised by the International Organisation for Migration (IOM) regarding issues of human trafficking.

From 19–21 September 2007, having the role of an observer, CRT lawyers of the Ombudsperson Institution participated in the annual meeting of the European Network of Ombudsman Institutions for Children (ENOC), which was held in Barcelona, Spain. Among other things, the matters discussed included activities undertaken by the member states of ENOC in order to improve the situation in the human rights field of children with special needs.

From 17–19 October 2007, CRT lawyers of the Ombudsperson Institution participated in the second conference of the Regional Network of Ombudsman Institutions for Children, which was held in Budva, Montenegro. Some of the issues discussed were related to the rights of children with special needs and also informing the media about the children.

At this conference, the Deputy Director of Investigations held a presentation on “The rights of children with disabilities in Kosovo”.

On 20 November 2007, in order to mark the Universal Children's Day, the CRT organised invited the children of primary schools of the Municipality of Prishtinë/Priština to pay a visit to the Ombudsperson Institution. On this occasion, participants discussed different aspects of children's rights violations, in particular, the issue of physical violence in schools in the Municipality of Prishtinë/Priština.

On 18 December 2007, the Acting Ombudsperson, in the scope of the Ombudsperson Institution's attempts to promote the position of persons with special needs in Kosovan society, paid a visit to the Resource Centre “Përparimi” in Prishtinë/Priština, a centre which has developed a curriculum for children with special needs. The visit was broadcast by electronic media and via these media, the Acting Ombudsperson demanded that public authorities pay more attention to the care of children with special needs and create conditions for including these children in regular education with other children.

On 15 January 2008, within the framework of activities undertaken to improve the situation of children's rights in Kosovo, the CRT launched a compilation of children's rights laws applicable in Kosovo. This compilation includes laws which directly or indirectly deal with the protection of children's rights. Representatives from governmental and non-governmental institutions dealing with the children's rights related issues took part in the official introduction of this compilation, held at the premises of the Ombudsperson Institution.

On 28 March 2008, the CRT attended a round table on the prevention of delinquency in Kosovo, organised by the NGO “Terre des Homes”.

From 7-14 April 2008, the CRT participated in a training organised by the Helsinki Foundation on Human Rights on the subject “Human Rights Monitoring”.

On 23 April 2008, the CRT participated in a workshop dedicated to the process of drafting a strategic framework on children's rights. This workshop was organised by the Office for Good Governance and Equal Opportunities within the Prime Minister's Office, in co-operation with UNICEF.

On 8 May 2008, the CRT, together with the Non-Discrimination Team (NDT), attended a public debate organised by the Journalists' Club "Beqir Musliu" in Gjilan/Gnjilane called "Let's hear their voice". This debate was related to the situation of persons with special needs in Kosovan society.

During the reporting period, the CRT investigated a considerable number of cases directly involving children's rights issues. Cases registered with the Ombudsperson Institution that dealt with children's rights covered various issues such as: the right of a child to maintain relations with both parents following their divorce or the loss of a parent. The CRT intervened in some cases of lengthy court or administrative procedures. Also, the CRT addressed public authorities due to inadequate living conditions for children, requesting that they provide shelter or social assistance to the families of these children. The CRT investigated some cases where physical violence was used against children at schools. Another case investigated by the CRT involved physical violence by KPS police officers against some Roma children who were begging on the city streets. During the reporting period, the CRT investigated the sanitarian and hygienic conditions of some kindergartens in Prishtinë/Priština. In particular, it investigated the manners in which the municipal inspectors for health and education were inspecting these kindergartens.

Activities of the Non-Discrimination Team

The Anti-Discrimination Law that entered into force four years ago as well as the UNMIK Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo both authorise the Ombudsperson Institution in Kosovo to receive and investigate complaints concerning allegations on human rights violations related to discrimination. Based on these legal instruments, the Ombudsperson Institution in Kosovo can conduct investigations on complaints concerning discrimination in both the public and the private sector.

The Anti-Discrimination Law was the legal basis for creating the Non-Discrimination Team (NDT), a unit within the Ombudsperson Institution responsible for investigating complaints on discrimination and promoting awareness of discrimination related issues. In order to fulfil its mandate effectively, the NDT drafted operational plan for 2007 and the first four months of 2008 aimed at promoting and educating people on the above issues. All activities of the NDT in this reporting period have been developed in accordance with the goals set out in the operational plan.

The NDT continues to work towards and contribute to raising awareness among citizens on protection mechanisms against discrimination by focusing on the promotion, education and information on discrimination matters. The NDT consists of two lawyers within the

Ombudsperson Institution in Kosovo coordinated by the Institution's Deputy Director of Investigations.

In June 2008, the awareness-raising campaign of the NDT continued. The NDT lawyers visited some of the elementary & secondary schools in all regions of Kosovo. Such campaigns have even been organized in cooperation with local authorities in Pejë/Peć, Lipjan/Lipljane, Fushë Kosovë/Kosovo Polje, Gjilan/Gnjilane, Ferizaj/Uroševac, Kaçanik/Kaçanik, Prizren, Gjakovë/Djakovica and Mitrovicë/Mitrovica. During this campaign, presentations before NGOs have been organised as well, focusing mainly on the protection of human rights of disabled people. During the campaign, the lawyers of the NDT paid several visits to the geriatric centre in Prishtinë/Priština as well.

During the reporting period, NDT lawyers reviewed complaints lodged with the Ombudsperson Institution in the field of non-discrimination. Some of the cases investigated by the NDT involved the rights of disabled persons to have access to and communicate with public institutions, discrimination of aged people under institutional care, discrimination of children in educational institutions, discrimination of citizens in the northern part of Mitrovicë/Mitrovica regarding their right to property and the unequal treatment of members of the Roma, Egyptian and Ashkali communities in different fields of social life.

Besides reviewing complaints on discrimination, the NDT also carried out other activities, such as capacity-building training. Such training is discussed in greater detail in this Annual Report's section on "Cooperation and capacity-building".

One of the NDT lawyers visited the Office of the Slovenian Ombudsman from 9 to 12 July 2007 in order to exchange experiences with staff working on discrimination issues there. In discussions, special attention was paid to the protection level of human rights in Slovenia and Kosovo and to programs these institutions apply in this field.

In August 2007, NDT lawyers participated in an event, organized in Gračanica/Gračanicë by the OSCE Mission in Kosovo with the aim to launch the OSCE's report on returns.

On 28 September 2007, NDT lawyers participated in a roundtable organized by the women's NGO "Norma" and other organisations dealing with women's rights. At the roundtable, they presented the Ombudsperson Institution's best practices on dealing with complaints regarding discrimination and other human rights violations.

In September 2007, the NDT lawyers met with UNMIK representatives in relation to the adequate implementation of the Anti-Discrimination Law.

On 22 October 2007, an NDT lawyer participated in a roundtable discussion organised by the Humanitarian Law Centre aimed at promoting the report on the use of official languages in Kosovo. On this occasion, the NDT lawyer gave a presentation on the Ombudsperson Institution's experience in receiving complaints concerning the use of official languages in Kosovo.

From 19 to 22 November 2007, the lawyers of the NDT carried out a study visit to Stockholm, Sweden. During the visit, they met with many representatives from Ombudsman offices there dealing with discrimination issues. This visit was sponsored by SIDA and organized by the Council of Europe.

On 26 and 27 November 2007, at a conference organized by the Ministry of Environment and Spatial Planning, the OSCE Mission in Kosovo and the Spanish NGO MPDL on the protection of property rights, the Deputy Ombudsperson presented the activities of the Ombudsperson Institution in protecting property rights along with NDT lawyers who moderated a working group. The conference ended with recommendations addressed to the Government and courts of Kosovo.

NDT lawyers also attended the “Fair against discrimination”, a roundtable held on 5 December 2007 and organised by the Ministry of Labour and Social Welfare. At the roundtable, the NDT lawyers again promoted their work and the contribution to raising awareness in Kosovo on discrimination protection mechanisms.

On 18 December 2007, as part of the Ombudsperson Institution’s general efforts to improve the position of persons with special needs in Kosovan society, the Acting Ombudsperson, together with the Deputy Director of Investigation visited the centre “Perparimi” in Prishtinë/Priština, a centre which has developed a curriculum for children with special needs.

During the reporting period, the lawyers of NDT in the scope of their activities related to the promotion and awareness raising, had participated in a radio and local TV debates, giving their views on the issue of discrimination and the rights of disabled persons, in particular on the right to property,. One example of this was a debate with citizens of the Municipality of Gjilan/Gnjilane regarding the discrimination of disabled persons.

Lawyers of the NDT also had several meetings with the Kosovo Property Agency (KPA) about complaints concerning property rights lodged with the Ombudsperson Institution by Kosovan citizens. Many such complaints were received especially by Kosovars who own properties in the northern part of Mitrovicë/Mitrovica. These people complained that they were being discriminated as they were paying rent to the KPA for the apartments that they were living in, while this same Agency was not obtaining any rent from people occupying these same persons’ properties.

NDT representatives have several times visited the Deputy Minister for Labour and Social Welfare regarding the difficulties some citizens experienced in accessing the pension administration’s office, located in a suburb of Prishtinë/Priština. Following the Acting Ombudsperson’s recommendations, this office was relocated to an area which was more accessible to all citizens.

On 28 January 2008, lawyers of the NDT participated in a conference aiming to initiate the amending process of the Law on Road Transport No. 2004/01 and the Law on Construction No. 2004/15. The conference was organized by the NGO “Handicap” Kosovo.

On 6-8 February 2008, the NDT, together with the Ombudsperson Institution's Children's Rights Team (CRT), visited the primary school "Meto Bajraktari" in Prishtinë/Priština and held a lecture to the school pupils. During these visits, the lawyers of both teams became closely acquainted with the problems faced by that school.

On 18 March 2008, lawyers of the NDT contacted the Permanent Secretary of the Ministry of Trade and Industry regarding complaints by some former workers of the Ministry concerning discrimination based on age. According to these workers, their contracts were terminated because of their age (which did not yet hit the ceiling which would allow these people to retire). Following the investigation, the NDT was not able to verify the above allegations, but did notice that the Ministry of Trade and Industry had not followed the proper procedure when terminating these employment contracts. Following the reaction of the Acting Ombudsperson, the majority of workers were returned to their working places. Two of the workers were not returned to their work places as the Ministry did not consider that they had fulfilled their working obligations according to their contracts. These two complainants are currently making use of legal remedies to contest their dismissals.

On 19 March 2008, the NDT lawyers met directors for communities and return within the Ministry for Communities and Return to obtain information regarding the situation of minorities in Kosovo.

Activities of the Gender Equality Unit

In accordance with actual legislation, Gender Equality Unit has a jurisdiction to accept and investigate complaints regarding the discrimination based on gender. The Unit is has a mandate to review the compatibility of domestic laws with international standards for gender equality and to give comments on the implementation of laws and applicable legislation regarding the gender issues. Besides legal analysis, The Gender Equality Unit is committed towards prevention and monitoring of human rights violation on gender base and is also involved in promotion of the principle of gender equality.

During the reporting period, the Gender Equality Unit has accepted complaints that deal with discrimination on gender base in different fields, especially in the fields of employment and education, the right to benefit on legal ground for social schemes and pensions, the right to access to court and court hearing within a reasonable period of time, the right to share-out of family estate and some complaints from victims of domestic violence related to their protection or shelter.

GEU had regular meetings with representatives of international and local institutions, with representatives of civil society. These meeting aimed at improving the cooperation with the mentioned institutions/bodies in achieving the common objectives, such as gender equality and the promotion of women's rights in Kosovan society.

In this period, the Gender Equality Unit has cooperated with Kosovo Police Service (KPS), Victims' Advocacy and Assistance Division within the Ministry of Justice, Centers for Social

Welfare, safe houses etc. GEU has also maintained contacts with representatives of many women NGOs operating in Kosovo, such as NGO "Dera e Hapur"(Open Door); "Norma"; "Women's network of Roma, Ashkali and Egyptian organizations in Kosovo"; and with representatives of NGO "Little People of Kosovo"; "Center for protection of women and children" etc.

From 26 August 2007 until 28 August 2007, the lawyer of GEU visited the Ombudsman for Gender Equality in Croatia. The purpose of that visit was to enable GEU lawyer to gain acquaintance with the structure and state mechanisms for gender equality in Croatia as well as with the work and competencies of Ombudsperson Institution for gender equality.

During this visit the representatives of two institutions exchanged their best experiences regarding the mandate of the Ombudsman and also discussed about current challenges these two countries face in the gender equality field. Special attention was paid to promotion of gender equality in new democracies and the role of ombudsman in that regard.

On 28 September 2007, the representative of GEU took part in a round table discussion, that was organized in Prishtinë/Priština by NGO "Norma" in cooperation with many other NGOs, which deal with different aspects of women's rights. The work of GEU was presented during this discussion.

On 1 October 2007, the representative of Ombudsperson Institution in Kosovo attended a conference with the occasion of the "Anti-Trafficking Month" in Kosovo that was organized by the office for Good Governance within the office of the Prime Minister.

On 18 October 2007, the representative of GEU had a meeting with the representative of the NGO "Dera e Hapur" in which the above agreed to establish cooperation. Issue of difficulties faced in the rehabilitation process of victims of human trafficking was also discussed during the meeting.

On 31 October 2007, the representative of GEU participated in a press conference that was organized in Prishtinë/Priština on the occasion of publishing the OSCE Report on "Evaluation for creating a referring mechanism for Victims of Human Trafficking in Kosovo".

On 18 November 2007, the representatives of GEU and NDT within the Ombudsperson Institution visited the Ombudsman for Gender equality in Sweden. The purpose of this visit was the acquaintance with the work and competencies of Swedish Ombudsman for gender equality and as well the acquaintance with structure and state mechanisms for the protection of gender equality in Sweden. The representatives of Ombudsman for Gender equality in Sweden have introduced to the OIK lawyers the results of the work of the Ombudsman for Gender Equality and presented the challenges they face in practice. In addition, the lawyer of GEU was able to learn about the procedures of submitting and reviewing complaints and also about the activities of Ombudsperson for Gender Equality.

On 24 December 2007, the representative of GEU took part in the promotion ceremony of the report on "Monitoring of Safety in Kosovo from gender perspective", which was organized in Prishtinë/Priština by Kosovo Center for Gender Studies. The aim of the Report was to review different safety issues from the gender point of view.

On 1 February 2008, the Deputy Director for Special Programs and lawyer of Gender Equality Unit took part in the informative meeting in the Kosovo Assembly that was organized by National Democratic Institution (NDI). The purpose of this informative meeting was to inform the informal Parliamentarian women group with activities of non-governmental organizations and the identification of possible fields for cooperation in future. During the meeting Deputy Director for Special projects presented the activities of GEU within OIK.

On the occasion of International Woman's Day, on 7 March 2008, the Agency for Gender Equality within the Prime Minister's Office organized a round table in Prishtinë/Priština. The subject matter of the mentioned round table was the treatment the gender perspective in Kosovo and the commitment of Kosovo towards promotion of woman in society. The GEU representatives were present in this discussion too.

In the beginning of June 2008, lawyer of the GEU within the Ombudsperson Institution in Kosovo had official meeting with representatives of the Agency for Gender Equality and during this meeting the lawyer of GEU was informed on the Activities and Operational Plan of the Agency for Gender Equality for the year 2008.

On 20 June 2008, the representative of GEU contacted the Coordinator and a representative of the Commission for Legal Assistance and was informed about the work and jurisdiction of the above mentioned independent organ.

Furthermore, in June 2008 the lawyer of GEU had an official meeting with representative of the Victims' Advocacy and Assistance Division within the Ministry of Justice. During this meeting, it was discussed about further cooperation of these two institutions in order to achieve more effective institutional and legal support to the victims of domestic violence and victims of human trafficking.

Cooperation with the International Community

Throughout the reporting period, the Ombudsperson Institution continued to be in close cooperation with the OSCE Mission in Kosovo, the Office of the High Commissioner for Human Rights (OHCHR) in Prishtinë/Priština, Office of the Council of Europe in Prishtinë/Priština, as well as the Advisory Panel for Human Rights, the SRSG's Advisor for Human Rights and various offices within UNMIK.

The OSCE continued to support the Ombudsperson Institution mainly by providing one special international advisor to the staff of the Institution in the field of law. Her support and dedication has been of paramount importance to the daily work of OIK. In April 2008, this advisor left and was replaced by a new advisor in June 2008. Also as of June 2008, OSCE provided an assistant to this new advisor.

Furthermore, the Ombudsperson Institution continued to cooperate with the Executive Directorate of the Kosovo Property Agency (KPA) (formerly the Housing and Property Directorate (HPD)) regarding a number of cases where people complained about proceedings

before the KPA and the HPD. Certain cases were about the non-payment of rent to ethnic Albanians owning flats in the northern part of Mitrovicë/Mitrovica that were occupied by Serbs. At the same time, these owners were asked to pay rent for living in flats administered by the KPA in other parts of Kosovo. Despite the insistence of the Acting Ombudsperson that all communities receive equal treatment in such cases, there was no real progress in that direction.

The Ombudsperson Institution has also continuously contacted the Kosovo Trust Agency (KTA) regarding a number of such cases, but as during the previous reporting period, the KTA stayed persistent to its habit to not reply to such correspondence. In cases where the KTA did reply, it took place with a delay of six or more months. Despite the promises of the KTA managing staff that cooperation would improve, this practice of not replying or delayed replies to Ombudsperson Institution requests has continued throughout the reporting period.

The Ombudsperson Institution has continued its cooperation with institutions of the same kind in other countries regarding cases that demanded their involvement. Such cooperation took place with the People's Advocate of Albania, Ombudsman Institutions of the Former Yugoslav Republic of Macedonia, Montenegro, Croatia, Slovenia as well as Spain and Hungary.

Besides that, the staff of the Ombudsperson Institution also participated in a number of study visits, various conferences, workshops and seminars, thanks to a strong cooperation with international institutions and organizations. The aim of these visits was to acquaint the Ombudsperson Institution staff with the good experiences and practices of other ombudsman institutions and human rights organizations in other regions and European countries.

In order to raise capacity and enhance professional education during the reporting period, a project called "Strengthening Democratic Institution in the Balkans - Ombudsman Services in Kosovo and Montenegro" was implemented. This project was implemented by the ICDT (International Centre for Democratic Transition) from Hungary. Representatives of the Ombudsperson Institution participated in workshops that took place in Budapest (Hungary), Berlin (Germany) Strasbourg (France) and most recently in The Hague (the Netherlands). Cooperation with the ICDT from Hungary has continued in various areas such as the organization and implementation of trainings, e.g. communications training for lawyers of the Institution, which was sponsored and organized by the ICDT. This project is expected to continue in the future as well.

During the reporting period, the lawyers of the Institution attended courses on writing skills in Albanian and Serbian; these courses were organized by the Council of Europe and financed by the Swedish Development Agency SIDA.

During the reporting period, representatives of the Ombudsperson Institution were also invited to participate in a number of conferences, such as the one organized by the French Ombudsman in co-organization with the European Commissioner for Human Rights in Strasbourg. This conference was attended by the Acting Ombudsperson along with the Director of Investigations and was called "Prevention of Freedom and Human Rights and the Prevention of Torture in Europe".

As part of the cooperation with the European Commissioner for Human Rights of the Council of Europe, the implementation of a workshop project called "PEER to PEER" was initiated, which was carried out by the Office of the Council of Europe, Office of the High Commissioner for Human Rights, the Centre for Human Rights and Peoples' Rights of the University of Padova (Italy) and the Centre for Humanitarian Research and Policy Studies "Strategy" in Saint Petersburg (Russian Federation). Two senior lawyers from the Ombudsperson Institution participated in the workshop organized in Padova (Italy) and contributed to the topic "The rights of prisoners and the role of national structures that are or are not mechanisms of the Additional Protocol of the Convention against Torture". At the same time, the project continued with the subject "complaints against the police", which took place in Saint Petersburg (Russian Federation). Also here, Ombudsperson Institution representatives participated and gave their contribution by having a special accent on the practices in Kosovo.

Also, during the reporting period, SIDA once again enabled an Ombudsperson representative to attend the summer school in Strasbourg. SIDA also funded the visit of two other representatives of the Ombudsperson Institution to the Slovenian Ombudsman Institution and a study visit of one lawyer to the Ombudsman Institution in Croatia in order to exchange experiences on gender equality issues. Another representative of the Ombudsperson Institution participated in a round table in San Remo (Italy).

With the support of SIDA and the assistance of the Council of Europe, many trainings were organised for Ombudsperson Institution staff throughout the reporting period. Such training courses were on report-writing skills, translator training, proper writing training, training on how to use the new database, a moot court competition (articles 2, 3, 8 and 14 of the European Convention on Human Rights).

The cooperation with the Swedish Ombudsman continued during the reporting period with a study visit from the Ombudsperson Institution's Non-Discrimination Team and the Gender Equality Unit. Representatives of the Slovenian Ombudsman also provided non-discrimination training for the staff of the Ombudsperson Institution. Ombudsperson Institution staff participated in the training on "Presentation skills in front of the audience and elimination of fear" which was organized by the Council of Europe and financed by SIDA. Recently, the Ombudsperson Institution's staff participated in training on "Human Rights Monitoring" held by the Helsinki Foundation for Human Rights in Warsaw (Poland). This training was organised by the Council of Europe and sponsored by SIDA.

The co-operation with the UNMIK Standards Coordinator has continued until the first year of the reporting period. The Acting Ombudsperson mainly informed him about human rights cases investigated by the Institution.

During the reporting period, the Acting Ombudsperson continued to meet with various representatives of KFOR units in order to exchange information and discuss the human rights situation in Kosovo.

As in the previous reporting periods, the Ombudsperson Institution maintained regular contacts with the diplomatic missions of various countries in Prishtinë/Pristina.

The Ombudsperson Institution continued to cooperate and communicate with some NGO-s working on or monitoring development in Kosovo, in particularly with the:

- The EU Commission
- The EU Monitoring Mission
- Human Rights Watch
- Amnesty International
- The Humanitarian Rights Centre in Belgrade and the branch Prishtinë/Pristina
- The ICRC Office in Prishtinë/Pristina
- ONM
- The Spanish NGO “Movement for Peace, Disarmament and Freedom” MPDL”, now CLARD (Centre for Legal Aid and Regional Development)
- Save the Children
- The Swedish Helsinki Committee for Human Rights in Stockholm and its Office in Belgrade
- UNHCR
- UNICEF
- UNIFEM
- ICDT (International Centre for Democratic Transition) from Hungary.
- Office of the Helsinki Foundation in Poland in Warsaw.
- “Terre des Homes” Foundation

Cooperation with Local Institutions

Throughout the reporting period, the Acting Ombudsperson met with numerous representatives of government institutions at a central level – including the President of Kosovo, the Prime Minister of Kosovo and the President of the Kosovo Assembly – to discuss various human rights issues and the future of the Ombudsperson Institution.

A number of human rights units were created within the ministries according to an administrative instruction from the previous Prime Minister, who obliged Human Rights Units to communicate and exchange information with the Ombudsperson Institution. The cooperation amongst the Ombudsperson Institution and these units has been smooth regarding issues addressed to the above-mentioned units.

The Acting Ombudsperson addressed requests for information, intervention letters as well as recommendations to various ministries bringing to their attention various human rights issues regarding the work of their ministries. Unfortunately, not all ministers were responsive to these interventions. In those cases in which they did respond to the Acting Ombudsperson, the information was incomplete or it was not followed by any substantive action. Many municipal authorities were even less responsive to the Institution’s efforts to advocate or mediate remedies to various complaints from individuals under their jurisdiction. Not all municipalities were uncooperative, but it is worth noting that the Municipality of Prishtinë/Priština continued to not cooperate with the Ombudsperson Institution until the election of new municipal leaders in

October 2007. The same is true for the Municipality of Skenderaj/Srbica and Mitrovicë/Mitrovica. After the last elections in Kosovo, a minor progress was made.

The cooperation with the Kosovo Assembly has improved remarkably during the reporting period, especially with the Human Rights Commission, the European Integration Commission, the Commission for Agriculture, Forestry, Rural Development, Environment and Spatial Planning and Commission for Gender Equality, Missing Persons and Petitions. A good example of good cooperation was the review of the petitions by the Kosovo Assembly; respectively the Human Rights Commission. This kind of cooperation will continue in the future.

In addition, during this reporting period, staff of the Ombudsperson Institution was also in constant contact with judges of all courts in Kosovo in order to receive updates in cases where individuals had complained of lengthy proceedings. In most cases, the cooperation with the judiciary was positive with the exception of the Municipal Court in Ferizaj/Uroševac, which, like in the previous reporting period failed to respond to the Acting Ombudsperson's requests. Lately, the Municipal Court in Prishtinë/Pristina also failed to respond to some request for information by the Acting Ombudsperson regarding cases before this court. In some other cases, the response was delayed.

Cooperation with Local NGOs

During the reporting period, the Ombudsperson Institution continued its cooperation with local NGOs. The cooperation was even closer with those local NGOs dedicated to the protection of human rights of the special categories of the society, such as: children's rights, persons with special needs, women's rights or minority rights.

The Ombudsperson Institution continued its cooperation with local NGOs by participating actively in conferences, seminars or round tables organised by these NGOs, or special meetings in order to exchange information, be that for individual or collective cases with regard to the protection of human rights.

Thus, during this period, the representative of the CRT met with the representative of the foundation "Terres des Hommes". The latter informed the CRT representative about an individual case and also invited her to take part at a round table organised by the respective foundation on the prevention of juvenile delinquency in Kosovo.

During this reporting period, the representative of the Ombudsperson Institution held a short presentation in the Opening Campaign Ceremony "Tetori" (October) – a month of disabled persons' professional opportunities" in order to support the promotion of mental-physical disabled persons' professional opportunities. On that occasion, ten disabled persons were invited to work each for one day at the Ombudsperson Institution.

During this reporting period, the representative of the Ombudsperson Institution cooperated with the NGO "Labyrinth" in order to exchange information with regard to the phenomenon on the use of narcotics, a phenomenon which is very much widespread nowadays among the young

population, as well as participated at a round table, the mentioned organization organized in cooperation with UNICEF.

The Ombudsperson Institution in Kosovo has cooperation with the NGO “Norma” in the scope of which the representative of the Ombudsperson Institution was invited to a debate organised by this NGO to have a short presentation on the role of the Ombudsperson Institution in the protection of human rights. This presentation was held in front of the other participants mainly from local NGOs dealing with the protection of the women’s minority rights.

Internships

During this reporting period, the Ombudsperson Institution awarded monthly internships to 33 students from the political science and law faculties of the University of Prishtinë/Priština. OIK Regional office in Gjilan/Gnjilane awarded internship to one student and Regional office in Prizren awarded internship to two students. Internships at the Ombudsperson Institution were also awarded to one student from Serbia for a period of several months.

Media Relations and Awareness-Raising

The Ombudsperson Institution’s attempts to establish better relations with the media and raise awareness of human rights during this reporting period resulted in the employment of a Media Officer. At the same time, the decision of the Government of Norway to provide further support the Ombudsperson Institution’s Public Affairs Office made it possible to hire an additional employee, which enabled the broadening of the scope of activities in the field of public relations and media and heightened the efficiency of the Public Affairs Office. The correspondence of the Media Information Unit and Public Affairs Office is conducted in Kosovo’s official languages – Albanian, Serbian and English.

As a result of the Ombudsperson Institution’s constant efforts to inform the public regularly and consistently about the work of the Institution, a more comprehensive and advanced media strategy was developed and has greatly contributed to the Ombudsperson Institution’s aim of raising awareness on human rights with both with the Kosovo authorities and the population. Special attention has been paid to a partnership with the media and civil society groups, in order to also promote the work and mandate of the Ombudsperson Institution.

Another chance to obtain an overview of the Ombudsperson Institution’s work is the Institution’s recently overhauled internet website with a more sophisticated and easier-to use design and system. The site-name (www.ombudspersonkosovo.org) has remained the same. This enhanced internet website was launched in July 2007 and contains daily information about the work of the Ombudsperson Institution. The site is constantly updated with additional information. The Ombudsperson Institution, in order to reach the entire Kosovo population and the international community, translates the information that released in the internet into four languages; Albanian, English, Serbian and the in cases where it is relevant Turkish. Besides reports, press releases, a selection of incoming and outgoing correspondence, the official website has other features as well, namely a photo gallery and articles from national and international newspapers.

Another novelty offered by the Ombudsperson Institution during this reporting period is the publication of a revised complaints form. This form now also includes fundamental information on to the Institution. When filling in the respective form, prior to an interview with the Institution's lawyers, the complainants are requested to specify more facts interrelated with their cases than before. This further serves to improve and speed up of the initial consultation process. The complaints form can be collected at the Ombudsperson Institution's offices and via the internet website, as well as at public administration offices, courts and prisons throughout Kosovo.

Contacts of the Acting Ombudsperson and senior staff with local and international media have increased notably. Also, in order to inform the public about the Institution's work and to raise different issues of concern, the Ombudsperson Institution now and then holds press conferences and briefings for journalists. On the other hand, the Acting Ombudsperson and his associates are often invited to participate in radio and TV debates and in direct interviews to promote different human rights issues for the wider public. The interest of local journalists has increased, in particular regarding the follow-up of reports issued by the Ombudsperson Institution. Considerable attention of both the local and international media was raised by the process of appointing a new Ombudsperson, a process which has been going on for more than two years and has still not resulted in an appointment.

The fact that approximately 400 articles related to the Ombudsperson Institution's work have been published in the local and international written and electronic media during the reporting period is a good reflection of the great interest shown by the media to the field of human rights in Kosovo.

The Ombudsperson Institution's special teams continue to inform the public related to issues dealing with their work in the fields of children's rights, non-discrimination and gender equality.

The Children's Rights Team (CRT) continued with its "campaign of awareness-raising for children's rights", which involves visits to schools throughout Kosovo and the distribution of posters, leaflets and promotion material, as well as different meetings and workshops related to children's rights. Also, special meetings were held with pupils and teachers in order to raise awareness and a sense of responsibility in protecting human rights.

In order to mark the "Universal Children's Rights Day" on 20 November, the Ombudsperson Institution organized a meeting to which it invited children from primary schools of the Municipality of Prishtinë/Priština. At this meeting, the participants discussed different aspects of children's rights violations, in particular the presence of physical violence in schools of the Municipality of Prishtinë/Priština.

The Ombudsperson Institution's Children's Rights Team also promoted a compilation of domestic and international laws on children's rights, which was launched at the beginning of 2008. This compilation was distributed to schools, relevant institutions and other counterparts and has so far been considered to be of great assistance to teachers in schools and NGOs and administrative offices dealing with children's rights.

During this reporting period, the CRT lawyers participated in some meetings and conferences with the subject on children's rights in the country and abroad. The presentations and achievements of the Ombudsperson Institution related to the children's rights situation raised great interest and were also broadcast by the media.

Representatives of the CRT within the Ombudsperson Institution also took part in the Children's network conference of the *European Southeast Ombudsmen (ENOC)*, held in Budva Montenegro (17-19 October 2007). In the conference discussed was the issue of children's rights with special needs as well as public information by the media related to this matter.

On the other hand, the Gender Equality Unit (GEU), during this reporting period, has also attempted to raise awareness regarding gender issues as well as fostering partnerships amongst civil society. A roundtable was an example of this co-operation which was about domestic violence, and was hosted by the Ombudsperson Institution in co-operation with UNDP, which brought together NGOs and other parties concerned to address the implementation of some measures of the UNMIK Regulation No. 2003/12 on Protection Against Domestic Violence.

The Non-Discrimination Team, during this reporting period, continued its activities in the campaign entitled "Stop to Discrimination", which comprised lectures on non-discrimination at schools, civil society groups and local authorities throughout Kosovo. As part of this campaign, posters and leaflets were distributed and published in several languages.

Lawyers of the NDT participated in different round tables, meetings, seminars, conferences related to non-discrimination issues. In order to raise awareness, the lawyers of the NDT have attended a training held by experts from Slovenia in the field of non-discrimination.

The Public Affairs and Media Office, among other activities, also issues press releases and is in close contact with journalists; therefore it has also assisted in this way to promote special teams' work and activities functioning within the Ombudsperson Institution.

Collaboration and Capacity-Building

The Ombudsperson Institution has continued to cooperate closely with similar institutions in other countries where the resolution of a complaint from a person in Kosovo required their engagement. Collaboration for such purposes took place, for example, with the People's Advocate in Albanian, Ombudsman Institutions of Montenegro, Croatia, Slovenia, and Hungary.

In addition, the staff of the Ombudsperson Institution participated in numerous and varied study visits, conferences, workshops and seminars. The purpose of these visits was to expose the Institution's staff to the best practices of other ombudsman institutions and human rights organizations in surrounding countries and throughout Europe.

Collaboration: Conferences, seminars and workshops

On 19-21 September 2007, lawyers from the Ombudsperson Institution attended the annual meeting of the European Network Ombudsman for Children (ENOC) held in Barcelona, Spain, in which the actions taken by member states of ENCO, in improving children's right situation were presented, while a special focus was paid to the situation of the children with disabilities. The above-mentioned annual meeting was organized and funded by the Norwegian Ministry of Foreign Affairs.

On 17-19 October 2007, lawyers from the Ombudsperson Institution attended the conference of the European Ombudsman South East Network. The main topic of discussion was "the rights of children with disabilities" which took place in Budva, Montenegro. The conference was organized and funded by the Ombudsman Institution in Montenegro.

In this conference, the Deputy Director of the Department of Investigation gave a presentation on "Children with disabilities in Kosovo" where she described the human rights situation of children with disabilities in Kosovo.

On 20 November 2007, the Children's Rights Team (CRT) within the Ombudsperson Institution, in order to mark the Universal Children's Day, organised a meeting at the head offices of the Ombudsperson Institution in Prishtinë/Priština and invited the children of primary schools of the Municipality of Prishtinë/Priština.

On this occasion, participants discussed different aspects of children's rights violations, in particular, the issue of physical abuse in schools in the Municipality of Prishtinë/Priština.

From 26 to 27 November 2007, the Deputy Ombudsperson and a lawyer participated in a conference on the protection of property rights, organised by the Ministry of Environment and Spatial Planning, the OSCE Mission in Kosovo and MPDL ((Movimiento per La Paz, El Desarme y la Libertad)-a Spanish NGO. The Deputy Ombudsperson held a presentation on the activities of the Ombudsperson Institution in Kosovo with regard to the protection of property rights in Kosovo, while the lawyer of the CRT was the moderator of a working group. The work of this conference was concluded after recommendations had been issued which were addressed to the Government and courts in Kosovo

On 18 December 2007, the Acting Ombudsperson, together with the Deputy Director of Investigations visited the Resource Centre "Përparimi" in Prishtinë/Priština, a centre which has developed a curriculum for children with special needs. This visit was part of the Ombudsperson Institution's general efforts to promote awareness of persons with special needs in Kosovo society.

On 15 January 2008, the CRT, within the framework of activities undertaken to improve the situation of children's rights in Kosovo, promoted the "Compilation of Laws Applicable in Kosovo", which directly or indirectly deal with the protection of children's rights. The publication of this compilation was made possible thanks to the financial assistance from the Norwegian Ministry of Foreign Affairs. Representatives of governmental and non-governmental institutions, which deal with the issue of children's rights, took part in this event. Different aspects of the protection of children's rights were discussed on this occasion, as well as possibilities for achieving better co-operation in the future in order to protect and promote children's rights.

On 23 April 2008, the CRT participated in a workshop on the drafting of a strategic framework on children's rights. This workshop was organised by the Office for Good Governance and Equal Opportunities within the Prime Minister's office in co-operation with UNICEF.

From 9 to 10 April 2008, two senior lawyers from the Ombudsperson Institution participated in a workshop held in Padova (Italy), co-organised by the Office of the Council of Europe's Human Rights Commissioner and the Centre on Human Rights and the Rights of People of the University of Padova (Italy). The workshop was on the rights of persons deprived of their liberty and the role of national human rights structures, which are or are not mechanisms of the Additional Protocols of the Convention against Torture". This workshop was part of a joint project of the European Union and the Council of Europe ("PEER to PEER Project") initiated with the aim of establishing an active network of independent non-judicial structures on human rights.

From 17 to 20 June 2008, one senior lawyer of the Ombudsperson Institution participated in a workshop held in Padova (Italy), co-organised by the Council of Europe's Office of the Commissioner on Human Rights, and the Centre on Human Rights and the Rights of People of the University of Padova (Italy). The workshop was called: "The protection of human rights of irregular immigrants and the role of national structures on human rights". This workshop was also part of the PEER to PEER Project described above.

On 27 June 2008, the Acting Ombudsperson in Kosovo held a lecture at the Conference of Ombudsman Institutions of the Region in Budapest on "Challenges and advantages of Ombudsmen in fragile democracies". This conference was organised and supported by the ICDT (International Centre for Democratic Transition) from Hungary.

Capacity-Building: study visits and trainings

From 27 August to 2 September 2007, 11 lawyers of the Ombudsperson Institution attended in a study visit in Hungary, sponsored and organised by the ICDT (International Centre for Democratic Transition). This study visit was also attended by 11 professional staff of the Ombudsman of Montenegro.

From 9 to 12 July 2007, the Co-ordinator of special teams and a senior lawyer in the Non-Discrimination team (NDT) visited the Ombudsman Institution in Slovenia. Their visit aimed at an exchange of experiences in combating discrimination. Special attention was paid to the level of human rights protection in the field of discrimination in Slovenia and in Kosovo, and action programmes that these two institutions apply in this field.

From 8 to 9 September 2007, the Ombudsperson Institution's lawyers took part on the training "Report-Writing and Investigation" held in Hotel "Afa" in Prishtinë/Priština, financed by SIDA and organised by the Council of Europe.

From 19 to 22 November 2007, the Deputy Director of Investigations, together with one lawyer from the Non-Discrimination Team and one lawyer from the Gender Equality Unit participated

in a study visit to Stockholm, Sweden. During this visit, they had numerous meetings with the representatives of different Ombudsmen dealing with the issues on non-discrimination, this study visit was financed by SIDA and was organised by the Council of Europe.

From 2 to 9 and on 16 November 2007, the Ombudsperson Institution's lawyers attended trainings on "Report Writing", organised by MDA (Management and Development Associates), financed by SIDA and was organised by the Council of Europe.

From 28 to 29 November 2007, the Ombudsperson Institution's lawyers participated in training on "Non-discrimination" held by the staff members of the Ombudsman of Slovenia. The training was organized in the premises of the AUK (the American University in Kosovo), in Prishtinë/Priština, was financed by SIDA and organised by the Council of Europe.

From 29 to 30 November 2007, the Ombudsperson Institution's lawyers attended a training on "Non-discrimination" held in the AUK (the American University in Kosovo) in Prishtinë/Priština. The trainer was a representative of the Ombudsman of Slovenia. The training was financed by SIDA and organised by the Council of Europe.

In November 2007, the Ombudsperson Institution's lawyers participated in a law moot court Competition organised only for Ombudsperson Institution staff and involving violations of various articles of the European Convention on Human Rights. This training was financed by SIDA and organised by the Council of Europe.

From 13 June 2007 to 11 December 2007, the staff of the Ombudsperson Institution in Kosovo attended courses on writing skills in Albanian and Serbian, at the main offices of the Ombudsperson Institution as well as in all regional offices. Courses were held by a local trainer who was an expert in this field. These courses were financed by SIDA and were organised by the Council of Europe.

On 18 January 2008, the Acting Ombudsperson and the Director of Investigations attended training in Paris, France, on "The deprivation of Freedom and Human Rights, Prevention of Torture in Europe". This training was conceived and organised by the Office of the Council of Europe's Human Rights Commissioner.

From January to February 2008, the CRT continued to visit schools all over Kosovo. In this reporting period, the CRT visited schools in the Municipality of Prishtinë/Priština. During these visits, the CRT's lawyer, together with representatives of the NDT distributed leaflets and held presentations on children's rights and on the possibility of filing a complaint with the Ombudsperson Institution in case their rights had been violated by public authorities.

On 28 March 2008, the CRT attended a round table organised by the NGO "Terre des Homes" and held at the Grand Hotel in Prishtinë/Priština. The main topic of discussion was "The Prevention of Delinquency in Kosovo".

On 27 March 2008 and 4 April 2008, the Ombudsperson Institution's lawyers attended training on "Presentation skills in front of an audience and the elimination of fear". It was held in AUK

(The American University in Kosovo), and was financed by SIDA and organised by the Council of Europe.

On 7 April 2008 to 14 April 2008, the Ombudsperson Institution's lawyers attended training on "Human Rights Monitoring", organised by the Helsinki Foundation on Human Rights, at AUK (The American University in Kosovo), in Prishtinë/Priština.

On 8 May 2008, the CRT together with the NDT attended a public debate, organised by the Journalists Club "Beqir Musliu" in Gjilan/Gnjilane titled "Let's hear their voice". At this debate, participants discussed the situation of persons with special needs in Kosovan Society.

From 15 to 16 May 2008, a group of lawyers attended a seminar on "Monitoring Countries Where Freedom is Deprived in the Light of European Convention for the Prevention of Torture and Inhuman or Degrading, Treatment or Punishment" elaborated by experts of the European Commission on Prevention of Torture (CPT), and held at the Kosovo Centre for Public Safety, Education and Development in Vushtrri/Vučitrn.

From 21 to 28 June 2008, a lawyer of the Ombudsperson Institution attended the International Summer School on Human Rights in Warsaw, Poland. Sessions were focused on various paragraphs of the European Convention on Human Rights. The participation of staff member was organised by the Polish Helsinki Foundation on Human Rights, in cooperation with the Council of Europe, and was financed by SIDA.

The Financial Future of the Ombudsperson Institution

The Ombudsperson Institution, based on UNMIK Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo and the Kosovo Constitution, was established as an independent institution. This means that it shall not accept any instructions or interferences from other bodies, institutions or authorities which are exercising powers in the Republic of Kosovo. Respect for the Institution's independence requires not only political, institutional and moral support but financial support as well. If state institutions do not respect the Ombudsperson Institution as an independent institution, then adequate functioning and effective performance of its mandate in protecting and promoting human rights can not be possible. Throughout the reporting period, the Ombudsperson Institution faced the challenge of retaining its financial sustainability due to the Government's interference in the budget ceilings.

Although, the Constitution of the Republic of Kosovo guarantees the general independence of the Ombudsperson Institution from the interference of state institutions, it also pays adequate attention to the aspect of financial independence (Article 132 paragraphs 1 and 2). The necessity of financial independence is also explicitly mentioned in UNMIK Regulation No. 2006/06, amended by UNMIK Regulation No. 2007/15 (Section 2). Indeed, Section 17.1 of UNMIK Regulation No. 2006/06 states that sufficient funds should be allocated from the Kosovo Consolidated Budget to the Ombudsperson Institution to carry out its functions and responsibilities fully and independently. This same section prohibits any scenario whereby public authorities might use the budgetary process for allocating funds to interfere with the

independence of the Ombudsperson Institution. Should the Ombudsperson Institution consider that a budgetary proposal from the Government might compromise the independence of the Institution, Section 17.1 gives the Institution the option of drawing the attention of the Kosovo Assembly to this matter.

Therefore, the only authority to whom the Ombudsperson shall report is the Assembly of the Republic of Kosovo.

During discussions with the Ministry of Economy and Finances (MEF) regarding the Institution's budget, the Acting Ombudsperson continuously stressed the importance of ensuring the sustainability of the Institution and its work, by providing sufficient funds for human resources. Despite several discussions with the Ministry of Economy and Finances as well as the Budgetary Committee of the Assembly of Kosovo, there was no significant progress in this matter. Due to this reason, the Assembly of Kosovo is required to be more responsible with regard to the financial requests for the funds to be allocated to this Institution, and thus making the Government unable to exercise political control through the process of annual budget and allocation of funds for the Ombudsperson Institution.

As a result of such negligence, the interference of the Government to the financial independence has considerably compromised the ability of the Ombudsperson Institution to carry out its functions and responsibilities set forth by the law, fully and independently, as the approved budget was insufficient to carry out the activities of the Ombudsperson Institution. As a result of this inappropriate practice, the Government interfered in discussions on the Institution's annual budget for 2008 and withdrew 10% of the approved budget and transferred it to the other budgetary units. However, thanks to some donations provided in the past by international donors, a number of capacity-building programmes were possible to implement.

A case when the Government interfered to the budget and financial independence of the Ombudsperson Institution was when it requested to do the administration and management of the OIK's financial means through the Department of Treasury within MEF, which is as an executive governmental body, despite constant insistence not to do so which would allow the Government to impose its impact.

It is necessary to mention that the decrease of budgetary means by the Government, many times with the tacit approval and no ensuing debate from the Assembly of Kosovo, has negatively influenced the efficient and independent functioning of the Institution and its sustainability both in previous reporting periods and in this reporting period.

Therefore, direct influence of the Government of Kosovo, both through the turnover of annual budget and allocation of funds from the Kosovo Consolidated Budget, partly withdrawing means from the budget of the Ombudsperson Institution in Kosovo, as well as with regard to the direct administration and management of donations has had some negative influences on the Ombudsperson Institution during this reporting period. In this reporting period, the reduction of the Ombudsperson Institution's requested budget and the fact that some donations have ended have had a very negative influence on the work of the Institution. The result was the impossibility of the Institution to pay some staff members. Unfortunately, these staff members had been hired as late as 2005 and had always been paid by donations due to the Government's

reluctance to provide the Institution with additional funds for staff. The ending of donations have influenced on a part of the professional senior staff, in which a lot was invested through education and special training, to leave the Ombudsperson Institution, lacking additional funds and finding themselves jobs and better paid salaries.

Thus, as of 1 April 2008, the Institution's sub-office in the Serbian village of Vidanje/Videjë had to be closed down because the donation funding ended. This was a sub-office to the Ombudsperson Institution's field office in Pejë/Peć and provided the Serbian community in the entire region of Pejë/Peć with direct access to the Ombudsperson Institution. The Institution still enjoyed special respect from this community. Closing down this sub-office has had very negative repercussions for the Ombudsperson Institution's work for minorities living in that area, at a politically very difficult time.

For the same reasons, staff of the Ombudsperson Institution's field office in Gračanica/Graçanicë was reduced so that at the moment, this office is only staffed by the head of office. It is very difficult for the head of an office to go out, meet complainants, investigate cases and do the administrative processing of these cases at the same time, so this reduction has also lead to great difficulties in this office's daily work.

It is very unfortunate that this Institution was never able to include all additional staff hired in 2005, specifically dealing with cases of minority communities (mainly Serbian), in the Kosovo Consolidated Budget. The fact that donations are an instable and unsustainable manner of payment for the salaries to these people was many times raised with the Government, unfortunately with little success. The Government's wide-ranging decision to indiscriminately disallow funds for additional staff to public institutions has had grave repercussions on the work of small independent institutions such as the Ombudsperson Institution. These government strategies have not only curtailed the Institution's work on cases submitted by members of minority communities, but have also considerably compromised the work of other parts of the Institution such as the Children's Rights Team, the Gender Equality Unit and the Non-Discrimination Team. Also, other activities of these units could not be conducted in full swing and a number of publications had to be reduced with regard to the protection and progress of human rights.

The hitherto lengthy procedure in appointing a new Ombudsperson before the Kosovo Assembly has also reflected negatively on the Institution in its attempts to procure further donations for staff and programmes. Many attempts on the side of the Acting Ombudsperson to secure additional funds from different donors has been exclusively conditioned with the appointment of an Ombudsperson and deputies by the Kosovo Assembly due to different reactions with regard to the delay of the Ombudsperson's appointment.

Financial and material support

During the reporting period, the Ombudsperson Institution used funds from the Kosovo Consolidated Budget, Swedish International Development Cooperation Agency (SIDA), and from the following governments: Austria, Belgium, Finland, Norway, Turkey and OSCE.

SWEDISH INTERNATIONAL DEVELOPMENT COOPERATION AGENCY (SIDA)

From September 2005, the Ombudsperson Institution began implementing a three-year project, financed by SIDA, which mainly aims to educate and train the staff of the Ombudsperson Institution in the field of human rights, the rule of law, general administration and office management, as well as translation skills. The implementing partner to this project is the Council of Europe.

This significant support for the Ombudsperson Institution in Kosovo was foreseen to be fulfilled by the end of 2008.

AUSTRIA

In accordance with an agreement with the Austrian Agency for Development within the Ministry of Foreign Affairs of Austria, a donation received in December 2004 continued to fund the Ombudsperson Institution's field office in Gračanica/Gracanice throughout the reporting period. This project ended on 31 December 2007.

BELGIUM

The Government of Belgium continued to provide donations in this reporting period. Following an agreement with the donor, the Belgian fund was used to pay the salaries of two specialist employees (lawyer and an IT officer) and to publish the Quarterly Information Sheet in four languages. The project ended on 31 December 2007. It is an encouraging fact of the official position of Belgian Government expressed during the Donators' Conference for Kosovo on 11 July in Brussels, with regard to the continuance of support for the Ombudsperson Institution in the future.

FINLAND

As part of an ongoing project instigated at the end of 2004, the Finnish Ministry for Foreign Affairs continued to pay the salaries of the Ombudsperson Institution's two highly-qualified senior translators until 31 December 2007. This project also continued in 2008 paying the salary of one senior translator until the end of 2008.

NORWAY

In January 2007, the Ombudsperson Institution received another Norwegian donation. This donation has been used to cover the cost of publications and translations, the special projects of the Ombudsperson Institution's Children's Rights Team (CRT) and Gender Equality Unit

(GEU), and the remuneration of professional staff working for the Institution's field office in Gračanica/Gračanicë.

TURKEY

During the reporting period, this donation has been used to cover expenses for the Institution's Turkish language publications. The project is still ongoing. This project was foreseen to end by the end of 2008.

USA

The United States contribution to the Ombudsperson Institution has, since 2001, supported the general expenses and salary of the former International Ombudsperson. In December 2005, in accordance with USA government guidelines, the fund's objective was amended to cover capacity-building initiatives within the Ombudsperson Institution. The implementing partner of this grant is the OSCE Mission in Kosovo.

Other forms of support:

During 2007-2008, the OSCE Mission in Kosovo continued to support the Institution in a number of areas. The presence of international advisors within the Ombudsperson Institution also continued during this year.

From 12 June 2008, the OSCE mission in Kosovo continued to support the OIK by appointing an advisor on human rights and an assistant to the international advisor.

In this year the OSCE will continue to financially support two major projects:

- TV spots; and
- Capacity-building project.

TV spots will be financed by the OSCE. The project has been approved and the main purpose is: the Promotion of the Ombudsperson Institution in Kosovo as a professional and independent organ as well as the awareness-raising of the population with regard to human rights.

The OSCE, by being supported with the foundations from the USA, will finance the comprehensive capacity-building project in order to enhance the work capacity, professional knowledge and efficiency of the Ombudsperson Institution's staff in Kosovo.

OVERVIEW OF CASES AND STATISTICS

Overview of cases

During the reporting period, approximately 3808 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 94 Open Days that were held during the reporting period, approximately 862 people met personally with the Acting Ombudsperson, his Deputy or Director of Investigation.

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 KPA- ex. HPD), unresponsive administration, property issues, complaints about abuses of authority, fair hearing issues, pensions and social assistance, 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.

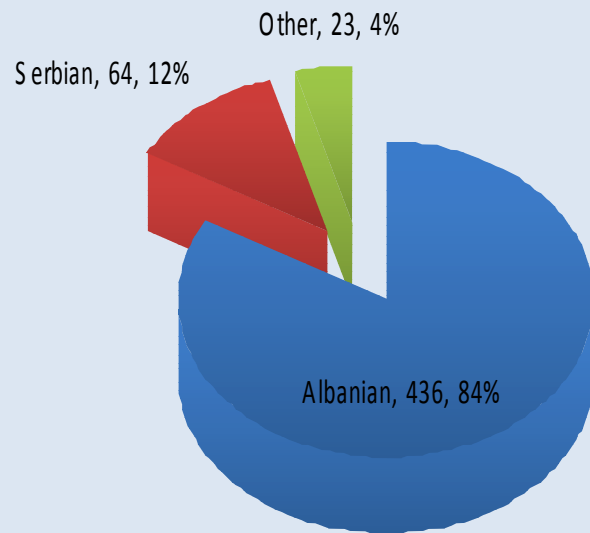
When intervention letters and attempts at mediation have not been successful, the Ombudsperson may issue a report, providing an in-depth analysis and public exposure of a violation of human rights or applicable law, complete with recommendations to the respective public or court administrator on how 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, the SRSG and to the Assembly of Kosovo.

Statistical overview of cases

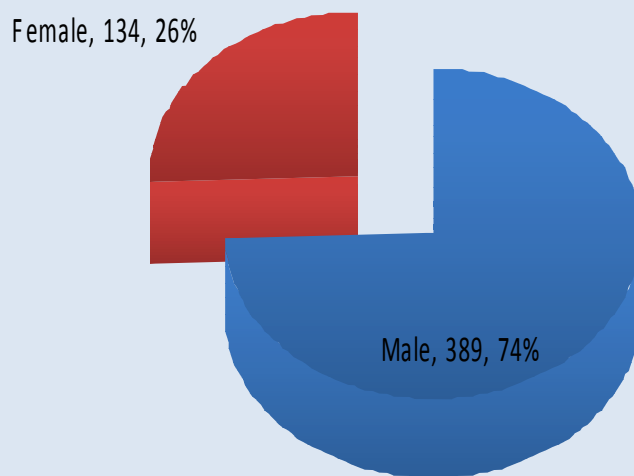
Cases :		
Cases registered from 01 July 2007 – 30 June 2008		523
Ethnicity of complainants		
	Albanian:	436
	Serbian:	64
	Other:	23
Gender of complainants		
	Male	389
	Female	134
Respondent Parties		
	Government Ministries:	163
	Courts:	162
	Municipalities:	76
	Other:	51
	Police:	35
	KPA (ex.HPD):	35
	KTA:	24
Cases closed from 01 July 2007 – 30 June 2008		
	Declared inadmissible	271
	Other reasons	232
	Positively solved	181
<i>Total</i>		684
Subject of complaint		
	Access to court (civil proceedings)	130

	Administrative silence and related issues	86
	Abuse of authority	58
	Economic, Social and Cultural Rights	53
	Employment-related issues	49
	Property-related issues (other than KPA ex.HPD)	39
	Fair hearing issues (criminal proceedings):	38
	KPA issues (ex.HPD)	35
	Impunity of authorities	28
	Good Offices	26
	Other rights protected by the ECHR	23
	Right to liberty	7
	Failure to investigate a crime	6
Investigations and reports		
01 July 2007 – 30 June 2008		
	Ex-Officio investigations opened	10
	Case Reports	11
	Ex.Officio Reports	1
	Requests from the Ombudsperson Institution for interim measures	1

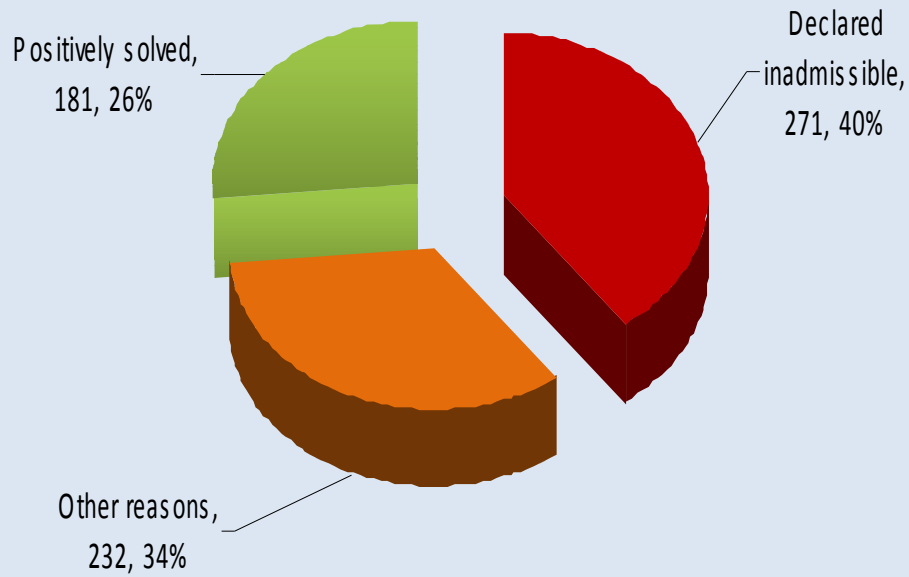
Ethnicity of complainants



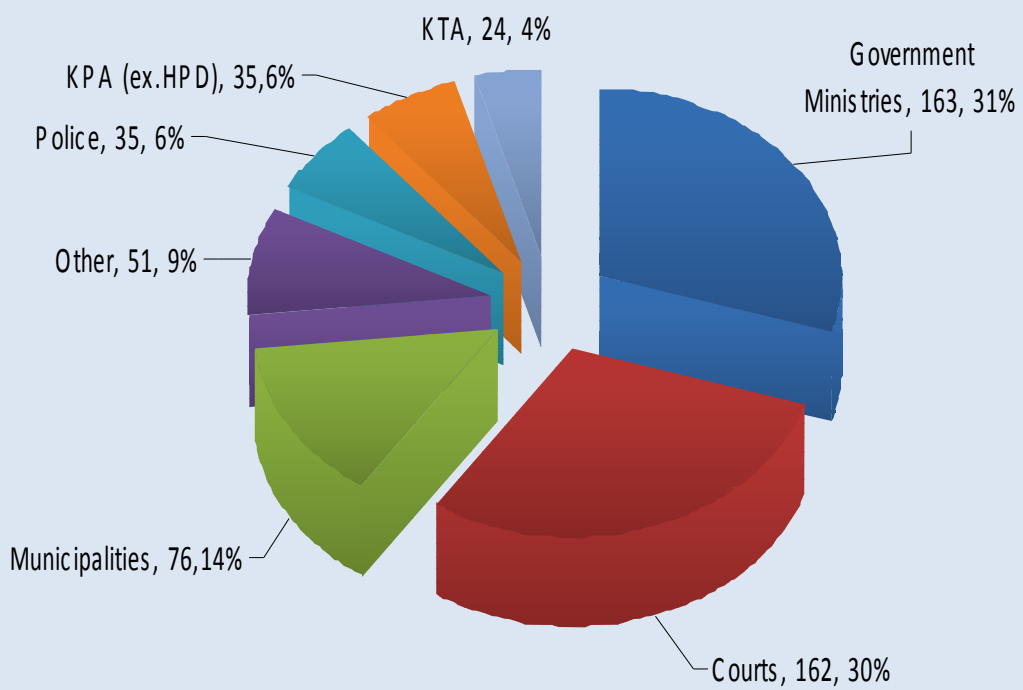
Gender of complainants



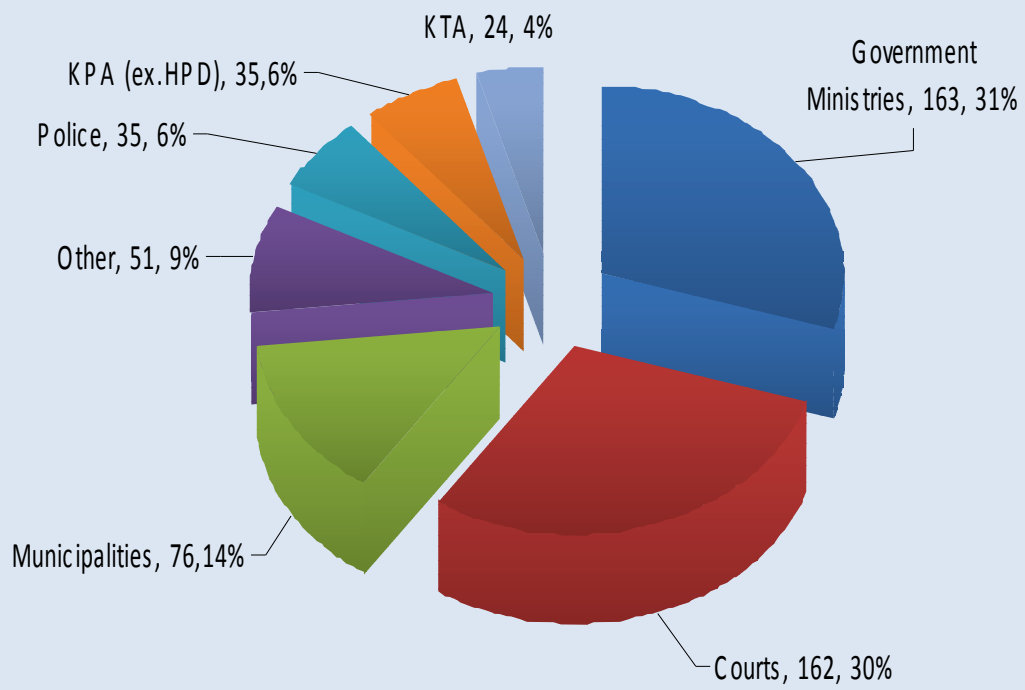
Cases closed



Respondent parties



Respondent parties



ANNEX I: SUMMARIES OF REPORTS

Complaint No. 2263/07

Faruk Keka against Ministry of Health

On 1 February 2008, the Acting Ombudsperson published a report concerning the complaint of an individual who claimed that the Ministry of Health failed to implement a decision granting him financial support for his medical treatment outside Kosovo.

In this report, the Acting Ombudsperson found that by promising to cover the costs for the medical treatment outside Kosovo and to this effect issuing a decision to grant a sum of 7000 euro, the Ministry of Health had created a legitimate expectation on the side of the complainant who thought that he will effectively enjoy a property right, which is protected by Article 1 of Protocol No. 1 of the European Convention on Human Rights. The failure of the Ministry of Health to implement its decision thus constituted a violation of the complainant's right to property under the above-mentioned provision.

The Acting Ombudsperson recommended that the Ministry of Health should ensure that the complainant received the money originally allocated to him as compensation for any loss or damage sustained due to the Ministry's previous inability to implement its decision.

To date, there has been no response to this report, nor has the Acting Ombudsperson been informed that his recommendations have been or would be followed.

Complaint No. 1534/2004

Hajdin Beka against the Municipal Court in Prishtinë/Priština

On 22 February 2008, the Acting Ombudsperson published a report on a case involving lengthy delay in the implementation of judgement in a property case. Mr. Beka complained about the failure of the Prishtinë/Priština Municipal Court to implement its judgement according to which a house and a garage had to be removed from the complainant's property.

The Acting Ombudsperson found that the failure of the Municipal Court to implement a final court judgement violated Article 6 para.1 of the European Convention on Human Rights which protects every person's right to a fair trial within a reasonable time.

The Acting Ombudsperson added that the procedural guarantees laid down by Article 6 of the European Convention on Human Rights, *inter alia*, guarantee the implementation of final court decisions, which in the rule of law based-systems must not remain unimplemented. He further stressed that the right to a fair trial would be inefficient if the justice system would allow that the final court decisions remain unimplemented.

The Acting Ombudsperson further recommended that the President of the Municipal Court in Prishtinë/Priština take necessary and indispensable measures to execute the final court decision in favour of the complainant, namely removing the house and garage build on the complainant's land which constitutes the subject of the above-mentioned judgement.

He also asked the President of the Municipal Court to inform him of any action taken in response to this report within thirty days.

To date, there has been no response to this report, nor has the Acting Ombudsperson been informed that his recommendations have been or would be followed

Complaint No. 1322/05

Saqip Ibrahim and others against the District Court in Gjilan/Gnjilane and UNMIK Department of Justice

On 22 February 2008, the Acting Ombudsperson addressed a report to the Acting Director of the UNMIK Department of Justice drawing his attention on the complaint of Mr. Ibrahim and others concerning the delay created by the District Court in Gjilan/Gnjilane (precisely by the panel formed according to UNMIK Regulation No. 2000/64) in preparing the written judgment P.No. 142/04 within the statutory time limit.

The Acting Ombudsperson found that the failure of the District Court in drafting and delivering the written judgment within the statutory time limit was in violation of Article 6 of the European Convention on Human Rights, which regulates the obligation for courts to conduct regular judicial process within a reasonable time.

The Acting Ombudsperson further stated that the failure to draft and issue a written judgment for more than eighteen months was also in breach of the principles of proper administration of justice and the general respect for human rights. The Acting Ombudsperson added that the delay caused on this occasion had consequently deprived the complainants for a considerable length of time of their right to appeal against the judgment issued on 19 May 2005.

The Acting Ombudsperson stressed that Article 13 of the European Convention on Human Rights stipulates the need for an effective legal remedy to complain against human rights violations regardless of the fact that such violations are carried out by persons while performing their official duties. He added that the absence of such a legal remedy in Kosovo leads to a situation where parties have no possibility of using any other legal mechanism in order to ensure that there is transparency and information regarding their cases and to ensure that their cases are resolved expeditiously.

The Acting Ombudsperson recommended that the Special Representative of the Secretary-General promulgates a Regulation that would contain an effective remedy within the meaning of Article 13 of the European Convention on Human Rights in cases of excessive long court proceedings by preventing further delays and offering compensation for damages suffered due to past delays.

He further recommended that the Acting Ombudsperson be informed about any action undertaken in response to the above-mentioned recommendation, in accordance with Section 4.6 of UNMIK Regulation No. 2006/06.

To date, there has been no response to this report, nor has the Acting Ombudsperson been informed that his recommendations have been or would be followed.

Registration No.1474/04
Ajet Kaqiu against the District Court in Prishtinë/Priština

On 28 February 2008, the Acting Ombudsperson published a report on the length of appeal proceedings before the Prishtinë/Priština District Court in a labour dispute against the Central Fiscal Authority. On 23 May 2003, Mr. Ajet Kaqiu, the complainant, lodged an appeal before the Prishtinë/Priština District Court against the judgment issued by the Prishtinë/Priština Municipal Court on 2 April 2003. The complainant subsequently alleged that the Prishtinë/Priština District Court had unnecessarily delayed court proceedings.

Concerning the applicability in this case of Article 6 para.1 of the European Convention on Human Rights which protects every person's right to a fair trial within a reasonable time, the Acting Ombudsperson noted that generally labour disputes are considered to involve private law relations and thus fall under the protection of Article 6 of the European Convention on Human Rights. The Acting Ombudsperson recalled that labour disputes between employees and public employing authorities such as municipalities may in certain cases be excluded from the scope of Article 6.

In this report, the Acting Ombudsperson found that because the tax inspector directly administers public tax policy, he/she should be regarded as an extension of the governing authorities in the field of tax inspection, thereby participating directly in the exercise of powers conferred by public law and thus 'wielding a portion of the sovereign power of state.'

Thus, the Acting Ombudsperson observed that the nature of the complainant's former duties and responsibilities precluded his labour dispute from falling under the scope of Article 6 and concluded that Article 6 of the European Convention on Human Rights was not applicable in the present case.

To date, the Acting Ombudsperson received no response to this report.

Registration No. 1301/04
Ismet Istogu against the District Court in Prishtinë/Priština

On 28 February 2008, the Acting Ombudsperson published a report related to the length of appeal proceedings before the Prishtinë/Priština District Court (hereinafter "the District Court") in a labour dispute against the Municipality of Glogovac/Glogovac.

The Acting Ombudsperson observed that the complainant lodged an appeal before the District Court on 27 March 2002, and on 24 November 2005 the District Court decided to revoke the original judgment and remand the case to the Municipal Court.

In this report, the Acting Ombudsperson noted that the reasonableness of the length of proceedings must be assessed in the light of the unique circumstances of the case and having regard to the criteria laid down in the European Court of Human Rights' case law, in particular the complexity of the case, the conduct of the complainant and the authorities dealing with it, as well as the nature of the issues that are at stake in the case (see, as a recent example, *Debono v. Malta* judgment of 7 February 2006). In this respect, the Acting Ombudsperson further added that the complexity of the present case was not an issue in the appeals proceedings and there was no indication suggesting that the complainant or the defendant contributed in any way to the three-and-a-half year delay in the proceedings before the District Court.

Referring to the case law of the European Court of Human Rights, the Acting Ombudsperson stressed that labour disputes generally require particular diligence on the part of the competent courts and that this specific case was of particular importance to the complainant who claimed for a reintegration in his previous position. Therefore, he concluded that there has been a violation of the complainant's right to a fair hearing within a reasonable time as guaranteed under para. 1 of Article 6 of the European Convention on Human Rights.

Moreover, the Acting Ombudsperson found 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 Acting Ombudsperson recommended that the President of the Prishtinë/Priština District Court take urgent steps to issue a new judgment in the complainant's case without further delay, bearing in mind that the complainant's case had been pending for almost six years since the very beginning of the proceedings; ensure that the management and distribution of cases within this court be subjected to an independent assessment with a view to improving court management and inform the Acting Ombudsperson of the actions taken in response to the above recommendations.

The Acting Ombudsperson further recommended that the Assembly of Kosovo should without undue delay initiate discussions with all competent organs and institutions in Kosovo on the drafting of a legal instrument that would constitute 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 complains about excessively long civil court proceedings.

Finally, the Acting Ombudsperson also recommended that the President of the Kosovo Judicial Council shall expedite the implementation and peruse the progress of the property strategy and initiate discussions on similar strategies to deal with labour disputes as well as other civil disputes in general with the view to improving the case backlog; initiate discussions on a new strategy for appointing more judges; initiate discussions on how to improve case management in all courts in Kosovo and inform the Ombudsperson of the actions taken in response to the preceding recommendations.

On 11 April 2008, the Acting Ombudsperson received a letter from the Director of the Kosovo Judicial Council in response to the report published on 27 February 2008. In this letter, he stated that the strategic aim of the Kosovo Judicial Council is the improvement of case management in all courts of Kosovo and this is set up as a priority in the budgetary request for year 2008, with respect to appointing more judges.

He further stated that the Kosovo Judicial Council and USAID set up a joint pilot project that will be implemented in ten courts in Kosovo, with the purpose of testing the strategy meant to improve the efficiency of the work in twenty six courts and in all legal related issues and type of cases, including property cases.

He also informed that the Commission for Court Administration within the Kosovo Judicial Council has set up a permanent working group regarding the management of database related to the Court matters aiming at issuing recommendations with respect to Courts' activities and policies which also have to be approved by the Commission for Administration of Courts and Kosovo Judicial Council. The various measures taken are meant to improve the management of unresolved cases, including property cases.

Moreover, he added that the Kosovo Judicial Council and USAID are also setting up a plan of action in order solve 21.000 property cases suspended after the suggestion of UNMIK Department of Justice for a long time. This plan should be launched in a near future.

Cr. 272/2003

Mentor Zejnullahu and others against the Municipality of Lipjan/Lipljan and the Ministry of Environment and Spatial Planning

On 4 March 2008, the Acting Ombudsperson issued a report concerning the complaint submitted by the villagers of Banullë/Banula, Municipality of Lipjan/Lipljan. The case involved the village's dissatisfaction about the failure of the competent organs to prevent the pollution caused by the "ADI" firm located in Banullë/Banule that produced eggs and related products. The villagers alleged they had been facing serious problems of air pollution impacting on their health and discomfort due to a bad smell resulting from the factory's activities in the village and preventing them from enjoying their family and private life rights.

In the report addressed to the Ministry of Environment and Spatial Planning, the Acting Ombudsperson expressed his concerns about the failure of the competent organs to take appropriate actions in preventing the environment pollution in the area of Banullë/Banule village. Referring to the provisions of the Law on Environmental Protection adopted by the Assembly of Kosovo (Law No.2002/8) and promulgated by the UNMIK Regulation No. 2003/9 of 15 April 2003, which prescribed in its article 43.1 that "the Environmental Inspectorate shall be responsible for carrying out the functions specifically assigned to the Environmental Inspectorate by the present law...", the Acting Ombudsperson, based on the findings of his investigation, stated that the firm concerned did not have the environmental permit and this should be immediately subjected to the above-mentioned Environmental Inspectorate control.

He also recalled his two previous letters sent on 18 January and 20 April 2007 to the previous Minister of Environment and Spatial Planning in which he had asked him to take actions in order to verify the allegations of the complainants, although these letters both remained unanswered..

The Acting Ombudsperson further stated that the Ministry of Environment and Spatial Planning and the Municipality of Lipjan/Lipljan were informed about the problems raised by the villagers of Banullë/Banula, but they failed to fulfil their obligations prescribed in the law.

In light of his findings concluding to a breach of both the provisions of the Law on Environmental Protection and Article 8 of the European Convention of Human Rights guaranteeing the right to respect for private and family life, the Acting Ombudsperson called for an amelioration of the situation in compliance with legal standards and respect of human rights.

Finally, he recommended to the Minister of Environment and Spatial Planning to ensure that that the firm “ADI” fulfils the criteria’s prescribed by law with regard to its activity, and to inform the Acting Ombudsperson with respect to actions taken in response to the above-mentioned recommendation as soon as possible.

To date, there has been no response to this report, nor has the Acting Ombudsperson been informed that his recommendations have been or would be followed.

Complaint No. 2322/2007
Group of complainants of Branch of Dentistry, Faculty of Medicine
Against
the Rectorate of the University of Prishtinë/Pristina

On 6 March 2008, the Acting Ombudsperson issued a report sent to the Minister of Education, Science and Technology, regarding a complaint submitted by the group of teaching assistants from the Faculty of Medicine, Branch of Dentistry. The complainants alleged they had applied to some vacancies announcements that had been published in the daily newspaper “Koha Ditore” and the Official Web page of the University of Prishtinë/Pristina. However, they claimed that they were being discriminated on the basis of their age because the Senate of the University of Prishtinë/Priština had informed them on 29 October 2007 that they had not been selected as teaching assistants, although they have fulfilled other criteria prescribed by the Statute of the University of Prishtinë/Priština and the vacancy announcement, on the sole basis that they were not under thirty five years old.

In the report, the Acting Ombudsperson, found that the decision refusing to select the complainants for the teaching assistants’ position solely based on age limit, as prescribed by Article 185. 3 of the Statute of the University of Prishtinë/Priština, contained element of discrimination based on age and breached the concepts of non-discrimination and equality enshrined in international and national human rights instruments, specifically in Article 14 of European Convention on Human Rights and Article 26 of the International Covenant on Civil and Political Rights, as well as in the Kosovo Anti-Discrimination Law No. 2004/3.

The Acting Ombudsperson further observed that based on his investigations in the case, he found that the complainants fulfilled all other criteria foreseen by the vacancy announcement, let alone the age limit, to the contrary of other candidates who had been selected even if they did not fulfill some criteria prescribed by the Statute, but who were under thirty five years old.

The Acting Ombudsperson recommended that the Minister of Education, Science and Technology should ensure that the Rectorate of the University of Prishtinë/Priština amend Article 185. 3 of the Statute of the University of Prishtinë/Priština to be in compliance with the relevant legal provisions prohibiting any discrimination based on age in the context of vacancy announcement or professional promotion.

He further recommended the Minister of Education, Science and Technology to disseminate this report to all public institutions in Kosovo and inform the Ombudsperson in response to these recommendations.

To date, there has been no response to this report, nor has the Acting Ombudsperson been informed that his recommendations have been or would be followed.

Ex Officio Report No. 008/2007

Regarding the incidents that occurred during the “Vetëvendosje” protest on 10 February 2007

On 21 March 2008, the Acting Ombudsperson issued a report regarding the events that occurred during the “Vetëvendosje” protest on 10 February 2007 that led to two persons being killed and eighty persons being injured. *Ex officio* investigations initially focused on the behaviour of the Kosovo Police Service (KPS) during and after the protest, but it was later clarified that as long as the Ombudsperson Institution was under temporary leadership, UNMIK Regulation No. 2000/38 continued to apply. Hence, it implied that the Ombudsperson Institution was competent to investigate complaints against both the local Kosovo authorities and UNMIK. The Acting Ombudsperson thereupon extended the scope of investigations to investigate the behaviour of UNMIK Police during and after the above events

The Acting Ombudsperson noted that that during the protest, UNMIK Police violated Article 2 of the European Convention on Human Rights by using excessive force (fire-arms with rubber bullets with an expired validation date aimed at the upper bodies of protesters) and by not organizing the police operation in such a way as to minimize to the greatest possible extent any risk to the lives of the protesters. The Acting Ombudsperson concluded that the use of force against protesters was neither proportionate nor, accordingly, absolutely necessary in defence of any person from unlawful violence.

With regard to investigations initiated by the Police Inspectorate of Kosovo (PIK) and an international prosecutor appointed by the SRSG after the events of 10 February 2007, the Acting Ombudsperson stated that it is questionable whether the investigations were completely independent. The Acting Ombudsperson then noted that the preliminary investigations initiated by the PIK were investigations conducted by a police organ. They thus cannot be held to be

completely independent. At the same time, the investigations conducted by an international prosecutor also cannot be deemed to be completely independent since international prosecutors and judges are appointed by the SRSG, who is also the final supervisor of the UNMIK Police and the KPS.

Referring to the findings of the international public prosecutor, the Acting Ombudsperson stated that the competent prosecuting authorities did not or could not fulfil their obligation to find the people responsible for the deaths of two protesters. This was mainly due to the fact that potential suspects from UNMIK Police were recalled by the Romanian governments and UNMIK's structure and competences led to a situation where UNMIK governing bodies were incapable of preventing these suspects from leaving Kosovo. This led to a second violation of Article 2 of the European Convention on Human Rights, which requires an independent and effective investigation to be conducted into killings potentially caused by police agents and finding of the people responsible for the deaths.

The Acting Ombudsperson further found that neither of the above violations could be attributed to the KPS due to the subordinate role they played during and after the protest.

The Acting Ombudsperson recommended that the competent UNMIK authorities liaise with the Romanian authorities with the aim of attempting to bring potential perpetrators to justice either in Kosovo or in Romania.

The Acting Ombudsperson further recommended that the UNMIK authorities inform the Acting Ombudsperson about any disciplinary proceedings initiated by UNMIK Police against any police officers who took part in the above events and that these same authorities proceed to prosecute any police officers potentially responsible for the deaths of the two victims who are still in Kosovo.

Finally, he asked that the competent UNMIK authorities inform the Acting Ombudsperson of the actions taken in response to the preceding Recommendations, issued in accordance with Section 4.6 of UNMIK Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo.

To date, there has been no response to this report, nor has the Acting Ombudsperson been informed that his recommendations have been or would be followed.

Complaint No. 1533/2006

Vera Nuredini against the Municipal Court in Lipjan/Lipljan and the Municipality in Lipjan/Lipljan

On 3 April 2008, the Acting Ombudsperson issued a report involving the failure to implement a court decision in a labour case. The complainant Ms. Nuredini complained about the failure of the Municipal Court in Lipjan/Lipljan to implement the judgment of 30 April 2001 which had ordered the Municipality of Lipjan/Lipljan to allow the complainant to reintegrate her work place as registrar in the Municipality of Lipjan/Lipljan.

The Acting Ombudsperson found that the failure of the Municipal Court to implement a final court decision violated Article 6 para.1 of the European Convention on Human Rights which protects a person's right to a fair trial within a reasonable time.

The Acting Ombudsperson added that the procedural guarantees laid down by Article 6 of the European Convention on Human Rights, *inter alia*, guaranteed the implementation of final court decisions, which in the rule of law based-systems must not remain unimplemented. He further stressed that the right to a fair trial would be inefficient if the justice system would allow that the final court decisions remained unimplemented.

Stressing the importance of the good governance at the level of the local government and the rule of law principle, the Acting Ombudsperson added that even though the Municipality of Lipjan/Lipljan did not agree with the court decision, it was bound by the final court decision and had to implement it.

The Acting Ombudsperson stressed that the failure of the Municipal Court in Lipjan/Lipljan to implement its final decision damages the authority of the courts and decrease the confidence of the public opinion in the Kosovo justice system.

The Acting Ombudsperson further recommended that the Municipality in Lipjan/Lipljan took necessary measures to implement the final court decision in favour of the complainant, namely reintegrate her to her previous work place as registrar in the Municipality in Lipjan/Lipljan.

The Acting Ombudsperson also recommended that in the case of continuous refusal of the Municipality in Lipjan to implement the final court decision, the Municipal Court in Lipjan/Lipljan should maintain its efforts to ensure that its decision be implemented.

The Acting Ombudsperson finally asked the President of the Municipality in Lipjan/Lipljan and the President of the Municipal Court in Lipjan/Lipljan to inform him about any action in response to this report within thirty days.

On 18 April 2008, the Acting Ombudsperson received a response from the President of the Lipjan/Lipljan Municipality which stated that it was the UNMIK Municipal Administrator that at that time decided about this case and other labour affairs in the Municipality. He also stressed that the complainant had initiated a proceeding to claim for the compensation of the loss of her salaries and that this case was pending before the Supreme Court of Kosovo following a revision procedure.

The President of Municipality further added that the representative of the Municipality in Lipjan/Lipljan tried to implement the judgment and offered to the complainant a position as registrar in the Liaison Office of the Municipality in the village Babush i Muhaxherëve. However the complainant had refused this solution and thus, the Municipality of Lipjan/Lipljan considered it fulfilled its obligation as foreseen in the judgment.

On 5 May 2008, the Acting Ombudsperson received a letter from the Acting President of the Municipal Court in Lipjan/Lipljan informing him that the Municipal Court had taken some

actions in order to find a solution to reintegrate the complainant in her previous working place. He further explained that on 18 April 2008, the representative of the Municipality in Lipjan/Lipljan had been invited to discuss the possibilities of implementing the judgment. In this meeting, the representative of the Municipality informed the Court that the Municipality of Lipjan/Lipljan has attempted to implement the decision by offering to the complainant a position as registrar in the Liaison Office of the Municipality in the village Babush i Muhaxherëve. However as the complainant had refused this solution, the Municipality of Lipjan/Lipljan considered it fulfilled its obligation as foreseen in the judgment.

The Acting President of the Municipal Court in Lipjan/Lipljan finally stated that the Law on Execution Procedure foresees the possibility of imposing fines on the Organization of Joint Labour in labour cases involving non-implementation of judgments relating to the reintegration in workplace. He however stressed that since the Municipality had a legal personality, as opposed to an Organization of Joint Labour, the court could only impose coercive measures.

Complaint No. 91/2008

Maliq Berisha and others against the Kosovo Energy Corporation (KEK) and the Ministry of Environment and Spatial Planning

On 4 April 2008, the Acting Ombudsperson issued a report concerning the inhabitants of the village of Grabovc i Ulët, Municipality of Fushë Kosovë/Kosovo Polje who complained about the lack of appropriate actions taken by the authorities to prevent the risks and potentials damages they are being exposed to due to the excavation work of KEK in this area. The area in question is just about fifty metres from the houses of the complainants and the earth-slide may seriously put at risk their life. Also, they were concerned that because of this excavation work, their living environment was polluted with noise and that they risked contamination of the water supply and contamination of the air, which would lead to the infringement of their rights to enjoyment of their private and family life, which are rights enshrined in Article 8 of the European Convention of Human Rights.

In the report, the Acting Ombudsperson stated that the Ministry of Environment and Planning and the Municipality of Fushë Kosovë/Kosovo Polje were aware of the problems since 2007, when the citizen prepared a petition against these authorities. He further stated that the situation raised serious issues under Article 8 of the Convention. Referring to the case law of the European Court of Human Rights, the Acting Ombudsperson further added that the public authorities are, *inter alia*, under the obligation to protect individuals from the interference of third party into his/her private life, especially when their health is put at risk.

The Acting Ombudsperson also stated that in this present case, he concluded that the reaction and response of the public authorities concerned had been inadequate, in particular because the Ministry of Environment and Spatial Planning had ignored the complaint made by the inhabitants of the village of Grabovc i Ulët.

The Acting Ombudsperson further recommended to the Minister of Environment and Spatial Planning to take the necessary and indispensable measures to find a solution for inhabitant's of Grabovc i Ulët, and, as a last resort, to consider the possibility to move these families from this area against adequate compensation for their properties value, if the Ministry failed to diminish in a satisfactory manner the noise, the contamination of the water supply and air.

He also requested the Minister of Environment and Spatial Planning to inform him of any action in response to this recommendation within thirty days.

On 9 May 2008, the Acting Ombudsperson received a letter from the Head of the KEK Property Division who stated that the excavations are going to the direction of the village Sibovc, which means that the excavators are leaving the Grabovc i Ulët village. He also informed that after receiving the Ombudsperson's report, the Property Division had, formed a team which included one geodesy expert and two legal officers. On 22 April 2008, the team of experts went to the area to assess the situation on site and on 28 April 2008 prepared a report that was shared with the Acting Ombudsperson.

Complaint No.2346/2007

Bedri Zyberaj against District Court in Prizren / UNMIK Department of Justice

On 21 April 2008, the Acting Ombudsperson issued a report concerning the failure of the judging panel of the District Court in Prizren established according to UNMIK Regulation No. 2000/64 to draw a judgment within the foreseen legal time frame, In the present case, the decision on the case had been pronounced orally during the final hearing held on 10 August 2006 but the written judgement had only been issued on 6 March 2008, which prevented the defendant imprisoned in the Dubrava prison and his defending lawyer to lodge an appeal against the case.

The Acting Ombudsperson concluded that there has been a violation of the applicable law of Kosovo, respectively of Article 395, para. 1 of the Provisional Code of Criminal Procedure, which foresees that "the court shall take the necessary measures for the judgement to be drawn up as soon as possible, but no later than thirty days from its announcement if the accused is in detention on remand and forty five days in other instances".

The Acting Ombudsperson further stressed that the non-drawing of the judgement for more than nineteen months was contravening the necessity of a regular judicial process and the principles of fair governance and respect of human rights. This delay had prevented the complainant to lodge an appeal against the decision pronounced on 10 August 2006. The Acting Ombudsperson observed that this delay was tantamount to an excessive length of judicial procedure.

The Acting Ombudsperson stressed that Article 13 of the European Convention on Human Rights foresees the need for an effective legal remedy to complain against human rights violations regardless of the fact whether such violations are carried out by persons while performing their official duties. The Acting Ombudsperson added that in this particular case there was a violation of Article 13 of the European Convention of Human Rights due to the lack of an effective legal remedy.

The Acting Ombudsperson recommended that the Special Representative of the Secretary-General should promulgate a Regulation that would constitute an effective remedy within the meaning of Article 13 of the European Convention for the Human Rights which provides for both preventive and compensatory relief with respect to complaints about excessively long court proceedings.

He finally requested to be informed about any action undertaken in response to the above-mentioned recommendation, in accordance with Section 4.6 of UNMIK Regulation No. 2006/06.

On 9 May 2008, the Acting Ombudsperson received a letter from the President of the District Court in Prizren who informed him that following his intervention, the panel of international judges finally delivered the judgment in this case. He also attached the copy of a response sent to Mr. Zyberaj in the Dubrava Prison on 23 November 2007, with respect to his complaint relative to the non-deliverance of a written judgment.

Complaint No. 211/2008 National Park “Sharri Mountain”

On 19 May 2008, the Acting Ombudsperson issued a report sent to the President of the Assembly of Kosovo concerning the complaints submitted by some workers of the National Park of “Sharri Mountain”. The case involved the violation of the provisions of the Law on the National Park of “Sharri Mountain” (SAPK Official Gazette No.11/86), the Spatial Planning Law (No.2003/14) as well as the Law on Nature Conservation (No.02/L-18) by the Ministry for Environment and Spatial Planning.

The Acting Ombudsperson observed that National Park of Sharri is gradually being destroyed by mass destructions followed by illegal constructions, functioning of quarries, illegal deforestation etc.

The Acting Ombudsperson stressed that in the present case, the public authorities had not paid proper attention to the above mentioned issue and that, in particular, the Ministry for Environment and Spatial Planning had ignored the current situation generated by the illegal activities of private persons.

Furthermore, on 4 September 2006 the Ministry approved the request of the Municipality of Prizren concerning the Regulative Plan of Prevallë/Prevala. Based on the provisions enshrined in the above-mentioned laws, the Acting Ombudsperson concluded that the Ministry of Environment and Spatial Planning’s decision on the Regulative Plan of Prevallë/Prevala was illegal and he further observed that the Ministry of Environment and Spatial Planning had no authority to approve the Plans for the National Park. Indeed, the Ministry is only entitled to submit the drafts Plans of the National Parks to the Government for a preliminary approval, whereas the Assembly of the Republic of Kosovo gives the final approval.

The Acting Ombudsperson found violations of the provisions of the Law on the National Park of “Sharri Mountain”, the Law on the Spatial Planning and the Law on Nature Conservation, and urged for the improvement of the situation in compliance with these laws. He also warned that if

urgent measures would not be taken to prevent such actions in the future, the consequences and damages caused by the destruction of the natural resources would be irreparable.

The Acting Ombudsperson recommended to the President of the Assembly of Kosovo:

-to instruct the Government of Kosovo to immediately take measures to prevent such activities to take place in the Sharri National Park and to annul the Ministry of Environment and Spatial Planning's decision approving the Municipality of Prizren's request for approval of the Regulative Plan of Prevallë/Prevala ;

-that the Assembly of Kosovo form a special commission that would, in cooperation with other relevant institutions, including the Ombudsperson Institution, conduct a general evaluation on the created situation in the National Park and would report to the Assembly of Kosovo concerning the irregularities committed and the necessary measures to be taken to protect the National Park and ensure that the situation is reversed.

Finally, the Acting Ombudsperson requested the President of the Assembly of Kosovo to inform him about the measures taken as a response to the above stated recommendations.

The Municipality of Prizren acted upon the recommendation made by the Acting Ombudsperson to the President of the Assembly of Kosovo and stopped the construction in Prevallë/Prevala , although to this date there has not been any formal response from the Prime Minister's Office and the formal decision taken by the Minister of Environment is still in force.

Following the second recommendation made by the Acting Ombudsperson to the President of the Assembly of Kosovo, the Ombudsperson Institution was invited on 10 June 2008 by the Assembly's Committee for Agriculture, Forestry, Rural Development, Environment and Spatial Planning, along with various parties concerned, to discuss technical and legal issues more in depth. They agreed that the Special Committee composed of a representative of the Ombudsperson, the Head of Committee for Agriculture, Forestry, Rural Development, Environment and Spatial Planning and other relevant actors will go to Prizren and Prevallë/Prevala to conduct an on site visit and assess the situation.

On 17 June 2008, the representative of the Ombudsperson Institution along with various parties concerned conducted a visit to the Municipality of Prizren and an on site visit in Prevallë/Prevala. They requested the municipal officials to submit all relevant documentation as soon as possible to allow the Commission to raise the issue in the Assembly in the sessions when will be discussed the issue of the implementation of the laws.

ANNEX II: SUMMARIES OF INTERIM MEASURES

Conditioning vehicles registration upon the presentation of the receipt of payment of electricity bills

The Acting Ombudsperson initiated an *ex officio* investigation following the publishing of several articles in the press mentioning the signature on 4 July 2007 of the Memorandum of Understanding (MoU) between the Ministry of Energy and Mines, the Ministry of Internal Affairs and the Kosovo Energy Corporation (KEK) which foresaw that vehicles registration should be conditional upon the presentation of the receipt of payment of electricity bills. The MoU raised serious questions concerning the absence of legal grounds motivating such a decision, and created a legal insecurity potentially infringing on the rights of the Kosovo population.

On 5 July 2007, the Acting Ombudsperson sent an interim measure request to the Prime Minister of Kosovo noting that according to the applicable law in Kosovo, there was no legal provision allowing to take a decision forcing Kosovo's inhabitants to present evidence of payment to KEK or other entities in order to register their vehicles and concluding that the memorandum was unlawful.

The Acting Ombudsperson asked the Prime Minister to pay attention to this issue, , to help eliminating these irregularities and to ensure the respect of the rule of law. Furthermore, the Acting Ombudsperson requested the Prime Minister to take urgent steps to ensure the suspension of the implementation of this MoU until the completion of the Ombudsperson's investigation.

On 2 August 2007, the Acting Ombudsperson received a letter from the Minister of Internal Affairs acknowledging the fact that according to the applicable law there was no provision allowing to take a decision forcing Kosovo's inhabitants to present evidence of payment to KEK in order to register their vehicles but pointing out that there was no provision expressly preventing the Ministry to do so. Furthermore, it was stressed that according to the UNMIK Regulation No. 1999/15 on Provisional Registration of Private Vehicles in Kosovo, there is no provision that imposes an exhaustive criteria for the registration of private vehicles. The Minister of Internal Affairs thus concluded that the measures foreseen in the MoU were not in contradiction with human rights standards.

On 18 September 2007, the Spokesperson to the Prime Minister's Office announced that the Government of Kosovo will not suspend the Memorandum of Understanding between the Ministry of Energy and Mines, Ministry of Internal Affairs and Kosovo Energy Corporation (KEK) which foresaw that vehicles registration should be conditional upon the presentation of the receipt of payment of electricity bills.

On 31 October 2007, the Prime Minister's Office took the decision 14/277 which foresees the annulment of the MoU signed by the Ministry of Internal Affairs and the Ministry of Mines and Energy as of 1st December 2007. However, the Acting Ombudsperson has not been officially informed of the latest developments.

ANNEX III: SUMMARIES OF SELECTED INTERVENTION LETTERS

Lack of adequate investigation into the disappearance of the complainant's brother

On 17 September 2004, the Ombudsperson received a complaint concerning the length of the investigation proceedings into the disappearance of the complainant's brother L. V. Indeed, the case had been pending since February 2000 before the District Court in Gjilan/Gnjilane.

On 20 May 2005, 1 July 2005 and 28 October 2005, the Acting Ombudsperson sent letters to the International Prosecutor in Gjilan/Gnjilane and to the Deputy Special Representative of the Secretary General (SRSG) for Police and Justice asking for information about any action that had been taken or planned in order to solve the above mentioned case.

On 11 January 2008, the Acting Ombudsperson sent a letter to the SRSG asking him to use his powers to ensure that he received information on the current stage of the investigation proceedings and concerning the nature of the actions taken or planned in order to resolve the present case within a reasonable time.

On 11 April 2008, the Acting Ombudsperson received a letter from the Acting Director of the UNMIK Department of Justice stating that Mr. L.V. had disappeared on 19 April 1999 after having been forced by Serbian paramilitaries to get into a car and reach the village of Kamenica. He further declared that on 8 November 2007, the Head of the Office of Missing Persons and Forensics confirmed that L.V. was still missing and that there was no information about his fate or whereabouts. The Acting Director of the UNMIK Department of Justice also added that the investigation was assigned to the International Prosecutor and was still pending and he had been assured that every possible action will be undertaken in order to solve and close the case.

On 9 May 2008, the Director of the Department of Investigations of the Ombudsperson Institution sent a letter to the complainant informing him about the response received by the Ombudsperson Institution from the Acting Director of the UNMIK Department of Justice and advised him to address this case to the Human Rights Advisory Panel in UNMIK.

Request for the transfer of a prisoner from the Republic of Germany to Kosovo

On 21 December 2005, the Ombudsperson Institution received a complaint alleging that the complainant's brother was imprisoned in Germany and that on 14 September 2005, the brother's lawyer had requested the UNMIK Department of Justice to inform him concerning the possibility for his client to be transferred to Kosovo to serve his sentence. However, the UNMIK Department of Justice had not answered his request yet.

On 16 January 2006, the Ombudsperson sent a letter to the Director of the Department of Justice, asking him for information with regard to the complainant's case and whether such a transfer from a prison in Germany to a prison in Kosovo was possible.

On 23 January 2008, the Ombudsperson Institution received a response from the Acting Director of Department of Justice who informed him that on 28 October 2005, his office had

responded to the German authorities *via letter* explaining that before a request for transfer would be taken in consideration, the applicable law in Kosovo requires the existence of an international agreement on the transfer of the sentenced persons between two countries. In this context, he added that UNMIK reputedly submitted a draft agreement on the transfer of sentenced persons to the German authorities for their consideration since April 2004 but no response had been received yet. Also, he stressed that on 29 November 2005 the Department of Justice had sent a letter to the complainant informing him concerning the above-mentioned issue, but that due to an administrative error, the Ombudsperson Institution in Kosovo inadvertently was not copied on the correspondence.

Non-execution of the court decision by the Kosovo Trust Agency

On 13 July 2006, the Ombudsperson Institution received a complaint concerning the non-execution by the Kosovo Trust Agency (KTA) of a court decision issued on 6 June 2003 by the Municipal Court in Kaçanik/Kaçanik. The court had issued a decision providing that Limestone Factory Lepenci, should pay to the complainant the amount of 12.205 euro plus the interests and the costs of the proceedings, but in the meantime, the Factory had been put under liquidation by KTA.

On 10 April and 17 July 2006, the Acting Ombudsperson sent letters to the Managing Director of KTA and asked him to provide information regarding the actions taken and foreseen in order to solve the above-mentioned issue.

On 3 November 2006, the Acting Ombudsperson sent a letter to the Deputy Special Representative of the Secretary General (SRSG) asking him to use his authority in this case and request the Managing Director of KTA to take actions to solve the above-mentioned issue, and to inform the Ombudsperson Institution about any developments.

On 11 January 2008, the Acting Ombudsperson sent a new letter to the SRSG, underlining that he did not receive an answer to his previous letters and reiterating his request for information.

On 1 February 2008, the Ombudsperson Institution received a letter from the Deputy SRSG, informing him that the business and assets of Limestone Factory Lepenci had been transferred to the subsidiary NewCo Lepenci LLC, tendered in the first wave of privatization, and that the sale was completed on 9 March 2004. In addition, he stated that the liquidation procedures had not started yet. However, the KTA registered the claim and the claimant would be entitled to participate in the distribution of the sale needs. He further added that the above-mentioned did not prevent the complainant to seek execution of the decision issued by the Municipal Court in Kaçanik/Kaçanik.

The Acting Ombudsperson has to date not been officially informed of the latest developments

Request for a transfer of prisoner from the FYR of Macedonia to Kosovo

On 20 October 2006, the Acting Ombudsperson sent a letter to the Director of the UNMIK Department of Justice asking for information concerning a case where a prisoner detained in the correctional institution “Idrizovë/Idrizovo” in Skopje, FYR of Macedonia, had asked to be transferred to a prison in Kosovo. Copies of this letter were sent to the Minister of Justice, the President of the District Court in Gjilane/Gnjilane and the President of the District Court in Prizren.

On 19 January 2007, the Acting Ombudsperson sent a second letter to the Director of the UNMIK Department of Justice requesting a response to his letter of 20 October 2006 and updated information concerning the case.

On 13 March 2007, after initial contact with the Ombudsperson of the FYR of Macedonia regarding this case, the Acting Ombudsperson received a letter from the Ombudsperson of the FYR of Macedonia informing him that the person detained in Skopje had been sentenced to three years imprisonment and had been detained since August 2005. The detainee had filed a request with the Ministry of Justice of the FYR of Macedonia asking to be transferred to a prison in Kosovo, in compliance with a temporary protocol for the transfer of sentenced persons signed between the FYR of Macedonia and UNMIK on 9 March 2006. The Ombudsperson of the FYR of Macedonia informed the Acting Ombudsperson that the initializing of the transfer of this person fell within the competencies of the Kosovo authorities.

On 30 March 2007, the Acting Ombudsperson sent a letter to the President of the District Court in Prishtinë/Priština requesting further information on the current stage of proceedings regarding the prison transfer.

On 25 May 2007, the Ombudsperson Institution received a letter from the President of the District Court in Prizren where the complainant was from, stating that the court was not competent to decide on such matters, and that the Department of Justice’s request had been submitted to the District Court in Prishtinë/Priština.

On 15 June 2007, the Acting Ombudsperson sent a reminder letter to the President of the District Court in Prishtinë/Priština reiterating the request for information mentioned in his letter of 30 March 2007. The Acting Ombudsperson noted that, according to the President of the District Court in Prizren, the instant case had been submitted to the District Court in Prishtinë/Priština for further procedure.

On 26 December 2007, the Acting Ombudsperson received a letter from the Court Administrator of the District Court in Prishtinë/Priština informing him that a decision had been taken concerning the present case and they had referred the case to the UNMIK Department of Justice on 10 August 2007.

On 25 February 2008, the Acting Ombudsperson sent another letter to the Acting Director of the UNMIK Department of Justice asking him further information about the procedures to initialize the transfer requested by Mr. Halili as soon as possible.

At the beginning of March 2008, representatives of the Ombudsperson Institution met with the complainant who had been released from the correctional institution “Idrizovë/Idrizovo” in Skopje, FYR of Macedonia and on 10 mars 2008, the Acting Ombudsperson decided to strike the case from the list.

Allegations regarding serving expired food products and the lack of proper working conditions in some public and private educational institutions in Prishtinë/Priština

In January 2007 the Kosovo daily newspaper “Koha Ditore” published an article expressing concern that expired food products had been served in the public and private pre-school educational institutions in Prishtinë/Priština Municipality and echoing allegations that some of these institutions do not fulfil sanitary criteria. Following the article published in “Koha Ditore”, the Ombudsperson Institution initiated an investigation in this case. The representatives of the Ombudsperson Institution had meetings with a representative of the Municipal Sanitary Inspectorate during which the latter complained about the length of the court proceedings concerning cases lodged by the above-mentioned inspectorate against the pre-school institutions.

On 17 April 2008, the Acting Ombudsperson sent a letter to the President of the Municipal Court of Minor Offences in Prishtinë/Priština asking information about the cases brought by the Municipal Sanitary Inspectorate against the pre-school Institutions in Prishtinë/Priština.

The Acting Ombudsperson further asked information about the number of cases before the Municipal Minor Offences Court in Prishtinë/Priština, brought by the Municipal Sanitary Inspectorate against the pre-school institutions, including the number of cases that have already been implemented after a final court decision.

On 25 April 2008, the Acting Ombudsperson received a letter from the President of the Municipal Minor Offences Court in Prishtinë/Priština stating that on 26 February 2008 the Municipal Sanitary Inspectorate lodged nine requests, asking initiation of proceedings against the Directors of pre-school institutions and the former Director of the Municipal Directorate of the Municipality in Prishtinë/Priština. He also informed that the judges in charge were prioritizing the cases involving the above-mentioned institutions.

On 20 May 2008, the Acting Ombudsperson sent a letter to the Director of the Directorate for Health and Social Welfare of the Municipality in Prishtinë/Priština asking for information about the functions of the Municipal Sanitary Inspectorate, especially with regard to the cases involving pre-school institutions. In this letter, he further stressed that according to the information available to him, in several cases, the Municipal Sanitary Inspectorate had issued warnings and recommendations addressed to some pre-school institutions in view of improving their conditions.

Finally, the Acting Ombudsperson requested to receive information about the cases in which the pre-school institutions have been charged with administrative fines and whether the courts decisions have been executed.

Concerning the criminal proceedings against persons involved in the sale of expired medicines

On 21 January 2007, pursuant to UNMIK Regulation No.2000/38 on the Ombudsperson Institution and the Rule 9 of the Rules of Procedure, the Ombudsperson Institution opened an ex officio investigation following information relayed in the media concerning the criminal procedures initiated against individuals involved in the sale of expired medication and other irregular practices in Kosovo pharmacies. The Media alleged that a large number of cases existed in the Municipal Prosecutor's Office in Prishtinë/Priština and involved governmental and health institution officials.

On 16 March 2007, the Acting Ombudsperson sent a letter to the Chief District Prosecutor in Prishtinë/Priština, asking about the alleged large number of cases involving officials of the Ministry of Health and the University Clinic Centre of Kosovo in Prishtinë/Priština in the sale of expired medication and other irregular practices. He asked him further information concerning the current stage of the proceedings.

On 23 March 2007, the Ombudsperson Institution received a letter from the District Prosecutor's Office in Prishtinë/Priština, informing that the above-mentioned criminal cases were being dealt with by the International Prosecutor.

On 20 July and 7 December 2007, the Acting Ombudsperson sent letters to the International Prosecutor, asking for information about the stage of the above mentioned proceedings. A copy of these letters was also sent to the Director of the Department of Justice in UNMIK.

On 17 January 2008, the Acting Ombudsperson received a letter from the Acting Director of the Department of Justice who informed him that after a thorough investigation of the Criminal Division database, it appeared that there was no such case was being handled by an International Prosecutor or by the Kosovo Special Prosecutor's Office.

On 4 February 2008, a representative of the Ombudsperson Institution visited the District Public Prosecutor in Prishtinë/Priština to enquire whether there was any file concerning the alleged cases in the registry of the Prosecutor's office and concluded that there was no such case file registered.

On 5 February 2008, a representative of the Ombudsperson Institution tried to arrange a joint meeting with the Administrator of the District Public Prosecutor in Prishtinë/Priština and a representative of the Legal Office of the Kosovo Agency for Medicines Products to find out more about these alleged case files.

On 6 February 2008, the Director of the Legal Office of the Kosovo Agency for Medicines Products denied the allegations relayed by the press and observed that the issue had been exaggerated by the journalists. He further stated that the number of cases where the pharmacies are involved in the sale of expired medication is very limited, and that the Kosovo Agency for Medicine Products, in such situations, submits cases to the Kosovo Police Service for further proceedings. He finally mentioned that he did not know whether there was such a case pending before the regular courts in Kosovo.

The Acting Ombudsperson has to date not been officially informed of the latest developments

Failure of authorities to promulgate necessary administrative instructions and other sub-legal acts to ensure the implementation of Article 13 of the Law 2003/23 on the Pensions for People with Disabilities

On 22 February 2007, the Ombudsperson Institution received a complaint regarding the non-implementation of Article 13 of the Law 2003/23 on the Pension for People with Disabilities. This Article foresees that people with disabilities who are eligible to this pension right, are also entitled to various benefits such as, inter alia, free access to public transport, remissions of custom taxes and reduced tariffs for electricity.

On 30 March 2007, the Acting Ombudsperson sent a letter to the Prime Minister of Kosovo expressing his concern that the administrative instructions necessary to ensure the implementation of the above-mentioned law had not yet been issued. He also asked the Prime Minister to use his authority to invite the other ministers to adopt these administrative instructions. A copy of this letter was sent to the Minister of Energy and Mines and to the Minister of Labour and Social Welfare.

On 11 February 2008, the Acting Ombudsperson sent a letter to the new Prime Minister of Kosovo in which he reiterated his request of 30 March 2007 and requested to be informed on the actions taken with regard to the above-mentioned issue. A copy of the letter was also sent to the new Minister of Energy and Mines and to the new Minister of Labour and Social Welfare.

On 21 February 2008, the Ombudsperson Institution received a letter from the Director of the Legal Department within the Ministry of Labour and Social Welfare who informed him that the implementation of the benefits foreseen in Article 13 of the Law No. 2003/23 for the Pensions for People with Disabilities exclusively depends on the adoption of the administrative instructions by the respective ministries, such as Ministry of Transport and Post-Telecommunications, Ministry of Culture, Youth and Sport, Ministry of Environment and Spatial Planning, Ministry of Economy and Finance and the Ministry of Energy and Mines. He further added that the Ministry of Labour and Social Welfare which had sponsored the above-mentioned law, had several times recommended to the other ministries to adopt the necessary administrative instructions. He also stated that on 14 February 2008, the Ministry of Labour and Social Welfare reiterated its recommendation to the other competent ministries which are mandated to set up criteria for the realization of these benefits for the persons with disabilities.

He finally hoped that following the Ministry of Labour and Social Welfare's recommendations and reiteration of the Ombudsperson's request, the competent ministries will issue the relevant administrative instructions and other sub legal acts needed to ensure that People with Disabilities fully enjoy their rights.

Length of proceedings concerning a request for compensatory damages due to an unjustified detention

On 9 March 2007, the Acting Ombudsperson sent a letter to the Director of the UNMIK Department of Justice concerning a complainant who had been detained for a month in the Detention Centre in Mitrovicë/Mitrovica prior to being released due to lack of evidence. This former detainee claimed that the UNMIK Department of Justice had still not paid him compensatory damages.

On 18 May 2007, the Acting Ombudsperson sent a reminder letter to the Acting Director of the UNMIK Department of Justice reiterating his request for information with regard to the above mentioned case.

On 1 June 2007, the Acting Ombudsperson received a letter from the Acting Director of the UNMIK Department of Justice stating that the Department of Justice had no record of a request filed by the complainant. He stressed that the Department of Judicial Administration's Commission for Compensation for Wrongfully Accused, Convicted and/or Wrongfully Detained Persons was the appropriate body for handling requests for compensation, further promising to bring the matter to their attention.

On 29 June 2007, the Acting Ombudsperson sent a letter to the Secretary of the above mentioned Commission for Compensation in the Department of Judicial Administration requesting information on the complainant's case.

On 7 September 2007, the Acting Ombudsperson sent a new letter to the Secretary of the Commission for Compensation in which he reiterated his request for information.

On 20 September 2007, the Acting Ombudsperson received a letter from the Director of the Judicial Council of Kosovo who informed him that, in a hearing held on 19 February 2007 in the presence of the legal representative of the complainant, the above mentioned Commission offered a sum of 530 euros as a compensatory measure, based on the applicable criteria for compensation. The parties agreed to the proposal and on 24 April 2007, the money was transferred to the complainant's legal representative.

On 7 December 2007, the Acting Ombudsperson decided to strike the case from the list as positively solved.

Failure of authorities to implement the administrative decision

On 22 March 2007, the Ombudsperson Institution received a complaint against the Education and Culture Directorate (ECD) in Fushë Kosovë/Kosovo Polje Municipality regarding the non-execution of the Education Chief Inspector's decision no.51/02-5 of 6 February 2007, which foresaw the appointment of the complainant on a working position.

On 24 May, 19 June and 17 December 2007, the Acting Ombudsperson sent letters to the Director of the ECD in Fushë Kosovë/Kosovo Polje Municipality, asking him for further information regarding the non-execution of the above-mentioned decision.

On 31 January 2008, the Acting Ombudsperson sent a reminder letter to the Director of the ECD in Fushë Kosovë/ Kosovo Polje Municipality, and a copy of the letter was sent to the Minister of Education, Science and Technology, to the Minister of the Local Government, as well as to the Human Rights Units of these Ministries.

On 7 February 2008, the Ombudsperson Institution received a response from the Director of the ECD in Fushë Kosovë/ Kosovo Polje Municipality who informed him that the complainant had been appointed at the secondary school “Hivzi Sylejmani” in Fushë Kosovë since 1 September 2007.

On 8 February 2008, the Ombudsperson Institution received a response from the Ministry of Education, Science and Technology informing that the ECD in Fushë Kosovë/ Kosovo Polje Municipality apparently had delayed the execution of the decision because it had issued by mistake a decision of appointment to another teacher, which had financial implication. Further, it stressed that on 31 August 2007 the ECD in Fushë Kosovë/ Kosovo Polje had implemented the decision no.51/02-5 and that the complainant was currently employed.

Length of proceedings on a property dispute

On 23 March 2007, the Ombudsperson Institution received a complaint regarding the length of proceedings on a property dispute before the Municipal Court in Istog/Istok. According to the complainant, the procedure was initiated in October 2005 and the Court has not yet issued a decision due to the absence of the defendants at the court hearings.

On 18 April 2007, the Ombudsperson Institution was informed that the Municipal Court in Istog/Istok sent a request to the Directorate for International Legal Assistance stressing its need for assistance from the Department of Justice in order to ask the Serbian authorities to return the Court documents proving the ownership over the disputed property.

On 23 July 2007, the Acting Ombudsperson sent a letter to the Directorate for International Legal Assistance in the Department of Justice asking information with regard to the actions taken on the above-mentioned request of the Municipal Court in Istog/Istok.

On 23 January 2008, the Ombudsperson Institution received a letter from the Acting Director of the Department of Justice informing him that the request to obtain the Court documents dislocated in Serbia had been filed by the Municipal Court too late to proceed with it in an adequate manner. Further, he added that the Serbian authorities have continuously refused to cooperate and proceed with these types of requests unless the request was filed at least three months in advance before the date of the court session. Finally, he stressed that the above-mentioned court received a notification from the Department of Justice that advised the court to give sufficient time before the next summons.

On 7 April 2008, the Acting Ombudsperson sent a letter to the President of the Municipal Court in Istog/Istok asking for information with regard to the stage of the proceedings in the case of the complainant.

On 11 April 2008, the Ombudsperson Institution received a letter from the President of the Municipal Court in Istog/Istok who informed him that although the Acting Director of the Department of Justice had sent the summons to the defendants in time, some of the defendants were not present at the hearing, therefore a new session had been scheduled on 24 April 2008.

On 3 June 2008, the Ombudsperson Institution representative contacted the judge in charge of the case, who stated that the next hearing in the case was postponed until September 2008, because of the absence of some defendants. In addition, the judge said that the consequences of their absence in the next session shall be underlined in the next summons.

Lack of adequate investigations into the unlawful killing of thirteen people in the northern part of Mitrovicë/Mitrovica on 3 February 2000

Concerning the allegations of the complainant and others, the Ombudsperson published reports on 29 January 2002 and 20 January 2004 (No. 8/01/I, no.8/01/II, No. 8/01/IV, and No. 810/03) in which he concluded that the law enforcement authorities had failed to conduct adequate investigations into the unlawful murder of thirteen individuals that occurred in the northern part of Mitrovicë/Mitrovica on 3 February 2000 and also to bring the persons responsible of these killings before the court.

***On 30 March 2007**, the Acting Ombudsperson sent a letter to the Minister of Justice regarding a new complaint filed by Mr. Canhasi on the inadequate investigation into the unlawful killing of his wife and other 12 individuals that took place in the northern part of Mitrovicë/Mitrovica on 3 February 2000. The complainant alleged that he had sent two letters to the Minister of Justice on 16 May 2006 and 10 October 2006 complaining about the lack of proper investigation into this case, but he had not received any response.*

In this letter, the Acting Ombudsperson asked the Minister of Justice to inform him about the answer to the complainant's requests.

On 4 June 2007, the Acting Ombudsperson received a copy of a letter that the Permanent Secretary in the Ministry of Justice had sent to Mr. Canhasi in which he informed that according to UNMIK Regulation No. 2005/53 of 10 December 2005, which established the Ministry of Justice, the latter is not competent to provide information on current investigations. He further advised the complainant to address his request to the Judicial Inspection Unit of Kosovo.

On 11 February 2008, the Acting Ombudsperson sent a letter to the Special Representative of the Secretary General (SRSG) stressing that since February 2000, neither Mr. Canhasi nor the Ombudsperson Institution had received proper information on the investigations into the killing of Mr. Canhasi's wife. The Acting Ombudsperson also asked him to exercise his authority to ensure that the competent investigation authorities proceed with the investigation in this case in a professional and timely manner.

Further to the transfer of cases against UNMIK lodged with the Ombudsperson Institution to the Human Rights Advisory Panel on 22 February 2008, Mr. Canhasi's complaint was relocated to the jurisdiction of the Panel.

Despite the formal transmission of the cases against UNMIK to the Human Rights Advisory Panel, the Acting Ombudsperson did not receive any reply from the SRSB to his letter of 11 February 2008.

Failure of the Tax Administration to take actions in order to ensure the realization of the complainant's right granted on the basis of an official act

On 17 May 2007, the Ombudsperson Institution received a complaint against the Regional Office of the Tax Authority in Ferizaj/Uroševac and the Municipal Directorate for Cadastre, Geodesy and Property in Shtime/Štimlje alleging that they failed to register a property bought by the complainant in a public auction organised by the Tax Administration of Kosovo.

On 1 June and 3 August 2007, the Acting Ombudsperson sent a letter to the Minister of Economy and Finance, requesting the Ministry to take measures in order to allow the complainant to enjoy the right to his property obtained on the basis of an official and authoritative act. A copy of these letters was sent to the Prime Minister of Kosovo, to the Minister of Local Government and Administration, to the Director of the Tax Administration of Kosovo and to other relevant institutions.

On 10 January 2008, the Ombudsperson Institution received a letter from the Regional Manager of the Tax Administration in Ferizaj/Uroševac, informing that his office issued a decision regarding the sale of the above-mentioned property and the transfer of the ownership of this plot on the name of the complainant and had further sent it to the Municipal Directorate for Cadastre, Geodesy and Property in Shtime/Štimlje. However, the latter had objected to the registration of this plot in the name of the complainant observing that the property in question was registered on the name of a third person. Furthermore, the Regional Manager added that on 4 May 2007, the Cadastral Agency of Kosovo ordered the Municipal Directorate in Shtime/Štimlje to register the property in the name of the complainant, but that the Municipal Directorate had refused to do so. Therefore, because of the impossibility to register the property on the complainant's name, the Regional Manager stated that the sale would be annulled and that the complainant will be fully reimbursed.

Lack of adequate actions by the Municipality of Vushtrri/Vučitrn to provide shelter for Kosovo Protection Corps officers

On 1 June 2007, the Ombudsperson Institution received a complaint from the officers of the Kosovo Protection Corps (KPC) about the failure of the Municipality of Vushtrri/Vučitrn to provide them with humanitarian shelter. The complainants have been sheltered in a collective neighbourhood in the village Lumi i Madh, Municipality of Vushtrri/Vučitrn, which is actually administered by the Kosovo Property Agency (KPA). They alleged that the latter warned to expel them from this collective neighbourhood unless they were included in a rent paying scheme. The complainants said that they had addressed several times the issue to the authorities of the

Municipality of Vushtrri/Vučitrn and asked the Municipality to provide them with humanitarian shelter since they could not afford to pay the rent imposed by KPA.

On 26 February 2008, the Acting Ombudsperson sent a letter to the President of the Municipality of Vushtrri/Vučitrn asking him to inform the Ombudsperson about the actions taken by the Municipality in response to the requests for shelter submitted by the complainants.

On 18 March 2008, the Acting Ombudsperson received a letter from the President of the Municipality of Vushtrri/Vučitrn informing him that after the 1999 conflict, the members of TMK and their families who were in a difficult social situation obtained shelter in this neighbourhood. He further stated that after they had been asked by the KPA to pay the rent, the inhabitants of this collective neighbourhood had been addressing several requests to the Municipality asking to exempt them from paying the rent. He also stated that the Municipality of Vushtrri/Vučitrn had asked the KPA to delay the payment of the rent by these families until an acceptable and reasonable solution had been found. The President of the Municipality in Vushtrri/Vučitrn further informed the Acting Ombudsperson that there were some other collective shelter buildings in which people were living in very bad conditions and that the Municipality had no budget to provide for other shelters for so many families. Nevertheless, he promised that he will pay attention to this problem and try to find a solution suitable for all parties.

Alleged lack of adequate measures in taking actions to solve the interference into the frequencies of radio stations in Mitrovicë/Mitrovica

On 11 June 2007, the Acting Ombudsperson sent a letter to the Head of the Council of the Independent Media Commissioner concerning a complaint submitted by the League of Independent Journalist in Mitrovicë/Mitrovica and the Radio “Globi” in Mitrovicë/Mitrovica in which they claimed that the Independent Media Commissioner did not take adequate measures to discontinue the interference of Radio Dukagjini on the radio wave frequency of Radio “Globi”.

The Acting Ombudsperson requested to be informed about the action taken by the Independent Media Commissioner to resolve the complainant’s problem in a timely manner.

On 11 February 2008, the Acting Ombudsperson sent another letter to the Head of the Council of Independent Media Commissioner reiterating his request for information regarding the complainant’s claim.

On 31 March 2008, the Acting Ombudsperson received a letter from the Head of the Council of the Independent Media Commissioner who informed him that following an order issued by the Independent Media Commissioner in September 2007, the Radio “Dukagjini” took action and operated changes in the antenna system in accordance with its license permission.

On 31 March 2008, the Acting Ombudsperson decided to strike the case from the list as positively solved.

Length of criminal proceedings following a complaint lodged with the Supreme Court of Kosovo

On 26 June 2007, the Acting Ombudsperson received a letter from the People's Advocate of Albania concerning the length of proceedings in a criminal case. The complainant's brother had been sentenced to twenty two years of imprisonment by the District Court in Pejë/Peć and on 18 November 2002, he lodged an appeal before the Supreme Court of Kosovo, which remained pending for more than five years. The People's Advocate of Albania asked the Acting Ombudsperson to mediate in order to accelerate the criminal proceedings before the Supreme Court of Kosovo.

On 3 July 2007, the Ombudsperson Institution found out that the case had only been forwarded to the Supreme Court of Kosovo on 13 June 2007 and that it was still pending.

On 13 July 2007, the Acting Ombudsperson sent a letter to the People's Advocate of Albania informing him about the current stage of the proceedings. He stressed that the almost five years delay in forwarding the case to the Supreme Court of Kosovo raised concerns of violation of Article 6 of the European Convention on Human Rights. He further stated that the Ombudsperson will continue to investigate this case and to inform the People's Advocate of Albania concerning any follow-up actions.

On 15 November 2007, the Acting Ombudsperson sent a letter to the President of the Supreme Court of Kosovo asking to inform him about the actions taken or foreseen in the complainant's case.

On 26 November 2007, the Acting Ombudsperson received a letter from the President of the Supreme Court of Kosovo who informed him that the case had been received on 15 November 2007, had been then assigned to a panel of judges and the hearing was scheduled on 23 November 2007.

The Acting Ombudsperson has to date not been officially informed of the latest developments

Regarding the pollution of the Sitnica River caused by industrial waste in Vushtrri/Vučitrn

In August 2007, the Kosovo newspaper "Koha Ditore" published an article concerning the pollution of the Sitnica River caused by industrial waste released by different companies in Vushtrri/Vučitrn. The information raised concerns on the failure of the competent authorities to take actions in preventing the pollution.

Following this information, the Acting Ombudsperson initiated an ex officio investigation on this case and a representative of the Ombudsperson Institution met with the Director of the Department of the Protection of Environment within the Ministry of Environment and Spatial Planning. During this meeting, the Director noted that the Ministry was informed about the case and proper investigations had been conducted.

On 21 April 2008, the Acting Ombudsperson sent a letter to the Minister of Environment and Spatial Planning and the President of the Municipality in Vushtrri/Vučitrn asking to be informed

about all actions that the Municipality and the Ministry have taken in this case and to receive reports of inspectors and other authorities responsible to deal with the case.

On 7 May 2008, the Acting Ombudsperson received a letter from the Permanent Secretary of the Ministry of Environment and Spatial Planning informing him that the inspector of the Ministry investigated the site located nearby Pantinë/Pantina village in the Municipality of Vushtrri/Vučitrn, and reported that many fish had died as a result of the pollution caused by the industrial waste. The suspected polluter was the factory of Tin Plates NEWCO “Llamkos”. The Inspectorate had inspected the factory and, after evaluation of the factual situation on the surrounding environment, came to the conclusion that the “Llamkos” had stopped working on 9 August 2007 and that the flow of industrial waste was not being delivered by this factory.

He further added that according to the findings of the Hydrometeorology Institute, the parameters are normal in this surrounding even though there has been flow of waste of sewage waters.

Finally, he stated that the cause of the dead fish was the use of the electricity to kill them.

Non-execution of the decision of the Independent Oversight Board

On 13 August 2007, the Ombudsperson Institution received a complaint concerning the non-execution of the decision of the Independent Oversight Board (IOB), which provided that the complainant should be reinstated in the position of administrator in the Municipal Public Prosecutor’s Office in Prizren.

On 10 August and 21 September 2007, the Acting Ombudsperson sent letters to the President of the IOB asking for information about the actions taken and foreseen in the future to ensure the implementation of the above-mentioned decision.

On 8 October 2007, the Ombudsperson Institution received a response from the President of the IOB informing him that he was aware that the employing authorities have not executed the IOB decision and that pursuant to the provisions of the Regulation 2001/36 on the Civil Service in Kosovo, Article 11- 4, he had informed on 30 August 2008 the SRSG and the Prime Minister of Kosovo about the non-execution of the IOB decision by the Municipal Public Prosecutor’s Office in Prizren. He moreover added that pursuant to Regulation 2001/36, the IOB has no competence to take further action concerning the execution of this decision.

The Acting Ombudsperson has to date not been officially informed of the latest developments

Regarding a request for comments on some articles of the Provisional Criminal Code of Kosovo and the Provisional Procedure Code of Kosovo

On 24 August 2007, the Acting Ombudsperson sent a letter to the Chief Prosecutor of Kosovo concerning some complaints brought to the attention of the Ombudsperson Institution with respect to inconsistencies in the way courts and prosecutors’ offices implement Article 322 of the

Provisional Criminal Code of Kosovo and Article 476 of the Provisional Criminal Procedure Code of Kosovo. In this letter, the Acting Ombudsperson requested that the Chief Prosecutor's office provides him with a authorised comment on these two articles to allow the Ombudsperson Institution to continue investigations of cases implying the application of these two articles.

On 7 March 2008, the Acting Ombudsperson sent a reminder letter to the Chief Prosecutor of Kosovo reiterating his request for information.

To date, there has been no response to this request of the Acting Ombudsperson.

Non-execution of the decisions of the Independent Oversight Board of Kosovo

On 5 September 2007, the Ombudsperson Institution received a complaint against the Independent Oversight Board of Kosovo concerning the non-execution of a decision that compelled the Forester Agency of Kosovo to reintegrate the complainant back to his previous work within 15 days after the issuance of the decision, and to ensure the respect of all labour rights in compliance with his contract.

On 24 September 2007, the Acting Ombudsperson sent a letter to the President of the Independent Oversight Board of Kosovo in which he expressed his concern that more than five months after the decision had been issued, it had still not been implemented. He further asked to be informed about the actions taken or planned to be taken by the Independent Oversight Board of Kosovo in order to implement the above-mentioned decision.

On 7 December 2007, the Acting Ombudsperson sent a reminder letter to the President of the Independent Oversight Board of Kosovo reiterating his request for information in the present case.

The Acting Ombudsperson has still received any response to his letters.

Non-execution of the decision issued by the Special Chamber of the Supreme Court of Kosovo- Trust Agency Related Matters

On 5 September 2007, the Acting Ombudsperson received a complaint concerning the non-execution of a judgment issued in May 2007 that granted the complainant's request and compelled the Kosovo Trust Agency to include him in the list of workers who were to take part in the apportion of 20% of the assets after the privatization of the PE "Llamkos" in Vushtrri/Vučitrn.

On 26 October 2007, the Acting Ombudsperson sent a letter to the Presiding Judge of the Special Chamber of the Supreme Court of Kosovo-Trust Agency Related Matters where he requested to be informed about the actions taken in order to implement the above-mentioned decision.

On 23 November 2007, the Acting Ombudsperson sent another letter to the Presiding Judge of the Special Chamber of the Supreme Court of Kosovo-Trust Agency Related Matters reiterating his request for information.

On 4 December 2007, the Acting Ombudsperson received a letter from the Presiding Judge of the Special Chamber of the Supreme Court of Kosovo-Trust Agency Related Matters, stating that the above mentioned judgment had been forwarded to the Kosovo Trust Agency that was in charge of distributing the funds as part of the liquidation procedures. He further added that the Special Chamber of the Supreme Court of Kosovo- Trust Agency Related Matters had nothing to do with the delays in the proceedings in front of the Kosovo Trust Agency and that it had no authority under the law to implement its judgments.

The Acting Ombudsperson has to date not been officially informed of the latest developments.

Alleged irregularities during the trial hearing in Albin Kurti's case

On 23 October 2007, the Acting Ombudsperson sent a letter to the Director of the Department of Justice in UNMIK drawing his attention to some irregularities which occurred at the last trial hearing in Mr. Albin Kurti's case on 19 September 2007.

The Acting Ombudsperson observed that according to the information provided by the Institution lawyers present at the hearing, it appeared that when the accused Mr. Kurti was asked if he had any objection to the composition of the panel trial, he answered affirmatively and gave to the court interpreter a translated statement supporting his objection. The presiding judge then ordered the public to leave the court room so that the panel could read the statement. He further denied the possibility to Mr. Kurti to read his statement in front of the panel trial and the audience.

Furthermore, the Acting Ombudsperson stated that when Mr. Kurti insisted on reading the statement, stressing that the panel's refusal to hear statement infringed his right to freedom of expression, the presiding judge overreacted by shouting at Mr. Kurti, telling him to "shut up" and refusing to let him speak. The Acting Ombudsperson stressed that such a reaction on the side of the presiding judge constituted a breach of judicial ethics, i.e. the standards and norms that judges are obliged to adhere to and which also imply maintaining independence and impartiality at all times and avoiding improper behaviour.

The Acting Ombudsperson also raised another issue related to the announcement made by the presiding judge during the initial phase of the hearing in which he stated that the panel had been provided with a new indictment that would be added to the existing one. The Acting Ombudsperson expressed his concern as it appeared that neither the accused nor his defence lawyer had previously been informed about this new indictment.

In addition, the Acting Ombudsperson stated that this raised serious concerns with regard to the principles of fair trial, especially in the context of notification of charges in advance. Furthermore, this directly infringes the principles of equality of arms, which requires procedural equality between the accused and the public prosecutor.

The Acting Ombudsperson finally asked the Head of the Department of Justice in UNMIK to take appropriate measures to ensure that a proper investigation is conducted into these issues.

On 24 December 2007, the Acting Ombudsperson sent another letter to the Director of the Department of Justice in UNMIK in which he shared some additional information in relation to the above mentioned case and asked him to take action in this regard. In this letter he stated that during the last hearing in Mr. Kurti's case on 4 December 2007, the behaviour of the Presiding Judge towards the accused improved. However, he said that Mr. Kurti had still not received a copy of the second indictment mentioned in the hearing in September 2007. Furthermore, he added that based on the information available to him, the appointment of Mr. Kurti's defence lawyer had been conducted in an unprofessional manner. This also constituted a violation of the general fair trial principles, notably the principle of equality of arms. Indeed, during the hearing held on 16 November 2007, the court experienced difficulties in finding a defence lawyer who would be willing to defend Mr. Kurti. The appointed lawyer had no time to prepare his defence strategy and was unfamiliar with the case as a whole and it would have been more appropriate to reschedule the hearing to a later date. The Acting Ombudsperson mentioned that the lawyer appointed did not appear to act in favour of his client and even opposed the arguments of the accused before the court.

In addition, during the last hearing held on 4 December 2007, the accused submitted to the court a DVD of a talk show broadcasted in February 2007, in which the appointed lawyer allegedly condemned the accused for his involvement in the protest of 10 February 2007. The Acting Ombudsperson said that it was questionable whether the trial should have been continued under these circumstances.

In this letter he further stressed that the trial against Mr. Kurti appeared to be characterised by a lack of respect for technical and procedural requirements on a number of occasions.

The Acting Ombudsperson finally asked him to undertake all possible measures to ensure the transparency of the entire trial and its compliance with international fair trial principles and the applicable procedure and called for those irregularities not to be repeated in the further course of proceedings.

On 15 January 2008, the Acting Ombudsperson received a letter from the Acting Director of the Department of Justice in UNMIK who stated that the appropriate forum for objections to the conduct of the proceedings is the court itself and that the Department of Justice could not influence an independent trial panel. He further stated that should the trial panel not address the defendant's concerns to his satisfaction he could utilise the available appellate proceedings.

With respect to the complaints against international judges or prosecutors when there is a claim that they have violated a criminal procedure law or human rights norms, the Acting Director of the Department of Justice in UNMIK observed that the defendant could lodge a complaint about the alleged violation before the appellate court, and that the European Convention on Human Rights and the International Covenant on Civil and Political Rights are directly applicable by the courts under the Constitutional Framework for Provisional Self-Government in Kosovo.

He finally stated that pursuant to UNMIK Regulation 2000/6, the Special Representative of the Secretary General has the authority to remove an international judge from office taking into account the criteria set forth in sections 2 and 4 of that Regulation, which include misconduct and failure in the due execution of office.

The Acting Ombudsperson has not been officially informed of the latest developments in the case.

Failure of the Administrative Authorities to answer to the complainant's complaint

On 30 October 2007, the Ombudsperson Institution received a complaint against the Judicial Inspection Unit (JIU) that did not answer the complainant's request of 30 May 2006, asking the JIU to take action regarding the decision of the Municipal Court in Mitrovica, concerning the confirmation of his ownership right.

On 1 February 2008, the Acting Ombudsperson sent a letter to the Coordinator of the JIU and asked information regarding the actions taken in order to solve the above-mentioned issue.

On 26 February 2008, the Ombudsperson Institution received an answer from the JIU informing that on 9 June 2006 a disciplinary investigation had been initiated in the present case and that the case was still pending.

Alleged use of violence by a teacher on the pupils of the primary school "Gjergj Fishta" in Prishtinë/Priština

On 23 November 2007, the Kosovo daily newspaper "Kosova Sot" published an article raising the issue of alleged use of violence by a teacher on the pupils of the primary school "Gjergj Fishta" in Prishtinë/Priština. On 12 December 2007, the Acting Ombudsperson opened an ex officio investigation on the above mentioned allegations of ill-treatment and addressed a letter to the Director of the primary school "Gjergj Fishta". A copy of the letter was also sent to the Municipal Director of the Education Directorate in Prishtinë/Priština Municipality as well as to the Minister of the Education, Science and Technology. In this letter, the Acting Ombudsperson informed them about the opening of the ex officio investigations on the case and requested them to inform him about the actions they had taken or planned to take with respect to solving this case.

On 24 December 2007, the Acting Ombudsperson received a letter from the Director of the primary school "Gjergj Fishta" stating that on 27 November 2007 the Directory of the primary school came to the conclusion that the teacher used violence against the pupils, which was in contradiction with the Law on Primary and Secondary Education and Code of Conduct of the education system. The Directory of the primary school took a disciplinary measure and issued a written warning to the teacher. He further stated that this disciplinary measure had been read at the Council of Teachers' meeting in front of all teachers.

On 9 January 2008, the Ombudsperson Institution received a letter from the Minister of Education, Science and Technology who stressed that the Education Inspection had conducted an investigation of the case and had concluded that the teacher in question had used physical violence against the pupils while being fully aware of his behaviour. Further, the Minister stated that the teacher had violated the Rules of the Code of Conduct, thus, based on the provisions of Articles 5.1 and 5.3(b) of the Law on the Education Inspection in Kosovo, it recommended that

the school directorate “Gjergj Fishta” immediately initiate a disciplinary procedure against the teacher.

Allegations about the use of force by the Kosovo Police Service members

On 7 December 2007, the Acting Ombudsperson sent a letter to the Municipal Public Prosecutor in Prishtinë/Priština with regard to the allegations of the complainant concerning the brutal treatment and the injuries caused to him by the members of Kosovo Police Service (KPS), and requested him to initiate an investigation against the KPS members who committed the alleged abuse in their official capacity.

On 24 January 2008, the Ombudsperson Institution received a response from the Municipal Public Prosecutor’s Office in Prishtinë/Priština who informed that the present case was referred to the Prosecutor’s office and that the Regional Investigation Unit had been authorised to take all necessary measures to find the offenders and to shed light on the case.

Excessive length of criminal proceedings with regard to an aggravated theft

On 12 December 2007, the Acting Ombudsperson sent a letter to the President of the Municipal Court in Podujevë/Podujevo concerning a complaint about the excessive length of criminal proceeding before the above-mentioned court. The complainant, who was the defendant in this theft case, alleged that following the confirmation of the indictment on 15 February 2005, no further action had been taken by the Court to continue the proceedings. In this letter, the Acting Ombudsperson asked to be informed about the actions that the President of the Municipal Court had taken or planned to take with respect to complainant’s case.

On 17 January 2008, the Ombudsperson Institution received a letter from the President of the Municipal Court in Podujevë/Podujevo who informed him that a considerable number of judges had stopped working in the court, as a result of which there was a considerable shortage of judges. He further stressed that in the last two years, there were only two judges working in the court, which explained the delay in the proceedings. He also stressed that in October 2007, a new judge had been assigned to the present case and that he had taken the necessary procedural actions related to the case. In addition, the President of the Municipal Court informed that a hearing on this case was scheduled on 30 January 2008 and the summons has been sent in due time to the parties in the procedure.

Regarding the circumstances in which a suicide occurred at the Detention Centre in Lipjan/Lipljan

On 3 January 2008, the Acting Ombudsperson opened an ex officio investigation regarding the circumstances in which an inmate committed suicide in the Detention Centre in Lipjan/Lipljan on 1 November 2007. Indeed, during a visit to the Detention Centre in Lipjan/Lipljan on 5 December 2007, a representative of the Ombudsperson Institution was informed by the Deputy Director of the Detention Centre that the inmate S.H. had committed suicide in his cell.

On 3 January 2008, the Acting Ombudsperson sent a letter to the Kosovo Correctional Service Commissioner informing him about the initialisation of an ex officio investigation in this case and asking him to provide the Ombudsperson Institution with a copy of the internal investigation conducted by the Kosovo Correctional Service on the incident.

On 14 January 2008, the Acting Ombudsperson received a letter from the Kosovo Correctional Service Commissioner, as well as a copy of the internal investigation conducted on 9 November 2007 by two members of the General Directorate of the Kosovo Correctional Service. This report stated that the inmate had been visited several times by the doctor and the social worker since he had been transferred to the Detention Centre in Lipjan/Lipljan from the Detention Centre in Prizren on 31 October 2007 and that he had neither displayed sign of mental illness nor revealed his intention to commit suicide.

On 23 May 2008, the representatives of the Ombudsperson Institution met with the Director and the medical staff of the Detention Centre in Lipjan/Lipljan and had the opportunity to have access to the medical files relevant in the case. The doctor of the Detention Centre in Lipjan/Lipljan observed that he had visited the inmate thirty minutes before he committed suicide and he had not identified any sign or intention that he was about to commit suicide.

Request for temporary accommodation in the Roma camp “Vojni Remont” in Mitrovicë/Mitrovica

On 11 January 2008, the Acting Ombudsperson sent a letter to the Head of UNMIK Administration in the northern part of Mitrovicë/Mitrovica regarding the complainant’s request for temporary accommodation in the Roma camp “Vojni Remont” in Mitrovicë/Mitrovica. The complainant claimed that the accommodation where his family and his brother’s family (fifteen people) were currently staying was too small for both families. He further alleged that in December 2007, he submitted a request for temporary accommodation in the two empty rooms close to the rooms housing his family.

The Acting Ombudsperson asked the Head of UNMIK Administration in Mitrovicë/Mitrovica to inform him about the actions that had been taken or will be taken to solve the complainant’s problem.

To date, there has been no response to this request of the Acting Ombudsperson.

Non-receiving of the Pension for Persons with Disabilities due to the liquidation of the complainant’s bank

On 15 January 2008, the Ombudsperson Institution received a complaint from a beneficiary of the disability pension alleging that he had recently stopped receiving his pension and had not been informed by the Department of Pension Administration in Kosovo about this decision.

On 25 January 2008, Ombudsperson Institution's representative contacted the officials of the Ministry of Labour and Social Welfare in order to obtain information with regard to the allegations of the complainant and asked them to act in compliance with the law in order to solve the above-mentioned case.

On 31 January 2008, the complainant informed the representative of the Ombudsperson Institution that he had started to receive his pension again.

On 6 February 2008, the Ombudsperson Institution received a letter from the Permanent Secretary of the Ministry of Labour and Social Welfare informing that on 13 December 2004, the Department of Pension Administration approved the complainant's request for disability pension, with possibility of revaluation after one year. He further stated that on 20 July 2005, the medical commission within the Department of Pension Administration had re-evaluated the complainant's health case and his right to pension for disabled persons had been approved and extended for the next three years. Finally, the Permanent Secretary also explained that the delay in providing the pension was due to the liquidation of the Creditory Bank of Kosovo where the complainant had his account.

On 8 February 2008, the Acting Ombudsperson issued a decision striking this case from the list as positively solved.

Request for mediation with the institutions in order to obtain documents reflecting their working experience.

On 15 January and 24 January 2008, the Ombudsperson Institution received requests from two complainants who asked for a mediation with the Department of Pension Administration in Kosovo in order to obtain the details of their incomes from the M-4 form in order to confirm their working experience and effectively claim for their right to pension.

On 2 February 2008, the Acting Ombudsperson sent a letter to the Director of the Department of Pension Administration, requesting that data collected through M-4 form, which are available at the above-mentioned administration, be provided to the requesting parties in order to allow them to enjoy their rights to pension.

On 13 February 2008, the Ombudsperson Institution received a letter from the Department of Pension Administration that had attached the data found in the records of M-4 forms. The Ombudsperson's representatives forwarded these data to the relevant complainant. However, in the second case, the Department of the Pension Administration observed that they had not found the data of the complainant in the records of M-4 forms. The Ombudsperson Institution representatives thus informed the other complainant on these findings.

Difficulties in obtaining invalidity pension in Croatia

On 18 January 2008, the Acting Ombudsperson received a complaint concerning the length of proceedings before the Croatian authorities.. The complainant alleged that he submitted a

request before the Croatian Fund for Invalidity Pensions on 30 April 2004, and that he had not received any response yet.

The complainant found himself in a difficult situation as he had no possibility to travel himself to Croatia to solve his pension issue and asked the Acting Ombudsperson to mediate with the competent body in the Republic of Croatia in helping to realize his right to pension.

On 12 February 2008, the Acting Ombudsperson sent a letter to the Ombudsperson of the Republic of Croatia asking him to pay attention to the complainant's case and to mediate with the Croatian Fund for Invalidity Pensions to solve the case.

On 5 March 2008, the Acting Ombudsperson received a letter from the Croatian Ombudsperson stating that on 21 February 2008, he had sent a letter to the Croatian Fund for Invalidity Pensions requesting to be informed about the reasons causing the delay in the procedure, the subsequent inaction and absence of decision concerning the complainant's request.

The Croatian Ombudsperson also asked the Croatian Fund for Invalidity Pensions to share any information about the actions taken to solve the complainant's case to be shared with the Ombudsperson Institution in Kosovo.

Length of Proceedings in the investigation by the District Prosecutor's Office in Pejë/Peć

On 22 January 2008, the Acting Ombudsperson sent a letter to the Chief District Prosecutor in Peja/Peć requesting information concerning the length of proceedings in the investigation of the murder of the complainant's son. The complainant alleged that her son had left the house on 28 September 2001, had been attacked and injured by unidentified persons in the street and had later passed away in the Prishtinë/Priština Hospital.

On 30 January 2008, the Acting Ombudsperson received a letter from the District Public Prosecutor's Office in Pejë/Peć stating that the Prosecutor's Office still did not have sufficient evidences allowing the Office to conclude whether the death of the son's complainant had been caused by an attack or by a traffic accident. The Prosecutor's Office observed that they need to gather further information from the police and the parents of the victim and that the investigation was still open.

The Acting Ombudsperson has to date not been officially informed of the latest developments in the case.

Refusal of the complainant's request for disability pension

On 28 January 2008, the Acting Ombudsperson sent a letter to the Director of the Department of Pensions Administration asking under what legal basis the complainant's request for disabled person pension was refused. The complainant indeed alleged that the Commission within the Department of Pensions Administration had not taken into consideration her health condition.

On 17 March 2008, the Acting Ombudsperson received a letter from the Coordinator of the Human Rights Unit within the Ministry of Labour and Social Welfare who explained that after

due assessment, the Doctor's Commission had concluded that the complainant's request was ill-founded because she did not fulfil the criteria of permanently disabled person.

Regarding the alleged discrimination of deaf people

On 28 January 2008, the Acting Ombudsperson sent a letter to the Minister of Public Services regarding a complaint filed by the Club of Deaf People who alleged that deaf people are discriminated with respect to their communication with the public institutions due to the absence of sign translators.

The Acting Ombudsperson observed that public institutions do not provide any translation services ensuring that the needs of deaf people are met and that in many cases, deaf people are obliged to hire somebody who knows the sign language in order to communicate with the public servants in the public institutions.

The Acting Ombudsperson further drew the Minister attention on the Anti-Discrimination Law No. 2004/3 which forbids any direct and indirect discrimination against a person on account of physical or mental disability.

The Acting Ombudsperson stressed that deaf people are treated differently because the public institutions that they address to do not provide any interpretation in sign language. Thus, they are deprived of their right to communicate in their language.

Finally, he asked the Minister of Public Services to inform him about the actions he intends to undertake in order to solve this situation of deaf people.

To date, there has been no response to this request of the Acting Ombudsperson.

Allegations about the corruptive practices during the privatization procedure of a public enterprise by Kosovo Trust Agency

On 8 February 2008, the Acting Ombudsperson received a complaint from some of the workers of a Pipe Factory in Ferizaj/Uroševac concerning the alleged existence of corruptive practices during the privatization procedures and the conclusion of the contract between the above-mentioned enterprise and the firm "GDG EXIM".

On 16 April 2008, the complainants informed the representative of the Ombudsperson Institution that on 11 March 2008 they had submitted a request to the Kosovo Anti-Corruption Agency asking the Agency to start an administrative investigation with regard to the above-mentioned issue.

On 30 April 2008, the Acting Ombudsperson sent a letter to the Director of the Kosovo Anti-Corruption Agency, referring the case to the Agency and asking to be kept informed about the outcome of the investigation concerning the complainants' allegations.

The Acting Ombudsperson has to date not been officially informed of the latest development in the investigation of this case by the Anti-Corruption Agency of Kosovo

Refusal of the complainant's request for civil registration as a permanent inhabitant of Kosovo

On 11 February 2008, the Acting Ombudsperson sent a letter to the Head of the Office for Civil Registration in Mitrovicë/Mitrovica concerning the refusal of the complainant's request to be registered as a permanent inhabitant of Kosovo. The complainant, who was originally from Albania, got married with an inhabitant of Kosovo on 28 May 2002 before the local authorities of the Municipality of Mitrovicë/Mitrovica and alleged that she had been living continuously in Kosovo for eight years.

The Acting Ombudsperson requested the Head of the Office for Civil Registration in Mitrovicë/Mitrovica to inform him about the reasons sustaining the refusal to register the complainant as permanent inhabitant of Kosovo.

On 12 May 2008, the Acting Ombudsperson sent a reminder letter to the Head of the Office for Civil Registration in Mitrovicë/Mitrovica reiterating his request for information in this case.

On 26 May 2008, the Acting Ombudsperson received a letter from the Head of the Office of the Civil Registration in Mitrovicë/Mitrovica who stated that although the complainant has lived for more than five years in Kosovo and got officially married before the municipal authorities on 28 May 2002, her request did not fulfil all the criteria requested, by the UNMIK Regulation No. 2000/13 on the Central Civil Registry of 17 March 2000, in particular Article 4(c). He also informed that on 9 February 2008, the complainant received a response about her request from the Office for Civil Registration in Mitrovicë/Mitrovica.

Alleged ill-treatment of children of Ashkali community by the Kosovo Police Service officers

On 15 February 2008, the Acting Ombudsperson sent a letter to the Kosovo Police Service (KPS) Deputy Police Commissioner regarding a case brought to the attention of the Ombudsperson Institution by representatives of the Suisse Foundation "Terre des Hommes". According to the Swiss Foundation, on 6 and 9 January 2008, five children from the Ashkali community were stopped and ill-treated by the KPS officers while they were begging nearby BBC "Santea" complex. Furthermore, they alleged that due to the suffered injuries, one of the children was sent to the University Clinic Centre of Kosovo. In this letter, the Acting Ombudsperson asked the Deputy Commissioner of the KPS to initiate an investigation about this incident and inform him about its results as soon as possible.

On 11 March 2008, the Acting Ombudsperson received a letter from the Director of the Department of Investigations in the Police Inspectorate of Kosovo (PIK) in which he explained that the case was being processed and under preliminary investigation.

On 18 April 2008, the Acting Ombudsperson sent a reminder letter to the KPS Deputy Commissioner in which he reiterated his previous request for information.

On 3 June 2008, the Acting Ombudsperson sent another letter to the Director of the Department of Investigations in the PIK in which he asked to inform him about the results of the preliminary investigations conducted by the PIK.

On 5 June 2008, the Acting Ombudsperson received a letter from the Director of the Department of Investigations in the PIK informing him that the PIK Chief Executive initiated on 17 March 2008 a disciplinary investigation against a police officer for alleged force used relating to the incident of 6 January 2008. He further stated that concerning the alleged incident of 9 January 2008, it resulted from the preliminary investigations that no police officer had been identified or involved in this incident.

Concerning the alleged incident of 6 January 2008, he added that the PIK conducted a disciplinary investigation and interviewed the children in the presence of their parents and social workers from the Centre for Social Work as their legal guardian, as well as the police officer who was involved in the incident of 6 January 2008. Based on these interviews, the PIK did not conclude that there were sufficient evidences to prove that the KPS officer should be subjected to a disciplinary proceeding and on 20 May 2008, the Chief Executive of the PIK stopped the disciplinary investigation and closed this case.

About the alleged discrimination concerning labour work dispute

On 25 February 2008, the Acting Ombudsperson sent a letter to the Permanent Secretary of the Ministry of Labour and Social Welfare concerning a complaint submitted by some inspectors in the Executive Agency of Labour Inspectorate alleging discrimination in the working place. They indeed alleged that the Managerial Staff of the Labour Inspectorate of Kosovo had renamed, without any legal basis, the Labour Inspectorate of Kosovo as “Executive Agency of Labour Inspectorate”. The Labour Inspectorate of Kosovo was established according to the Law on Labour Inspectorate of Kosovo No. 2002/9 which was promulgated by the UNMIK Regulation No. 2003/4. According to the complainants’ allegations, the consequence of this change of name was that they were discriminated with respect to their salaries. They also complained that they had sent several requests to the Executive Agency of Labour Inspectorate and the Ministry of Labour and Social Welfare but they had received no response.

In this letter, the Acting Ombudsperson asked the Permanent Secretary of the Ministry of Labour and Social Welfare to send him a copy of any decision or any other legal acts which could have been the legal basis for establishing the Executive Agency of Labour Inspectorate.

On 6 March 2008, the Acting Ombudsperson sent a letter to the President of the Assembly of Kosovo concerning the implementation of the UNMIK Regulation No. 2001/27 on Labour and the Assembly Law No.2002/9 on Labour Inspectorate of Kosovo. In this letter, the Acting Ombudsperson recommended that the President of the Assembly of Kosovo use his authority in order to influence the competent organs and induce them to issue sub-legal acts for the purpose of implementing the above-mentioned laws.

On 14 March 2008, the Acting Ombudsperson received, through the Permanent Secretary of the Ministry of Labour and Social Welfare, a response from the representatives of the Labour Inspectorate in which they attached a Draft Report of the Assembly Commission for Health, Labour, Social and Welfare Issues analysing the Draft Law amending the Law on Labour Inspectorate. This report mentioned, inter alia, that the Draft Law in question had been processed by the new Assembly of Kosovo and was approved in principle. Concerning the question of the denomination, it was stressed that the creation of an “Executive Agency of Labour Inspectorate” would be a unique case compared to other inspectorates established in order to supervise the implementation of the laws.

To date, there has been no response to this report from the President of the Assembly of Kosovo, nor has the Acting Ombudsperson been informed that his recommendations have been or would be followed.

On the legality of the actions of the authorities of Secondary School “Kuvendi i Lezhës” in Viti/Vitina

On 26 February 2008, the Ombudsperson Institution received a complaint from a pupil studying in the Secondary School “Kuvendi i Lezhës” in Viti/Vitina who complained that the school authorities had banned her to enter the school premises because she was wearing a headscarf.

On 28 February 2008, the Acting Ombudsperson sent a letter to the Minister of Education, Science and Technology in which he recalled that according to Article 9 of the European Convention on Human Rights, everyone has the right to freedom of thought, conscience and religion. Referring to the Ombudsperson’s Special Report issued on 4 June 2004 on the legality of public authorities’ actions aimed at banning the wearing of religious symbols by pupils in public schools throughout Kosovo, he further added that he did not consider that Section 4.7 of the Law on Education may serve as a legal basis for any action of a public authority aimed at banning the wearing of religious symbols by pupils in public educational institutions throughout Kosovo. He concluded that in cases when educational public authorities have attempted to do so, such actions were thus in violation of Article 9 of the European Convention of Human Rights.

The Acting Ombudsperson further stressed that by banning a pupil to enter school premises, the authorities of the Municipality of Viti/Vitina were jeopardizing one of the complainant’s most important human rights, i.e. the right to education.

In this letter, the Acting Ombudsperson also noted that the Kosovo Law on Freedom of Religion No. 02/L-31 prescribes the right to freedom of thought, conscience and religion and foresees in its Article 1 para.1, inter alia, “the freedom to have, not to have, to retain or to change one’s religion or belief and freedom, either alone or in community with others, in public or private (...)” and in its Article 2 para. 2 that “no one shall be hindered or forced to participate in religious ceremonies or in other forms of manifestation of religious conviction”.

The Acting Ombudsperson then stated that the Anti-Discrimination Law of Kosovo No.2004/3 protects the principle of equal treatment of all individual before the law and stresses that there shall not be any direct or indirect discrimination based on, inter alia, religion or belief.

The Acting Ombudsperson concluded that there was no clear legislation banning the wearing of headscarves by the pupils and considered that Section 4.7 of the Law on Education in Kosovo was not applicable to pupils, but actually rather to the members of the educational institutions.

The Acting Ombudsperson thus recommended that:

- the Director of the Secondary School “Kuvendi I Lezhës” in Viti/Vitina should allow the expelled pupil to attend classes and stop hindering her to manifest her religious conviction ;
- the Directorate of the Secondary School “Kuvendi i Lezhës” should in the future refrain from a such a violation of human rights;

He also asked the Minister of Education, Science and Technology to inform him about the measures taken to comply with his request as soon as possible.

To date, there has been no response to this report, nor has the Acting Ombudsperson been informed that his recommendations have been or would be followed.

Comments and recommendations concerning some of the Articles of the Draft-Constitution of the Republic of Kosovo

On 28 February 2008, the Acting Ombudsperson sent a letter to the President of the Constitutional Commission of the Republic of Kosovo to provide some comments and recommendations regarding some of the Articles of the Draft-Constitution.

Concerning Article 5 Chapter I of the Draft-Constitution on Languages, the Acting Ombudsperson recommended, that the right of persons in need of interpretation assistance should be guaranteed by the Constitution. In February 2008, the coalition of national organizations of the disabled persons in Kosovo asked the Ombudsperson Institution to support such a request.

The Acting Ombudsperson’s recommendation was not included in the Constitution of the Republic of Kosovo which was approved by the Assembly of Kosovo on 9 April 2008 and entered into force on 15 June 2008.

Concerning Article 7 Chapter I of the Draft-Constitution, which determines on which principles the Constitutional Order of the Republic of Kosovo is based, the Acting Ombudsperson recommended that the Constitutional Order should be based on the non-discrimination principle in all aspects rather that solely on grounds of ethnicity, gender or religion.

This recommendation was included in the Constitution of the Republic of Kosovo.

Concerning Article 21 para. 3 Chapter II of the Draft-Constitution on the Principles of Human Rights and Fundamental Freedoms, the Acting Ombudsperson recommended that paragraph 3 which reads “Everyone must respect the human rights and fundamental freedoms of others” should be deleted. The rationale of this position was that human rights are not the rights of one person towards another, but are guaranteed and should be respected by state authorities that are responsible to ensure that every person can exercise his/her human rights and freedoms.

The Acting Ombudsperson’s recommendation was not included in the Constitution of the Republic of Kosovo.

Concerning Article 22 Chapter II of the Draft-Constitution on the Direct Applicability of International Agreements and Instruments, the Acting Ombudsperson first recommended that a reference to the International Covenant on Economic, Social and Cultural Rights should be included in the Constitution, which also contains important international standards on employment, standard of living, health and education. The Acting Ombudsperson further noticed that if the European Convention on Human Rights and Fundamental Freedoms and its Protocols was to be applicable in Kosovo, it was important to specify whether that only would apply to the Protocols that have entered into force at the time when the Constitution has been approved, or whether this would also apply to future Protocols.

The Acting Ombudsperson’s recommendation was not included in the Constitution of the Republic of Kosovo.

II of the Draft-Constitution on the Right to Liberty and Security, the Acting Ombudsperson noted that this Article foresaw that the only reason for placing a person in pre-trial detention is the danger that he/she might commit the act again, whereas in the Criminal Code of Procedure, pre-trial detention may also be ordered in other cases e.g. if there is the danger that a person may abscond, would destroy evidence or threaten witnesses. The Acting Ombudsperson further noted that Article 29 para 1- 2 was not in accordance with the last sentence of Article 29 para. 2, which allows for pre-trial detention when a person is a danger to the community or when there is the risk that he/she absconds. Furthermore, the Acting Ombudsperson recommended that this Article be compliant to Article 5 of the European Convention on Human Rights and Fundamental Freedoms.

The Acting Ombudsperson finally recommended that Article 29 para.1-4 of the Constitution of the Republic of Kosovo should be drafted as follows “for the purposes of medical supervision of a person who, because s/he suffers from a disease [...], represents a danger to the society or for himself/herself”.

The Acting Ombudsperson’s recommendation was not included in the Constitution of the Republic of Kosovo.

Concerning Article 46 para.1 Chapter II of the Draft-Constitution on the Protection of Property, the Acting Ombudsperson considered that it is not enough to protect the right to own property, but that the right to peaceful enjoyment of one’s possessions should also be guaranteed. Further, concerning Article 46 para.2, the Acting Ombudsperson recommended that the text of this Article should be closer that the wording of Article 1 of Protocol No. 1 of the European Convention on Protection of Human Rights and Fundamental Freedoms. The Acting

Ombudsperson indeed observed that denying individuals the right to compensation in cases of zoning, when zoning is tantamount to a de facto expropriation, would clearly not be compatible with the case law of the European Court of Human Rights. Finally, the Acting Ombudsperson pointed out that the Ahtisaari package does not envisage that people should not be compensated if they lose their property due to zoning.

The Acting Ombudsperson's recommendation concerning Article 46 para.1 was not included in the Constitution of the Republic of Kosovo, whereas the recommendation concerning Article 46 para.2 was included in the Constitution.

Concerning Article 51 para. 2 Chapter II of the Draft-Constitution on Health and Social Protection, the Acting Ombudsperson supported the Coalition of National Organizations of Disabled Persons in Kosovo, which considered that the reference to physical and mental disability in this Article did not cover all cases of disabilities. The Acting Ombudsperson thus recommended that the Constitution should only refer to "disability" rather than qualifying disability as physical and mental.

The Acting Ombudsperson's recommendation was included in the Constitution of the Republic of Kosovo.

Concerning Article 52 Chapter II of the Draft-Constitution on the Responsibility for the Environment, the Acting Ombudsperson observed that while it was important to stress the fact that "nature and biodiversity, environment and national inheritance" are the responsibility of the people, it was also primarily the responsibility of the State, and this should be reflected in the Constitution.

The Acting Ombudsperson's recommendation was not included in the Constitution of the Republic of Kosovo.

Concerning Article 54 Chapter II of the Draft-Constitution on Judicial Protection of Rights, the Acting Ombudsperson observed that Article 54 somewhat duplicates what was already mentioned in Article 32 on the Right to Legal Remedies and recommended that the right to legal remedies and the right to effective legal remedies should be mentioned in the same article to avoid an overlap

The Acting Ombudsperson's recommendation was not included in the Constitution of the Republic of Kosovo.

Concerning Article 114 Chapter VIII of the Draft-Constitution on the Constitutional Court, the Acting Ombudsperson appraised the fact that the Ombudsperson was granted the right to refer matters to the Constitutional Court, but regretted that the scope of Article 114 was too limited. He thus recommended that the Ombudsperson should also have the competence to refer matters to the Constitutional Court in cases when the improper implementation or the failure to implement a law results in a violation of the Constitution.

The Acting Ombudsperson's recommendation was not included in the Constitution of the Republic of Kosovo.

Concerning Article 132 para.1 Chapter XII of the Draft-Constitution on the Role and Competencies of the Ombudsperson that reads “The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of non-judicial public authorities”, the Acting Ombudsperson considered that the expression “non-judicial” should be removed from the above-mentioned paragraph. He also pointed out that the Ahtisaari’s proposal stressed that the Competencies of the Ombudsperson should remain as they are. Furthermore, he observed that a majority of the Ombudsperson’s work deals with monitoring cases in courts to examine whether the proceedings are respecting the international principle of fair trial and other human rights principles, and this was conducted in full respect of the judiciary’s independence principle. He also added that the Ombudsperson Institution had provided assistance to many persons complaining about lengthy court proceedings and that the Institution was the only one competent to assist people in such situations.

The Acting Ombudsperson’s recommendation was included in the Constitution of the Republic of Kosovo.

The alleged ill-treatment by Kosovo Police Services officers

On 28 February 2008, the Ombudsperson Institution received a complaint from Mr. Arben Maqedonci claiming that he had been ill-treated on 21 February 2008 by Kosovo Police Service officers during his arrest that lasted 72 hours in the Police Station Dardania in Prishtinë/Priština. He also alleged that he had been arrested because he was suspected of robbery.

On 7 March 2008, the Acting Ombudsperson sent a letter to the Chief of the Police Inspectorate of Kosovo (PIK) referring him the case and asking him to initiate an investigation against the police officers involved in the alleged incident. The Acting Ombudsperson also requested to be kept informed about results of the investigation.

On 19 March 2008, the Acting Ombudsperson received a letter from the Director of the Department of Investigations in the PIK stating that he had investigate and analyzed the complaint of Mr. Maqedonci and he had not found that any violation had been committed in the complainant’s case. He further added that he had contacted the authorities of the Detention Centre in Lipjan/Lipljan who stated that they had not found any evidence or sign of the use of force on Mr. Maqedonci when he first arrived in the Detention Centre in Lipjan/Lipljan. Therefore, the Chief Executive of the PIK concluded that the allegations of the complainant were ill-founded.

About whether the conditions in the detention centres are in compliance with domestic legislation and international human rights standards

In March 2008, following the request of the Acting Ombudsperson, the representatives of the Ombudsperson Institution visited the Detention Centres throughout Kosovo in order to monitor practices and conditions in these centres where the persons deprived of liberty are confined and

to verify whether those conditions are in compliance with domestic legislation and international human rights standards on correctional service institutions.

On 30 May 2008, the Acting Ombudsperson sent a letter to the Commissioner of the Correctional Service of Kosovo in which he highlighted some concerning situations with respect to the conditions of detention centres throughout Kosovo. The Acting Ombudsperson enclosed a list of inappropriate conditions and inadequate practices which need to be addressed in the future in order to ameliorate the conditions in these detention centres and ensure that they are in compliance with the domestic legislation on correctional service and international human rights standards.

The Acting Ombudsperson asked the Commissioner of the Correctional Service in Kosovo to inform him about the actions that have been taken or are meant to be taken in this matter.

Allegations about corruptive practices by the management of the Correctional Service in the Dubrava Prison

On 18 March 2008, an ex-prisoner in the Dubrava Prison submitted a complaint against the management of the Dubrava Prison about alleged practices of corruption concerning the time when he was detained in prison. In the presence of the representatives of the Ombudsperson Institution and the Anti-Corruption Agency of Kosovo, he alleged that he was asked by the management of the Dubrava Prison to give them a sum of money so that he could have been freed to participate in the funeral of his brother, which he had refused to do.

On 19 March 2008, following the meeting held at the premises of the Ombudsperson Institution in Kosovo between his representative, the representative of the Anti-Corruption Agency and the complainant, the Acting Ombudsperson sent a notification letter to the Director of the Anti-Corruption Agency of Kosovo asking him to proceed with the investigation of the case in compliance with the Anti-Corruption Law in Kosovo.

The Acting Ombudsperson also asked him to inform him about the actions taken with regard to the complainant's allegations and the outcome.

To date, there has been no response to the request of the Acting Ombudsperson.

Failure of the Detention Centre in Prizren to cooperate with the Ombudsperson Institution

On 1 April 2008, a representative of the Ombudsperson Institution, received a complaint from a detainee during a visit to the Detention Centre in Prizren. The complainant alleged that during a search carried out at the Detention Centre on the same day, he had been victim of body injuries (injuries that the Ombudsperson Institution representative could witness). During the visit, the Ombudsperson Institution representative requested the managers of the Detention Centre the possibility to have access to the complainant's medical file, but this request was denied by the Director of the Detention Centre who argued that a written request should be submitted to the Kosovo Correctional Service before granting access to medical files.

On 13 May 2008, the Acting Ombudsperson sent a letter to the Kosovo Correctional Service Commissioner asking him to grant the Ombudsperson Institution access to all documents and files concerning the above-mentioned case.

On 28 May 2008, the Acting Ombudsperson received a response from the Kosovo Correctional Service Commissioner who informed him that the Ombudsperson representative was granted access to all documents and files, with the restriction that he could only take notes but not copy any documents or remove files from the Detention Centre in Prizren.

Regarding the absence of functioning of the courthouses and prosecutor's offices in the Northern part of Kosovo

On 30 April 2008, the Acting Ombudsperson sent a letter to the Special Representative of the Secretary-General (SRSG) drawing his attention to the implications arising from the lack of the functioning of the courts and prosecutors' offices in the Mitrovicë/Mitrovica region. According to the information available to the Acting Ombudsperson, it appeared that starting from 21 February 2008, the courts and prosecutors' offices in Mitrovicë/Mitrovica have discontinued their normal functioning following the violent protest organized by ex-employees of Serbian ethnicity.

In this letter, the Acting Ombudsperson stated that there were allegations that during these protests significant damages had been caused inside the premises of both the court houses and the prosecutors' offices and supposedly no appropriate measures had been taken yet to inspect those premises in order to conduct an assessment on the damages.

The Acting Ombudsperson also stressed that the created situation is a serious human rights violation as it directly affects the right of a number of citizens of Mitrovicë/Mitrovica area, which includes one town and forty nine villages, to access to court and to see their disputes settled.

He further requested that a solution must be found in a timely manner and urged to take appropriate measures in order to ensure people access to court services. The Acting Ombudsperson also warned that any further delays could worsen the situation and lead to a serious threat to the functioning of the rule of law.

To date, there has been no response to this request of the Acting Ombudsperson.

Regarding the conditions of detainees with special needs in the detention centre in Lipjan/Lipljan

The Ombudsperson Institution received a complaint from Mr. S.S., detainee in the Detention Centre in Lipjan/Lipljan. The complainant stated that he had a broken leg in plaster that impedes him to freely move, and he claimed he faced difficulties in using lavatory facilities within his cell. He therefore alleged being victim of inadequate treatment by the authorities of the Detention

Centre in Lipjan/Lipljan and had asked to be transferred to the Dubrava Prison where there is a hospital centre.

On 5 June 2008, the Acting Ombudsperson sent a letter to the Commissioner of the Kosovo Correctional Service concerning the complaint of Mr. S.S. The Acting Ombudsperson stressed that due to the seriousness of the complainant's allegations and his need for an adequate medical treatment for his broken leg, it was necessary to host this detainee in a place where access to bathroom facilities was appropriate and met his specific needs, as well as to guarantee him medical treatment.

Also, he asked the Commissioner to take measures for assuring that each detainee who has health problems, receives adequate health treatment and live in conditions suitable to his/her specific needs. These measures would avoid and prevent inhuman and degrading treatment from occurring in the detaining centres in the future.

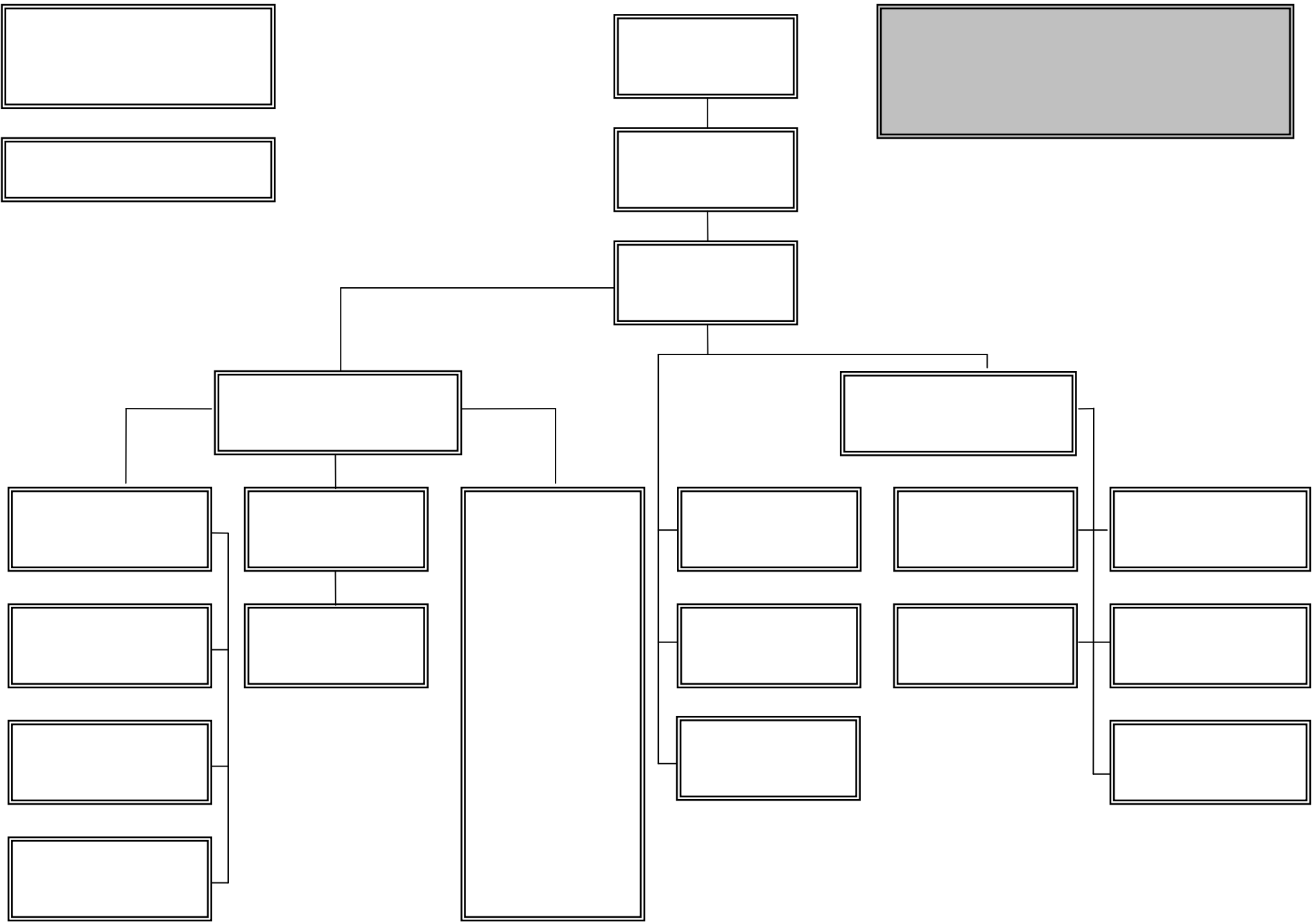
On 9 June 2008, the Acting Ombudsperson received a letter from the Head of the Penal Health System in the Kosovo Correctional Service who informed him that due to the lack of beds in the Hospital of the Dubrava Prison, it was currently impossible to transfer the detainee in special need. He also added that the detainee had been under the medical care of the doctor of the Detention Centre in Lipjan/Lipljan who had requested the authorization to make an appointment with the orthopaedist in the University Clinic Centre of Kosovo in Prishtinë/Priština. He further informed that on 30 May 2008, the District Court in Mitrovicë/Mitrovica approved the Detention Centre's request and the same day the detainee was transported to see the above-mentioned orthopaedist. After his return to the Detention Centre in Lipjan/Lipljan and further to the orthopaedist's request, the Managerial Staff of the Detention Centre requested his transfer to the University Clinic Centre of Kosovo in Prishtinë/Priština on 13 June 2008.

The Head of the Penal Health System observed that the detainee was subjected to an adequate medical treatment with the consent of the competent court and following medical specialist's recommendations. He also reassured the Acting Ombudsperson that the detainee's needs had been taken care of, following the recommendations of the medical staff.

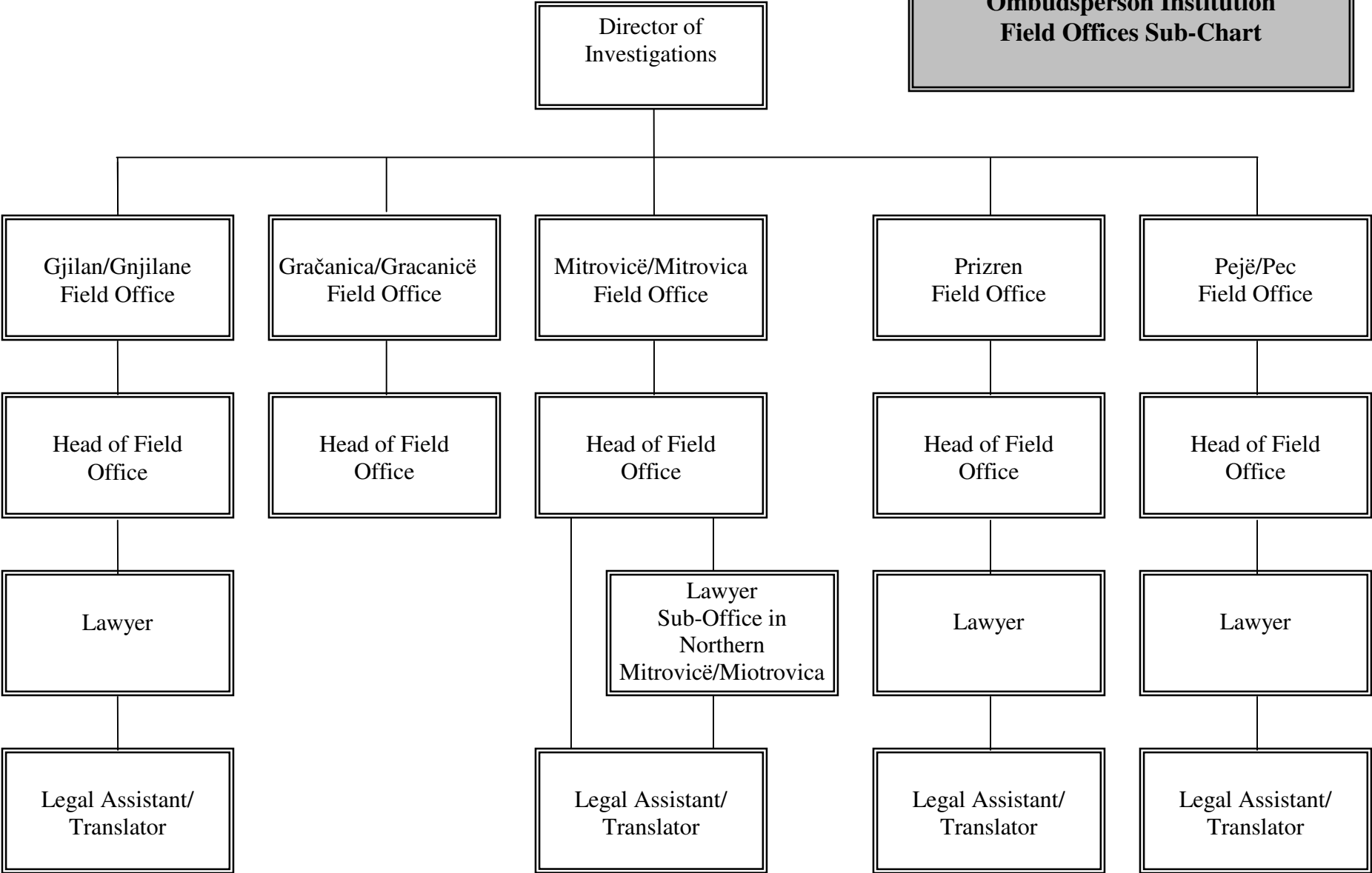
He finally stated that he had asked the management of the Kosovo Correctional Service to remove all eventual barriers, not only in the Detention Centre in Lipjan/Lipljan but in all correctional centres throughout Kosovo, in order to provide detainees who have special needs with adequate conditions to use toilets in their cells.

On 18 June 2008, the father of the detainee informed the representative of the Ombudsperson Institution that his son had been transferred on 13 June 2008 to the Dubrava Prison's Hospital Centre for further treatment.

ANNEX IV: ORGANISATIONS CHARTS OF THE OMBUDPERSON INSTITUTION



**Ombudsperson Institution
Field Offices Sub-Chart**



ANNEX V: LIST OF STAFF

Staff members (update 30 June 2008)

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	Ilirjana Çollaku
Head of the Field Office in Gjilan/Gnjilane	Goroljub Pavić
Head of the Field Office in Gračanica/Gracanice	Aleksandra Dimitrijević
Head of the Field Office in Mitrovicë/Mitrovica	Makfirete Krasniqi
Head of the Field Office in Pejë/Peć	Hasie Islami
Head of the Field Office in Prizren	Hunaida Pasuli
Lawyer for CRT	Igballe Rrahmani
Lawyer for GEU	Luljeta Domaniku
Senior Lawyer for NDT	Dragana Rodić
Senior Lawyer for NDT	Merita Syla
Senior Lawyer, Gjilan/Gnjilane	Isuf Sadiku
Lawyer, Northern Mitrovicë/Mitrovica	Miljana Scekić
Lawyer, Pejë/Peć	Shqipe Ibraj-Mala
Lawyer, Prizren	Faton Morina
Director of Administration	Përparim Vula
Media and Public Relations Officer	Ibrahim Arslan
Senior Translator/Media Officer	Jetmir Sefa
Procurement Manager	Gëzim Latifi
Finance Manager	Beqir Musliu
Chief of Translators	Isak Skenderi
Senior Translator	Rrahim Sylejmani
Translator	Safete Sadrija
Translator/Legal Assistant, Gjilan/Gnjilane	Meliha Brestovci
Translator/Legal Assistant, Mitrovicë/Mitrovica	Merita Gara
Translator/Legal Assistant, Pejë/Peć	Aida Nela
Translator/Legal Assistant, Prizren	Abdullah Kryeziu
Executive Assistant	Shqipe Paçarada
Executive Assistant	Arta Ibrahim
Legal Assistant	Labinot Sheremeti
Legal Assistant	Leonard Desku
Chief of Drivers	Shpëtim Reçica
Driver	Sami Kuqi
Switchboard	Mentor Myftari
Storekeeper	Hakif Imeri

Cleaner

Gëzime Lepaja

Persons who left the Ombudsperson Institution during the reporting period

Executive Director	Hanife Statovci
Head of the Field Office in Mitrovicë/Mitrovica	Naim Krasniqi
Head of the Field Office in Prizren	Murlan Prizreni
Lawyer	Agron Kelmendi
Lawyer, Vidanje/Vidaje	Vlado Prodović
IT/Website Officer	Leonora Ibraj
Legal Assistant, Gračanica/Gracanice	Dušan Dimitrijević
Driver	Goran Stević
Cleaner, Gračanica/Gracanice	Vesna Cvejić

International Advisors (update 30 June 2008)

OSCE Special Advisor to the Ombudsperson Institution (Human Rights/Legal)	Helvise Gallet
Assistant to the OSCE Special Advisor	Agnesa Mehmeti

International Advisors who left the Ombudsperson Institution during the reporting period

OSCE Special Advisor to the Ombudsperson Institution (Human Rights/Legal)	Alice Thomas
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ANNEX VI: LIST OF ABBREVIATIONS

CRT	Children's Rights Team within the Ombudsperson Institution in Kosovo
FYR of Macedonia	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
KEK	Kosovo Electric Corporation
KFOR	Kosovo Force [of NATO]
KPA	Kosovo Property Agency
KPS	Kosovo Police Service
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 Agency
SRSB	Special Representative of the Secretary-General
UNDP	United Nations Development Programme
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
EULEX	European Union Rule of Law Mission in Kosovo