



OMBUDSPERSON INSTITUTION in KOSOVO

THIRD ANNUAL REPORT

2002 – 2003

addressed to the

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of the United Nations**

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INTRODUCTION

This Annual Report is issued in accordance with Section 17.1 of United Nations Mission in Kosovo (UNMIK) Regulation 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rule 22.1 of the Rules of Procedure of the Ombudsperson Institution.

This Third Annual Report covers the second full year of operations of the Institution, from 1 July 2002 to 30 June 2003. It has two main sections. The first comprises a brief analysis of certain aspects of the human rights situation in Kosovo as seen from the perspective of the Ombudsperson and the second, the activities and operations of the Ombudsperson Institution.

CERTAIN ASPECTS OF THE HUMAN RIGHTS SITUATION IN KOSOVO

Infrastructure and Governance

In our Second Annual Report, we pointed to a number of difficulties arising from the undemocratic nature of the United Nations Mission in Kosovo coupled with its role as the surrogate state. Although this reporting period has seen the devolution of certain functions to local municipal and central authorities in Kosovo, UNMIK remains firmly in control of many of the most important elements of governmental authority, for example the judiciary, the police and the legislature. This ongoing situation leads to continuing violations of human rights and abuses of authority by UNMIK, reflecting its indifference to the rule of law by which the rest of Europe is bound. The conclusion we drew in our Second Annual Report, that the people of Kosovo have been deprived of protection of their basic rights and freedoms – now four years after the end of the conflict – by the very entity set up to guarantee them, remains valid.

As confirmed by a series of consultative visits of the Ombudsperson to the Supreme Court, the District Courts, selected Municipal Courts, some public prosecutors and UNMIK authorities involved in court administration, the judiciary continues to be a weak link in an aspiring democratic Kosovo. The Ombudsperson considers that the judicial system in Kosovo is severely understaffed, leading to lengthy delays in pursuing and resolving cases. Even when courts have completed their review of a case and a judgment has become final, the delay of UNMIK to either establish or fill executive officer positions in the civil courts has had the effect of rendering judgments ineffective, as there has been no one responsible for their execution. Low salaries for judges and other court officials, particularly when coupled with threats to them or their families should they take certain decisions, means that many of these essential professionals abandon their judicial positions in order to enter private law practice or pursue other types of work. The Courts thus remain unable to play a significant role in the administration of justice and the protection of the rights of individuals.

Legal Chaos

During this reporting period, little has been done to clarify the applicable law in Kosovo. One of the fundamental precepts of the rule of law is that a law must be published in order to be considered as a law, according to European standards governing 'lawfulness' – accessibility, foreseeability and quality of the law, all of which conjoin to protect the individual against arbitrary governmental action. With respect to accessibility, laws issued by UNMIK or passed by the Kosovo Assembly are not published in accordance with the applicable law governing their

official publication. It appears that even if UNMIK considers publication on their web site to meet the required standard, they nevertheless also fail to publish their Regulations through this medium. As of the end of June 2003, only four UNMIK Regulations for the year appeared on the UNMIK web site. Furthermore, it was only by chance that the Ombudsperson Institution discovered that the eighth UNMIK Regulation for the year had in fact amended UNMIK Regulation 2000/38 on the Establishment of the Ombudsperson Institution. This Regulation had been signed on 15 April 2003, but a copy had never been transmitted to the Institution. No Albanian or Serbian language versions of this UNMIK Regulation appear to exist.

In this context, it is worth considering the unenviable situation of individuals in Kosovo, who lack the wherewithal of the legally trained staff of the Ombudsperson Institution to discover what the applicable laws in Kosovo are. These individuals, however, who are the subjects of these laws, and judges, other court officials and legal practitioners, for whom the laws are their stock in trade, have extremely limited internet access. Although hard copies of applicable laws are distributed to courts after extensive delays, no such hard copies are readily available to the public. Also, as we have noted on a number of occasions, laws in Kosovo must also be published in all three official languages. Unfortunately, the lack of translations remains a problem and the quality of translations of those laws that are, in fact, translated, is so poor that legal practitioners working in Albanian or Serbian frequently cannot ascertain their meaning.

Another ongoing problem is the lack of a period of *vacatio legis* (the period between the signing of a law and its entry into force) with respect to UNMIK Regulations and laws passed by the Kosovo Assembly. Regulations and laws are declared to be in force at the time of signature by the SRSG or, at best, within a few days. Virtually all UNMIK Regulations include an omnibus provision declaring that the Regulation supersedes any existing law or Regulation that is inconsistent with the new Regulation. Many, and in particular those that take the form of vague statements of policy rather than clear legal standards also include provisions that permit the issuance of administrative directions or other subordinate legal acts for their effective implementation. Until such time as those subordinate legal acts are issued, however, governmental authorities and legal practitioners are expected to apply the new vague Regulation anyway. Even when acting in the best of faith, those charged with the implementation or enforcement of the law face extreme difficulties in meeting their professional obligations in this regard. The population as a whole thus exists in a state of legal limbo.

An important attribute of respect for the rule of law is that the executive branch of government is not considered to be above the law. In Kosovo, as the executive and the legislature are one and the same individual, the premise is already compromised. The removal of certain categories of human rights complaints from the jurisdiction of the courts, their placement under the control of UNMIK administrative bodies and the impossibility of obtaining judicial review of the decisions taken confirms that the melding of executive and legislative functions coupled with the nullification of the role of the judiciary has not served the interests of human rights in Kosovo.

As reported on previously, UNMIK and KFOR have at least nominally recognised that individuals to whom they have caused injuries, damage to or loss of property should receive compensation, although neither has recognised the possibility of awarding damages. Both actors have established internal 'claims offices'. However, the nature of the proceedings of the UNMIK and KFOR bodies differs greatly. UNMIK provides no opportunity for individuals to be heard or represented by legal counsel in their proceedings and all decisions are taken by a panel of UNMIK staff members. The only appeal possible against this internal first instance decision is the sending of a 'memorandum' to the UNMIK Director of Administration. In contrast, although first instance proceedings before KFOR call for a single KFOR officer to take a decision, the appeals

process incorporates many elements of proper judicial proceedings, including an opportunity for individuals to be heard or legally represented.

It remains impossible to obtain information from UNMIK about the status of pending claims or any statistical information about the number or type of claims resolved. It appears that even claims regarding which UNMIK has been found liable remain pending indefinitely, as the UN has apparently allocated no portion of its budget for the payment of such claims. KFOR, on the other hand, provides such information and has provided financial compensation in a number of cases.

However, in spite of the good faith efforts of KFOR to resolve claims against them, the system still has some shortcomings. First and foremost amongst these shortcomings is the limitation of the system to claims against KFOR Headquarters in Prishtine/Pristina. Individual KFOR contingents can choose to be subject to the jurisdiction of the KFOR claims commission, but there is neither any obligation nor any general public pressure that contingents should accept this jurisdiction. Therefore, individuals wishing to ask for compensation or damages from country contingents may not be able to do so through the limited claims system established by KFOR within Kosovo.

In previous Reports, the Ombudsperson raised serious concerns regarding the detention of residents of Kosovo for long periods of time under Executive Orders issued by the SRSG or by the Commander of KFOR (COMKFOR). Although such detentions were uncommon during this reporting period, the lack of any response to the Reports of the Ombudsperson regarding the unlawfulness and contraventions of human rights engendered by such detentions reflects a disregard for human rights and the rule of law. Given the general political assessment of both the SRSG and the COMKFOR that the security situation in Kosovo is much improved, it would seem to be an opportune moment to formally abolish any aspect of unlawful detentions by UNMIK or KFOR.

One category of problems that has been raised with the Ombudsperson more frequently in this reporting period than in previous ones relates to the inconsistent recognition of civil documents (e.g. birth, marriage or death certificates) issued by UNMIK. Within Kosovo, individuals applying for certain benefits, for example those available to individuals disabled or survivors of those killed during the conflict, must produce UNMIK documents in order to verify their relationships. For example, the authorities in Kosovo have refused to accept marriage certificates issued by any authority other than UNMIK, even if the marriage took place well before the establishment of UNMIK as the 'interim' civil administration on the territory. On the other hand, some foreign countries, for example Germany, refuse to recognise marriage certificates issued by UNMIK, even if the marriage was contracted before UNMIK authorities. The only option for a couple wishing to have their marriage recognised outside of Kosovo is to go through another marriage ceremony before a parallel authority in a Serbian area within Kosovo, in order to obtain a marriage certificate that is universally recognised. Similar problems arise for individuals attempting to obtain visas for foreign travel where they can only produce an UNMIK birth certificate.

Members of Minority Communities Inside and Outside Kosovo

Although some improvements have obtained during the reporting period, for example freedom of movement and security of individuals who are not of Albanian ethnicity, at least in some parts of Kosovo, the situation in general remains very difficult. The question of the return of members of minority communities inside and outside of Kosovo to their homes in Kosovo remains a highly

politicised issue, with both UNMIK and political leaders in Serbia and Montenegro agreeing that all IDPs should return to Kosovo, but for different political reasons. However, the lack of province wide security, the dire economy, and the delays in resolving the future status of Kosovo render it unsurprising that very few IDPs have returned to Kosovo during this reporting period.

In spring 2003, the Albanian National Army violently destroyed a bridge in northern Kosovo and publicly claimed credit for this terrorist act. The Ombudsperson sent an open letter to them condemning the act and stressing that the way forward for Kosovo was through democratic channels and not through terrorism. Also in the spring of 2003, a Serbian resident of Verbovc/Vrbovac was murdered in circumstances that raised strong suspicions that he had been a victim of interethnic violence. In response to the almost total silence of key opinion makers in Kosovo, including representatives of the international community, the Ombudsperson issued a public statement noting that the attitude evinced by the level of silence created the impression that public opinion was indifferent to interethnic violence and hence raised questions about the future of a multi-ethnic Kosovo.

Circumstances indicate that the return of large numbers of non-Albanian former residents of Kosovo will only be achieved over the long term, if at all. It follows that any policies or allocations of financial support targeted on 'returns' should reflect this reality. As all parties agree that returns should be 'voluntary', it would seem that support should be provided to displaced individuals either to return to Kosovo or to rebuild their lives elsewhere if that is their choice. Instead, financial support seems to be provided on a geographical rather than a human basis.

Missing Persons and Unsolved Crimes

Four years after the conflict, several thousand people remain on the lists of the missing. Ethnic Albanians on these lists went missing during the conflict and the period leading up to the conflict, whereas persons of non-Albanian ethnicity have mainly gone missing since the arrival in Kosovo of KFOR and UNMIK. With respect to persons who went missing in the context of the conflict in Kosovo, not enough has been done by the government of Serbia and Montenegro, whether on its own initiative or in concert with UNMIK, to determine their fate. UNMIK, who has exercised the sole jurisdiction over such matters for the past four years, has also failed to adequately address the disappearances of residents of Kosovo after the establishment of the international presence on the territory.

As noted in previous Reports, the responsible UNMIK authorities have also failed to investigate other serious crimes that were committed since their arrival, in particular cases involving interethnic violence against non-Albanian communities. In part this failure appears to have stemmed from the constant turnover of the investigative staff of the UNMIK Police. In this regard, the spring 2003 establishment by the UNMIK Police of a 'cold crimes' unit, for the purpose of re-examining unsolved murders, can be seen as a positive development.

Other Human Rights Issues

During the reporting period, the Federal Republic of Yugoslavia/Serbia and Montenegro submitted its first Report on compliance with the Council of Europe Framework Convention on the Protection of Minorities. Serbia and Montenegro also became a member of the Council of Europe and began the process of ratification of other major European human rights instruments, including the European Convention on Human Rights. It seems clear, however, that the current

situation will necessitate the lodging of a reservation on ratification of these Conventions, barring any liability of Serbia and Montenegro for any human rights violations by international or local authorities in Kosovo.

In our Second Annual Report, we stressed that Kosovo should prepare itself to be a ‘human rights black hole’, in Europe and in the world. This observation remains an accurate one, particularly given that UNMIK continues to ignore any findings that it has violated human rights guaranteed under international human rights conventions.

Activities and Operations of the Ombudsperson Institution

Access to the Ombudsperson Institution

The general approach to providing adequate access to the Ombudsperson Institution described in previous Reports (field offices, open days, etc.) has continued during this reporting period. However, the Ombudsperson has increased the number of visits to locations in Kosovo where there are concentrations of non-Albanian returnees.

During this reporting period, the Ombudsperson Institution continued to co-operate closely with cognate institutions in other countries, for example the Ombudsmen of Bosnia and Herzegovina, the Slovak Republic, Slovenia, Sweden, Spain and Switzerland, where the engagement of the authorities in those countries was necessary to resolve problems faced by individuals from Kosovo. Ombuds institutions in Croatia and Albania also solicited our assistance with cases pending before them.

With respect to the exercise of his good offices, in February 2003 the Ombudsperson, together with other senior members of the staff of the Institution, travelled to Montenegro to visit individuals who had been displaced from Kosovo, representatives of non-governmental organisations engaged in addressing problems confronting this population and governmental officials. All agreed that a significant problem confronting IDPs in Montenegro is the failure of international and bilateral donors to adjust their pattern of providing financial support after the creation of Serbia and Montenegro. Donations continue to be made only to Belgrade, with the further distribution of resources being left exclusively in the control of the Serbian authorities, who, not surprisingly, transmit few if any of the funds to Podgorica.

It is clear that access to the Ombudsperson Institution has little meaning if the Ombudsperson is unable to engage the competent authorities with respect to issues raised by individuals with complaints against those authorities. It was therefore an unfortunate development when, in early 2003, the SRSG introduced a new policy that no UNMIK staff member should sign a receipt or provide any other form of proof that UNMIK, or at least the SRSG, had received any correspondence from anyone, let alone from the Ombudsperson. On investigating this matter, the Ombudsperson discovered that the SRSG had forbidden his staff to sign receipts for correspondence sent to him through registered mail as well. In a press release, the Ombudsperson stressed that a key characteristic of good democratic governance is the accountability of governmental institutions to the people. Such accountability starts with transparency and responsibility and not with governmental authorities protecting themselves from the people. The Ombudsperson noted that he was unaware of any democratic government whose executive authorities refuse to receive correspondence either from an institution established by law for the express purpose of engaging those authorities, or, for that matter, from members of the public.

The policy, at least as regards correspondence from the Ombudsperson Institution, was subsequently changed.

Overview of Cases

During the reporting period, approximately 3500 people contacted the Ombudsperson Institution for advice and assistance or to lodge formal complaints. Roughly 900 contacted the staff from the Pristina office, including a number of individuals who met with representatives of the Institution during their February 2003 visit to Montenegro.

During the 70 Open Days that were held during the reporting period, approximately 1600 people met with the Ombudsperson.

Since the inauguration of the Ombudsperson Institution on 21 November 2000, 991 formal applications have been lodged. Also since the opening of the Institution, the Ombudsperson has opened 27 *ex officio* investigations. As during previous reporting periods, most cases investigated by the Ombudsperson Institution concern property issues, complaints about fair trial issues, abuses of authority, employment related complaints or impunity issues (see Annex 1).

Of the individual applications that have been lodged with the Ombudsperson Institution since its inauguration, the Ombudsperson has rejected 414 applications on the grounds either that he does not have jurisdiction to investigate the complaints raised or on similar formal grounds. He also closed 157 cases on the grounds that the problems raised had been resolved or applicants were no longer interested in pursuing their complaints.

From 1 July 2002 to 30 June 2003, the Ombudsperson issued eight final reports in individual cases and two final reports in *ex officio* investigations (See Annex 3 for summaries of the Reports).

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

Expansion of Activities

During the reporting period, the Ombudsperson Institution in Kosovo continued to expand activities focused towards the full implementation of the mandate of the Institution. In addition to providing better access to individual applicants outside Prishtine/Pristina (see above), the Ombudsperson also introduced new working methods to better address all matters falling within his mandate. The Ombudsperson also increased his contacts with the authorities on behalf of individuals or groups facing difficulties amenable to resolution without the need for extensive formal investigations. (See Annex 4). The Institution also improved working relationships with various agencies of UNMIK and KFOR. On 1st March 2003, the Ombudsperson Institution also established a telephone hotline for individuals wishing to contact the Institution by phone.

Both the Ombudsperson and senior members of the staff engaged in a number of mediation exercises, bringing representatives of communities raising issues requiring governmental action or engagement together with the competent authorities, for the purpose of helping to effect

improvements in the daily living conditions of disadvantaged communities across Kosovo. For example, until the end of the 2001-2002 school year, KFOR had provided armed escorts to individual school children or school buses in some ethnically mixed areas, for example Cernic/Cernica (Gjilan/Gnjilane municipality), Obiliq/Obilic municipality, Vitija/Vitina municipality, etc.. At the end of that school year, KFOR changed its protection policies to provide only general protection in affected areas. In response to concerns expressed by some Serbian parents, the Ombudsperson helped to ensure that ethnically mixed teams of the Kosovo Police Service provided the children with adequate security protection when going to and from their schools.

At the end of 2002, the Ombudsperson was instrumental in having the electricity and water supplies restored to a building housing several Serbian IDP families in Kosovo Polje/Fushe Kosova and water supplies to Janjina Voda, a Serbian village. He was also instrumental in helping to improve the supply of electricity to the area of Llapje Selle/Lapje Selo and general living conditions in Plementin/Plementina camp, whose population is largely Roma and Ashkali. The Ombudsperson also intervened with the authorities to supply heating fuel to two IDP collective centres in the Brezovice/Brezovica area. The Ombudsperson also made extensive efforts to help improve the daily living conditions in three Albanian villages in Leposaviq/Leposavic municipality.

In spring 2003, the Ombudsperson was instrumental in helping to resolve problems the resolution of which formed the grounds for a hunger strike by students at the University of Pristina. He also helped to provide access for journalists wishing to cover the hunger strike, where such access had been denied by the local police.

Also in spring 2003, the Ombudsperson successfully mediated between an association representing owners of small businesses in Mitrovica and the municipal authorities regarding the level of certain municipal taxes on such businesses. As a result of this mediation, the authorities decided to reduce the taxation rate by 50% and to give retroactive effect to this reduction to the date of its introduction in 2001.

The Ombudsperson made two official visits to Serbia during the reporting period, meeting with governmental officials, and representatives of non-governmental organisations, such as the Association of Families of Missing Persons, the Humanitarian Law Centre, and the Serbian Helsinki Committee.

At the beginning of 2003, in connection with an indictment issued by the International Criminal Tribunal for Former Yugoslavia (ICTY) against Mr. Agim Murtezi, a resident of Kosovo, KFOR delivered Mr. Murtezi to the Tribunal. Shortly afterwards, the Tribunal ascertained that the Mr. Murtezi who had been delivered to them was not the individual against whom the indictment had been issued, after which he was returned to Kosovo. In light of the trauma suffered by Mr. Murtezi and his family, he approached the Ombudsperson to discuss the possibility of obtaining an apology and compensation from the Tribunal. The Ombudsperson served as an intermediary between Mr. Murtezi and the Canadian lawyer who had represented him before the Tribunal in order to facilitate the pursuit of these claims.

Funding and In-Kind Support

Funding for the Ombudsperson Institution for 2003 was provided by the Kosovo Consolidated Budget, the Permanent Council of the OSCE, and the following bilateral donors: United States, Switzerland, Poland, Sweden, and France.

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

The OSCE Office of Democratic Institutions and Human Rights (OSCE/ODIHR) supported visits of two groups of staff members to the Slovenian Ombudsman and the Polish Ombudsman.

The Office of the Norwegian Ombudsman supported the visit of two of its staff members as consultants to the Institution.

Future Prospects for the Ombudsperson Institution

During this reporting period and in connection with a series of policy decisions taken by UNMIK, the Ombudsperson Institution significantly reduced the size of its international staff, the Ombudsperson remaining as the only international in the Institution. Discussions have also taken place at the international and domestic political levels with a view to the full Kosovarisation of the Ombudsperson Institution by the middle of 2004. Although the Ombudsperson has always fully endorsed the eventual 'Kosovarisation' of the Institution, it appears that the actions taken in this regard have been premature. In particular, the drastic reduction in the engagement of qualified professionals from outside Kosovo has serious negative repercussions for the future effectiveness of the Institution. Over the short term, the intensive hands-on training of local lawyers working for the Institution has already suffered, with obvious implications for their future capacity to carry the Institution into the future. In this context, it appears that no consideration has been given to the crucial role of the Institution as the only independent entity with a mandate to engage on human rights and rule of law issues both with the international administration, which will remain in place and in power beyond that time frame, and with emerging local institutions, which have yet to develop fully. In such a context, a strong Ombuds institution with a hybrid international and local character provides the best guarantee for the protection of individual rights.

Marek Antoni Nowicki
Ombudsperson

Annex 1: Statistical Overview of Cases

(30 July 2002 to 30 June 2003)

PROVISIONALLY REGISTERED CASES: **399**

ETHNICITY OF APPLICANTS:

Albanian:	306
Serbian:	81
Other:	14

RESPONDENT PARTIES:

UNMIK:	239
KFOR:	19
Institutions of Provisional Self-government:	63
Housing and Property Directorate:	69
Other:	44

CASES DECLARED INADMISSIBLE: **69**

CASES DISCONTINUED DURING PROCEEDINGS FOR OTHER REASONS: **60**

EX OFFICIO INVESTIGATIONS OPENED: **13**

FINAL REPORTS ISSUED: **10**

Subject matter of formal applications:

Property - related rights:	156
Fair hearing rights:	131
Abuses of authority:	56
Employment related issues:	37
Rights to social benefits and/or and adequate standard of living:	28
Right to liberty:	25
Freedom from inhuman or degrading treatment:	19
Impunity:	14
Other (issues not included in above categories and raised fewer than ten times):	13

Annex 2: Overview of Requests for Interim Measures

(1 July 2002 – 30 June 2003)

24 July 2002: Request to the SRSG to take urgent action to ensure that a large family with several disabled members not be evicted pursuant to an HPD eviction order of 25 June 2002 from the apartment in Pristina where they were then residing, as the only alternative accommodation available to them was outside Pristina and far away from essential medical and other services. No social welfare authorities had responded to the family's requests for assistance. A second request was sent on 26 July 2002, after the family had been evicted.

(Successful: On 30 July 2002, the Principal Deputy SRSG informed the Ombudsperson that the family had been put in contact with the local governmental authorities responsible for allocating places in temporary community shelters and with the Ministry of Labour and Social Welfare regarding their possible eligibility for social welfare benefits.)

30 August 2002: Request to the SRSG to take urgent action to ensure the protection of private orchards located in the village of Morin (a previous request was made on 8 May 2002) (These requests were also mentioned in the 17 September 2002 letter of the Ombudsperson to the SRSG (see below).)

(Unsuccessful: no response).

17 September 2002: Outstanding requests for interim measures raised in a letter to the SRSG providing an overview of issues raised with him or his predecessor and regarding which there had been no response or an inadequate response (see Annex 4):

Two interim measures requests (3 July 2001 and 3 April 2002) in the “Trepca” case (asking the SRSG to stop UNMIK sales of assets whose ownership is under dispute in the Commercial Court of Pristina.)

(Unsuccessful: no response).

26 November 2002: Request to the UNMIK Head of Returns and Communities Office to take urgent action to ensure that schools in Osojane, Istog/Istok municipality and Kolloni, Gjakova/Djakovica municipality be provided with adequate heating.

(Successful)

29 November 2002: Request to the SRSG that he exercise his powers to order the suspension of construction activities then being conducted by KEK on a number of properties located in Pristina, pending a final court decision in related civil cases.

(Partly successful: On 14 January 2003, the SRSG informed the Ombudsperson that the SRSG considered that it would be inappropriate for him to order the suspension of the construction on the grounds that such construction was necessary to provide electricity to the residents of the area and that KEK had expressed its willingness to pay compensation for any damage caused, in accordance with any relevant court decision.)[The parties ultimately settled the case.]

4 February 2003: Request to the Director of the Housing and Property Directorate (HPD) to suspend, during the winter season, the eviction of a number of families from properties they were illegally occupying in the Peja/Pec Region without providing them with access to alternative accommodation.

(In a response of 14 February 2003, HPD described the channels available to families who would be rendered homeless should they be evicted from properties they were illegally occupying and stated that the families in question had not pursued those channels.)

16 April 2003: Request to the President of the Municipal Court in Prishtine/Pristina to take urgent action to prevent the alienation of property jointly held by a divorced couple pending the final division of the property through court proceedings.

(Successful: The President of the Municipal Court provided the Ombudsperson with a copy of its order prohibiting the alienation or use to produce income of the properties at issue in this case.)

5 May 2003: Request to the Acting Director of Culture and Sport Department in Gjilan/Gilane Municipality to take immediate urgent action to secure all books in the Serbian language then in the custody and control of the City Library in Gjilan/Gilane and to ensure that no such books were damaged or removed from that location.

(Successful: The responsible authorities informed the Ombudsperson about their general policies and their actions to ensure the proper maintenance and protection of all library collections within their area of responsibility.)

20 May 2003: Request to the President of the Municipal Court in Suhareke/Suva Reka to order the Directorate of Urban Planning in Suhareke/Suva Reka to revoke construction permits and to ensure that all construction work be stopped on properties the ownership of which was subject to pending litigation. (Both the Directorate and the person to whom the permit was issued are parties to the litigation.)

(Unsuccessful: no response)

2 June 2003: In light of the lack of a response to the preceding request, the Ombudsperson asked the SRSG to take urgent actions both to order the Municipal Directorate of Urban Planning in Suhareka/Suva Reka to revoke decisions it had issued permitting construction work on properties that were the subject matter of judicial proceedings in which both the Municipal Directorate and the person obtaining the construction permits were parties and to ensure that all construction work was stopped immediately. [The Ombudsperson also recommended that disciplinary proceedings be initiated against the Director of Urban Planning in Suhareke/Suva Reka.]

(Unsuccessful: no response)

Annex 3: Summaries of Reports

SUMMARY

Ex Officio Registration No. 12/01
Regarding the conduct of criminal proceedings
against
Mr. Alexander Zotov and Mr. Marat Akhamadiyarov

28 January 2003

In this case, the Ombudsperson investigated allegations that two Russian nationals had been deprived of certain rights guaranteed under Articles 5 and 6 of the European Convention on Human Rights during the conduct of criminal proceedings against them. The Ombudsperson found that the individuals affected had been informed of the reasons for their arrest promptly and in their native Russian and that there was thus no violation of their right to be informed promptly, in a language which they understood, of the reasons for their arrest and the charges against them, as guaranteed under Article 5(2) of the European Convention on Human Rights. The Ombudsperson also found that the individuals affected had been provided with a written copy of the indictment against them in Albanian, but that it was orally translated into Russian for them two weeks later and a written copy in Russian provided to them ten days after that. The Ombudsperson found that there was thus no violation of the right of the individuals affected to be informed promptly of the charges against them, in a language which they understood, as guaranteed under Article 6(3)(a) of the European Convention on Human Rights. The Ombudsperson further found that although defence counsel first met with the accused on 25 April 2001 and was formally appointed to represent them on 3 May 2001, the same day that the trial was supposed to start, the competent court responded favourably to the request of defence counsel to postpone the trial in order to allow for adequate time to prepare a proper defence. There was thus no violation of the right to have adequate time for the preparation of the defence as guaranteed under Article 6(3)(b) of the European Convention on Human Rights. The Ombudsperson next found that the Municipal Court had appointed free defence counsel for the accused and that defence counsel had fulfilled their professional obligations in properly representing the accused. There was thus no violation of the right to free legal assistance as guaranteed under Article 6(3)(c) of the European Convention on Human Rights. The Ombudsperson finally found that an Albanian-Russian interpreter was provided by the Municipal Court both for meetings with the Investigating Judge and during the main hearing of the case. There was thus no violation of the right to the free assistance of an interpreter as guaranteed under Article 6(3)(e) of the European Convention on Human Rights.

SUMMARY

Ex officio Registration No. 14/2001

Regarding treatment of the representative of the Humanitarian Law Center by prison officers in Mitrovica

30 January 2003

In this case, the Ombudsperson investigated allegations both that the Director of Mitrovica Detention Centre had refused to permit a representative of a non-governmental organisation, the Humanitarian Law Centre (HLC), to visit five detainees, on the appearance of the representative at the Detention Centre and that Detention Centre officials had copied files related to previous visits to the Detention Centre from the laptop computer of the HLC representative, without the latter's permission. Although the facts surrounding the initial refusal of permission for the representative of the Humanitarian Law Centre to visit detainees in the Mitrovica Detention Centre were not in dispute, it was not possible to establish the facts surrounding the allegations that Mitrovica Detention Centre officials had copied files related to previous visits to the Detention Centre from the laptop computer of the HLC representative, without the latter's permission. The Report therefore did not examine the issue of possible human rights violations or abuses of authority in regard to the latter issue.

The Ombudsperson noted that the relevant domestic law allows detainees to ask the competent court to authorise representatives of non-governmental organisations to visit them and that the HLC representative had been so authorised. The Ombudsperson also noted, however, that the same provision of the domestic law that sets forth the authorisation requirement also prescribes that even authorised visits must be conducted in accordance with the internal rules of the detention facility. In this regard, the Ombudsperson further noted that the Director denied the HLC representative immediate access to the detainees, pursuant to the internal rules of the Detention Centre and the policies of the Kosovo Correctional Service, according to which representatives of NGO's are required to obtain permission from the prison authorities 24 hours in advance of a planned visit. The Ombudsperson also observes that in the instant case the Director of the Detention Centre had asked the HLC representative to return later in the day, in order to afford an opportunity for the Director to consult with his superiors about allowing the visit to proceed. If the HLC representative had chosen to do so, the visit would have been permitted.

The Ombudsperson thus found that the initial refusal of permission for the representative of the Humanitarian Law Centre to visit detainees in the Mitrovica Detention Centre did not constitute a violation of human rights or abuse of authority.

SUMMARY

Regarding the length of proceedings in the case of
Alush Krasniqi

31 January 2003

In this case, the Ombudsperson found that the failure of the Municipal Court in Peje/Pec to deliver its judgment to the applicant between 28 March 2001 and 13 June 2001, coupled with the failure of the District Court in Peje/Pec to take any action in the case between 18 July 2001 and 7 May 2002, constituted a violation of the applicant's right to a fair hearing within a reasonable time, as guaranteed under para. 1 of Article 6 of the European Convention on Human Rights. The Ombudsperson also found that the lack of any specific legal avenue whereby the applicant in the present case could have complained about the length of proceedings with any prospect of obtaining either preventive or compensatory relief constituted a violation of the applicant's right to an effective remedy guaranteed under Article 13 of the European Convention on Human Rights.

The Ombudsperson recommended that the Special Representative of the Secretary-General of the United Nations, no later than **28 March 2003**, appoint a sufficient number of judges to the courts in Peje/Pec or take other necessary measures to guarantee the review of cases and delivery of judgments to all parties within a reasonable time and promulgate a Regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human Rights providing both preventive and compensatory relief with respect to complaints about excessive length of proceedings in civil cases.

On 7 February 2003, the Deputy SRSG for Police and Justice informed the Ombudsperson that recommendations contained in this Report had been forwarded to the Department of Justice and the Kosovo Judicial and Prosecutorial Council for their consideration. He also noted that the latter body was in the process of reviewing the staffing allocation and capacity of all of Kosovo's courts, in order to ensure the matching of caseload and capacity to the extent allowed by budgetary restrictions.

SUMMARY

Milomir Mitrović
against UNMIK

26 March 2003

In this Report, the Ombudsperson found that, for all intents and purposes, the circumstances of the instant case could not be distinguished in any material way from those addressed in the Report of the Ombudsperson of 22 April 2002 (see summary in Second Annual Report at pp. 43-44). It followed that the legal analysis contained in that Report applied also to the facts of this case. The Ombudsperson found that the refusal of the UNMIK Municipal Administrator in Fushë Kosovë/ Kosovo Polje to permit the Municipal Court to register a contract for a sale of residential property, pursuant to UNMIK Regulation 2001/17 constituted a violation of the following human rights of the applicant: the right to peaceful enjoyment of possessions (Article 1 of the Additional Protocol to the European Convention on Human Rights); the right to respect for private and family life and for the home (Article 8 of the European Convention on Human Rights); the right to choose one's place of residence (Article 2 of Protocol No. 4 of the European Convention on Human Rights); the right to freedom from discrimination (Article 14 of the European Convention on Human Rights); and the right to freedom from the imposition of restrictions on rights for purposes other than those prescribed under the Convention (Article 18 of the European Convention on Human Rights). The Ombudsperson also reiterated concerns raised in conjunction with Special Report No. 5 on Certain Aspects of UNMIK Regulation No. 2001/17 on the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo (22 August 2001), addressed to Mr. Hans Haekkerup, Special Representative of the Secretary General of the United Nations (29 October 2001). The Ombudsperson also found that the implementation of a Regulation that had previously been found to be incompatible with recognised international human rights standards constituted an abuse of authority by the Municipal Administrator in Fushë Kosovë/ Kosovo Polje.

The Ombudsperson recommended that, no later than 4 April 2003, the Special Representative of the Secretary General act on an urgent basis to ensure that the contract for the sale of the applicant's property be registered by the competent court in Kosovo and that, no later than 11 April 2003, the SRSG abolish UNMIK Regulation No. 2001/17, abolish Administrative Direction 2001/16 Implementing UNMIK Regulation No. 2001/17 (19 October 2001), abolish Administrative Direction 2002/4 Implementing UNMIK Regulation No. 2001/17 (28 February 2002), abolish any additional Administrative Directions or other subordinate legal acts aimed at the implementation of UNMIK Regulation No. 2001/17, issue a new Administrative Direction declaring null and void any decision to refuse to register a contract for the sale of real property anywhere in Kosovo, where that decision was taken pursuant to UNMIK Regulation No. 2001/17 and/or Administrative Directions 2001/16, 2002/4 or other relevant Administrative Direction or subordinate legal act, inform all courts in Kosovo of the above actions and direct them to register any contracts for the sale of property that had not been registered pursuant to the implementation of UNMIK Regulation No. 2001/17.

On 11 April 2003, the Principal Deputy Special Representative informed the Ombudsperson that the UNMIK Municipal Administrator had acted outside her authority in refusing to permit the registration of the sale of the property at issue, as said property was not located in a geographical area falling within the purview of UNMIK Regulation 2001/17. He stated that the contract for the sale of the property would be duly recorded.

SUMMARY

Regarding the length of proceedings in the case of
Zarife Haxholli

11 April 2003

In this case, the Ombudsperson found that the failure of the Municipal Court in Gllogovc/Gllgovac to reach a decision in the applicant's civil case from 22 May 2001 until the date of the Report, coupled with the failure of the Municipal Court to take any action or hold any hearing in the case between 22 May 2001 and 23 October 2002, constituted a violation of her right to a fair hearing within a reasonable time, as guaranteed under para.1 of Article 6 of the European Convention on Human Rights. The Ombudsperson also found that the lack of any specific legal avenue whereby the applicant could complain about the length of proceedings with any prospect of obtaining either preventive or compensatory relief constituted a violation of her right to an effective remedy guaranteed under Article 13 of the European Convention on Human Rights.

The Ombudsperson recommended that the Special Representative of the Secretary-General of the United Nations, no later than **25 April 2003**, take all necessary measures to ensure that the Municipal Court in Gllogovc/Gllgovac complete the proceedings in the instant case without further delay and promulgate a Regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human Rights providing both preventive and compensatory relief with respect to complaints about excessive length of proceedings in civil cases.

There has been no response to this Report.

SUMMARY

Gani Thaci
against
The United Nations Mission in Kosovo
(UNMIK)

17 April 2003

At the outset of his consideration of this case, which related to the suspension and subsequent dismissal of the applicant from the Kosovo Protection Corps (KPC), the Ombudsperson found that the nature of the duties and responsibilities of members of the KPC, considered in light of the criteria established by the European Court of Human Rights for the applicability of Article 6 of the European Convention on Human Rights, placed proceedings concerning the suspension or dismissal of KPC members within the scope of the Article.

The Ombudsperson noted that the KPC, KPC disciplinary bodies and the SRSG (in his capacity as the final administrative authority over KPC matters) had all failed either to respond to the repeated requests of the applicant to be provided with a written reasoned decision on his dismissal from the KPC or to review his appeal against his suspension. The court competent to adjudicate on the substance of these matters had stated that it was unable to review the applicant's case pending his exhaustion of all channels for administrative review, up to and including a decision of the SRSG. The Supreme Court, which has the jurisdiction to order the SRSG to issue the written decision required by law, had also failed to take the requisite action. The total failure of any administrative authority to comply with their legal obligations to provide the applicant with a reasoned written decision had prevented the applicant from having his case adjudicated in accordance with the Constitutional Framework and the principles of the rule of law. The Ombudsperson thus found that there had been a violation of the right of the applicant to a court as guaranteed under para. 1 of Article 6 of the European Convention on Human Rights.

In addition to raising claims that his rights under Article 6 of the European Convention had been violated, the applicant in this case considered that his suspension and dismissal from the KPC appeared to have been based in large part on the grounds that he had made statements to the press regarding the negative repercussions on him of internal personnel decisions and actions taken by the KPC, and thus violated his right to freedom of expression as guaranteed under Article 10 of the European Convention on Human Rights. The Ombudsperson, however, found, *inter alia*, that the impact of the actions of the applicant on the discipline in KPC may have had a significant enough effect to support the taking of disciplinary action against him and that the actions taken in this regard could not be definitively considered to be disproportionate. There was thus no violation of the right to freedom of expression guaranteed under Article 10 of the European Convention on Human Rights.

The Ombudsperson recommended that the Special Representative of the Secretary-General of the United Nations, no later than 16 May 2003, ensure that the competent administrative authorities issue to the applicant written reasoned decisions regarding his dismissal from the KPC and undertake to participate fully in any judicial proceedings that might transpire at the conclusion of the ensuing administrative review process, in accordance with the Constitutional Framework and the District Court decisions cited in the Report.

There has been no response to this Report.

SUMMARY

Afrim Selaci
against
The United Nations Mission in Kosovo
(UNMIK)

17 April 2003

In this case, the applicant complained that he had been ill-treated by the UNMIK Police in contravention of his rights under Article 3 of the European Convention on Human Rights.

In the Report on his investigation of this case, the Ombudsperson noted with concern that the UNMIK authorities had refused, for over two years, to respond to requests from the Ombudsperson for any relevant information that they possessed about the matter at issue, even when the information that they ultimately provided clearly established that there was no improper conduct on the part of the UNMIK Police. The Ombudsperson had requested such information on eight separate occasions after criminal proceedings had been initiated against the applicant for assaulting a police officer during the incident in question. Seven of these requests were made after the applicant had been convicted of the offence and a judgment, a public document, issued. The Ombudsperson considered that the intransigence of the UNMIK authorities in responding to requests for information in this case raises serious questions about the standards of transparency considered to be appropriate to allegedly democratic police operations in Kosovo.

The Ombudsperson found no violation of Article 3 of the European Convention on Human Rights or any other relevant human rights provision in this case.

SUMMARY

Haki Sahiti
against
The Municipal Court in Ferizaj/Uroševač

21 April 2003

In this case the Ombudsperson found that that the failure of the Municipal Court in Ferizaj/Uroševač to execute a final judgment of 11 May 1998 in favour of the applicant constituted a violation of the right to a court guaranteed under Article 6 of the European Convention on Human Rights. He also found that the same court's failure, from 25 November 1997 (the date of the judgment) to the date of the Report of the Ombudsperson, to take a decision on the portion of the first instance judgment that the court had declared would be decided at a later date constituted a violation of the right to a fair hearing within a reasonable time guaranteed under para. 1 of Article 6 of the European Convention on Human Rights. The Ombudsperson also found that the lack of any legal avenue whereby the applicant could complain about the excessive delays, either in the execution of a judgment or in the final determination of the reserved matters, with any prospect of obtaining preventive or compensatory relief, constituted a violation of the right to an effective remedy in the sense of Article 13 of the European Convention on Human Rights.

The Ombudsperson recommended that the Special Representative of the Secretary-General of the United Nations, no later than **16 May 2003**, take urgent steps to ensure that the operative portion of the judgment of the Municipal Court in Ferizaj/Urosevać of 25 November 1997 be fully executed without further delay, take all necessary measures to ensure that the same court review the outstanding issues from its judgment of 25 November 1997 and issue a decision on these issues without further delay and promulgate a Regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human Rights, providing both preventive and compensatory relief with respect to complaints about the right to a court and excessive length of proceedings in civil cases.

There has been no response to this Report.

SUMMARY

Regarding the length of proceedings in the case of
Gordana Ilioska-Djoric

23 April 2003

In this case, the Ombudsperson found that the failure of the Municipal Court in Prishtinë/Priština to decide on the applicant's case from 15 September 1998 to the date of the Report, coupled with the failure of the Municipal Court to take any action or hold any hearing in the case between 15 September 1998 and 11 March 2003, constituted a violation of her right to a fair hearing within a reasonable time, as guaranteed under para. 1 of Article 6 of the European Convention on Human Rights. The Ombudsperson also found that that the lack of any specific legal avenue whereby the applicant could have complained about the length of proceedings with any prospect of obtaining either preventive or compensatory relief constituted a violation of her right to an effective remedy guaranteed under Article 13 of the European Convention on Human Rights.

The Ombudsperson recommended that the Special Representative of the Secretary-General of the United Nations, no later than **16 May 2003**, take all necessary measures to ensure that the Municipal Court in Prishtinë/Priština complete the proceedings in the case without further delay and promulgate a Regulation providing for an effective remedy in the sense of Article 13 of the European Convention on Human Rights providing both preventive and compensatory relief with respect to complaints about excessive length of proceedings in civil cases.

There has been no response to this Report.

SUMMARY

Afrim Zeqiri
Against
The United Nations Mission in Kosovo
UNMIK

30 May 2003

In this case, the Ombudsperson found that various aspects of the deprivation of liberty of the applicant Mr. Afrim Zeqiri from 29 May 2000 to the date of the Report, were unlawful within the meaning of Article 5 of the European Convention on Human Rights.

Those aspects included the deprivation of liberty of the applicant imposed under a series of "Executive Orders" issued by the SRSG, his initial detention, his deprivations of liberty pursuant to several decisions of the competent courts in Kosovo and, finally, his deprivation of liberty for periods of time for which there were neither Executive Orders nor valid court decisions

The Ombudsperson also found that the failure of the authorities to bring the applicant before the competent judicial authority from 29 May 2000 to 2 June 2000, and the total absence of any possibility to challenge his detention under Executive Orders constituted violations of his right to be brought promptly before such authority as guaranteed under para. 3 of Article 5 of the Convention. The Ombudsperson finally found that the failure of the competent judicial authorities, from 2 June 2000 to 25 January 2002, to consider the possibility of releasing the applicant on bail constituted an additional violation of the applicant's rights under paragraph 3 of Article 5.

With respect the right of the applicant to a tribunal established by law, as guaranteed under Article 6 of the European Convention on Human Rights, the Ombudsperson found that the promulgation and implementation of UNMIK Regulation 2001/2 giving extensive powers to the International Prosecutor responsible for the case, materially changed the rules governing the conduct of proceedings against the applicant. There was thus a violation of his rights under that provision of the Convention.

The Ombudsperson recommended that the Special Representative of the Secretary-General of the United Nations, **no later than 30 June 2003**, comply with the Ombudsperson's recommendations in Special Report No. 3 and reiterated in Special Report No. 4, promulgate an UNMIK Regulation abolishing UNMIK Regulation 2001/2 Amending UNMIK Regulation No. 2000/6, as Amended, On the Appointment and Removal from Office of International Judges and International Prosecutors (12 January 2001), and on the dates of their entry into force, disseminate, through all appropriate channels the new UNMIK Regulations in all languages widely used in Kosovo, in accordance with Section 5.2 of UNMIK Regulation No. 1999/1. In particular, the Regulations should be distributed to all judges, judicial officers or others exercising judicial authority in Kosovo and to all individuals in detention.

There has been no response to this Report.

Annex 4: Summaries of selected letters requesting assistance or services

(1 July 2002 – 30 June 2003)

17 September 2002: Letter to the SRSG asking for information about actions UNMIK had taken or planned to take in order to resolve a number of outstanding issues. (This letter was intended to provide a comprehensive overview of matters that had arisen also during the mandate of the previous SRSG.) Matters relating to requests for interim measures appear at Annex 2.

The SRSG responded to the following matters raised in the 17 September 2002 letter of the Ombudsperson:

No response to a letter to the SRSG (29 January 2002) concerning the lack of access of Kosovo Albanians to civil documents being held in Serbia proper.

On 9 October 2002, the SRSG informed the Ombudsperson about documentation required and other conditions to be fulfilled as conditions for UNMIK to issue civil documents that otherwise would have to be obtained in Serbia proper.

As of 30 June 2003, there had not been an adequate response to the following matters raised in the 17 September 2002 letter of the Ombudsperson:

Special Report No. 1 on the Compatibility with recognised international standards of UNMIK Regulation 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo (18 August 2000) and on the Implementation of the above Regulation

In summer 2001, the previous SRSG had informed the Ombudsperson that this Report had 'been sent to New York.

Report in the case of V.S. and V.N. against UNMIK (29 January 2002)

On 12 March 2003, the SRSG informed the Ombudsperson that investigations of these murders had been conducted but without yielding any evidence regarding the identity of the perpetrator or perpetrators of the offences. He also stated that the police were continuing their search for new witnesses and that he would keep the Ombudsperson informed of any progress made.

Special Report No. 5 on Certain Aspects of UNMIK Regulation No. 2001/17 on the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo (22 August 2001) and Report in *Ex officio* case 24/2002 Regarding the refusal of UNMIK to register a contract for the sale of a residential property in Lipjan/Lipljan

On 9 October 2002, the SRSG informed the Ombudsperson that no actions had been taken or were being considered to change either the Regulation or its implementation.

As of 30 June 2003, there had not been adequate subsequent information regarding the following matters raised in the 17 September 2002 letter of the Ombudsperson:

In response to the recommendations of the Ombudsperson in the A.P.L. case (17 October 2001), UNMIK stated that it would:

- Revise detention request forms to ensure that when a law enforcement agency considers it necessary to detain someone at the time of arrest for longer than 24 hours, that any such longer period is justified in writing, notification is provided to the detainee and that the detention otherwise conforms with the applicable provisions of the Criminal Procedure Act.

In response to the recommendations of the Ombudsperson in the *Rashica* case (31 October 2001), the SRSG stated that he would:

- Bring the case to the attention of the acting UNMIK Police Commissioner, requesting the full co-operation of the UNMIK Police to ensure that appropriate legal action could be taken to address any criminal acts that might have been committed;
- Request the assistance of the DSRSG for Police and Justice in forwarding the case to an international public prosecutor for his attention;
- Forward the case to the UNMIK Claims Review Board for their determination as to whether the applicant should be awarded compensation.

In response to the recommendations of the Ombudsperson in the *Maliqi* case (13 March 2002), the SRSG stated that he would:

- Bring the case to the attention of the acting UNMIK Police Commissioner, requesting the full co-operation of the UNMIK Police to ensure that appropriate legal action could be taken to address any criminal acts that might have been committed;
- Forward the case to the UNMIK Claims Review Board for their determination as to whether the applicant should be awarded compensation.

As of 30 June 2003, there had been no response to the following matters raised in the 17 September 2002 letter of the Ombudsperson:

Report in the case of R. C. against UNMIK (29 January 2002)

Report in the case of S. A. against UNMIK (29 January 2002)

Report in the case of S. B. against UNMIK (29 January 2002)

Special Report No. 3 on the Conformity of Deprivations of Liberty under ‘Executive Orders’ with Recognised International Standards (29 June 2001)

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

Three requests to the SRSG (7 March 2001, 20 April 2001 and 8 May 2002) to intervene with the competent authorities in Belgrade to ensure that individuals in Kosovo who are entitled to pensions receive them.

Letter of 12 February 2002 to the Social Welfare Department outlining concerns about the social assistance scheme in Kosovo.

Letter to the Head of the UNMIK Department of Public Utilities (4 January 2002) concerning the lack of drinking water available to the residents of the Hajredinaj quarter of the village of Koshutovo/Kosutovo, Mitrovica/Mitrovica Municipality.

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

Letter to the SRSG (12 March 2002) expressing the view of the Ombudsperson that courts conducting criminal proceedings in Kosovo should not be permitted to attempt to exercise their jurisdiction outside of Kosovo for part of those proceedings.

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

21 October 2002: Letter to the Municipal Administrator of Novo Brdo regarding the inadequate water supply for Serbian settlements in the area of Izvor and Llabjan/Labljan.

On 30 October 2002, the Municipal Administrator informed the Ombudsperson about actions then being taken to resolve the matter and noted the difficulties in maintaining the infrastructure for delivering water to these communities, in that the infrastructure was regularly subject to damage and destruction by extreme elements.

22 November 2002: Letter to the SRSG asking him to assist authorised representatives (ethnic Albanians) of former residents (ethnic Serbs) to obtain death certificates from the municipal authorities in Gjakova/Djakovica.

On 18 December 2002, the SRSG issued an Executive Decision (No. 2002/16) instructing the municipal authorities to 'promptly take necessary action for the issuance of the death certificate[s]'.

26 November 2002: Letter to the Head of the UNMIK Office of Returns and Communities asking her to ensure that schools in Osojane (Istog/Istok Municipality) and Kolloni (Gjakova/Djakovica Municipality) were provided with adequate heating during the winter.

On 27 November 2002, the Ministry of Education, Science and Technology informed the Ombudsperson about actions it was taking to resolve the problem.

27 November 2002: Letter to the SRSG concerning conditions governing forgiveness of past debts of indigent and disadvantaged persons for unpaid electricity bills as set forth in UNMIK Administrative Direction No. 2002/19 on Payment of Debts for Electricity Services. The Ombudsperson noted that the Directive conditioned eligibility for forgiveness of past debts on the individual's acknowledging responsibility for the payment of current and future electricity consumption, but failed to take into account the fact that impoverished people who had been unable to pay for their electricity consumption in the past would be unlikely to be able to do so in the foreseeable future either. He also noted that official notices that an individual's electricity was to be cut off did not provide any information about the possibility of asking for the debt to be forgiven. Finally, he pointed out that the Law on Obligatory Relations, as the applicable law in Kosovo, prohibits providers of public utilities from requesting payment for any debts accrued by domestic consumers more than twelve months prior to the demand for payment. In a follow-up letter of 27 January 2003, the Ombudsperson reiterated a proposal he had made in October 2001 to adopt the general approach taken by most European states, to include a minimum level of electricity consumption in the benefits provided to individuals receiving social welfare.

In a letter of 4 February 2003, the Principal Deputy SRSG indicated that the Public Utilities Regulatory Authority of Kosovo was preparing proposals for the reduction of rates for minimal levels of electricity consumption by indigent or disadvantaged customers. No mention was made, however, about the applicability of the relevant domestic law.

28 November 2002: Letter to the European Agency for Reconstruction (EAR) regarding the lack of security and the poor conditions of the train running between Lipjan/Lipljan and the border between Kosovo and Serbia proper.

There has been no response to this letter.

4 December 2002: Letter to the SRSG asking about UNMIK's policies and plans regarding the support, return and integration of Kosovans of Albanian ethnicity in Northern Mitrovica.

There has been no response to this letter.

9 December 2002: Letter to the SRSG expressing concerns about the extension of the deadline for the lodging of property claims with the Housing and Property Directorate (HPD) from 1 December 2002 to 1 June 2003 and asking for his clarification of the implications of that extension for individuals whose property claims had been pending for long periods of time. The Ombudsperson's concerns in this regard arose in light of a 3 October 2002 letter of the Head of Case Processing of the HPD informing the Ombudsperson that the HPD had decided to delay the handling of a large number of property claims until the expiration of the deadline for filing such claims and the ongoing complaints to the Ombudsperson from individuals about the delays.

On 20 December 2002, the Principal Deputy SRSG provided the Ombudsperson with a copy of the Executive Order extending the deadline. No mention was made of the implications of the extension for individuals awaiting the resolution of their property claims.

17 December 2002: Letter to the Head of the UNMIK Department of Judicial Affairs asking him to exercise his prerogative to recommend that the SRSG assign an international prosecutor and a panel of international judges to consider the appeal of Sami Moraliu and others against the 21 October 2002 judgement of the Municipal Court in Prizren, in light of the murder of one witness in the first instance proceedings and threats to individuals or family members of individuals who had been involved in the case.

On 17 February 2002, the Director of the UNMIK Department of Justice informed the Ombudsperson that the Department was working with local prosecutors to develop issues arising out of these cases and that the Department would 'assess the degree of international involvement that is appropriate to ensure that the cases move forward in light of the potential threats to the local judiciary and prosecutorial service'.

17 January 2003: Letter to the Deputy SRSG asking for clarification of UNMIK procedures for the issuance of birth certificates in the light of difficulties faced by individuals presenting such birth certificates to certain consulates as part of visa application processes.

On 4 February 2003, the Deputy SRSG sent a letter to the Ombudsperson stating that no such problem exists.

27 January 2003: Letter to the Minister of Health asking him to ensure that kidney dialysis equipment and services be provided at the hospital in Llapje Selle/Lapje Selo given the difficulties for Serbian patients to continually have to travel to Mitrovica or Serbia proper in order to obtain essential medical services.

On 10 February 2003, the Permanent Secretary of the Ministry of Health informed the Ombudsperson that the Ministry did not find it necessary to provide these services and equipment to this community and suggested that individuals requiring dialysis should avail themselves of the services available at the Pristina University hospital.

30 January 2003: Letter to the UNMIK Municipal Administrator in Obiliq/Obilic Municipality asking for his intervention to improve the living conditions in the village of Janjina Voda, whose circumstances compared unfavourably to other villages in the Municipality.

On 3 February 2003, the Municipal Administrator informed the Ombudsperson about measures taken to improve the living conditions of the village of Janjina Voda, in particular the water supply, health services and security related matters such as street lights and transportation.

25 February 2003: Letter to the Chairperson of the Housing and Property Commission regarding lengthy delays and other procedural irregularities in the determination of a number of property claims (listed in an attachment to the letter) pending before the Housing and Property Directorate or before the Commission itself, and noting that neither of these administrative bodies had been fulfilling its legal obligations either under the relevant UNMIK Regulations nor under the Law on Administrative Procedures.

In a letter of 14 April 2003, the Acting Registrar of the Housing and Property Claims Commission provided the Ombudsperson with a copy of Resolution No. 7 (11 April 2003) of the Commission. In this Resolution, the Commission described the nature of the claims process, stating that its mass nature justified the slow determination of property claims. The Resolution also stated that the Commission did not recognise the applicability of the Administrative Procedures Act to the work of the Directorate or the Commission. The Resolution did not address other matters raised in the letter of the Ombudsperson, in particular the failure of these bodies to meet the deadlines and procedural requirements set forth in their own Regulation.

5 March 2003: Letter to the Deputy SRSG for Police and Justice informing him about concerns expressed by judges and prosecutors in Mitrovica relating to apparent irregularities in the conduct of police investigations and related matters. The Ombudsperson noted that he had raised many of the same issues in his report in the A.P.L. case (17 October 2001) and asked for the Deputy SRSG's update on progress in the implementation of recommendations made in that report.

There has been no response to this letter, nor has the Ombudsperson been informed through any other channels about the implementation of his recommendations in the mentioned case.

21 March 2003: Letter to the Minister for Trade and Industry expressing concerns about irregularities in the registering of businesses. Specifically, the Ombudsperson noted that individuals whose professional activities are regulated through professional associations exercising public law functions (e.g. the advocates association) but who are not in fact members of such associations should not be eligible to register as businesses purporting to provide such professional services. He also noted that individuals have been licensed as notaries, although no such profession exists under the applicable law in Kosovo.

On 14 May 2003, the Minister of Trade and Industry sent a response to this letter in which he indicated that he considered that the registration of advocates and notaries as businesses had no relationship to the regulation, legal bases or public law functions of these professions.

25 March 2003: Letter to the SRSG referring to several previous (unanswered) letters to him, asking for his assistance in obtaining information about police investigations pending in cases regarding which individuals affected had lodged applications with the Ombudsperson, where the UNMIK Police authorities had failed to respond to direct and repeated requests for such information.

On 4 April 2003, the Deputy Special Representative of the SRSG sent a partial response to this letter (see Summary of case: Afrim Selaci v. UNMIK at page 21)

22 April 2003: Letter to the President of the Executive Board of KEK asking the Board to take urgent action to decide on a location to which residents of Dardhishte/Krusevac (Kastriot/Obiliq Municipality) who were endangered by KEK installations could be moved.

On 9 May 2003, the President of the Executive Board of KEK sent a letter to the Ombudsperson expressing the view that the number of families the municipality had included on a list of endangered residents was well above the number raised in discussions between the concerned parties. He also noted that the families previously identified had provided adequate proof of property ownership, a precondition for the allocation of alternative properties, whereas the additional families had not done so.

5 June 2003: Letter to the SRSG asking him to intervene with the Ministry of Trade and Industry to prevent Business Registration Units across Kosovo from accepting applications for Provisional Business Registrations from either individuals who had never been admitted to the Kosovo Advocates Association or who had been barred from the practice of law by this Association after serious infractions of the Professional Code of Conduct or from individuals wishing to register themselves as "notaries" although there is no basis in the applicable law in Kosovo for the licensing or practice of this public law function.

There has been no response to this letter.

24 June 2003: Letter to the Director of the UNMIK Department of Justice regarding the conditions in Dubrava Prison, including improvements of hygiene facilities for the prisoners and their access to medical treatment and to the outside world, in accordance with the European and international rules for the treatment of prisoners.

There has been no response to this latter.