



**OMBUDSPERSON INSTITUTION in KOSOVO**

**SEVENTH ANNUAL REPORT**

**2006 – 2007**

**addressed to**

**the Assembly of Kosovo**

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## FOREWORD

*It is a special privilege to be working on the protection of the rights of all Kosovans during this historic time in Kosovo's destiny. That privilege becomes even more significant when one considers that the Ombudsperson Institution is not only Kosovo's leading mechanism for the protection of human rights, but is also a key instrument in consolidating the rule of law within our developing democracy.*

*This has certainly been another challenging year for the Ombudsperson Institution. The international administration continues to operate beyond the reach of the Ombudsperson's mandate. The Kosovo Assembly has not yet appointed a local Ombudsperson, and its legislation designed to strengthen the role of the Ombudsperson Institution has not yet been adopted.*

*This is the seventh Annual Report to be issued since the Ombudsperson Institution in Kosovo was established back in 2000, and the second to be issued directly to the Assembly following the departure of the international Ombudsperson.*

*You will find in this report a description and assessment of the human rights situation in Kosovo. It is my hope that the Assembly will pay due attention to the findings contained in this report. It is also my hope that the Assembly uses the report as a basis to develop more effective policies aimed at strengthening human rights protection and the rule of law.*

*Whilst there have been some achievements during this reporting period in establishing a proper legal framework for the protection of human rights, the problem of ineffective implementation of the rule of law continues. The situation is unlikely to improve until the authorities strengthen their commitment to building a fully democratic society, a commitment which I consider to be crucial for the future of all Kosovans.*

*The judiciary should be the pillar of any free and powerful democracy, and yet Kosovo's judicial system is still regarded with distrust by the people it is meant to serve. Similarly, the executive branch of the PISG is still characterised by irresponsibility and a lack of dedication to open and accountable decision-making.*

*If Kosovo's unresolved status can be likened to a frameless picture, the (dis)functioning of the three pillars described above has created the sense of an incomplete mosaic. To complete the picture, the authorities and courts must steer away from political rhetoric and dedicate themselves to confronting the challenges faced by all Kosovans. These challenges include the rebuilding of trust amongst communities and combating poverty, unemployment, organised crime, discrimination and violence.*

*Overcoming these challenges requires fresh, bold and sustainable policies on the part of the authorities. To complete the mosaic and secure this land's respect for the rule of law, however, requires their dedication.*

*Hilmi Jashari  
Acting Ombudsperson  
July 2007*

## **INTRODUCTION**

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

The Seventh Annual Report covers the sixth full year of operations of the Institution, from 1 July 2006 to 30 June 2007. 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. 2000/38, thus 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-2003 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. Following this new Regulation, the Ombudsperson Institution is still mandated to investigate complaints against local authorities or other bodies of the Kosovo Provisional Institutions of Self-Government (PISG), but is no longer competent to investigate complaints against UNMIK. The working languages of the Institution, previously English, Albanian and Serbian, have now been reduced to Albanian and Serbian.

UNMIK Regulation No. 2006/06 also prescribes a new organisational structure: Instead of an international Ombudsperson and two deputies, 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 has now been 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, and on 28 June 2007 issued a new vacancy announcement for the position of Ombudsperson. It is expected that a new Ombudsperson will be appointed by the Kosovo Assembly in time to take up his/her functions by the end of 2007.

### **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. The Ombudsperson Institution does not deal with disputes between private individuals and, as mentioned above, it has no jurisdiction over either UNMIK or NATO’s Kosovo Force (KFOR), the military force responsible for security in the territory of Kosovo.

UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution of Kosovo and others following it 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 engagement and challenges faced by the Ombudsperson Institution of Kosovo throughout the previous six-year-period have shown that it has implemented these values and principles, which in fact are also standards that help assess the work of such an institution all over the world.

The main challenge for the Ombudsperson Institution is the fact that through its engagements and activities, it aims to influence and balance the relations between the public administration and the people that 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 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 are currently still pending before 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, the largest non-

governmental organisation in Kosovo. After 1994, Mr. Jashari was involved in the activities of various Albanian associations abroad. From 1996 to 1998, he worked as a legal assistant at 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 former SRSG, Søren Jessen-Petersen, in July 2005.

Based on a decision of Mr. Søren Jessen-Petersen dated 1 January 2006, Mr. Jashari was appointed Acting Ombudsperson.

### **The Deputy Ombudsperson**

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

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

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

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

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

Access to the Ombudsperson Institution is provided through its main office in Prishtinë/Priština and the field offices in Gjilan/Gnjilane, Pejë/Peć, Mitrovicë/Mitrovica, Prizren and Gračanica/Graçanicë. The field offices are generally 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/Graçanicë 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 headquarters in Prishtinë/Priština and those working in the field offices 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, which are then forwarded to the Institution by the competent administrator.

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

The Institution regularly holds Open Days at which complainants may personally meet the Ombudsperson, Deputy Ombudsperson or another senior staff member of the Institution. At the Prishtinë/Priština Headquarters, these Open Days take place twice a month, while the field offices offer them once a month. Once a month, there is also an Open Day in Gjakovë/Đakovica. A list is maintained of complainants from Lipjan/Lipljan interested in meeting the Ombudsperson, and when the list is long enough, an Open Day is held there as well. In the regions covered by the field offices, the inhabitants are informed about the dates of these open days by schedules that are made accessible to the public 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 proper or, to a lesser extent, in Montenegro continues to be facilitated through cooperation with the Serbian Commissioner for Refugees (for Serbia proper) and the Spanish humanitarian NGO Movimiento por la Paz, el Desarme y la Libertad (Movement for Peace, Disarmament and Freedom, or MPDL). The Institution and MPDL continue to cooperate following an agreement signed in the previous reporting period, in which the MPDL agreed to assist complainants in filling out complaint forms and in contacting the Ombudsperson Institution.

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

### **General issues**

As in the last reporting period, the ongoing uncertainty with regard to the future status of Kosovo continues to overshadow all else. With their focus based squarely on status negotiations in Vienna and New York, both international and local authorities at central and municipal levels often have little time for the everyday problems brought about by an arbitrary implementation of the rule of law.

This weakness of the rule of law is a common thread found in most human rights violations in Kosovo today, whether they involve the lack of execution of court proceedings, *de facto* expropriations without following the proper expropriation procedure or gaps in the application of the Law on Administrative Procedure. The crux of this problem often lies in public officials' lack of accountability and awareness of the applicable law. This lack of knowledge is not surprising when one considers the huge influx of new laws and principles that have to be implemented.

The generic definition of accountability is an obligation or willingness to accept responsibility or to answer for one's actions. One of Kosovo's main problems is the fact that many officials do not feel a sense of responsibility towards properly fulfilling their tasks, let alone towards the people of Kosovo. Kosovans, on the other hand, are not sufficiently informed about existing laws or their rights to demand such accountability under these laws. This lack of legal certainty is a result of the general legal chaos in Kosovo mentioned so frequently in previous Annual Reports. If the public administration and courts do not know which laws exist in Kosovo and which of the Yugoslav laws applicable before 23 March 1989 are relevant today, how can one expect Kosovo's lay persons to know?

Those suffering most from this legal uncertainty and arbitrariness are those who, for various reasons, are in a more vulnerable predicament than others. These include poor people, ethnic minorities, disabled persons, women (especially single women) and children. Since these people's voices are so often not heard, there needs to be more awareness of their specific needs amongst the public and the Kosovo authorities. There should also be more initiatives aimed at involving these people in decision-making processes that affect their rights.

Another obstacle to the proper implementation of the rule of law is the fact that many serious criminal offences committed in Kosovo are not prosecuted properly, especially if they are related to organised crime, political in-fighting or are ethnically motivated. Some of these cases cannot be investigated properly due to a lack of cooperative witnesses. Others are the result of investigators not fully pursuing their inquiries for fear of endangering themselves or their families. As a result, a number of criminal offenders never need to answer for their crimes; worse still, these same offenders have every opportunity to repeat similar crimes in the future. While the Kosovo Police Service has achieved much over the last few years, it is still a relatively new police force with insufficient experience and powers to match the formidable criminal circles still operating in Kosovo.

In a situation where numerous laws are ignored and injustice abounds, it is not surprising that there is still little public trust in the executive, legislative and judiciary, many parts of which are perceived to be corrupt and inefficient. While many of the cases discussed in this report only confirm this impression, there are other cases where public officials have cooperated with the Acting Ombudsperson or other officials and thus managed to resolve these cases positively.

One can only hope that this positive trend will continue. A strengthened collaboration between the Ombudsperson Institution and Kosovo's public institutions will further increase the level of human rights protection; it will also create a situation where the proper implementation of the rule of law is not the exception, but the norm.

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

An effective implementation of the rule of law is central to the proper functioning of any society. If a society fails to implement the rule of law, it will also fail, in general, to implement human rights principles. Therefore, preventing human rights violations is linked to the establishment of a proper rule of law system. Unfortunately, Kosovo's legal system continues to lag behind international standards, thereby depriving the entire population of some of its most basic rights.

Previous Annual Reports have repeatedly criticised the confusing legal system in Kosovo, a system which is often inconsistent with elementary rule of law principles. So far, such criticism has not met with much of a practical response.

One of the fundamental problems with the domestic legal system is its lack of legal certainty and transparency. It is not clear which laws from Yugoslav times are still applicable, and there is still no higher judicial body competent to address such matters. All UNMIK Regulations and Kosovo Assembly Laws merely state that they supersede any other inconsistent law or other provisions, but still do not specify exactly which legal provisions or laws they are replacing. While UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo specifies that Yugoslav laws passed after 23 March 1989 are only

applicable in today's Kosovo if they are not discriminatory, it is still up to each individual court to determine which of these laws it considers to be discriminatory.

Six years after the promulgation of the Constitutional Framework through UNMIK Regulation No. 2001/9 of 15 May 2001, the Special Chamber of the Supreme Court for Constitutional Matters foreseen in Chapter 9.4.11 of the Constitutional Framework has still not been constituted. This chamber would, however, only alleviate the complicated legal situation in part, since according to the wording of the Chapter it is only competent to *inter alia* review the compatibility of Kosovo Assembly laws with the Constitutional Framework and international human rights standards. It is not clear if this also includes deciding on the applicability of Yugoslav laws or examining the compatibility of UNMIK Regulations with international human rights standards.

Even if the applicability of a law is not in dispute, there are many situations where individuals, administrative offices and courts are unsure as to how to apply certain legal provisions. This is often the case with UNMIK regulations, many of which have introduced new concepts and structures that were not part of the hitherto applicable legal system. In other places in Europe and the world, academic scholars write commentaries to help interpret the most important laws. Such commentaries do not exist in Kosovo, apart from those referring to Yugoslav laws, many of which have now been replaced with other laws. Preparing such commentaries would be a great step towards creating legal certainty and clarity with regard to the laws in Kosovo.

An example where a commentary would be very helpful is the Provisional Criminal Procedure Code of Kosovo, which contains certain provisions that are open to different interpretations. For instance, Article 254 provides that the public prosecutor or the court may order on-site inspections or reconstructions in criminal proceedings. As a consequence, neither the court nor the public prosecutor is clear about his/her competences; the courts consider the public prosecutor to be competent, while the public prosecutor does not want to enter into the competencies of the courts. The fact that the court, the public prosecutor and the police are entitled to conduct such inspections or reconstructions only increases this confusion. There should be more clarity with regard to the above issues.

Another factor in Kosovo's legal system that leads to a great deal of confusion is the parallel application of the Serbian legal system, not only by parallel courts, but also by parallel administrative offices administered by the Serbian Ministry of Justice. These courts and administrative offices continue to operate in Serbian enclaves in Kosovo or towns in Serbia proper and are not recognised by UNMIK.

The Kosovo Assembly's Law on the Official Gazette, promulgated by an UNMIK Regulation on 12 May 2005, is now being properly implemented thanks to the creation of the Office for Management and Administration of the Official Gazette in April 2006. However, the accessibility to certain Yugoslav laws that are still applicable in Kosovo remains difficult, if not impossible. Although the Ombudsperson Institution has received information from the Prime Minister's Office that efforts are underway to ensure that a

legal database containing all applicable laws in Kosovo would be functional in the second half of 2006, this database is still not operative.

In 2007, the Kosovo Judicial Council began establishing its own legal database designed to contain all laws applicable in Kosovo, case law of higher courts in Kosovo, international human rights instruments, legal documents of the European Union, as well as academic legal articles. The database will be available in the English, Albanian and Serbian languages. According to information received from the Kosovo Judicial Council, the database is still being developed and should become functional in September 2007. The aim of this project was to create a database that would be user-friendly, not only for lawyers, but also for the general public. While such a database would again only benefit those persons who are able to access the internet, it is an important first step in collating all laws applicable in Kosovo and thereby enhancing legal transparency.

UNMIK regulations continue to be posted on UNMIK's website following promulgation and are thus not accessible for persons without internet access. Recently, moreover, even this manner of informing the public about new UNMIK regulations has been delayed – so far, all UNMIK regulations promulgated after 1 March 2007, including UNMIK Regulation No. 2007/15 amending UNMIK Regulation No. 2006/06 on the Ombudsperson Institution, have not been posted yet.

One problem that is yet to be resolved despite having been raised in the last four Annual Reports is the constant lack of *vacatio legis* in almost all of the Assembly's laws or UNMIK regulations issued during this and previous reporting periods. *Vacatio legis* is the time delay between the promulgation of a law and its entry into force, with the aim of giving the public and those institutions applying the law the chance to adjust and prepare for the new legal situation. So far, neither UNMIK nor the Assembly of Kosovo appear to have accepted the necessity of including *vacatio legis* in legal texts. In the absence of this time delay, UNMIK regulations and Assembly laws enter into force immediately after they have been promulgated by the SRSG. As a result, most institutions are not prepared for them and important institutions are only created months or even years after they have been established by law. Another problem in this respect is the fact that both the local administration and the judiciary are often so overwhelmed with the great amount of regulations and laws promulgated within a relatively short time period that they either fail to implement them properly or do not implement them at all. The lack of *vacatio legis* in Kosovo legislation thus delays the proper implementation of this legislation.

An example where an institution established by law has not yet been established in practice is the Human Rights Advisory Panel, which had been mandated to deal with human rights complaints against UNMIK. Such complaints previously fell under the mandate of the Ombudsperson Institution, but following the promulgation of UNMIK Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo on 16 February 2006, the Ombudsperson Institution's mandate was limited to receiving complaints against the PISG. Created by UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel, this panel is still not operative, even though its members have been appointed. In the absence of the Human Rights Advisory Panel, there

is currently no body competent to receive and investigate human rights complaints against UNMIK in Kosovo.

On the other hand, there have been a number of positive developments with regard to the Kosovo Assembly Law No. 2005/26 on the Suppression of Corruption, promulgated by UNMIK Regulation No. 2005/26 on 12 May 2005. The Kosovo Anti-Corruption Agency created by this law has been functional since February 2007. However, following a two-week anti-corruption campaign in December 2006, a confidential hotline opened to receive allegations of corruption from individuals appears not to be working properly. Moreover, there still seems to be a lack of information in the public on the work of this Agency. Despite the fact that the government has recently taken steps to combat corruption, it is still paramount that along with the Assembly of Kosovo and other important stakeholders, the government demonstrates its strong support for this Agency to ensure that the number of complaints will increase. This should include proper and sustainable financial support.

UNMIK Regulation No. 2001/4 on the Prohibition of Trafficking in Persons is another example of a law that cannot be implemented properly as long as the institutions competent to do so have not been established. Almost four years after the entry into force of this UNMIK Regulation, the SRSG promulgated Administrative Direction No. 2005/3. The aim of this Administrative Direction was *inter alia* to clarify the responsibilities of a Victims Assistance Coordinator and establish funds to provide financial assistance and reparation to victims of trafficking. While the Ministry of Justice appears to have initiated appointment proceedings for the Victims Assistance Coordinator twice (at the end of 2005 and in the first half of 2006), this position is still vacant. Moreover, funds for providing financial assistance and reparation to victims of trafficking have not been secured; hence the UNMIK Regulation and the Administrative Direction are yet to improve the situation of trafficked persons.

In June 2006, the SRSG promulgated the long-awaited UNMIK Regulation No. 2006/36 on Legal Aid, thereby creating an integrated legal aid system for civil, criminal and administrative proceedings. Unfortunately, not all members of the Legal Aid Commission responsible for administering and monitoring the legal aid system have been appointed. Furthermore, the Legal Aid Coordination Office (the secretariat of the Commission) and the District Legal Aid Bureau (responsible for receiving requests for legal aid and delivering legal aid) have not been established. As a result, Kosovo still does not have a functioning legal aid system. In civil proceedings, many parties who cannot afford to pay for a lawyer continue to represent themselves despite the fact that they often do not fully understand the law or the proceedings and thus cannot defend their interests properly.

A number of Yugoslav laws dating from before 23 March 1989 have not been replaced by other laws and are thus still applicable. They are constantly being ignored, however, either because the competent authorities are waiting for the passing of new laws or because they are unaware of the existence of these laws. One example of such a failure to implement existing legislation is the Law on Expropriation of the Autonomous Socialist Province of Kosovo of 1978. While a new Law on Expropriation was adopted by the

Kosovo Assembly on 8 February 2007, this law has still not been promulgated by the SRSG and is yet to enter into force. The Yugoslav law therefore remains applicable. It outlines a proper expropriation procedure - including remedies - intended to safeguard individuals from disproportionate interferences with the right to property. Many cases investigated by the Ombudsperson Institution have revealed that municipalities and central government authorities are not applying this law properly or do not follow any kind of expropriation procedure at all. Other examples demonstrate a potentially discriminating application of the law. It is rare for municipalities to compensate people deprived of their property, although the above law obliges them to do so. This leads to a constant series of violations of the right to property and related human rights.

Where privately owned land is to be allocated for a public purpose, the SRSG may exercise his authority to intervene pursuant to UN Security Council Resolution 1244 (1999). Although most expropriations that have taken place over the last few years have not been conducted in conformity with the existing law, UNMIK has for the most part failed to react to this in accordance with its powers.

Other examples where laws have been almost completely ignored are the Kosovo Assembly's Anti-Discrimination Law, promulgated by UNMIK Regulation No. 2004/32 on 20 August 2004, and the Assembly's Gender Equality Law, promulgated by UNMIK Regulation No. 2004/18 on 7 June 2004. For more details regarding these Laws, see the Non-Discrimination and Gender Equality sections of this Annual Report.

However, the complete failure to apply an existing law is an exception in Kosovo. Usually, the problem lies not in the lack of application of a law, but in its selective application. An example of this is the Kosovo Assembly's Law No. 2004/15 on Construction, promulgated on 14 October 2004 by UNMIK Regulation No. 2004/37. There are still many complaints regarding the arbitrary manner in which the competent authorities apply this law. Illegal construction continues to be the rule rather than the exception in Kosovo, and municipalities and courts often indirectly contribute to this phenomenon by acting against some offenders while refusing to involve themselves in other cases.

The implementation of UNMIK Regulation No. 2001/27 on the Essential Labour Law, the Kosovo Assembly Law No. 2003/19 on Occupational Safety, Health and the Working Environment promulgated by UNMIK Regulation No. 2003/33, and the Kosovo Assembly Law No. 2002/09 on the Labour Inspectorate of Kosovo, promulgated by UNMIK Regulation No. 2003/4, still poses problems. Based on the investigations of the Ombudsperson Institution during this reporting period, it became apparent that certain provisions of the above-mentioned laws continue to violate the rights of employees. These flaws are more evident in the private sector, where many employers recruit manpower from the black market without work contracts, thereby avoiding many provisions protecting the rights of employees. The competent authorities responsible for implementing these laws have so far not taken any effective steps to put an end to this illegal practice.

Since the existing UNMIK Regulation No. 2001/27 on the Essential Labour Law (which generally regulates employment in Kosovo) does not adequately cover a number of issues (for more details regarding this see the part of this survey dealing with Children's Rights), the Assembly of Kosovo began drafting a new Labour Law. It also began preparing laws on the right and freedom of association in Kosovo, as well as a law specifying the right to go on strike. The Assembly of Kosovo's Committee on Health, Labour and Social Welfare invited the Ombudsperson Institution to a public debate on the above-mentioned laws and a representative of the Institution submitted comments on them.

During the reporting period, the Ombudsperson Institution also monitored the implementation of the Kosovo Assembly Law No. 02/L-28 2005/26 on Administrative Procedure, promulgated by UNMIK Regulation No. 2006/33 on 13 May 2006. The purpose of this Law is to regulate administrative proceedings and the indiscriminate efficiency of public administrative services for all inhabitants in Kosovo. While the Law itself does not adequately regulate all parts of administrative proceedings, the competent authorities are also not implementing the Law properly. Investigations conducted by the Ombudsperson Institution showed that public administrative bodies for the most part do not respect the statutory timeframes for completing administrative proceedings. Provisions setting out the form and content of administrative acts and of the obligation to inform the recipients of these acts about legal remedies are rarely followed properly. Some administrative offices do not respond to individual requests at all, despite being obliged to do so by law. This failure of the competent bodies to implement the Law on Administrative Procedure in a comprehensive manner contravenes the principles of good governance and respect for human rights. It also greatly affects the transparency of the administrative decision-making process. In a letter sent to the Prime Minister of Kosovo on 29 January 2007, the Acting Ombudsperson asked the Prime Minister to advise all competent administrative bodies to engage more in the implementation of the Law on Administrative Procedure, citing some of them as examples of malpractice. The Prime Minister responded by stating that his office had advised those administrative organs cited by the Acting Ombudsperson in his letter to comply with the Law on Administrative Procedure in future.

The Kosovo Assembly's Law on Access to Official Documents, promulgated on 6 November 2003 by UNMIK Regulation No. 2003/32, is of special importance for the proper functioning of a democratic society. The purpose of this Law is to enable individuals to have greater insight into the decision-making process of public institutions, thereby guaranteeing more transparency in the public administrative sector. So far, the Prime Minister has issued an administrative instruction and established the Inter-Institutional Commission for the Evaluation of Administrative Practices in the Field of Official Documents. Apart from these measures, however, the Government and the "relevant institutions" mentioned in the Law have not acted upon the obligations that they were under to implement the Law within certain deadlines.

With regard to the Kosovo Assembly's Law on Disability Pensions in Kosovo, promulgated on 17 December 2003 by UNMIK Regulation No. 2003/40, the Ministry of

Labour and Social Welfare has now issued several legal sub-acts to implement this Law. The other Ministries obliged to issue similar legal sub-acts have thus far not followed suit. These sub-acts are necessary for the proper implementation of Article 13 of this Law, which concerns benefits for persons with permanent disabilities. The failure of the majority of the competent Ministries to issue the necessary legal sub-acts for the last three-and-a-half years is an ongoing violation of the principles of good governance. As a result, people with disabilities have not been able to profit from the rights granted to them by the Law. This issue has been raised by the Acting Ombudsperson with the respective Ministries several times to no avail. In September 2006, the Acting Ombudsperson addressed this issue in a letter to the Prime Minister, who has so far not replied.

Certain provisions of the Provisional Criminal Procedure Code of Kosovo are also not being applied as they should. For example, although Article 209 para. 1 foresees cooperation between the public prosecutor and certain police officers under his supervision (judicial police), this cooperation does not always function well in practice. The police appear to work more on their own and do not always involve the public prosecutor who, according to Article 47 of the Provisional Criminal Procedure Code, is the main authority responsible for investigating criminal acts. As a result, the public prosecutor is sometimes not even informed about certain criminal cases. Both UNMIK Police and the KPS do not always reply to requests for information from prosecutors.

The Ombudsperson Institution's investigations also revealed a certain disregard for UNMIK Regulation No. 2005/14 on a Vehicle Road Tax. Annex A to the Regulation provides that persons who have paid all import taxes on vehicles imported into Kosovo are exempt from paying road tax for a period of 30 days following the payment of import taxes. In practice, however, the Department for Vehicle Registration does not recognise this period of exemption and threatens to fine vehicle owners who have not paid road tax, even before the 30-day period has elapsed. Despite the Acting Ombudsperson's intervention in this matter by a letter to the Minister of Internal Affairs in December 2006, this situation continues to this day.

Another problem involves vehicles with foreign license plates which were first imported into Serbia proper and from there into Kosovo. Serbian law specifies that all vehicles entering Serbia with foreign license plates need to register and receive Serbian license plates. Since the Serbian authorities do not recognise the KS license plates used in Kosovo, they register inhabitants of Kosovo under old Yugoslav license plates, which in turn are not recognised by UNMIK. However, according to UNMIK Executive Decision No. 6/2002 on the Registration of Privately Operated Vehicles in Kosovo by Habitual Residents of Kosovo, which was passed in 2002 and has been extended several times, persons with license plates that are not considered valid in Kosovo have the right to exchange them as well as registration documents for Kosovo license plates without paying the established fees. This decision has been violated repeatedly by certain KPS officers, who have confiscated these vehicles in cases where the owners have not paid customs taxes upon entering Kosovo. This executive decision leads to different interpretations – while parts of the KPS do not recognise it at all, UNMIK Customs exempts vehicle owners from the obligation to pay customs tax whilst obliging them to

pay excise tax and VAT. The Department for Vehicle Registration, on the other hand, insists that these vehicle owners do not need to pay any tax at all. Representatives of the Ombudsperson Institution have repeatedly requested that the Department for Vehicle Registration ask UNMIK for clarifications regarding this executive decision, but so far this has not happened. In the meantime, the above vehicle owners cannot use their cars because they have been confiscated; these vehicle owners do not know which vehicle taxes they need to pay and which ones they are exempt from.

There are still inconsistencies in the proper application of the Kosovo Assembly's Family Law No. 2004/32, which 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. As a result, both laws continue to be applied in practice, which causes much confusion as to which organ is responsible for taking certain decisions. A more detailed description of this issue can be found in this Annual Report's survey on Children's Rights.

Courts across Kosovo are still failing to implement UNMIK Regulation No. 2003/12 on Protection against Domestic Violence, promulgated on 9 May 2003. One of the main problems involves delays in court proceedings following requests for protection orders. More information on these problems can be found in this Annual Report's section on Gender Equality.

In some areas, no laws exist to regulate certain situations. One example is the issue of public prosecutors in Kosovo. The Kosovo Judicial and Prosecutorial Council, created by UNMIK Regulation No. 2001/8 on the Establishment of the Kosovo Judicial and Prosecutorial Council, was previously competent to advise the SRSG on the appointment of prosecutors, as well as judges and lay judges. However, this body has now been replaced by the Kosovo Judicial Council following the promulgation of UNMIK Regulation No. 2005/52, which is only mandated to set policy, promulgate rules and guidelines and nominate members of the judiciary. Section 1.6 of UNMIK Regulation No. 2005/52 states that until a similar council is established for prosecutors, UNMIK Regulation No. 2005/52 shall provisionally apply to prosecutors. This provisional situation has now lasted for over one-and-a-half years, but thus far no body has been created to fill this void.

There is also no legal remedy providing relief in cases of excessively long court proceedings. This issue was raised in many reports released by the Ombudsperson Institution, which found that certain court proceedings had been so long that they had violated a person's right to have his case decided within a reasonable time. Despite the Ombudsperson Institution's constant recommendations to both UNMIK and the Kosovo Assembly over the last five years to prepare such a legal remedy, no visible steps have so far been taken to prepare a law.

It is clear that one of the underlying problems of Kosovan legislation is not so much its quality, but the lack of its proper implementation. This is often a problem of a lack of accountability. And yet, in most cases laws in Kosovo are not implemented because the

persons responsible for implementation simply do not know how to do so. Considering the huge number of UNMIK regulations and laws that have been passed in Kosovo since 1999, it is not surprising that its administration and judiciary are having problems digesting all this new legislation. In order to improve this situation, UNMIK and other experts involved in the legislative process need to be more active in giving advice and issuing guidelines on how to properly implement and interpret laws in Kosovo. The Kosovo Assembly also needs to oblige the Ministries to report more regularly on the implementation of Kosovo Assembly Laws.

## **The judiciary in Kosovo**

Overall, there has been some progress in certain areas of the judiciary in Kosovo, however it is difficult to overlook the fact that the Kosovan judicial system still suffers from considerable shortcomings.

Since its establishment in December 2005, the Ministry of Justice has continued to gradually take over more responsibilities from the UNMIK Department of Justice. In terms of the judiciary, the Ministry is thus far *inter alia* in charge of policy development with regard to the administration of justice, including access to justice. In 2006, the Ministry of Justice drafted a Strategic Plan for 2006-2011, which includes the overall objectives, plans and strategic goals the Ministry wants to achieve in this period.

A Draft Law on Courts has been in preparation for over two years now, but has not been adopted yet. Such a law would clarify the roles of the judiciary, the Ministry of Justice and the Kosovo Judicial Council, a body consisting of local and international judges and a number of experts from the Ministry of Justice, the Kosovo Assembly, the Kosovo Chamber of Advocates and the academic sector responsible *inter alia* for nominating judges, setting administrative policies and providing administrative oversight to the judiciary. The new law would also include detailed proceedings on the appointment of judges and disciplinary measures in cases of misconduct.

In the absence of this new law, the recruitment and nomination of judges and lay judges continues to be conducted as before; judges are nominated by the Kosovo Judicial Council and appointed by the SRSG. While the nomination process would seem to guarantee the independence of the judiciary due to the variety of different institutions involved, the final decision on whether or not to appoint a judge still rests in the hands of the SRSG, whom UNMIK Regulation No. 1999/1 has empowered as the final executive and legislative authority in Kosovo. This situation has existed since 1999, creating an imbalance of power and an obstacle to an independent judiciary in Kosovo.

There is still a contingent of international judges in Kosovo supporting the local judges in their work. The previous year's Annual Report already mentioned concerns regarding the appointment procedure for international judges, mainly due to a lack of procedural clarity and transparency. International judges and prosecutors are still appointed directly by the SRSG and there is no mention of the length of their terms of office in the applicable

UNMIK Regulation (No. 2000/06 on the Appointment and Removal from Office of International Judges and Prosecutors of 15 February 2000, amended by UNMIK Regulation No. 2000/34 of 27 May 2000 and UNMIK Regulation No. 2001/2 of 12 January 2001). The selection criteria for international judges are also quite basic. Even if the SRSG submits candidates to some form of quality testing or extended interview, the detailed procedure within UNMIK for selecting these judges is invisible to the outside world, depending only on the SRSG himself. Both this and the lack of a fixed term of office could compromise the independence and impartiality of these judges. The lack of transparency in the selection criteria leads to a wide qualitative disparity between individual judges' work. This is also due to the fact that there is no quality control and no supervisory body to complain to in cases of misconduct. Even if a judge is partial or behaves in an improper manner, there is no recourse to initiating disciplinary proceedings or other ways of ensuring that such behaviour is not repeated.

Moreover, there is no clear rule stating which kinds of cases will ordinarily be dealt with by international judges. Section 1.2 of UNMIK Regulation No. 2000/06 merely states that international judges may select and assume responsibility over cases. Over the last few years, international judges have dealt with cases involving war crimes, organised crime as well as terrorism, inter-ethnic violence, political assassinations, and corruption. Some cases go directly to international judges, some are transferred to them by local judges.

While it is true that the weak Kosovo judiciary is still in need of support from its international colleagues, there should be more clarity as to which cases are assigned to these judges and which ones go to local judges. Also, selection criteria should be more detailed and transparent. There should be a more open procedure for nominating and appointing international judges that involves not only the SRSG, 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. Finally, a special independent body should be constituted that deals with complaints of misconduct by international judges.

Previous Annual Reports have highlighted the existence of parallel courts located in Serbian enclaves inside Kosovo and certain towns in Serbia proper. These courts are funded and remunerated by the Government of Serbia, and their judgments are not recognised by UNMIK or the PISG. They still perform certain actions such as the registration of property transactions, which are then considered invalid by the authorities in Kosovo. This continues to lead to confusion in this field of law.

As far as the local judges remunerated by the PISG are concerned, there has been little change for the better since the last reporting period. The Kosovo judiciary continues to remain understaffed and underpaid, having negative effects on its efficiency, independence and impartiality. The case backlog, especially before civil courts, continues to grow steadily and many reports issued by the Acting Ombudsperson during this reporting period have demonstrated a clear lack of proper case management in those courts investigated. It often takes courts years to appoint a panel to deal with a certain

claim; it appears that this simple administrative act often takes longer than the actual consideration of the case, which is sometimes completed within a day.

According to the applicable law, lay judges shall be involved in both criminal and civil court proceedings in all instances. In practice, however, the system lacks proper management – in some cases, lay judges do not attend proceedings although court protocols state that they were present and there have been other cases where lay judges were assigned to different hearings at the same time. The administration and assignment of lay judges to court sessions is in great need of improvement.

There is no tradition of an independent judiciary in Kosovo and thus no proper understanding in Kosovan society of what this means. Judicial independence means *inter alia* that a judge should be free from any pressure or interference coming from one of the parties to proceedings, the executive or anybody else. The administration of justice should, of course, follow the law rather than political considerations. There should be an ethical and professional wall shielding judges from all outside interference, thus allowing them to implement the rule of law and to ensure that others obey it.

This general concept of judicial independence is, however, not prevalent in Kosovo. Neither the executive, nor the parties to the proceedings, nor indeed the judiciary itself respect this principle. Both the international and the local administration have contacted judges informally with respect to a variety of legal issues. In one case where UNMIK was not satisfied with the sale of a house in the recently reconstructed Roma Mahalla returns site, UNMIK representatives contacted judges from the District Court in Mitrovicë/Mitrovica to ask how to legally prevent such sales from being registered in future. In this case, the President of the District Court in Mitrovicë/Mitrovica gave legal advice on the matter, even offering to suspend the registration of such contracts until UNMIK changed the legal status quo. Such forms of bargaining between the executive and the judiciary would be unthinkable in other legal systems. In Kosovo, asking a judge for legal advice on how to resolve an issue that might later end up before that same judge in court proceedings jeopardises not only the impartiality of the judge, but challenges the independence and functionality of the judicial system overall.

Another issue that is raised repeatedly by complainants to the Ombudsperson Institution and others involves widespread allegations of corrupt practices within the judiciary. These allegations are usually impossible to prove, so that even if a person complains to the competent Judicial Inspection Unit within the UNMIK Department of Justice, the complaint rarely leads to disciplinary measures or the removal from office of a judge. While there is an Anti-Corruption Agency in Kosovo created by Kosovo Assembly Law in mid-2005, this Agency has only been operative for a short while. Currently, the level of awareness within the judiciary of this law and the agency appears to be quite low.

At the moment, there are ongoing debates on whether the Judicial Inspection Unit, currently part of the UNMIK Department of Justice and responsible for conducting inspections, audits and investigations within the Kosovo judicial system, will become

part of the Ministry of Justice or of the Kosovo Judicial Council. One solution to this debate could be to transform it into a unit which is independent of both bodies.

The insufficient remuneration received by local judges continues to be a problem, and is often the fundamental cause for their acceptance of bribes, succumbing to threats and of other forms of corruption. The corrupt practices of some judges are often justified as the result of a general deterioration in the standard of living caused by Kosovo's low salaries and high prices. Both the previous Ombudsperson and the current Acting Ombudsperson have repeatedly stressed the need to boost judicial salaries, arguing that if a judge has sufficient income to support his/her family, he or she will be less likely to accept bribes or succumb to pressure when deciding on a case. Moreover, judges should be better protected in cases where they are threatened – security guards or police protection should be made available to certain judges just as they are to politicians.

Another issue that has a direct influence on the quality of court decisions or judgments and the speed in which they are delivered is the lack of adequate working conditions in most courts. Almost every court in Kosovo complains about a lack of staff and insufficient infrastructure. Too little space in court rooms often deprives the public of its right to attend hearings, thereby diminishing the transparency of the work of courts. Another ongoing problem is the poor quality of translation of documents and oral interpretation during court hearings. This issue was mentioned in the last Annual Report and has not changed for the better. The courts are still not following the procedure for determining the quality of court translators and interpreters laid down in a 1969 Yugoslav law regulating the question of court translators and interpreters.

It is also important to note that the lack of sufficient judges may result in the impartiality of judges being compromised. This is especially prevalent when courts of second instance send cases back to municipal courts for retrial; the cases are then heard by the same panel which issued the previous first instance judgment. Such previous involvement in the case bears the risk that one or more of the affected judges have already formed an opinion in the case and are therefore partial in their judgment. Another danger brought about by this system is the fact that the panel which issued the original decision will often 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 impartiality than examples of an erroneous assessment of the law and of how to implement it in practice. As a result, some cases tend to wander back and forth between first and second instances, thus further contributing to delays in court proceedings. The quality of the administration of justice is an important factor in this context. Another is that, unlike legal systems outside of Kosovo, 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. This leads to a lack of continuity in the administration of justice in Kosovo.

Due to the wave of new legislation that has been passed by UNMIK and the Kosovo Assembly since 1999, the majority of judges appear to be unaware of a number of applicable laws. While the Kosovo Judicial Institute does its best to train these judges,

they still appear to have difficulties implementing new laws in practice. Presumably, many judges simply do not apply new laws for fear of applying them erroneously. The only way to improve this would be to appoint legal monitors to attend debates of judges' panels and, without compromising the independence or impartiality of the judges, direct them to laws or higher court case law that has been overlooked. Of course, the presidents of the courts would need to agree to such a measure.

To meet the challenge posed by the insufficient number of judges in certain courts, the Judicial Council has in some cases transferred judges from one court to another. At the same time, a lack of qualified judges seems to slow down the proceedings for appointing new judges. The Judicial Council is also engaged in a working group preparing a strategy for reducing the backlog of property cases in courts. This working group was funded by the United States Agency for International Development and chaired by a representative from the OSCE Mission in Kosovo. The group included 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. On 16 March 2007, the group published a Strategy and Action Plan for the Reduction of Judicial Property Backlog, which identified existing property backlogs, possible ways to reduce them, and actions to prevent such cases in the future. It also suggested legislative and case management reforms that would improve processing by courts and the efficiency of regular courts when dealing with property matters. So far, it appears that the Kosovo Judicial Council has not taken any proper steps to implement this strategy, and it remains to be seen how effective it will be in reducing the backlog of cases involving property disputes.

In terms of property disputes, it is alarming that the courts in Kosovo have no proper procedure in place to verify the authenticity of documents submitted to evidence property transfers. As a result, many property transfers are conducted on the basis of falsified documents, and especially falsified contracts, authorisation letters, or identification papers. It appears that in some cases, judges working for the parallel courts funded by Serbia proper accept bribes to register sales contracts with incorrect dates. Using the Yugoslav stamp, these judges then stamp such contracts with a date prior to 1999 when in fact the property transfer took place after 1999 or, in the worst case, when the owner of the property did not wish to sell at all.

With regard to the execution of court judgments, one obstacle to the proper implementation of such decisions is the fact that there are still not enough court bailiffs to ensure that the execution takes place. Often, the perceived weakness of the judiciary in Kosovo induces defending parties to disregard court judgments. In particular, certain municipalities consider that they are not obliged to respect court judgments and do not even consider it necessary to justify this failure to adhere to the rule of law.

The difficulties in trying to enforce judgments in cases where the defending parties are former socially-owned enterprises currently administered by the Kosovo Trust Agency (KTA) were mentioned in the last Annual Report and have improved little. The number of these cases has steadily increased throughout this reporting period. Courts continue to

deliver judgments in the complainants' favour, while banks continue to oppose execution alleging that the respective bank accounts are empty or that executing such decisions would violate instructions received from the KTA. Despite the Acting Ombudsperson's recommendations, issued in the previous reporting period, that called upon all organs dealing with the legal aspects of the privatisation of socially-owned enterprises to resolve this issue, no real efforts have been made to overcome this situation.

One reason for lengthy court proceedings prior to the execution stage is the lack of experts and equipment necessary to prepare appropriate expert opinions, as well as the absence of sufficient funds to pay for them. As far as criminal cases are concerned, the existing UNMIK Medical Examiner's Office, whose activities involve conducting autopsies and physical examinations of victims and providing expert opinions to courts, is not in a position to respond to the needs of both the courts and the prosecutorial office. Delays in submitting autopsy reports lead to lengthy investigations, which in turn delays the initiation of criminal court proceedings. In cases where an expert was needed to explain and testify to what was written in an autopsy, in a number of instances courts did not summon the medical examiner who prepared the autopsy, instead deciding to summon an expert who had previously worked for the Medical Examiner's Office to testify, even though he now worked in a private capacity. In civil cases, there is also 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 the previous Annual Report, establishing a special institute responsible for preparing expert opinions during proceedings (in particular for criminal courts and prosecutors) would help overcome the current problems. Due to a lack of financial means, however, such an institution cannot be established at this point.

An issue which has improved slightly with the help of greater funding is the protection of witnesses. During the reporting period, the Judicial Council received a donation from the British Liaison Office in Kosovo and the Kosovo Consolidated Budget, enabling it to install television equipment in court rooms for the protection of witnesses in five district courts in Kosovo. This constituted an important step towards ensuring these witnesses' security and confidentiality. The United States Liaison Office in Kosovo supported this initiative by financing the installation of video recording equipment for court hearings. This project is still ongoing.

Such measures, however, only bring slight relief to witnesses in criminal cases. There is still no effective witness protection programme that would adequately protect people and their families who face grave dangers if they agree to testify. Throughout the reporting period, the Ombudsperson Institution continued to receive information regarding witness intimidation; in many criminal cases, such intimidation greatly delays investigations into serious crimes and hampers a proper administration of justice.

As in many public institutions in Kosovo, the lack of financial means has become one of the main impediments to carrying out proper judicial reform. A large part of the process relies on foreign donations. The European Agency for Reconstruction (EAR) is involved in many projects aimed at strengthening the judiciary and the justice system. One long-

term project involves the establishment of an Information System on Case Managing (ISCM) for all courts in Kosovo. This project is now nearing completion, and it appears that the ISCM will enable effective case processing and electronic data archiving in the future.

It has been shown in recent years that establishing a proper court system requires a comprehensive approach to building capacity, strengthening the role of the judiciary, safeguarding judicial independence and developing effective mechanisms against the misconduct of judges.

A number of small steps have been taken to achieving this aim. However, there is still a great need for a more wide-ranging reform of the justice system in Kosovo. In particular, greater steps must be urgently taken to enhance judicial independence and ensure that judges behave in an impartial way, leaving no room for private interests, pressure from outside and other forms of corruption. In any democratic system, the judiciary is the main pillar that supports the rule of law. Failing to properly support this pillar will have negative implications for all sections of public and private life.

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

Although UNMIK and the PISG have been increasingly obliged to report on the human rights situation in Kosovo, and more specifically about the implementation of international human rights instruments, it is apparent that human rights protection in Kosovo has improved little since the last reporting period.

The International Covenant on Civil and Political Rights in Kosovo and a number of other human rights instruments have been a part of the applicable law in Kosovo since 1999. In mid-2004, the UN Human Rights Committee asked UNMIK, in cooperation with the PISG, to compile a report on the human rights situation in Kosovo since June 1999. This report was submitted in February 2006 and the Committee, after numerous discussions and requests, issued its final recommendations on the report at the end of July 2006. These included enhancing legal certainty, the integration of human rights programmes in the administration, full cooperation with the Ombudsperson, proper gender representation and a number of other issues.

The UN Committee on Economic and Social Rights also asked UNMIK, again in cooperation with the PISG, to prepare a report about the enjoyment of economic and social rights in Kosovo since June 1999. This report should have been submitted to the Committee in March 2007, but it appears that UNMIK has asked for an extension of this deadline.

UNMIK's submissions to the Human Rights Committee regarding the implementation of the Covenant on Civil and Political Rights in Kosovo initiated a much-needed discussion at an international level on the human rights situation in Kosovo. It was the first time that

UNMIK had been asked by a UN human rights monitoring body to report on human rights issues, and it was certainly the first time that many parts of the PISG had had to provide input for such an extensive report covering various human rights issues. The preparation of the report on the implementation of the Covenant on Civil and Political Rights (but also the ongoing preparation of the report on the Covenant on Economic and Social Rights) is an important first step towards fostering the perception of accountability of both international and the local structures with regard to the human rights situation in Kosovo.

With regard to European standards on human rights, the European Convention on Human Rights is applicable law in Kosovo. Also, the Council of Europe's Framework Convention on the Protection of National Minorities has been applicable in Kosovo since 2004, following a technical agreement between the Council of Europe and UNMIK. After UNMIK in 2005 submitted its first report to the Council of Europe on the implementation of this Framework Convention, the Council of Europe's Committee of Ministers issued a resolution in June 2006 in which, *inter alia*, they called for the more effective implementation of the Framework Convention and urged UNMIK to improve the transfer of powers (which included the transfer of the Ombudsperson Institution into local hands) and the functioning of the judiciary.

Since then the competent ministries, with the help of the Advisory Office for Good Governance within the Prime Minister's Office, have allocated responsibilities for implementing and reporting on the implementation of different parts of the Framework Convention. Currently, the respective ministries are developing action points on how to conduct their tasks in the best possible way.

This reporting period saw the Kosovo Assembly's adoption of the Law on the Use of Languages and the Law on Freedom of Religion. Both laws are important for the protection of the rights of certain communities in Kosovo, and one can only hope that their proper implementation will address the rights of minority communities in Kosovo.

Another step towards strengthening the protection of rights of minority communities was the initial phase of preparation in autumn 2006 of a joint strategy for the Roma, Ashkali and Egyptian communities by the Office of the Prime Minister, the OSCE Mission in Kosovo and the Kosovo Foundation for an Open Society. The PISG will again need to actively demonstrate its willingness to properly implement this strategy in order to secure its success.

Another Council of Europe Human Rights Instrument that in August 2004 became applicable in Kosovo was the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment. This instrument grants the Council of Europe's Committee for the Prevention of Torture the right to access all detention facilities in Kosovo. Discussions between NATO and the Council of Europe regarding the Committee's right to access the detention facility at KFOR Camp Bondsteel resulted in an agreement signed in mid-2006. 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 promised to submit a full report to UNMIK and NATO.

In terms of the integration of human rights programmes into administrative structures (as required by the UN Human Rights Committee's recommendations), human rights units have now been established in all ministries and continue to receive extensive capacity-building support from the OSCE.

On 19 March 2007, the Prime Minister issued an administrative instruction for human rights units in the Kosovo Government. The instruction aimed at securing the structure and integration of the human rights units within their various ministries. Apart from establishing human rights coordinators in each ministry, the administrative instruction includes specifications regarding the size of human rights units, contracts, training and capacity-building, as well as the role played by the units within the ministries. It also includes provisions for regular reporting obligations and information exchange within the ministries, and requires that the human rights units cooperate with other government structures. Article 12 of the instruction further obliges these units to cooperate with the Ombudsperson Institution; this most welcome inclusion is expected to foster greater cooperation between the Institution and the ministries on various human rights issues.

It appears that a number of ministries have begun to implement this instruction, although the level and speed of implementation has varied across the respective ministries. The administrative instructions should also resolve existing uncertainties concerning the involvement of these units in the everyday work of the ministries.

The Advisory Office for Good Governance, Human Rights, Equal Opportunities and Gender Issues that operates within the Office of the Prime Minister of Kosovo has existed since 2002. Due to this Office's broad mandate – which foresees involvement in various stages of the drafting and implementation of policies, action plans and strategies in the above fields - it is involved in all governmental policies with regard to human rights. Considering the difficulties posed by such a broad mandate as well as the budgetary problems it has faced in the past, the Advisory Office for Good Governance, Human Rights, Equal Opportunities and Gender Issues has been instrumental in promoting human rights within the PISG, and it is hoped that this Office will retain its ability to promote human rights. In the Prime Minister's instruction, the Advisory Office was further mandated to coordinate the work of the human rights units and to oversee the implementation of the instruction. The Office's Director also functions as the Government's Human Rights Coordinator.

While the creation of these human rights organs is an important step towards improving Kosovo's administration from within, the Ombudsperson Institution continues to be the only independent human rights protection mechanism in Kosovo that holds the PISG accountable by law. The Institution had previously been competent to investigate complaints against UNMIK as well; unfortunately, it was stripped of this competence

with the the promulgation of UNMIK Regulation 2006/06 on the Ombudsperson Institution, which defined the competences of the Institution at a local level only.

At this point, the Institution is still under provisional leadership following the expiration of the international Ombudsperson's mandate in December 2005. It is in the hands of the Kosovo Assembly to appoint a local Ombudsperson, but this process has been initially delayed due to the belated promulgation and adoption of UNMIK Regulation No. 2006/06 and the procedure for recruiting and appointing a new Ombudsperson. Following an unsuccessful vote in December 2006, the SRSG promulgated UNMIK Regulation No. 2006/15 in March 2007, amending the existing UNMIK Regulation No. 2006/06 on the Ombudsperson Institution, in order to clarify and simplify the appointment proceedings before the Assembly. The Assembly has now adapted its Rules of Procedure on the Appointment of the Ombudsperson and Deputy Ombudspersons in line with the new UNMIK Regulation and issued a new call for nominations for the position of Ombudsperson. Now that the new procedure has been initiated, the appointment of a new Ombudsperson is expected by the end of 2007.

Despite these difficulties, the Ombudsperson Institution continues to investigate human rights complaints and to monitor general situations from a human rights perspective. When complaints against UNMIK were taken out of its competences by UNMIK Regulation No. 2006/06, the Ombudsperson Institution repeatedly requested guidance from UNMIK on how to deal with pending cases against UNMIK. Since there was never a response to these requests, however, these cases have either been closed due to lack of jurisdiction, or the investigations into those cases have been limited to the conduct of local authorities.

As a result of this limitation of the Ombudsperson Institution's competences, there is no body competent to investigate allegations against UNMIK involving human rights violations and abuse of authority. This means that those parts of UNMIK that have not yet been transferred into local hands are not subject to any mechanism of accountability; although the UN Mission in Kosovo reports to the UN Security Council, this body does not deal with human rights complaints of individuals, while UNMIK staff members in Kosovo enjoy complete immunity.

In an attempt to fill this "accountability gap", in March 2006 the SRSG established the so-called Human Rights Advisory Panel within UNMIK. The Panel was established to deal with human rights complaints directed against UNMIK, in line with UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel. Following the procedure mentioned in the Regulation, the members of the Panel were nominated by the President of the European Court of Human Rights and appointed by the SRSG. The Panel is mandated to receive and examine human rights complaints against UNMIK. It is clear, however, that as an advisory body which is essentially part of the UN Mission in Kosovo, the Human Rights Advisory Panel is an insufficient replacement for an independent human rights protection mechanism such as the Ombudsperson Institution.

In summer 2006, the President of the European Court of Human Rights nominated three candidates for the Panel. This nomination was approved by the SRSG, who appointed all three candidates to sit on the Human Rights Advisory Panel several months later. The members of the Panel, however, have thus far not been invited to Prishtinë/Priština to take their oath. While there is a lot of information about the Human Rights Advisory Panel on UNMIK's homepage, including an invitation to people to submit complaints, the Panel still lacks a secretariat and has not begun operating as yet.

With increasing attention being paid to the impending replacement of UNMIK with an EU mission following the resolution of Kosovo's status, there appears to be no political will within UNMIK to implement UNMIK Regulation No. 2006/12. This issue was raised in a report, issued by Human Rights Watch in June 2007, on UNMIK and KFOR's lack of accountability. One can only hope that a future mission to Kosovo will be equipped with the kind of independent human rights supervisory body that UNMIK sorely lacks. The necessity for such a panel seems to have been recognised by the EU preparatory missions currently operating in Kosovo.

The fact that UNMIK is no longer under the jurisdiction of the Ombudsperson Institution does not mean that there is no cooperation between these two entities, although this cooperation is generally limited to individual cases. For example, there have been a number of meetings involving the Ombudsperson Institution and the UNMIK Office for Communities, Returns and Minority Affairs on issues concerning minority communities in Kosovo. There are also cases where the Acting Ombudsperson has raised his concerns to the SRSG, although he has not always received answers to these letters and UNMIK Regulation No. 2006/06 does not contain an absolute obligation to cooperate. The question of cooperation is still a decision to be taken by the respective departments within UNMIK.

There has been considerable improvement in the PISG's cooperation with the Ombudsperson Institution. This reporting period has seen a number of instances of goodwill from quite a few municipal and central authorities. There are numerous examples of public authorities reacting positively to the Ombudsperson's interventions, and there have been many cases where complaints pending before the Institution were resolved following successful collaboration. Cooperation with the Kosovo Assembly has also increased during this reporting period, and the Institution is looking forward to the Assembly's debate on the various human rights issues addressed in this report.

There are, however, a number of negative examples where certain public administrative offices did not respond adequately or at all to the Institution's requests or interventions. During this reporting period, the Acting Ombudsperson issued two special reports on the lack of cooperation of the President of the Municipal Court in Ferizaj/Uroševac and of certain bodies within the Municipalities of Skenderaj/Srbica and Mitrovicë/Mitrovica. In both reports the Acting Ombudsperson came to the conclusion that these bodies' failure to cooperate with the Ombudsperson Institution was in violation of Sections 4.6 and 4.8 of UNMIK Regulation No. 2006/06, which require public institutions in Kosovo to assist

the Ombudsperson Institution in its work and to respond to its requests for information and documents within a reasonable time.

This lack of cooperation on the part of public authorities in Kosovo is facilitated by the fact that UNMIK Regulation No. 2006/06 does not contain any mechanisms to ensure that public offices follow the Institution's recommendations. In such cases, the only action open to the Acting Ombudsperson under this Regulation is to inform the Kosovo Assembly and/or the media. As mentioned in previous Annual Reports, the Ombudsperson Institution would be greatly strengthened if the Ombudsperson could initiate or take part in court or other legal proceedings (as is the case in other parts of the world). The Institution could also be strengthened by obliging public authorities to justify a lack of cooperation or to include fixed response deadlines in the law regulating the Ombudsperson Institution. Moreover, additional provisions ensuring the financial independence and sustainability of the Institution are vital.

The Kosovo Assembly's Draft Law on the People's Advocate is a step in the right direction. However the Ombudsperson Institution, despite its involvement since the beginning, was not able to convince the working group preparing the first draft to include these and other elements that would help strengthen the Institution. The Council of Europe's Venice Commission provided comments on this law in June 2007, and the Kosovo Assembly is expected to take these comments into consideration before passing the law.

It remains to be seen whether or not the Kosovo Assembly will actually change the name of the post from Ombudsperson to People's Advocate. Changing the name of such a well-established institution more than six years after its creation could cause confusion amongst the wider population; it would also require further budgetary expenses to cover, for example, the cost of name awareness-raising campaigns.

The Ombudsperson Institution can only be strengthened as an institution for the protection and promotion of human rights if there is a greater awareness of individual human rights within the general population. Numerous international human rights instruments have been directly applicable in Kosovo for the last six years, but a number of public officials (including members of the judiciary) are not particularly familiar with their principles and specific contents. The situation is even worse amongst the broader public.

This is hardly a surprise considering the fact that most of these instruments (such as the Universal Declaration on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (ECHR), the International Covenant on Civil and Political Rights and the Protocols thereto and the Convention on the Elimination of All Forms of Racial Discrimination) have not been made publicly accessible. Only those people who really know what they are looking for can find these instruments via the internet. Finding many of these texts in Albanian or Serbian is an even more laborious exercise, requiring both imagination and a good knowledge of

human rights-related websites from Albania, Serbia proper and other countries in the region.

The general awareness of human rights instruments can only lead to an improvement of Kosovo's human rights situation if there is a proper independent judicial body mandated to deal with human rights complaints. Such a body is particularly crucial in Kosovo, since 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. While the Government of Serbia (which ratified the European Convention on Human Rights in 2003) has no jurisdiction over the territory of Kosovo, UNMIK's status as an international mission precludes it from signing a convention that is essentially a multilateral treaty between states. This issue can only be addressed once the future status of Kosovo is resolved.

In the absence of a specific court or other decision-making body competent to accept human rights complaints, the Ombudsperson Institution remains the only body competent to examine such cases. While it is doing its best to fill this void, the Institution cannot replace a judicial body issuing binding court decisions that may, if necessary, be executed by force. Due to the Ombudsperson Institution's limited mandate and continuing reliance on the good will and cooperation of governing structures, the general system of human rights protection in Kosovo remains weak, inconsistent and well below the human rights standards enjoyed in other parts of Europe.

### **Minority communities in Kosovo**

Within the general population in Kosovo, ethnic Albanians represent around 90% of the whole population and the remaining 10% are made up of Serbs, Roma, Turks, Bosniaks, Gorani, Ashkali, Egyptians and Croats. While these make up the minority of the overall population in Kosovo, there are some areas in Kosovo where ethnic Albanians are in the minority, for example the northern part of Mitrovicë/Mitrovica and the Municipalities of Zvečan/Zveçan, Zubin Potok, and Leposavić/Leposaviq in the north of Kosovo, Štrpce/Shtërpce Municipality in the south and the Municipality of Novo Brdo/Novobërde in eastern Kosovo. In predominantly Albanian populated areas, there are different tendencies of cohabitation with regard to the various minority communities – while it is common for Turks, Ashkali and Egyptians to live together with Albanians in urban areas and villages, Serbs and Roma tend to live in mixed or single-ethnic villages and enclaves scattered all over Kosovo. There are a number of Bosniak villages in different parts of Kosovo. There are also a few Croats living in areas in central and eastern Kosovo. The majority of the Gorani population in Kosovo lives in the Municipality of Dragash/Dragaš. General problems faced by all minority communities throughout Kosovo are education, unemployment and the (in)ability to use their respective languages, should they not be Albanian or Serbian, in an official context.

As in the last reporting period, the division between the Serbian and Albanian communities is still evident and mostly due to the opposing political stances of these communities with regard to the future of Kosovo (Albanians favour an independent

Kosovo while Kosovo Serbs insist that it remain an integral part of Serbia proper). Most, if not all, issues concerning the life of Kosovo Serbs remain highly politicised whilst the UN Security Council and its constituent states are engaged in intense discussions over the status of Kosovo.

Albanians and Serbs have essentially been living separate lives for the last eight years. In areas where Albanians are a majority, there is little to no contact with their counterparts of the Serbian, Roma and, to an extent, Bosniak and Gorani communities. One of the biggest obstacles is the issue of language. In most cases Serbs, Gorani, Roma and Bosniaks living in Serbian-speaking areas do not speak the Albanian language. This issue was raised by the former international Ombudsperson in Kosovo as early as 2005, but to this day there have been no attempts on the side of the PISG to offer free Albanian language courses for those members of minority communities willing to learn. Such courses would be particularly useful for members of minority communities working for the PISG and would be an important step towards bridging the gap between these communities.

Many villages in minority areas, in particular Serb and Roma enclaves, are not visited regularly by municipal officials. While there have been outreach activities in some municipalities, also by representatives of the central government, contacts between municipal officials and such settlements across Kosovo need to improve. On the other hand, Serbian enclaves still receive support from the Serbian government. Various representatives of the PISG criticise the inhabitants of the enclaves for this, while the latter complain that the PISG does not support them.

The heated political situation and tensions between the Albanian and Serbian communities have led to a number of inter-ethnic incidents; for example, buses transporting mainly Serbs from enclaves in Skenderaj/Srbica Municipality and returnee villages in Pejë/Peć region have been stoned on a regular basis. Other such incidents have been reported from the Municipalities of Gjilan/Gnjilane and Mitrovicë/Mitrovica. In November 2006, a school bus transporting Serbian and Roma pupils was stoned in the Municipality of Obiliq/Obilić. Often, the culprits are under-aged boys. There has been one instance where the President of one of the above municipalities became personally involved in this issue by talking to the families of the two boys responsible. Following this, stoning incidents in this municipality stopped for a while, but it appears that they have recently resumed. Unfortunately, such initiatives from the leadership of the respective municipalities are very rare, which again demonstrates that they do not really feel a sense of responsibility for resolving such issues.

In June, August, September, November and December 2006, there were a number of armed attacks, mostly against Serbian returnees in the Municipality of Pejë/Peć. One attack was recorded in the region of Gjilan/Gnjilane and there was a bomb attack on a café in the northern part of Mitrovicë/Mitrovica. In all of these incidents, a number of people were injured and one person was killed. However, it should be noted that the Kosovo Police Service could not verify that ethnic motives were behind these attacks in all cases.

Such incidents should not be seen as examples of a deterioration of the security situation. On the contrary, despite the continuing fragility of the general security situation in Kosovo, the freedom of movement for Serbs and Roma continues to improve, especially in the Municipalities of Prishtinë/Priština, Gjilan/Gnjilane and Prizren. On the other hand, the freedom of movement in the Municipalities of Pejë/Peć and Mitrovicë/Mitrovica still remains problematic for members of the above communities. Turks, Bosniaks, Gorani, Ashkali and Egyptians generally have no problems moving around in the areas they live.

Public transportation continues to pass through enclaves populated by Serbs and Roma without stopping. The only means of transportation for members of these communities are private vehicles, mini-buses, a railroad line and humanitarian bus transportation provided originally by UNMIK, and now by the Ministry of Transport and Post-Telecommunication as well as the Ministry of Returns and Communities. This follows the signing of an operational agreement for the transfer of responsibilities in August 2006. Both Ministries officially took over responsibilities for this form of transport from the UNMIK Department of Public Administration in January 2007. According to information received from the OSCE Mission in Kosovo, all but one of the 17 bus lines are operational and working well. The bus line not in operation, running from Leposavić/Leposaviq in northern Kosovo to the southern part of Mitrovicë/Mitrovica, was discontinued in June 2006 because nobody had been using it.

Safe and secure transport for minority communities, freedom of movement and the ability to communicate with municipalities and areas in Kosovo inhabited by other members of their communities play a key role in the protection of these people's rights. For this reason it is crucial to enhance this form of transport by including it into the general public transportation system. While enough funding has been allocated to ensure that the bus lines will continue to function until the end of this year, it is of paramount importance that the PISG continue to allocate sufficient funds for this transport in 2008 and coming years.

Real or perceived fears of being attacked also have a direct impact on the housing situation of many Serbs and Roma. Most houses destroyed during the March 2004 violence have now been rebuilt, but many of the owners of these houses have either sold them and moved away, or continue to live in containers in Serbian enclaves or villages because they are afraid to return.

The 36 orthodox churches, monasteries and other cultural and religious sites that were destroyed in March 2004 have now been partly or fully reconstructed, and work on all of them should be completed by the end of 2007.

From November 2006 to March 2007, however, several attacks on religious facilities were reported. The most recent one was a grenade attack on Deçane/Dečani Monastery, where fortunately the grenade missed the monastery and exploded in a nearby field. The police investigation into this case is ongoing. Such attacks continue to interfere with the

exercise of religious rights, mainly of the Serbian community. Many people are afraid to attend church services, especially if the churches are not located close to their homes.

Another issue related to the protection of religious sites involves the decision by UNMIK to reinforce the entrance and walls of the Orthodox Patriarchate in Pejë/Peć. In April and May 2007, the Municipality of Pejë/Peć issued decisions stopping this work, and it has not continued since.

With regard to the reconstruction of Roma, Ashkali and Egyptian houses destroyed after the end of hostilities in 1999, this reporting period finally saw the beginning of the reconstruction of the Roma neighbourhood (Roma Mahalla) in the southern part of Mitrovicë/Mitrovica. A large number of former inhabitants of the Mahalla had lived for more than six years in camps in northern Kosovo under appalling infrastructure and health conditions. The health risks for the camp's inhabitants, caused by high levels of lead pollution from a nearby waste dump, eventually led to considerable pressure from the international press and the Ombudsperson Institution. As a consequence, UNMIK began planning the transfer of these people to the former KFOR camp "Osterode", which offers much better hygiene and living conditions, including a sports field and women's centre. UNMIK also began planning for these people's return to the Roma Mahalla, following the reconstruction of the houses there thanks to donor funding. Most of the camp's inhabitants have now moved to Camp "Osterode", and eight families have returned to newly constructed houses and apartments in the Roma Mahalla. An additional 19 families have returned to the Roma Mahalla from IDP settlements in Serbia proper and Montenegro. The remaining families in Camp "Osterode" and those living in other camps in northern Kosovo still await their return to the Mahalla.

Almost all of the inhabitants of another mainly Roma and Serb IDP settlement, located in Plemetin/Plemetina, near Obiliq/Obilić in central Kosovo, have now moved to new apartments specially constructed for them. Once the remaining ten families have moved, the camp will probably be closed by the end of 2007. It is still not clear as to what will happen to the education facilities inside the camp once it is closed; the former camp inhabitants want to maintain the school, while the Municipality is offering transport to send the children to school in Obilić/Obiliq so that the Plemetin/Plemetina school can be shut down.

As far as the sustainability of life in Kosovo is concerned, unemployment still presents a phenomenon which affects Kosovan society in general. Usually, vulnerable groups suffer most from poor economic situations, and minority communities are no exception to this rule. Many communities, especially the Serb and Roma community, still do not have proper access to the regular Kosovan job market. Staff working for the Ombudsperson Institution assess that the unemployment rate within the Serbian community is as high as 70%; in some Serbian returnee villages, it may even be 100%. The main source of income in Serbian villages comes from agriculture, but in many cases the land owners do not have access to their land, either as a result of it being occupied by third persons, or because the land owners are afraid to cultivate their land if it is not located close to their

own villages. Thus many of the inhabitants of these villages live from social welfare or from collecting and selling metal scraps and wood.

In the Roma, Ashkali and Egyptian communities, the general rate of unemployment is even higher than in the average Serbian community, usually around 98%. Many varied factors are responsible for this situation, but the main one is most likely the lack of proper education and qualifications due to the fact that many members of these communities drop out of school at an early age. While some of these people occasionally find work as day labourers and some families do receive social assistance, it is rare for them to have proper jobs which will allow them to lead sustainable lives. Many of them also live from collecting and selling parts of discarded materials.

In order to boost sustainable economic development for minority communities in Kosovo, the European Agency for Reconstruction has initiated a number of programmes for providing members of the communities mentioned with individual and community grants to start, for example, new businesses and develop existing ones. These programmes are for both large and small businesses, and are implemented by the International Organisation for Migration (IOM). A number of people have already applied for grants within these programmes, a fact which may help to alleviate the difficulties faced by many members of minority communities.

In some cases, it appears that municipalities are even working *against* the sustainability of minority communities. Amongst a number of cases where infrastructural problems within these communities met with indifference on the side of municipal authorities, the plight of the Bosniak community in Župa valley in the Municipality of Prizren stands out. The Municipality decided to build over 400 holiday homes in this picturesque valley with the plan of renting them out in the future. Apart from the fact that such a large number of additional houses could well destroy the peace and remoteness of the valley, the main problem for the Bosniak villages there is the fact that these houses would deprive them of the valley's already scarce water supply. One can only hope that the Municipality of Prizren has some sort of plan to improve the water supply to the valley before the houses are completed.

Another issue which continues to be a problem for many members of minority communities all over Kosovo is that of health care. In this context, the parallel health care system managed and funded by the Ministry of Health of the Republic of Serbia still offers services to the Serbian community and other communities living in Serbian-populated areas, both in areas where Serbs form the majority and in the Serbian enclave of Gračanica/Graçanicë. This parallel structure is not recognised by UNMIK or the PISG and there is no cooperation between this health care system and the one run by the PISG. Staff working for parallel health institutions receive their salaries only from Serbia proper and have been refusing salary payments from the Kosovo Consolidated Budget since March 2006, after the Serbian government's Coordination Centre for Kosovo and Metohija (CCK) had told them that they would need to choose whether to take their salaries from the PISG or from Serbia proper. Previously, the staff of these health institutions had been receiving salaries from both the Kosovo Consolidated Budget and

the Budget of the Government of Serbia. It should be noted that the salaries from the Serbian Government Budget are higher than the ones previously received from the Kosovo Consolidated Budget and include social and other benefits.

Most of these parallel health care institutions primarily offer basic health care, although there are hospitals in Gračanica/Graçanicë, Laplje Selo/Lapllasellë and the northern part of Mitrovicë/Mitrovica.

One of the problems regarding health access of Roma, Ashkali and Egyptians is the fact that they often cannot apply for health insurance or social assistance due to the fact that many members of these communities are not registered. According to UNHCR estimates from mid-2006, approximately 20 – 40% of Roma, Ashkali and Egyptians are affected by this problem – in many of these cases, families have not registered for generations. This prevents these persons from enjoying many basic rights, such as the right to health care, education, and social protection. According to a report issued by the OSCE Mission in Kosovo on civil registration of these communities (following a monitoring exercise that took place from mid-December 2006 to mid-January 2007), these unregistered persons even risk becoming stateless.

In May 2006, to address this problem the Office of the Prime Minister issued recommendations to municipalities to ensure that pending registration proceedings for the above communities be completed within the coming six months and to exempt these people from the obligation of paying late fees for administrative services. Also, UNHCR initiated an action plan for a civil registration campaign targeting the Roma, Ashkali and Egyptian communities. The implementing partner, an NGO called Civil Rights Programme Kosovo, began implementing this campaign in September 2006. At the same time, the UNHCR has continued to advocate a flexible and harmonized approach to this issue in all municipalities in Kosovo.

According to this OSCE report, however, few of the municipalities in Kosovo had followed the recommendations issued by the Prime Minister's Office, whilst a number of municipalities claimed that they had never received them. In general, it appears that most municipalities are far from adopting a common approach and only a small percentage of them have taken measures to facilitate registration of members of the Roma, Ashkali and Egyptian communities. There appears to be a lack of flexibility in this respect within the various municipal registration offices.

This reporting period also saw the development in autumn 2006 of a joint strategy for the Roma, Ashkali and Egyptian communities by the Office of the Prime Minister, the OSCE Mission in Kosovo and the Kosovo Foundation for an Open Society. Areas covered by the strategy are: education, housing (including reconstruction and legalization of informal settlements), employment and economic empowerment, the specific situation of IDPs and refugees, the return of failed asylum seekers, registration/personal documents, security, access to social welfare, access to health, the specific situation of women, information (media), culture, political participation and representation, and discrimination. While there have been a number of representatives from the above communities involved in

discussions on this strategy, and while workshops have been held regarding different fields, it appears that the strategy is not progressing as expeditiously as hoped. Once it is running properly, however, one hopes that it will manage to resolve some of the most pressing issues in these communities, such as the issues of reconstruction, employment, registration, health access and education.

With regard to education in general, the situation is similar to that of the health sector - two education systems continue to exist in Kosovo. Parallel schools managed and funded by the Serbian Ministry of Education still exist in all regions where Serbs, Serbian-speaking Roma and Gorani reside. They follow the Serbian school curriculum, which following Kosovo's education reforms now differs from the one followed by other schools in Kosovo. The professional and technical staff of these schools receive their salaries from the budget of the Serbian Government. As in the health sector, they decided in March 2006 to retain their salaries from Serbia proper and reject salary payments from the Kosovo Consolidated Budget.

Most of the schools following the Kosovan curriculum do not offer lessons in Serbian, and at the University of Prishtinë/Priština, studies are pursued in Albanian only. For this reason, most children of the Serbian and some from the Roma and Gorani community can only be taught in their own languages if they attend parallel schools. Since the Kosovan curriculum now differs from the curricula in Serbia proper and Bosnia and Hercegovina and is not recognized in either place, students wishing to pursue higher education there can only do so if they continue to follow the Serbian curriculum.

With regard to the Gorani community, this problem has existed since 2003 and to date the two sides have not been able to find a compromise. There have been attempts by the Ministry of Education, Science and Technology to integrate Gorani pupils into the Kosovan system at a local level, but Gorani teachers, parents and pupils have persistently refused to accept the Kosovan curricula for the above-mentioned reasons. Gorani teachers also receive their salaries from the Serbian Government's budget, although the schools are administered by the Kosovo Ministry for Education, Science and Technology.

This created problems when, in autumn 2006, the Municipality of Dragash/Dragaš decided to advertise 161 teaching positions held by Gorani teachers who had refused to sign work contracts with the PISG due to their dissatisfaction with the Kosovo curriculum and the fact that this curriculum limits their pupils' options for higher education in the region. The local authorities forbade the existing teachers to follow the Serbian curriculum in schools in Dragash/Dragaš and insisted on hiring new teachers to replace them despite parents' complaints that the new teachers lacked proper qualifications. As a result, the majority of the Gorani pupils ended up boycotting these schools. It appears that now, a small number of pupils follow the Kosovo curriculum, while the vast majority is attending schools in villages. 130 secondary school pupils are now attending the school in the village of Milike near Dragash/Dragaš, which remains in an appalling condition.

These issues, however, do not concern all members of the Gorani community. Other Gorani children, along with members of the Bosniak and Turkish communities, attend schools that are integrated into the Kosovan education system. They follow classes in Albanian and some classes in Turkish and Bosnian based on curricula from Turkey and Bosnia and Herzegovina.

Such schools do not exist in all parts of Kosovo. In Prizren, for example, more than 1000 pupils of the Bosniak community are attending classes only in Albanian. The situation is similar in Gjakovë/Đakovica; in this town, Bosniak parents asked for supplementary classes in their own language in order to educate their children on their culture, history and tradition, but so far the Municipal Directorate for Education has refused this request on the basis of a lack of financial means.

Children of the Roma community either follow the Kosovo education system or attend parallel schools, depending on their proficiency in Albanian. The high level of poverty in this community continues to present serious difficulties for the education of its youth, and consequently many families simply cannot afford textbooks for their children. Roma children tend to drop out of school early, which contributes to the low level of education within this community. A similar phenomenon was noticed in the Ashkali and Egyptian communities.

Another problem that results from the high drop-out rate of Roma, Ashkali and Egyptian children and affects all of these communities is illiteracy. Despite the existence of a number of programmes and projects aimed at eliminating illiteracy, there are still many people in these communities who have great difficulties taking part in general public life due to their inability to read and write. This problem already existed before 1999, but a lack of security for parts of these communities and their children's lack of school attendance has aggravated this issue since.

As far as higher education is concerned, the situation is the same as in the last reporting period. Members of minority communities who do not speak Albanian cannot attend the University of Prishtinë/Priština, which means that most of them pursue higher education in the northern part of Mitrovicë/Mitrovica, Serbia proper or other countries in the region where the language is similar to theirs. There are some exceptions to this rule in the case of Bosniak students, who can attend courses in their own language at a business school in Pejë/Peć and a faculty for education in Prizren.

Regarding the use of languages of minority communities in Kosovo, this reporting period saw the promulgation on 20 October 2006 of the Kosovo Assembly's Law on the Use of Languages in Kosovo, which aimed to create an environment where all communities could enjoy their language identity. The Albanian and Serbian languages and alphabet remain the official languages in Kosovo and have an equal status in all institutions. The Bosnian, Turkish and Roma languages have the status of official languages in the institutions of those municipalities where more than 5% of the population speaks those languages. The Turkish language was even established as an official language in the Municipality of Prizren, where many members of the Turkish community live. Some

members of the Turkish community would like to have Turkish as an official language in other parts of Kosovo as well.

The Kosovo Assembly's Law on the Use of Languages prohibits any form of discrimination based on language and clearly provides for the public and private use of all languages. However, a number of its legal provisions are still not being respected adequately in practice. Practical cases demonstrate that with regard to the use of a number of minority languages (mainly the Serbian language and alphabet), not much has changed following the passing of the law. A report issued by the OSCE Mission in Kosovo on the implementation of the Law on the Use of Languages in December 2006 confirmed that the translation of laws, regulations and other documents is still not adequate and often of very poor quality; not all municipalities have translation units and the existing ones often lack experience and training. Following complaints received by the Ombudsperson Institution, it appears that many documents including bills and municipal decisions continue not to be translated, and it is rare for municipalities to respect the spelling of names in the Serbian, Bosnian or Turkish languages. In general, there appear to be no municipal language policies to fulfill the obligations set by the Law on the Use of Languages and little or no attempt to conduct any outreach activities (such as awareness-raising or training for municipal staff) for the respective communities, to ensure compliance with the law.

In terms of general communication issues, the situation within the postal and telephone services is still the same as it was in the last Annual Report. Different communities still use different systems. For the most part, the Albanian, Ashkali, Egyptian, Bosniak and Turkish communities use the services offered by Post and Telecommunications Kosovo, while members of the Serbian and Roma communities living in enclaves in central, northern and south-eastern Kosovo use the Serbian postal service. Regarding the mobile telephony, in November 2006 the Kosovo Agency for Telecommunications disconnected and confiscated the equipment of two mobile telephone operators from Serbia proper in Prishtinë/Priština and Gjilan/Gnjilane, which exclusively covered areas inhabited by members of the Serbian community. According to the Agency for Telecommunications, these companies were operating illegally in Kosovo. The main users of these operators were generally members of the Serbian community for whom this was the only connection with Serbia proper and the rest of Kosovo (since many of them do not have access to land lines). Members of other communities were also using these two mobile telephone operators.

After a few days, in fact, the above-mentioned emitters were connected again. The political issue of which mobile telephone companies may operate in Kosovo has still not been resolved and, as it stands now, members of the Serbian community can only use their mobile telephones in certain areas of Kosovo. This raises concerns about their safety and ability to communicate with other areas. The existing mobile telephone operators in Kosovo charge quite expensive rates and do not connect well with the mobile telephone operators in Serbia proper. It remains to be seen whether or not this problem will be alleviated once a second telephone operator starts functioning in Kosovo.

It is clear that, for the most part, the situation faced by Kosovo's minority communities has not changed substantially since the last reporting period. Despite some strategies and programmes to ensure the realisation of the rights of minority communities all over Kosovo, these rights are still being marginalised even though the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) has been directly applicable in Kosovo since August 2005. Representatives of these communities are still not sufficiently included in decision-making processes, particularly at the municipal level, and there is still a perceived lack of understanding of why they should be. Both the central and the municipal authorities must conduct more outreach activities to become aware of and properly deal with the specific problems faced by minority communities.

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

Almost eight years after the end of hostilities in 1999, there are still a large number of displaced people living inside and outside Kosovo. Some of them, mainly ethnic Albanians, were displaced during or shortly before 1998-99 while others, mainly Serbs and other non-Albanian communities, were displaced after the NATO intervention in 1999.

The right of all refugees and IDPs to return to their homes and places of origin is an internationally recognised right, and after spring 1999 many refugees who had previously fled to other countries did return voluntarily, sometimes benefiting from assistance from their host countries. Not all of them chose to do so, however, and several years after the end of hostilities, many of their host countries began returning them by force (repatriation). Some of these countries signed agreements to this effect with UNMIK and now, based on UNMIK statistics from the end of March 2007, 47 738 people have been returned to Kosovo in this manner. UNMIK continues not to accept forced returnees from the Serbian and Roma communities and of ethnic Albanians to places where they are a minority. 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. In addition, UNMIK urges that the repatriation of the elderly, the ill, and separated children for whom relatives and care-givers have been identified may only be effected if the care and protection provided for these people is not diminished as a result.

In order to avoid forced returns, a number of host countries continue to create incentives for voluntary returnees. One recent project co-funded by the EU and the German and Slovenian Governments led to the opening of a repatriation office in the Roma Mahalla in the southern part of Mitrovicë/Mitrovica. While there is a focus on minority returnees, this office also assists other returnees and offers medical and psychological assistance.

When talking about returns in Kosovo, the focus is usually on voluntary returns. Many internationally funded projects have been initiated over the last few years to ensure that people who were displaced before, during or after spring 1999 could return to their homes. The biggest challenge in this respect is the return of members of minority

communities, in particular the Serbian and Roma, but also the Ashkali and Egyptian communities. According to UNHCR estimates, 245 353 IDPs from these communities were displaced after the end of hostilities in 1999; 207 069 fled to Serbia proper, 16 284 went to Montenegro, and 22 000 remained in Kosovo. Due to the breakdown of their relationship with the Albanian majority population in Kosovo before and during the fighting in 1998-99, these IDPs still generally suffer from a real or perceived fear for their safety when considering return. The current political situation, marked by constant discussions on the future status of Kosovo, only adds to the general tension and makes it very difficult for displaced members of minority communities to assess whether or not sustainable return to their homes is at all possible. Another issue that must be considered is Kosovo's difficult economic situation.

Reports filtering back from those who have returned only add to the concerns of potential returnees. In June 2006, a Serbian returnee was murdered in his house in Klinë/Klina, and in September 2006 two Serbian returnees' houses suffered a bomb attack that injured four people. These incidents were widely condemned in Kosovo by both international and Kosovan politicians and have thus far not reoccurred; nevertheless, potential returnees often fear that such events could happen again. Many returnees continue to suffer from an irregular pattern of harassment including intimidation, attacks on life and property and the stoning of buses. Such incidents lead many returnees to doubt whether it is at all possible for them to enjoy total security. Nevertheless, it should be noted that the overall security situation has continued to improve over the last few years and that the number of attacks on returnees has fallen.

Returnees and displaced persons of mainly Serbian origin are still having difficulties accessing their agricultural land property, either because it is occupied by others or because it is not located in the direct vicinity of their areas of residence. The Kosovo Property Agency (KPA) is now responsible for the repossession of such land, and once it has started evicting illegal occupants from these areas, the issue of access to land for some of these people may improve.

Returnees of mostly Serb and Roma communities still harbour real or perceived fears for their security. These fears generally prevent them from moving around Kosovo freely and impede access to the employment market and public services. As a protective measure, the Kosovo Police Service (KPS) conducts frequent and intensive patrols in areas inhabited by returnees. So-called humanitarian bus lines funded by the Kosovo Consolidated Budget connect returnee villages with larger Serbian enclaves where the returnees can buy groceries and other necessary items or visit health care centres.

In order to fulfill its mandate of securing the safe and unimpeded return of all refugees and displaced persons to their homes, UNMIK, as part of its increasing cooperation with the PISG, has drafted and redrafted many strategies and projects to ensure the return of members of minority communities to Kosovo.

The most recent strategy and guideline in this respect is UNMIK's revised Manual for Sustainable Return of July 2006. It is based on the principles that returns must be

sustainable and that this is only possible if returnees are able to take a free and informed decision on whether they wish to return or not, and on where they want to return to (preferably their place of origin). The IDPs themselves should be the driving force behind such return, although it is also important that the entire community of the place to where they wish to return is engaged in the process. There is a great focus on preparing the environment before returns take place, as well as on outreach activities, inter-ethnic dialogue and so-called “go and inform visits” and “go and see visits”, where people wishing to return can visit the municipalities to where they wish to return and assess the situation themselves.

The Manual foresees a greater involvement of the PISG in the returns process, both at a central and municipal level. Municipal working groups manage the return of people to their municipalities. These working groups are made up of representatives of the respective municipality, as well as IDPs, the KPS, the international community and civil society. At a central level, voluntary return projects and related initiatives are reviewed by the Central Review Mechanism chaired by the Ministry of Returns and Communities, while a Steering Group co-chaired by the SRSG and the Prime Minister and consisting of several Ministries, international community representatives, the KPS and the KPA reviews the work of the Central Review Mechanism as well as the returns process and related policy as a whole.

Despite these good intentions, however, UNHCR statistics show that only 16 661 IDPs and refugees of minority communities returned voluntarily to their places of origin in Kosovo between 2000 and the end of May 2007. This number includes 7 288 Serbs, 4 428 Ashkali and Egyptians, 2 113 Roma, 1 447 Bosniaks and 708 Gorani. This is only 6, 76% of 245 353 displaced persons overall. While the number of returns reached an all-time high in 2003 with 3 556 people choosing to return, numbers have decreased since the targeted inter-ethnic violence of the March 2004 riots. The lowest return rate was noted during 2006 and January–May 2007, when only 2 098 persons returned over a year-and-a-half time period, most of them from the Roma, Ashkali and Egyptian communities.

Most IDPs from Kosovo’s Serb and Roma minority communities - but also some Ashkali and Egyptians - still live with family or friends in Serbia proper or in areas in Kosovo where Serbs form a majority. A small percentage continue to reside in collective centres in Serbia proper or Montenegro, often in poor living conditions. Although these people generally have the right to social services, education, healthcare, freedom of movement, housing, employment and justice in Serbia proper, discrimination by the local population or bureaucratic procedures often prevent them from exercising these rights properly. If they cannot present proper documentation, they have difficulties receiving certain benefits (such as pensions) or finding secure jobs. Poverty is wide-spread among people of this group and most of them consider that they do not receive enough support from the Serbian government and humanitarian aid agencies.

This lack of documentation is most widespread in the Roma, Ashkali and Egyptian IDP communities. Some of these people have no civil documentation at all, and thus find it

impossible to obtain a citizenship certificate in Serbia proper, essentially rendering them practically stateless within their own country. Many children from these communities speak only Albanian and are not able to attend Serbian schools. Due to the absence of appropriate schooling in Albanian and the lack of schooling in the Serbian language, many of them are now growing up without a proper education.

According to the UNHCR in Montenegro, most of the IDPs that arrived in Montenegro in 1999 are still living there. Around 6 500 IDPs of the Roma, Ashkali and Egyptian communities staying in settlements also risk becoming stateless due to a lack of proper documentation. For now, many children who cannot be registered are already stateless and are thus not able to exercise their civil, economic, social and political rights. In some cases, their parents never registered while they were still living in Kosovo; in other cases this documentation was lost when they fled their homes in 1999. In order to resolve this problem, UNHCR initiated a free legal aid programme in 2006 to help find lost documents and provide assistance in issuing new documents in Montenegro and Serbia proper. Since November 2006, UNHCR's legal implementing partners have helped around 150 people in Montenegro to obtain proof of birth and/or nationality.

Based on hitherto unconfirmed information, it appears that the Government of Montenegro has initiated several projects in accordance with a national strategy aiming at a permanent resolution to the issue of IDPs in Montenegro. The Montenegrin Commissioner of Refugees and IDPs is reported to have been in contact with UNMIK, the PISG and UNHCR, as well as with the municipalities of Pejë/Peć, Klinë/Klina, Deçan/Deçane and Gjakovë/Djakovica. Apparently, "go and see visits" are ongoing, and according to unconfirmed data more than 400 IDPs from Montenegro are now able to return. Allegedly, 80% of these potential returnees are members of the Roma, Ashkali and Egyptian communities, while 20% are Serbs and Montenegrins.

A protocol on the voluntary and sustainable return of IDPs to Kosovo signed between the PISG, UNMIK and the Government of Serbia on 6 June 2006 has so far not managed to increase returns from Serbia proper to Kosovo. This protocol acknowledges the obligation of all parties to provide the safe and free return of IDPs to their places of origin in a safe and dignified manner, as well as the return of their property rights. It also includes the obligation to create proper conditions for the freedom of movement and establishes mechanisms enabling cooperation between the receiving municipalities in Kosovo and the current host municipalities in Serbia proper.

In part, this protocol's lack of success is probably due to the nature of the document – as a policy guide issued by UNMIK and the Office of the Prime Minister, it has not been approved by the Kosovo Assembly. Thus, many municipalities do not consider it to be legally binding and have not included it into their returns strategies.

As far as IDPs in Kosovo are concerned, most Albanian IDP families continue to live with relatives or in rented houses or apartments, mainly because their own houses or apartments were destroyed during the fighting in 1999 and are yet to be reconstructed. In May 2007, the Ombudsperson Institution issued a special report concluding that the fact

that many municipalities across Kosovo had promised to reconstruct people's houses had raised a legitimate expectation on the part of these individuals. The fact that this promise was never fulfilled violated their rights to property under Article 1 of Protocol No. 1 to the European Convention on Human Rights, which also protects legitimate expectations to obtain property.

Moreover, many Serbs, Roma, Ashkali and Egyptians continue to live in containers and collective centres in Gračanica/Gračanicë and the Municipality of Fushë Kosovë/Kosovo Polje in central Kosovo, as well as Štrpce/Shtërpce and Prizren in the south. These settlements include displaced persons from 1999 and others who fled their homes during the riots of March 2004. In the case of the latter group, a large number of their houses have been reconstructed by the Government of Kosovo, but not all owners of these reconstructed houses feel that they would be safe returning, especially those persons formerly living in Fushë Kosovë/Kosovo Polje and the village of Svinjare in the Municipality of Mitrovicë/Mitrovica. A similar situation exists for many people displaced in 1999 who have now received decisions from the UN Housing and Property Directorate (HPD) that allow them to repossess their houses or apartments. These persons prefer to leave their houses under the administration of the HPD's successor, the Kosovo Property Agency (KPA), or are planning to sell their properties and move to Serbian-populated areas in northern Kosovo or Serbia proper.

Some of the victims of the March 2004 violence have now received compensation for destroyed commercial property, most notably in the Municipality of Fushë Kosovë/Kosovo Polje. In other cases within this Municipality and the Municipalities of Prishtinë/Priština and Obiliq/Obilić, compensation proceedings for damaged and destroyed furniture and other movable property are ongoing. A number of people with similar problems have been included in the list for reconstruction and compensation for damages but are still waiting for results. Although the Ombudsperson Institution has been asking for more expeditious compensation proceedings in four such cases since 2005, there has been little response from the PISG.

Similar compensation claims pending before the courts in Kosovo since 1999 are still not being processed since proceedings were suspended following a circular issued by the UNMIK Department of Justice in 2005. While this circular intended to minimise the burden on local courts caused by this large number of cases, there still appears to be no alternative strategy on how to resolve them.

The divided town of Mitrovicë/Mitrovica in northern Kosovo contains both Albanian and non-Albanian displaced persons who fled respectively to the southern and the northern part of town during and after the fighting in 1999. Due to security concerns, neither side is yet willing to return to the other part of town. In a number of cases, their properties are still occupied, often by other IDPs. In two cases involving IDPs from the northern part of town currently occupying apartments in southern Mitrovicë/Mitrovica, the Acting Ombudsperson asked the Prime Minister to ensure that these people be exempted from the obligation to pay rent until they received rental in turn from persons occupying their apartments in northern Mitrovicë/Mitrovica.

Up until recently, many displaced Roma, Ashkali and Egyptians were living in camps in different parts of Kosovo. Camp Plemetin/Plemetina in central Kosovo, which also housed Serbs and some other non-Albanians under very poor sanitary and health conditions, has now almost ceased to exist; most of its inhabitants were transferred to apartment houses nearby in mid-2006 and early 2007. The ten remaining families living in the camp will receive proper housing in the near future and the Municipality of Obiliq/Obilić plans to close the camp at the end of 2007.

The majority of people previously living in camps in northern Kosovo have now been moved to the former KFOR Camp Osterode located nearby. For over six years, these people were living in unspeakable conditions, with constant exposure to lead pollution emanating from nearby waste dumps of the Trepça mining complex. Now, 105 families have resettled in Camp Osterode. Two of the camps in northern Kosovo have been closed and in the remaining camp Česmin Lug, approximately 40 families still wait to be relocated to Osterode.

Camp Osterode is a well-organised and properly managed camp. Medical treatment has been offered to camp inhabitants to combat lead poisoning. The children are able to attend their old school in the northern part of Mitrovicë/Mitrovica with the aid of transport organised by the school principal, and there is a pre-school on the camp site. Complaints about the number of toilet facilities have decreased after the camp management installed a number of new ones. An official working for the camp management informed the Ombudsperson Institution that there were still problems with the water and plumbing supply, although one of the main reasons for this appeared to be the constant theft of parts, keys and locks. There have been some recent complaints regarding the lack of medicine and the closure of a medical centre in Camp Osterode as a result of budget cuts.

It should be noted that Camp Osterode is only a temporary settlement until the majority of its inhabitants can return to their homes in the Roma Mahalla neighborhood in the southern part of Mitrovicë/Mitrovica; this neighborhood had been completely destroyed after the end of hostilities in summer 1999. The reconstruction of the Roma Mahalla is one of the largest return projects of the last few years and is still ongoing. Eight families from Osterode have now returned to newly constructed houses and apartments; an additional 19 families have returned from settlements for displaced persons located in Serbia proper and Montenegro.

One of the remaining camps for Roma, Ashkali and Egyptians in northern Kosovo is located in Leposavić/Leposaviq. In this camp, living conditions are also quite poor, although not as bad as in other camps in northern Kosovo. Most of the inhabitants of this camp used to live in the Roma Mahalla in the southern part of Mitrovicë/Mitrovica and are currently waiting to return there.

Aside from the Roma Mahalla returns project, information received from the Ministry of Returns and Communities reveals that there are currently ongoing projects for return to

the municipalities of Prizren, Klinë/Klina, Fushë Kosovë/Kosovo Polje and Vushtrri/Vučitrn. According to this Ministry, five ongoing returns projects will be realised in 2007. Twenty-four houses will be reconstructed in Vitomiricë/Vitomirica in the Municipality of Pejë/Peć for 18 Serbian, 3 Bosniak and 3 Albanian returnee families. In the villages Nakarade/Nakaradë and Dobri Dub/ Lismir in the Municipality of Fushë Kosovë/Kosovo Polje, the Ministry plans to reconstruct houses for 35 Serbian IDP families; in the town of Prizren, 15 houses will be reconstructed for Serbian IDPs. Houses will also be reconstructed for 19 Serbian and 3 Albanian families in the village of Berkovo in Istog/Istok Municipality. Returnees from the Roma, Ashkali, Egyptian and Turkish communities will benefit from the reconstruction of 20 houses in Vushtrri/Vučitrn. All of these projects are slated for completion by the end of 2007. Moreover, according to the Ministry of Returns and Communities, 46 families who have been living in Montenegro since 1999 and who are originally from Pejë/Peć wish to return to this town. Their request will be taken into consideration for the return projects in 2008. With regard to returns to the village of Babuš/Babushi in the Municipality of Ferizaj/Uroševac, the Ministry has stated that all requests made by the returnees in this village have been met and that keys for 74 houses would be handed over to these Serbian returnee families at the end of June 2007. According to information received from the Ministry on 23 June 2007, 62 out of 74 families have now received keys to the newly rebuilt houses in this village.

It appears that during the reporting period, there were a number of spontaneous voluntary returns from surrounding countries of displaced Roma, Ashkali and Egyptians. So far, however, the returns project to the Roma Mahalla in the southern part of Mitrovicë/Mitrovica has been the only organised mass return project for these communities.

In practice, the level of outreach and involvement of IDPs in returns varies greatly from municipality to municipality. In one case, the Municipality of Istog/Istok has conducted several outreach activities to persuade the former inhabitants of Rudesh/Rudeš village to return; these are mostly persons from the Roma and Egyptian community currently living in settlements in Montenegro. The Municipality has made several attempts to create conditions for their return, *inter alia* by requesting UNMIK's approval for a so-called "land-swap". This would involve exchanging the land on which the village is built with municipal land, since only a small part of the former inhabitants of Rudesh/Rudeš can prove ownership of the land on which they used to live. Recently, however, the project and the intended land-swap have been suspended due 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), the protective zone around the nearby Gorioč Monastery has been extended quite far to the southeast to include Rudesh/Rudeš village. In this example, the right of the inhabitants of Rudesh/Rudeš to return appears to have been overruled by other considerations. Should UNOSEK's proposal be accepted, this returns project may be halted altogether. Before this happens, there needs to be further discussion on how to guarantee these persons' right to return and at the same time ensure the safety of Gorioč Monastery. A similar situation might arise in future with settlements of Serbian IDPs in the "special zoning

area” around the Serbian Orthodox Church Monastery Visoki Dečani, the remains of which were recently destroyed by KFOR.

So far, there has not been much return to urban areas in Kosovo. Many potential returnees of minority communities, mainly Serbs, fear for their safety if they were to return to apartments or houses in towns. It appears that the Ministry of Returns and Communities intends to increase return to urban areas in the future and has severely criticised some municipalities for allegedly obstructing the process of urban return.

As these cases demonstrate, there are a number of projects for persons who wish to voluntarily return to Kosovo. On the other hand, assistance and support for people returned to Kosovo forcibly has been rudimentary at best. While UNHCR and IOM continue to provide initial support and advice to forced returnees, the issue of how to integrate thousands of people repatriated every year continues to be sidelined by both UNMIK and the PISG. So far, neither UNMIK nor the PISG have allocated funds to enable these people to lead sustainable lives. Many children of forced returns continue to encounter difficulties with regard to school education in Kosovo because they speak the language of their former host country better than they speak Albanian or Serbian.

Inexplicably, the issue of forced returns or forced repatriation has, from the beginning, been treated separately from voluntary returns. So separately, in fact, that none of the organs usually competent for returns feels responsible for this large group of returned people. In cases where forced returnees have come to the Ombudsperson Institution, staff found that UNMIK considered the question of integration and support to these people as falling under the sole competences of the municipalities. The municipalities, on the other hand, still suffer from a chronic lack of funds and complain that they are often not informed about repatriations beforehand. As a result, the municipalities have also not done much to help these people. The Ministry of Returns and Communities does not consider the issue of forced returnees as falling under its competences.

In many cases, the houses belonging to forced returnees are still in ruins. They remain displaced and have so far had no other choice but to turn to relatives, acquaintances or other forms of assistance. In many cases, those who could did try to return to their former host countries by whichever means possible, usually illegally. While UNMIK has meanwhile set up a Repatriation Working Group to support and advise the PISG on future migration policies and practices, this still does not resolve the problems faced by persons who have already been repatriated to Kosovo. A Steering Group consisting of UNMIK and various Ministries has been formed to draft a Strategy for Reintegration of Repatriated Persons, which will help ensure that forced returnees will have adequate access to information, civil documentation, assistance and social services, so that they can reintegrate in their places of origin and rebuild their lives. Unfortunately, this strategy is still in the drafting stages and until it is completed, the dire situation of most repatriated Kosovans is unlikely to improve. There has also been no support from former host countries to improve living conditions for forced returnees in Kosovo, possibly because they only want to “reward” voluntary returnees.

The challenges of the returns and repatriation processes are indeed manifold, and IDPs across Kosovo face difficulties related to property, housing and in some cases security and freedom of movement. While it is admittedly a difficult field, the PISG and especially the municipalities need to take more responsibility for the plight of IDPs and returnees, both voluntary and involuntary. As far as forced returnees are concerned, it is imperative that UNMIK and the PISG, with the help of experts and donors, complete their strategy quickly in order to assist these people in integrating into Kosovo society.

### **Property and housing issues**

Ensuring the inviolability of property rights in Kosovo remains a great challenge. Due to the general shortcomings in Kosovo's rule of law, property owners are only protected if they are able to protect themselves. The competent public authorities are often accused of corruption, nepotism and failing to react to blatant violations of the existing laws, and this situation can only improve if the authorities begin assuming greater responsibility for upholding those laws.

This failure to act responsibly is especially apparent in the field of illegal construction, which still runs rampant throughout Kosovo. During the reporting period, some municipal inspectorates were quite active, occasionally demolishing illegally constructed buildings or preventing construction from being completed. Such cases were rare, however, and do not demonstrate a general trend of enforcing the rule of law.

The obligation to request a building permit before beginning construction of a building is often disregarded, and large apartment buildings continue to be built anywhere and everywhere with no special regard to the general principles of urban planning. The distance between these newly-built buildings and neighbouring properties is more often than not inadequate, which means that construction work on larger buildings continues to cause damage to neighbouring buildings. In such cases, property owners complain that municipal inspectorates rarely address their complaints properly.

When representatives of the Ombudsperson Institution raised this issue with the competent municipal inspectorate officials, the officials stated that they were addressing the complaints of persons whose properties had been damaged by construction work on taller buildings. At the same time, the municipal officials alleged that it was difficult to ensure that their orders were followed in the absence of a functioning inspection police. A continuing problem is that there is no proper legal remedy for persons complaining about the negative effects of illegal construction on their property.

The problems cited in the last Annual Report with the expropriation of private properties continue. The applicable Law on Expropriation of the Former Autonomous Socialist Province of Kosovo of 1978 is not being followed, and municipalities continue to expropriate people before determining the common public interest that justify such measures. Property owners are often not informed about municipal decisions to expropriate, nor are they informed of the further expropriation procedures. Only rarely

have there been cases where individuals received property as compensation for expropriated properties. For the most part, individuals are expropriated by their municipalities without reason or compensation. At the beginning of 2007, the Ministry of Local Government Administration became involved in the issue and urged the municipalities to comply with the existing law; thus far, however, there has not been much of a positive response to this request in practice.

One example of a *de facto* expropriation unfolded in March 2007 in the Municipality of Klinë/Klina. In order to construct a new building, the Municipality decided to destroy a house belonging to an individual not living in Klinë/Klina at the time without informing the individual of its intentions. The destroyed house was under the administration of the Kosovo Property Agency (KPA). (The KPA is an independent agency created by the UN and the successor to the Housing and Property Directorate (HPD); it was established to deal with a certain category of repossession claims for residential properties). A third person had been allocated the property on humanitarian grounds. Despite the fact that the KPA notified the Municipality beforehand and stressed that the property in question was under KPA administration, the Municipality destroyed the house, thereby violating its obligation to respect the applicable law and the rule of law in Kosovo generally.

Another example of the limitation of property rights is the declaration of the so-called “special zoning area” around the Serbian Orthodox Church monastery Visoki Dečani in the Municipality of Deçan/Dečani. This area aims to protect both the cultural heritage of the monastery and the natural heritage of the canyon in which it is located. When issuing his decision, the SRSG stated that the area would not affect private ownership rights, but would oblige potential investors, owners and users of all land in the area to follow Kosovo laws and international standards on the preservation of cultural and natural heritage. In March 2007, however, KFOR demolished the premises of an already existing former socially-owned enterprise and the remains of residential properties belonging to Serbian displaced persons residing outside Kosovo. Presumably, the property owners have not been informed of these measures. Should they express an interest in returning to Kosovo, a decision will need to be made on where they would return to – if they are unable to return to their original homes, these people will need to be compensated.

Similar problems might arise in future with regard to the limitation of property rights of persons whose properties lie in the so-called “protective zones” included in the comprehensive proposal for the Kosovo Status Settlement (prepared by the United Nations Secretary General’s Special Envoy for Kosovo, or UNOSEK). Like the “special zoning areas” mentioned above, these “protective zones” intend to preserve and protect the area around a select number of Serbian Orthodox Church monasteries, churches and other religious sites, as well as historical and cultural sites of special significance for Kosovo Serbs. Should this proposal be accepted, those persons owning property in these areas will not be able to initiate certain forms of industrial or commercial construction or development. Without discounting the necessity and positive intentions of such protective zones, the fact that such limitations would lead to a decline in the value of the property should not be forgotten, and the respective property owners should be compensated for this loss of value.

Taking into account the proposal and its annexes, there are also cases where it appears doubtful that the extent of some of the protective zones is really necessary to ensure the peaceful existence and functioning of the above sites. In the case of the Serbian Orthodox Church Gorioč Monastery near Istog/Istok in western Kosovo, the protective zone proposed by UNOSEK inexplicably extends a lengthy distance to the south-east; the zone encircles the facilities of a former socially-owned enterprise as well as the Roma and Egyptian village of Rudesh/Rudeš. The village was abandoned by its population after June 1999 following several threats directed towards its inhabitants. It appears that return proceedings initiated by the Municipality of Istog/Istok have now been delayed due to the inclusion of both the village and the socially-owned enterprise into the protective zone. The necessity of depriving the former inhabitants of the village and the socially-owned enterprise of their properties and homes should be examined before the proposal is accepted. If maintaining the protective zone in its current form is considered necessary, there should be extensive negotiations between the Municipality, the socially-owned enterprise and the representatives of Rudesh/Rudeš village to find a solution to this issue without compromising the inhabitants' right to return to the village.

In general, many houses that were destroyed before, during or immediately after the fighting in 1998-99 have not been reconstructed. For persons who fled their homes in spring 1999 (mostly Serbs and Roma), the reconstruction of homes depends on their willingness to return to Kosovo. The issue of returnees is covered in greater detail in this Annual Report's section on displaced persons and conditions for their return.

The majority of ethnic Albanians who were displaced during the fighting have demonstrated a willingness to return to their homes. Many houses were reconstructed after the NATO bombing in 1999, a time when Kosovo had been receiving substantial international donor funds. That money has now been spent, and for various reasons a substantial number of home-owners have never benefited from these donations. While municipalities all over Kosovo have repeatedly promised to reconstruct these houses, they have never taken any steps to do so. It is common knowledge that the small budgets of the municipalities often prevent them from helping their constituents. And yet these same municipalities often have not considered reconstruction to be a pressing issue, as most people have since found temporary accommodation with relatives or in abandoned houses. Nevertheless, the municipalities have raised public expectations by repeatedly promising to reconstruct houses, and the owners of these homes now have a legitimate expectation of this happening. Moreover, the HPD has now evicted many of the people illegally occupying abandoned property following repossession claims submitted to this body by the rightful owners. In such a situation, it is surprising that none of the municipalities concerned - with the exception of the Municipality of Prizren - have included reconstruction aid in their annual budgets. The central authorities consider this issue to be a problem for the municipalities to deal with, and do not feel responsible for contributing to its resolution. In general, most municipal and central authorities have not demonstrated a political will to resolve the issue. In a special report issued in May 2007, the Acting Ombudsperson found that the failure to even attempt to resolve an issue affecting people throughout Kosovo constituted a breach of the house-owners' rights

under Article 1 of Protocol No. 1 of the European Convention on Human Rights, which protects property rights including the legitimate expectation to a property right. The Acting Ombudsperson recommended *inter alia* that the respective municipalities devise strategies to obtain enough donor and other funds to fulfil the promises given. Since this is a widespread problem, the Kosovo government and municipalities, in cooperation with international donors, must act quickly to develop a housing strategy addressing this issue.

For those people whose houses have not been reconstructed, for other persons requiring accommodation, there are limited options for receiving shelter from municipalities. Mandated to decide on repossession claims related to residential property, the HPD has repeatedly stated that providing shelter for humanitarian cases is not part of its mandate and that this applies equally to its successor, the KPA. Moreover, individuals approaching municipalities in Kosovo very often end up being shuttled from one administrative office to another without receiving any proper assistance. Municipalities again cite lack of funds as the reason for such few shelters having being established. It should also be noted that there has been little or no attempt to allocate money for shelters or to find donor funding. These cases again demonstrate most municipalities' general lack of responsibility for the welfare of their inhabitants. In one case in Vushtrri/Vučitrn, the Acting Ombudsperson intervened with the Municipality so that families living under appalling conditions in the so-called "Sarajevo Barracks" could move to municipal housing. However, there are many municipalities in which such housing simply does not exist and where the Ombudsperson Institution's interventions do not yield such positive results.

While a number of cases before the Ombudsperson Institution concern shelter and the failure of municipalities to reconstruct houses, a number of cases involve the HPD, whose mandate officially ended in December 2006. Based on UNMIK Regulation No. 2006/10 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, promulgated on 4 March 2006, the KPA is mandated to deal with repossession claims related to the categories of real property mentioned in the title of the UNMIK Regulation (unlike the HPD's mandate, which dealt with claims involving residential property). According to information received from the KPA in June 2007, decisions have been issued in all cases previously pending before the HPD, and all but 100 of them have been executed. These remaining cases are currently in execution proceedings.

As mentioned in the last Annual Report, the HPD also dealt with claims of property holders who were deprived of their property or right to property due to the discriminatory practices of the Milosevic regime in 1989-1999 (so-called Category A claims). The HPD has decided on all of these cases, but not always in the category A claimants' favour. It appears that for compensation and related matters, this group of persons can still pursue their claims before the competent courts. The HPD is in the process of collecting these cases for delivery of all case files to the courts. It seems, however, that the courts are still waiting for legislation (presumably an UNMIK Regulation) to be passed which addresses such claims.

The KPA's tasks are to assist the courts in resolving conflict-related ownership claims with respect to private immovable property, including agricultural and commercial property, and claims involving property users' rights to the above forms of property for the time between 27 February 1998 and 20 June 1999. Decisions on the findings and conclusions of the KPA are to be made under the authority of the Kosovo courts. Thus far, the KPA has received 23,652 cases. In some of these cases, decisions have been issued but have not yet been executed.

In mid-June 2007, the KPA agreed to the Ombudsperson Institution's request that its staff could enjoy unhindered access to any information required by the Institution to complete its investigations without having to undergo a special procedure to acquire that information. This was a great step forward in the Ombudsperson Institution's cooperation with the KPA.

The Ombudsperson Institution has thus far received no complaints addressed against the KPA. Nevertheless, it appears that the KPA is already encountering certain difficulties in fulfilling its mandate, since many courts have not yet transferred cases to the Agency. Further, there appear to be over 5000 requests for HPD administration of residential properties that are now pending before the KPA. Such administration usually involves renting apartments or houses to third persons. The monthly rent is then forwarded to the respective owner of the property. So far only 100 of these houses and apartments have been rented out. Hopefully the KPA will manage to implement the existing rental scheme more widely. While there have been complaints that the rental prices are too high, further investigations into this issue have shown that the rental rates correspond to the municipal rates of property tax collection.

In cases where people prefer to sell their properties rather than having them administered, there have been many instances of fraudulent transactions; authorisation letters for legal representatives are often forged, and sometimes house-owners living outside Kosovo (mainly of them displaced Serbs) do not know that their properties have been sold in their absence. Other forms of fraudulent transfers include falsified contracts, authorisation letters and identity papers. The large number of fraudulent documents circulating in Kosovo has led to considerable confusion regarding ownership. In some cases, three or four parties or individuals claim ownership of the same property.

Along with the falsification of documents, many properties are being sold under duress. If the person wishing to buy the property has influence and power, there is little that a court can do to help the property owner. There are examples all over Kosovo where intimidated property owners have sold their houses or property under duress. This appears to be happening recently on a larger sale in the northern part of Mitrovica, where the victims are usually ethnic Albanians or other non-Serbs.

In order to prevent such sales, UNMIK continues to implement UNMIK Regulation No. 2001/17 on the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo. According to the Regulation, all property sales in certain areas designated by UNMIK (mainly areas inhabited by minority communities) need to

be registered by a competent UNMIK staff member. In certain cases, this staff member is permitted to refuse registration, *inter alia* in cases where he/she suspects that a contract has been signed under duress, where the sale could lead to a security breach, where the sale price is unreasonable or where the funds or motives for the sale are put into question. The compatibility of this UNMIK Regulation with individuals' right to property was questioned numerous times by the former international Ombudsperson in Kosovo. Another problem with regard to this UNMIK Regulation is that it is implemented in a somewhat arbitrary manner; in some cases, it has been applied even if the property is not in one of the specific geographical areas designated by UNMIK. Unfortunately, due to the general immunity of UNMIK, persons limited in the exercise of their property rights cannot take such matters to court.

It is also questionable whether UNMIK Regulation No. 2001/17 really manages to stop people from selling their properties, even in cases where one or more of the reasons preventing sales according to the Regulation exist. In many cases these properties change hands informally, even if the sale has been expressly forbidden by UNMIK.

There are certain areas which do not fall under UNMIK Regulation No. 2001/17 but in which UNMIK would like to prevent sales of properties regardless. This occurred in the case of the Roma neighbourhood (Mahalla) in the southern part of Mitrovicë/Mitrovica. The neighbourhood had been completely destroyed by fire in the aftermath of the fighting in 1999. Many of its inhabitants had fled Kosovo, or had been forced to live in IDP camps in northern Kosovo for more than six years under unbearable sanitary and health conditions. In 2005, following considerable pressure from international media and the Ombudsperson Institution, UNMIK and other sections of the international community began organising the reconstruction of the Roma Mahalla and this year, a number of people were able to move into these reconstructed houses. The houses were rebuilt following the signing of tripartite agreements between the property owners, the international donors and the Municipality of Mitrovicë/Mitrovica. As opposed to similar agreements made with returnees in other parts of Kosovo or the region, the tripartite agreement for persons wishing to return to the Roma Mahalla did not include a clause prohibiting the sale of property for a certain time. This became an issue when one of the Mahalla inhabitants sold his house within a short time following its reconstruction.

In order to prevent such transactions from taking place, UNMIK representatives met with representatives of the District Court in Mitrovicë/Mitrovica to ask them for advice in this matter. The President of the District Court informed them that, based on the current legal situation, nothing could be done to prevent such sales. The donors could, however, add an annex to the tripartite agreement prohibiting the sale of such property without the approval of both the donor and the Municipality by sending a letter to the courts requesting that they only register sales properties if there is evidence of such consent. In such a way, the sale of properties could be limited. The President of the District Court in Mitrovicë/Mitrovica also offered to suspend all registration of property sales in the Roma Mahalla until the above actions were completed.

Apart from the fact that such conduct risks compromising the independence of the judiciary, it raises serious issues with regard to the property rights of the persons who benefited from the tripartite agreement. UNMIK's argument that the tripartite agreements could be interpreted to restrict the sale of constructed houses is not supported by the wording of these agreements. On 21 May 2007, the Acting Ombudsperson sent a letter to the SRSB in which he expressed his concerns regarding this matter. He expressed his doubts as to whether any legal basis existed requiring the consent of third parties before selling property if this had not been included in the original sales contract. The Acting Ombudsperson added that any annex attached to an already signed contract would not be valid unless signed by all contracting parties. So far, there has been no official response to this letter. Concluding such special contracts could again lead to a situation where the beneficiaries of tripartite agreements could feel pressured to sign such agreements, again compromising the free exercise of their property rights. It is difficult to ensure that the donors' interests are taken into account in this case (having people live in the apartments and houses and the rights of the property owners to use their properties as they see fit). From a human rights perspective, there does not seem to be a proper justification that allows UNMIK and the donors to limit sales of the properties if this was not in the tripartite agreements and if UNMIK Regulation No. 2001/17 was not applicable.

Even in cases where property transactions are not forbidden by law or policy, there are a number of obstacles to selling property in Kosovo deriving from the aftermath of hostilities in 1999. Cadastre offices often lack proper documentation from the Yugoslav period; thus in many cases the ownership of property cannot be verified. Sometimes the documentation has been destroyed or registers have been taken to Serbia proper by previous office staff leaving Kosovo in 1999. Obtaining such documentation is still difficult, and can only be effected informally through the help of lawyers or certain NGOs specialising in such matters. Officials working in the cadastre offices sometimes advise persons to take their cases to the competent courts, which does not help much in resolving an issue which is, essentially, a political matter brought about by the tense relations between UNMIK, the PISG and the Serbian government in Belgrade.

Another problem is that prior to 1999 many property transfers were effected but not included in the cadastral records. Officials working at the cadastral offices refuse to accept that such transfers took place if they are not documented in the cadastral records. This is the case even if the property is not in dispute, there is only one property holder, and it can be proven by cadastral documents stamped by the city archives in Prishtinë/Priština. There are also problems with regard to certain purchasing contracts certified after 2000 for property transactions undertaken prior to 1999. In such cases, the parties involved usually have difficulties providing evidence from banks to prove that money was transferred from the seller of the property to the buyer. These issues could be resolved by more flexible guidelines within the cadastral offices allowing for other forms of evidence to prove that property transactions took place.

The protection of property is an area in which the weakness of the rule of law in Kosovo is most apparent, as neither the competent municipal inspectorates nor the courts have sufficient power, will or capacity to guarantee such protection. The situation can only be

improved with an overall strengthening of the rule of law and of the executive and judicial organs obliged to uphold it.

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

In this reporting period, it is evident that as the economic situation in Kosovo becomes more and more difficult, the protection of children's rights is likewise becoming more difficult to achieve. Kosovo is one of the poorest areas in Europe. Based on a newspaper interview with a representative from UNICEF from February 2007, about 17% of children of all communities living in Kosovo are born into poverty and remain poor at least until the age of 6, while 12% of local families live in extreme poverty, meaning that they are forced to subsist on no more than 0.99 Euro per day.

Despite the difficult economic situation and other problems that Kosovo faces as a post-conflict environment, it should be noted that since 1999, thanks to the input of many different international partners, the current legal framework for the protection of children's rights is good. Nevertheless, as in so many fields in Kosovo, the problem lies in the implementation of this framework. While it is evident that progress has been made over the past few years, the lack of a strategic government plan through which to implement and coordinate these mechanisms is still very noticeable and hampers an effective protection of children's rights in practice.

For children's welfare and their development in line with the standards set by international instruments such as the UN Convention on the Rights of the Child, legal protection is not enough if it is not enhanced by effective institutional protection and an adequate implementation of the pertinent legal provisions. The laws regulating children's rights were incorporated into the Kosovo legal system after 1999 in accordance with the above UN Convention. However, as with other laws issued since then, the relevant legal provisions and administrative instructions still need to be issued in order to ensure these laws' implementation.

The main domestic law generally regulating children rights is the Kosovo Assembly's Family Law No. 2004/32, which entered into force on 20 January 2006, thereby replacing the Yugoslav Law on Marriage and Family Relations. However, as already stated in the last Annual Report, in practice both laws continue to be applied concurrently, mainly because the new law does not cover certain issues that were regulated in the old law. For instance, even though there are some improvements with regard to providing access and custody rights when parents are separated, the implementation of the law in practice creates difficulties, since the new law has exclusive jurisdiction on such matters but fails to regulate the proper procedure to be followed.

Officials working with the centres for social work and the Ministry for Labour and Social Welfare have stated that they received instructions to apply both the new law and the old one. This situation creates a great deal of confusion for the officials directly involved in

the application of the law and also for those individuals whose rights are provided for under both laws.

One example of the confusion caused by this is that in many cases, it is not clear which bodies are competent to decide on certain issues. In adoption proceedings, the law specifies that a court should decide, but does not specify which court. Therefore, three different bodies consider themselves competent to decide on the adoption: the centres for social welfare, which were competent according to the former Yugoslav law, but also municipal courts and district courts, both of which decide on such cases in the first instance. The situation is similar in custody matters, where cases involving children born into wedlock are taken to the municipal court or, in the case of a prior divorce, the district court deciding in the first instance. In cases where children are born out of wedlock, the centres for social welfare still consider themselves competent; as they are administrative organs, the legal remedy against their decisions is the Supreme Court. Absurdly, the situation is such that in custody proceedings, the nature of the court proceedings depends on the marital status of the parents. While municipal and district courts at least follow the same procedure, this cannot be said for the Supreme Court, which follows an administrative procedure that often does not involve court hearings is debated in closed sessions. Thus children born out of wedlock do not have equal procedural rights to those born into wedlock. This problem was also raised recently in the Report on the Administrative Justice System in Kosovo, issued by the OSCE Mission in Kosovo in April 2007.

Another disturbing issue that renders the protection of children's rights more difficult is the lack of efficiency in the execution of administrative decisions and court decisions, especially with regard to cases involving access and custody issues. The Children's Rights Team within the Ombudsperson Institution became involved in such cases by asking the competent bodies to implement final court decisions on custody. In these cases, due to the courts' failure to execute such decisions, children had not been in contact with the respective parent for years. This situation is particularly grave in cases where one parent has died and the remaining parent, *de facto*, has no access to the children. The Children's Rights Team has also intervened in some cases involving the length of court proceedings, again involving custody or access issues or the question of paternity or alimony.

Like the courts, schools at times also fail to protect from serious harm the children who are in their custody. Apart from the general problems posed by insufficient infrastructure and equipment in schools, corporal punishment appears to be a common occurrence in schools throughout Kosovo. Even worse, there are cases of sexual abuse which do not receive the attention they deserve. The Children's Rights Team dealt with such a case in a primary school in the Municipality of Suharekë/Suva Reka where the victim was only ten years old. Despite the fact that the competent court found that her teacher had sexually abused her and convicted him under the applicable criminal law, this teacher continued to work at the school for several more months. This demonstrates the lack of responsibility of the school in this matter, since it did not do enough to protect its students from their teacher, even though several young girls had raised similar allegations against him.

On a more positive note, since 1999 a number of new governmental institutions were established at the local and central level to deal with the protection of children's rights. A good example of this is the Inter-Ministerial Committee for Children's Rights, which was established by a decision of the Prime Minister of Kosovo on 25 October 2006. This committee is chaired by the Prime Minister himself and aims at communicating and coordinating the policies, program and processes regarding the protection of children rights within the PISG, as well as facilitating the realisation of children's rights and offering them equal possibilities to participate actively in society. The Advisory Office of Good Governance, Human Rights, Equal Opportunities and Gender Issues within the Office of the Prime Minister has started to work on an evaluation of the existing professional and financial needs, and is searching for donors that will assist the process of drafting an action plan for the protection of children rights.

When it comes to protection mechanisms for children, the Children's Rights Team continues to function as the only independent and institutionalised mechanism that investigates individual cases, deals with general children rights' situations, and tries to raise awareness in the field of children's rights.

According to Articles 26 and 27 of the UN Convention on the Rights of the Child, in each society the main responsibility for children's welfare lies with two institutions: First and foremost the family, and if the family is not able to ensure a child's welfare, it should be the government that does so. It is the family unit that should ensure that the child has food, books, education and adequate health care. However if the family, due to a low income, cannot ensure such living conditions, the burden to do so falls on the government. In such conditions, the respective families depend on government assistance. If, however, the government is also not able to ensure fundamental living conditions, then it is difficult to maintain an adequate level of child welfare to ensure adequate physical growth, as well as spiritual, moral and social development.

Due to high unemployment and the average low standard of living, many families of the different communities in Kosovo are not able to secure the basic needs of their children. The Ombudsperson Institution receives complaints from such people on a daily basis – the main issues involve the inability of these people to provide their children with adequate accommodation, sufficient food, clothes, school books, health protection as well as other fundamental rights that are needed for the welfare and proper development of children. The situation is aggravated by the fact that the competent public authorities, due to their limited budgets, are only able to assist these families in very rare cases.

Due to the high level of poverty in Kosovo and the other typical problems existing in a post-conflict society, many children in Kosovo are forced to take responsibility for their own welfare at a very young age.

It has become quite common for children in Kosovo to work different jobs to contribute to the family budget, which in turn jeopardises their own welfare. Children can be seen selling cigarettes, sweets and peanuts in cafés, bars and on the street until late at night.

Others, particularly those of the Roma community, beg at traffic lights. In all of the above cases, many of the children are obviously no older than six or seven years-old. Although the competent government authorities and civil society have recently undertaken some initiatives to eliminate this occurrence, the problem will not cease to exist until a proper strategy and development plan is approved in Kosovo. At the same time, such a strategy can only be successful if the general economic situation in Kosovo improves drastically.

Currently, the Ministry for Labor and Social Welfare, with the support of the International Labor Organization (ILO), is in the process of drafting a strategic framework for eliminating harmful forms of child labour. ILO has an advisory role in the work of the Committee for the Elimination of Child Labour, which is comprised of a number of ministries, local NGOs, the chamber of commerce and an association of trade unions. Since UNMIK Regulation No. 2001/27 on the Essential Labour Law in Kosovo does not sufficiently specify which forms of work are harmful for children between 15 and 18 years of age, this Committee has recently drawn up a list of such areas of work. So far, 72 employees of centres for social welfare have been trained to implement a pilot project to eliminate child labour in the municipalities of Mitrovicë/Mitrovica, Prishtinë/Prishtina and Prizren. Needless to say, the same UNMIK Regulation prohibits child labour for all children under 15 years of age, a regulation which, as mentioned above, is broken on a daily basis all over Kosovo.

But while child labour is by far one of the most visible problems with regard to children's rights in Kosovo today, lack of proper housing is another issue that has very negative effects on children's development. Many people still live in barracks or with relatives. Some families who had illegally occupied houses or apartments after the end of hostilities in 1999 have now been evicted from these houses and are waiting for their own houses, destroyed in 1998-99, to be reconstructed. Others, mainly people from the Serbian and Roma communities, are still displaced. A number of them still live in IDP settlements inside and outside Kosovo under very harsh conditions. In such a situation, it is difficult to provide children in and from Kosovo with the kind of conditions necessary for their development and well-being, as required by Article 27 of the UN Convention on the Rights of the Child.

During the reporting period, following the intervention of the Acting Ombudsperson, families with several disabled children living in the so-called "Sarajevo Barracks" in Vushtrri/Vučitrn in very poor conditions were transferred to apartments owned by the Municipality.

Another issue affecting living conditions in Kosovo is that of domestic violence, which continues to be a widespread problem. The fight against domestic violence is one of the most difficult battles not only here, but in all societies, since everything tends to happen within the family. For many people, there is nothing wrong with violence towards children or other vulnerable family members; even if neighbours or public authorities know of such occurrences, they tend to believe that such problems do not concern them and should be resolved within the family. For this reason, most cases of domestic violence are not reported to authorities or courts.

The fact that domestic violence is often considered a normal occurrence within Kosovan society leads to a situation where many children are left without protection in their homes. This has a very negative influence on their development and well-being, and deprives them of a proper home and care.

There are rare cases where children are beaten so badly that they need to be taken to the hospital for treatment. In such events, there is no practice of hospital staff contacting social welfare centres or the police.

In general, children—as a naturally vulnerable group—suffer most from the lack of proper treatment in hospitals. The health system in Kosovo remains severely underfinanced and often lacks the most basic equipment and medicine, such as spatulas or vaccines. According to Article 25 of the UN Convention on the Rights of the Child, all children should be granted the best health conditions and adequate health care. While it is not surprising that Kosovo as a post-conflict environment cannot meet this standard, more could be done to ensure that children have basic health care.

Admittedly, not all illnesses or ailments can be treated in Kosovo due to a lack of equipment and professionalism. The main problem here is that, despite the shortage of funds, the Ministry has continued to issue decisions allocating funds for such treatment, thereby raising the hopes of the people involved. In a case report issued on 22 June 2007, the Acting Ombudsperson qualified these hopes as legitimate expectations, stating that in the case under investigation, the complainant had received a decision allocating him certain funds. Although this decision was not binding (it was signed only by the Minister of Health and not the Minister of Finance), the complainant, having received it as a ministerial decision, had no reason to doubt its validity. The Acting Ombudsperson considered that the failure of the Ministry of Health to fulfill its promise constituted a violation of the complainant's right to property under Article 1 of Protocol No. 1 to the European Convention on Human Rights, which covers the legitimate expectation to receive property. He recommended that the complainant be compensated and that the cooperation between the Ministry of Health and the Ministry of Finances improve to ensure the funding of the programme.

In a number of cases where children could not be treated in Kosovo, the Children's Rights Team within the Ombudsperson Institution managed to arrange for some children to be treated in Italy with the help of Italian KFOR and the Italian Government. These cases mainly involved children who were very ill. The cases were exceptions, however, and even though these contacts helped cure some children, this does not belie the fact that children all over Kosovo do not receive proper health treatment and that the Ministry of Health has thus far not prepared a workable strategy to improve health care for vulnerable groups who cannot afford to be treated outside Kosovo.

Concerning the situation of health services for infants, Kosovo continues to top the list of highest mortality rates of infants up to one year of age in the region and Europe. According to statistics published by UNDP in 2006, approximately 35 of every 1000

babies born in Kosovo will die. This is often due to a lack of proper medical equipment and medicine, but more often than not mothers complain that the service in the hospitals is appalling and that hospital staff do not care for the patients at all. Two reasons for this lack of motivation, presumably, are the extremely low salaries of hospital staff and a lack of service mentality. As the situation stands now, mothers who can afford to tend to give birth outside of Kosovo; the other option is to pay doctors and nurses an extra amount to ensure that proper treatment is provided.

Another disturbing issue with regard to proper health care for infants arose in August 2006, when the Children's Rights Team received information that there was a lack of oxygen in the Department of Neonatology in the Gynecological Clinic of the University Clinic Centre in Prishtinë/Priština, endangering the lives of a number of babies. Following the Acting Ombudsperson's intervention, the Ministry of Health's Chief Inspector and the Board of the University Clinic Centre gave their assurances that this would not happen again and that disciplinary measures had been taken against the employee responsible for the oxygen shortage.

Another important issue affecting children's rights in Kosovo is that of education. Although there is a good legal framework for education in Kosovo that creates conditions for the protection of children's rights, it is not being implemented properly. The most important laws in this respect to have been passed by the Kosovo Assembly since its establishment in 2001 are the Law on Primary and Secondary Education and the Law on Pre-School Education. Again, a lack of proper funds is reflected in almost all parts of the education system, including the lack of necessary equipment, teacher motivation (due to low salaries), school attendance, municipal transport to schools, school infrastructure, etc.

Moreover, the minimal budget allocated for education has led to an inadequate implementation of the existing laws. An example of this is Article 3 of the Law on Primary and Secondary Education in Kosovo, which provides that school books for primary schools are free of charge and that the Government should provide school books for secondary education if it has the financial means to do so. In reality, however, the Government of Kosovo is not providing school books to all children in primary schools – the only children benefiting from this are a number of children from poor families. Even though the Children's Rights Team raised this issue in 2004, the funds allocated for this purpose still remain too low to allow for a proper implementation of the law.

Another problem in the field of education is the lack of proper infrastructure in schools. Most schools, especially in rural areas, lack even the minimal conditions for effective education; overcrowding has meant that classes are often held in four or five shifts. Other problems suffered by several schools across Kosovo are poor hygiene conditions, while in a number of schools there is no drinking water.

The poor conditions in schools are aggravated by the generally low quality of education offered. According to statistics issued by the Ministry for Education, Science and Technology, the number of unqualified teachers in Kosovan schools is 15-18%, which is mainly due to the fact that more qualified staff have found better-paying jobs elsewhere.

Such problems have led to a high drop-out rate in schools. The number of children dropping out of schools is mostly attributed to poverty, meaning that either the children are required to work or their parents simply cannot pay for school materials. In rural areas, the problems are often a lack of infrastructure, meaning that some schools are simply too far away. This especially causes problems for girls, as does the lack of female teachers in rural areas.

According to statistics presented by the Statistical Office in Kosovo in 2006, only 50% of ethnic Albanian girls between 15 to 18 years of age pursue their education after primary school. Boys from that community also tend to leave school to work. The percentage of school attendance is particularly low within the Roma, Ashkali and Egyptian communities, where only 50% of children aged 6 to 14 years attend school. Many of these children drop out of school at a very early age.

In cases where children of the Roma, Ashkali and Egyptian communities do go to school, other factors make school attendance difficult. In the case of the school located in the IDP camp of Plemetin/Plemetina in central Kosovo, the school attendance of the pupils hitherto attending this school is endangered by the municipal authorities' decision to close the camp following the re-housing of the camp's inhabitants to apartments with better living conditions. The competent Municipality of Obiliq/Obilić has offered to provide transport for these children to a school in Obiliq/Obilić, but the leaders of the camp inhabitants say that the families do not want their children to go to a new school which is further away from home than the previous one. Although the Children's Rights Team is dealing with this case, a solution has yet to be found.

A number of Roma children who previously lived in IDP camps in the northern part of Mitrovicë/Mitrovica have now moved to new homes in the Roma Mahalla neighborhood in the southern part of that town. They stopped attending a school in the northern part of town after moving due to the difficulties involved in traveling from the southern part of Mitrovicë/Mitrovica, inhabited mainly by Albanians, to the northern part of Mitrovicë/Mitrovica, inhabited mainly by Serbs. Thanks to the principal of the school, however, transport has since been arranged and these Roma children are now attending the school in the northern part of town as before.

Serbian children, on the other hand, are often faced with the problem of there being a limited number of schools, especially secondary schools. Due to the fact that it is still not possible for members of the Serbian community to move freely in all areas of Kosovo, these children often need to move away from home at an early age in order to live close to their school, which in turn poses a huge financial burden on their families. Gorani children also face great difficulties in the education sector – this issue is covered under the section “Minority Communities in Kosovo” within this Annual Report.

According to the Law on Primary and Secondary School in Kosovo, the Ministry for Education, Science and Technology is obliged to include children with special needs in the education system. This also involves children with physical and mental disabilities.

However, the number of such pupils being educated in regular and special schools is still quite low. Instead of sending them to school, children with special needs are still often hidden away or left without any care, especially in rural areas.

Apart from the issues of child labour, housing, health and education, one of the most troubling occurrences with regard to children are cases where children are victims of human trafficking. Although, in the aftermath of the hostilities in 1999, victims of human trafficking were mainly persons from outside Kosovo, there appears to be a rise in the trafficking of children from Kosovo. In its country report on Kosovo for 2006, the US Department of State ascertained that the high level of poverty, unemployment and illiteracy has created a situation where children are in particular danger of becoming victims of human trafficking. In this context, it is important to mention that the majority of children trafficked in Kosovo had left their family homes earlier due to regular cases of domestic violence.

Indirectly, domestic violence appears to be one of the causes of a recent increase in juvenile delinquency. Along with the poverty and trauma associated with the fighting in 1999 as well as difficult social situations and obstacles to educational development, domestic violence leads to a general perpetuation of violence outside the home and across generations. Even though the Juvenile Justice Code of Kosovo, promulgated by UNMIK Regulation No. 2004/08 on 20 April 2004, is a good legal framework for dealing with such cases (and is indeed one of the most advanced laws in the region within this field), there is still no proper structure in place to ensure its implementation. For this reason, in February 2007 the European Agency for Reconstruction – in cooperation with UNICEF, the PISG and relevant parts of civil society – initiated a project providing support to a proper judicial system for minors in Kosovo, which is funded by the EU. The project is foreseen until February 2009. In order to implement this project, the PISG, the NGO Terre Des Hommes, the Centre for Human Rights in the University of Prishtinë/Priština and other partners to the project have signed a memorandum of understanding. In so doing, these partners have committed to improving the criminal justice system for juveniles in line with the UN Convention on the Rights of the Child and to promoting the prevention of juvenile delinquency.

As this overview suggests, the absence of proper governing structures and the rule of law always has particularly negative effects for those who cannot defend themselves, especially children. In such a situation, it is only thanks to the tireless efforts of certain international and local actors that the issue of children's rights is continually raised and the competent government structures are reminded of their obligations towards families and children.

### **Discrimination in Kosovo**

The different treatment of people in essentially similar situations due to their background, financial and social status, ethnicity, gender, or physical capacity or appearance is a continual problem in Kosovan society. Such discrimination is a direct result of a more

general problem, namely the lack of accountability of both central and local authorities and the arbitrary implementation of the rule of law. Both facilitate the unequal treatment of vulnerable groups or less privileged others. Combating such occurrences is rendered especially difficult by the fact that, for the most part, people are not aware of the concept of discrimination and are unable to identify their unequal treatment as being discriminatory. In Kosovo society, vulnerable groups are often so accustomed to being treated differently that they do not complain about it or do not believe that such a complaint could change their predicament.

People do not always complain, for example, if their wives are not fairly treated in the Prishtinë/Priština University Medical Clinic because their families were not able to pay extra money to nurses and doctors. They often do not raise their voices when it takes months for them to receive a civil registration document from a public office, merely because they are not personally acquainted with the competent official.

Even in cases where people do complain about discrimination (for example, due to irregularities in the University of Prishtinë/Priština, nepotism in the public employment sector or the fact that they cannot respond to bills or administrative acts as a result of them being written in a language they cannot understand), the fact remains that many such complaints remain unheard. In the latter cases, the Ombudsperson Institution has been able to help some people via direct interventions, but complaints where people have been discriminated against due to corrupt practices or nepotism have proved difficult to follow up, let alone resolve.

A closer examination of a number of cases where people complain about discrimination often reveals that the facts of the case do not support the claim. Article 8 of the domestic Anti-Discrimination Law, which is based on international standards, stipulates that if a professed victim of discrimination can establish facts from which it can be presumed that discrimination has taken place, it is up to the alleged offender to prove that discrimination has not taken place (thus shifting the burden of proof in discrimination cases). In many cases of alleged discrimination, however, victims cannot establish such facts or do not know how to. In public debates, on the other hand, complaints of discrimination have reached a distressing level, and are often used to make a political point.

There is a tendency among most people to simplify the problem of discrimination. Contrary to popular belief, 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 mentioned above or laid down 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”). If, for example, a man is not hired to work on a construction site because he is simply too weak to carry heavy loads, then treating him differently from other candidates is based on an objectively justifiable reason. If, on the other hand, he is not hired because he belongs to a certain ethnic community, then the reason for not hiring him might not be an

objective one; his ethnic background might wrongly suggest to some that he will not be reliable, honest or good at his work.

Discrimination can also take place in cases where people in essentially different situations are treated the same. One example of this is the predicament of physically disabled persons. As long as no concerted effort is made to meet the specific requirements of the disabled, they will continue to be discriminated against on a daily basis. People in wheelchairs and mothers with baby carriages will continue to depend on the goodwill of others to access certain public offices. For the most part, even newly constructed houses do not take the interests of the disabled into consideration by including a ramp or similar access facility. Over the last few years, the Ombudsperson has also received complaints regarding the inability of disabled persons to receive the pension benefits that they are entitled to receive by law. Within the under-funded education sector, speaking of special facilities or programmes for children with learning disabilities would be unrealistic.

Another example of this form of discrimination is the fact that many public documents are not accessible for people who do not speak both official languages of Kosovo. This problem exists wherever a section of a municipality's population does not understand the majority language spoken in that municipality, as well as in correspondence between central authorities and municipalities where the majority does not speak Albanian. While such discrimination is usually due more to a lack of translation units and funds to pay for them, the fact that it is so widespread indicates that informing the whole population of issues concerning them is not a priority for most public administration offices in Kosovo.

The problem related to language is only one of the issues faced by a number of communities that form a minority in the place where they live. Ethnic discrimination is also widespread in the areas of employment and health, and members of certain minority communities (mainly Serbs and Roma, but also Ashkali and Egyptians) continue to be subjected to a regular pattern of intimidation and harassment. In cases involving criminal acts against these communities, for example the theft of livestock or the occupation of or damage to property, perpetrators are rarely found; members of these communities complain that the police are not investigating such criminal acts as they should. Members of the Serbian community also continue to complain that they are being excluded from the process of privatising socially-owned enterprises for which they used to work.

In some cases, these forms of discrimination are based on age-old prejudice that most ethnic communities have against others. In other cases (notably if the victims are members of the Serbian community), they are a result of the deterioration of the relationship between the Albanian and Serbian communities over the last twenty or so years. Especially in the current period of talks on the future status of Kosovo, tensions between these two communities are high and render any kind of normal contact very difficult. Access to public offices is impeded by the real or perceived inability of members of some minority communities to move freely in all areas of Kosovo.

Another reason for ethnic and other forms of discrimination is the current economic situation in Kosovo, which is marked by a high unemployment rate and widespread poverty. In a situation where the number of work places is limited, many employers openly admit that they would not consider employing persons of another ethnic community, or that they would prefer to employ somebody they know.

As long as the economic situation in Kosovo remains in the appalling state it is now, this phenomenon is unlikely to change. More must be done to raise awareness within Kosovo society on the concept of discrimination and how to combat it. Understanding these issues will take years and even decades. But the more laws that are passed to prevent it and the more programmes that are initiated to help implement such laws and raise awareness of the issue, the sooner the existing situation can be improved.

In Kosovo, most experts would agree that the existing Anti-Discrimination Law passed by the Kosovo Assembly in 2004 and promulgated by the SRSG in the same year is an appropriate instrument for this purpose. It includes definitions on what discrimination is, in which forms and under which circumstances it may arise and how and where to complain about it. The Ombudsperson Institution is named as an extra-judicial entity mandated to examine complaints alleging discrimination in both the public and the private sector. The Institution has thus established a Non-Discrimination Team (NDT) to deal with such complaints.

As is so often the case, however, the problem lies not in the law itself, but in its implementation. Over the last three years, the Ombudsperson Institution has received only a small number of complaints alleging discrimination. A large number of people living in Kosovo are not aware of the Anti-Discrimination Law and even if they were, they would not know how to formulate a complaint. The courts have also not registered a large number of discrimination complaints thus far, and judges appear to be at a loss as to how to deal with such cases when they arise.

Throughout the last few years, international and local stakeholders have grown more aware of this law's lack of implementation. In November 2005, the Kosovo Government approved a comprehensive action plan for the implementation of the Anti-Discrimination Law, and in August 2006 the Prime Minister signed an Administrative Instruction on the Implementation of this Law. This Administrative Instruction attempted to create practical rules and structural and physical facilities for the purpose of implementing the Anti-Discrimination Law, in addition to promoting equal treatment in general. A small number of individual ministries and other administrative offices have also issued administrative instructions on the implementation of the law, and individual training and awareness-raising events on the law and related aspects have continued.

These attempts have, however, not been particularly successful in raising a general level of awareness. During the reporting period, a number of initiatives have attempted to identify the main reasons for this lack of awareness and implementation, with a greater focus on discussing ways to overcome these obstacles. One such event was a roundtable on the implementation of this law, organised in April 2007 by the OSCE Mission in

Kosovo, at which a number of stakeholders (including the Acting Ombudsperson, local government representatives and civil society) discussed ways to improve awareness and implementation of the Anti-Discrimination Law.

At around the same time, the NDT within the Ombudsperson Institution initiated an awareness-raising campaign on the issue of discrimination in general, by which it attempted to inform the public on what discrimination is and about the Ombudsperson's role in investigating complaints of discrimination. This campaign will continue until the end of 2007. More details on the campaign can be found in the section on "Activities of the NDT" within this Annual Report.

It is important to stress that the Anti-Discrimination Law is not the only instrument protecting individuals from unequal treatment in Kosovo. A number of international instruments protecting individuals from discrimination and other human rights abuses are directly applicable in Kosovo according to Chapter 3 of the Constitutional Framework on Provisional Self-Government. They include the UN Declaration on Human Rights, the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Awareness of these instruments within the central and local levels of government, the courts and among the wider public is quite poor. This is mostly due to the fact that the texts of these instruments are not made available to the public, and are difficult for persons working in the public administration to find, particularly in the Albanian and Serbian languages.

As mentioned above, the problem of discrimination is two-fold: On the one hand, there is a general lack of knowledge on what discrimination actually is and how to combat it. On the other hand, the weak administrative, executive and judicial structures in Kosovo typical of places in transition facilitate discrimination and prevent its elimination. Equal treatment of all inhabitants of Kosovo can only be realised once its population can identify situations where discrimination has occurred, and once the competent public authorities are willing and able to support and act upon subsequent complaints.

### **Gender equality in Kosovo**

Gender equality is an offshoot of the general rule of equality before the law that exists in all democratic states. It reiterates this general rule for people of different genders, meaning that both genders shall be treated equally in all situations. Cases where people of different genders are not treated equally could mean that they are being discriminated against.

The concept of gender discrimination involves difference in treatment, exclusion or limitation on the basis of gender, which thereby endangers or prevents the enjoyment or exercise of human rights and fundamental freedoms in political, economical, social, cultural or other fields. Any difference in treatment is only discriminatory if it has no objective or reasonable justification.

Kosovo, due to its current status, is not a signatory state of such international instruments as the Convention on the Elimination of all Forms of Discrimination against Women, adopted by the UN General Assembly in 1979. Since the Constitutional Framework on Self-Government in Kosovo obliges all institutions in Kosovo to apply certain international human rights instruments, including the Convention on the Elimination of all Forms of Discrimination against Women, the Convention is directly applicable in Kosovo. Its principles have been laid down in more detailed form in the domestic Law on Gender Equality, which was passed by the Assembly of Kosovo on 9 February 2004 and entered into force through UNMIK Regulation No. 2004/18 on 7 June 2004. In line with the requirements of Article 6 of that Law, the Ombudsperson Institution created the Gender Equality Unit to deal with complaints regarding discrimination on the basis of gender. The Gender Equality Unit (GEU) focuses on cases of gender discrimination and attempts to influence policies and processes which promote the analysis, prevention and monitoring of gender based human rights violations.

The main issue with regard to the Law on Gender Equality is the fact that many factors emanating from traditional customs and laws, as well as the problems faced by Kosovo as a society in transition, create obstacles to the proper implementation of this law and the principles contained in the Convention on the Elimination of all Forms of Discrimination against Women.

However, one must note that despite the difficulties encountered in this respect, many things have been done since 1999 to promote awareness of gender equality. There is an Office for Gender Affairs within the Office of the Kosovo Prime Minister, and a number of ministries and municipalities have gender units or officers. At the same time, UNMIK, OSCE and several women's NGOs have been very active with regard to promoting women's rights across Kosovo. There is nevertheless a question of whether the majority of campaigns, roundtables and seminars held to address women's rights were also able to reach people in rural areas, where a more traditional concept of women's role in society abounds.

In a situation where there is high unemployment all over Kosovo, it is difficult for women to compete in the employment market. Men are still more likely to be hired, especially in higher positions, even if there are equally good female candidates. The level of unemployment is thus higher with women than with men; according to information received from the Gender Office within the Prime Minister's Office, the unemployment rate is 70% for women and 51.7% for men. Only 13% of women live mainly from income generate from their employment.

A large number of those women who are employed do not receive regular salaries. According to a report published by UNDP on human development in Kosovo in 2004, women tend to work in lower-income positions and, on average, receive salaries of up to four times lower than those of men. On average, men attend two years more schooling than women; it is more common for them to enroll in primary and secondary schools, and thus their rate of illiteracy is lower. According to the above report, the proportion of men participating in the labour market was 75% in 2004, while the percentage of women was

only 31%. Presumably, not much has changed since. Traditionally, more women tend to work in the education and health sectors, whereas more men appear to work in trade, manufacture and construction. According to information received by the Ombudsperson Institution, the vast majority of women are employed in the service sector, while only few are employed in heavy industries, trade or agriculture.

Compared to other countries and regions, the extent of women's involvement at the political and governmental level in Kosovo appears to be satisfactory: in the Kosovo Assembly, female representatives hold 30% of the seats. On the other hand, only one of the thirteen ministers making up the Government of Kosovo is a woman. Within the Government, there is one more female deputy minister and one female permanent secretary. This demonstrates that while gender representation in the public administration in Kosovo may look good on paper, men still tend to very much dominate the political and decision-making process. A recent example of this was the negotiations process on Kosovo's status, which took place in 2006 and the beginning of 2007 in Vienna – the PISG did not include a single woman in these talks.

Based on information from the Ministry of Public Services, the number of women in management positions in the civil service is highly disproportionate to that of men. At the municipal level, of 893 management positions, only 90 are held by women. With regard to such positions, the gender proportion is approximately 1 to 10 in favour of men.

While it is usually women who are victims of gender discrimination, there have been instances where men have been victimised. On 6 October 2006, the Ombudsperson Institution issued a report on gender discrimination in job announcements in the public sector published in the daily newspaper "Koha Ditore" between 1 August 2004 and 31 August 2005. In this report, the Acting Ombudsperson found that in a number of announcements for positions, the employing agencies had specified that the positions were only for women. He considered that in each case, there was no reasonable justification for such a difference in treatment and found that such practices were in violation of domestic and international laws protecting gender equality in the employment market.

This report demonstrated again that there was little awareness inside public employing authorities of the principles of equal opportunity. During investigations, a number of employing authorities had not given satisfactory responses to the Ombudsperson Institution's requests for information on why they had advertised their positions only for women. In one case, an employing authority went so far as to specify that women were more apt at fulfilling the tasks of an administrative assistant, which involved taking telephone calls and welcoming visitors.

Although it depicts the discrimination of male candidates for positions in the public sector, the above report is still an exception. As mentioned above, the discrimination of women is the more widespread form of gender discrimination.

Apart from difficulties in finding work, another obstacle to the self-sustainability of many women in Kosovo is the fact that they usually do not own private property or real estate. The applicable laws grant women and men equal rights when it comes to inheriting property, but in most communities in Kosovo, family property is usually only bequeathed to men. Particularly in many rural areas, the idea that a woman could inherit the family home and real estate is far from common. In cases where women do ask for part of a property (for example following a divorce), these women have sometimes been threatened by their husbands or male relatives.

This is often due to the customs and traditions of a number of communities in Kosovo being based on the principle of women “belonging” to their families rather than standing alone. If a woman is not married, she is part of her father’s family and following her marriage, becomes part of her husband’s family. As a consequence, women are usually completely dependant on their families or on their husband’s families. Children are traditionally considered to be part of the father’s family, whose direct relatives will often believe that they have more rights over the children than the mother. In the Albanian community widows, particularly in rural areas, are expected to return to their birth families, while the children stay with their father’s family.

In the Roma community, most women are usually completely dependent on their husbands. For the most part, they are expected to stay home and tend to the house and family – it is rare and usually not accepted for women to be employed and independent from their husbands, although there are some exceptions where women have begun to work and even run their own businesses. According to a report published by the Institute for War and Peace Reporting in mid-2005, Roma girls learn how to bake at the age of five or six, and by the age of twelve they are expected to begin looking for husbands. The drop-out rate in schools is highest for girls from this community, mainly because their parents do not see any reason for them to continue their education beyond primary school.

The extreme dependency of women on their husband’s families in Kosovo causes many of them to refrain from asking for a divorce from their husbands. Even in cases where women are victims of domestic violence, they will often prefer the status quo to being separated from their children, becoming a burden to their birth families or, even worse, facing the unknown dangers of being forced to fend for themselves. The majority of self-supporting mothers do not end up in this situation by choice – usually, they are widows who lost their husbands and homes in the turmoil of 1998-99. Others left their families after having been sexually abused during the fighting in 1998-99. There are a few NGOs and shelters that help these women, but unfortunately, there is no specific government support for this group of people. Particularly in the case of women who suffered sexual abuse in 1998-99, the Ombudsperson Institution, along with UNIFEM and the NGO “Medica”, has asked for the inclusion of these women in the list of persons receiving benefits under the Kosovo Assembly’s Law on the Status and Rights of Families of Martyrs, Invalids, Veterans and Members of the Kosovo Liberation Army and Families of Civil Victims of War. So far, however, there has been no progress in this matter.

As far as the perception of women and women's role in society is concerned, there are considerable differences between rural and urban areas in Kosovo. In rural areas, due to deep-rooted traditional laws and customs, the social position of women is clearly subordinate to that of men, and there is little awareness of the concept of gender equality. In cities and towns, there is a greater understanding of gender issues, but a number of families, especially those who have migrated to urban areas, still follow the original customs and mind sets of rural areas.

Domestic violence, mostly directed towards women and children, continues to be a great problem in all communities in Kosovo. Unfortunately, only a small number of such cases are actually reported to the competent authorities. Due to the considerable emotional ties between victims and perpetrators, those women who do report such cases often do not seek protection orders. Within the societies they live in and particularly in rural areas, women are sometimes considered to be responsible for acts of domestic violence, and witnesses of such behaviour usually consider these cases to be internal family matters. In most communities in Kosovo, men were traditionally expected to chastise their wives. One example of this can be found in the *Kanun*, the Albanian customary law, where it states that "a man has the right to beat and bind his wife when she scorns his words and orders".

In this and previous reporting periods, the Ombudsperson Institution was informed of a number of complaints regarding the improper implementation of UNMIK Regulation No. 2003/12 on Protection against Domestic Violence. On the occasion of a round table organised by the Ombudsperson Institution and UNDP that addressed the implementation of this Regulation in November 2006, the Ombudsperson Institution issued a report on the same subject. In this report, the Acting Ombudsperson found that most courts called upon by victims of domestic violence to issue protection orders had not done so within the time limits specified in the UNMIK Regulation. He considered that this was in violation of the Regulation and of the courts' obligation to protect victims under the European Convention on Human Rights, in particular Article 3, protecting the right to freedom from ill-treatment and Article 8, protecting the right to home. Following the round table discussions, recommendations were issued by the organisers that called for the improved management of such cases in courts, more training on domestic violence for judges, amendments to UNMIK Regulation No. 2003/12, administrative instructions on how to implement it properly and general awareness-raising activities about the issue.

Another disturbing example of victimisation of women and girls in Kosovo is human trafficking. Many victims of human trafficking in Kosovo come from some of the poorest countries in Europe. Due to their illegal status, they face discrimination in access to social and economic rights and have often experienced domestic or other gender-based violence in their states of origin.

A report published by Amnesty International in 2004 suggested that within Kosovo, local women, the majority of them girls, are increasingly being trafficked. According to this report, trafficked women and girls submitted to forced prostitution are also victims of human rights abuses that violate a number of international human rights treaties including

the International Covenant on Civil and Political Rights, the Convention on the Elimination of All forms of Discrimination Against Women and the UN Convention on the Rights of the Child. Many other reports on human trafficking have been published in Kosovo; but the problem persists, and local authorities are not appearing to take responsibility for addressing it.

In order to improve the existing situation in the field of gender equality in Kosovo, the competent public authorities and institutions in Kosovo should engage more in combating such phenomena as domestic violence and trafficking. Strategies should be prepared to ensure that women are given the same opportunities as men, for instance in the employment market. Education focusing on the equal treatment of all persons, regardless of their gender, should begin at an early age; there also needs to be more awareness-raising of the importance of equal treatment within the civil service. Persons dealing with gender equality should also receive regular ongoing training. Both the central government and the municipalities should engage more in supporting and creating more safe houses and shelters and in improving the conditions of existing ones, possibly with the help of international donors.

## **ACTIVITIES OF THE OMBUDSPERSON INSTITUTION**

Due to the delays in nominating a new Ombudsperson, the Acting Ombudsperson continued to fulfil the tasks of Ombudsperson throughout the reporting period. In addition to managing the Ombudsperson Institution, he had numerous and regular meetings with representatives of different local and international institutions and organisations.

While the bulk of Institution's work continues to involve investigating and providing advice on human rights issues, it also engages in a variety of other activities. These include commenting on laws and governmental policies from a human rights-oriented standpoint, maintaining media relations and conducting awareness-raising activities, often with the support and cooperation of international organisations or NGOs. The Ombudsperson Institution also strives to maintain good working relationships with local government structures and collaborates with a number of local, regional, and international human rights organisations by sharing information and best practices. This section presents an overview of the Ombudsperson Institution's activities throughout the reporting period, as well as operational issues such as funding and internships.

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

When receiving complaints or other information on potential human rights violations or abuse of power, the Ombudsperson Institution needs to decide on the most promising way to proceed. This will depend on the facts of each individual case. Usually, the staff of the Ombudsperson Institution seek to resolve cases through intervention letters

addressed to various public authorities or personal meetings with the respective administrative offices. Where cases do not receive the attention they deserve, the Acting Ombudsperson may inform the media about them in order to increase public awareness. Some cases can be resolved through mediation and the offering of good offices, but this approach will only work if both parties, the complainant and the defending authority, are willing to communicate and find a solution.

During the reporting period, staff of the Ombudsperson Institution were able to resolve a number of cases through mediation. In certain cases, this involved helping people obtain social assistance or other forms of support. In other cases, the Ombudsperson Institution was instrumental in helping sick or disabled persons receive proper treatment inside or outside Kosovo.

In some cases where persons were threatened with eviction proceedings initiated by the HPD, the Ombudsperson Institution's mediation assistance succeeded in obtaining a stay of these proceedings for humanitarian or other reasons.

### **Examining legislation**

Part of the Ombudsperson Institution's mandate includes commenting on Kosovo Assembly laws. It may advocate the adoption or amendment of legislation or may call for an improved implementation of applicable laws. The Institution is sometimes consulted by the Assembly of Kosovo during the planning and drafting of legislation, or by other authorities regarding the implementation of laws. In such cases, the Institution is asked to examine the compatibility of these laws and practices with human rights standards. Usually, such requests involve draft laws in stages where they are still under discussion.

In the second half of 2006, a representative of the Ombudsperson Institution took part in working groups drafting the "Law on Protection from Defamation and Insult", and the "Law on Police". The Ombudsperson Institution also continued to be involved in the drafting of the Kosovo Assembly's Law on the People's Advocate. One of its staff members was part of the sub-working group responsible for drafting this law.

During the reporting period, the Ombudsperson Institution also commented *inter alia* on the following laws:

- The Assembly of Kosovo's Draft Law on Labour, in February 2007
- The Assembly of Kosovo's Draft Law on the Right and Freedom of Association in Kosovo, in February 2007
- The Assembly of Kosovo's Draft Law on Strikes, in February 2007.

## **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 Rights Team**

The objectives of the Children's Rights Team (CRT) within the Ombudsperson Institution in Kosovo are to monitor, protect and investigate children's rights violations by public authorities. Founded in March 2004, the CRT also aims to increase the visibility of children's rights in Kosovo and to influence policy development.

Currently, the CRT is staffed by one lawyer; following the departure of the previous CRT lawyer in December 2006, a new lawyer was appointed to fill the position in May 2007. The CRT is coordinated by the Institution's Deputy Director of Investigations.

During the reporting period, the activities of the CRT have led to some tangible results. The number of cases related to children's rights within the Institution has increased considerably, a fact also due to the close cooperation between the CRT and the Ombudsperson Institution's field offices. The CRT is still in the process of building a strong foundation and establishing contacts with social actors working on children's rights, and it is expected that this will further increase the number of complaints it receives. It also continues to distribute its posters, pamphlets, and other promotional materials at the various meetings and workshops it attends.

During the reporting period, the CRT completed the second part of its two-phased awareness-raising campaign, which was initiated in April 2006. Between October and December 2006, the CRT visited schools in the Municipalities of Prishtinë/Priština, Fushë Kosova/KosovoPolje, Rahovec/Rahovec, Dragash/Dragaš, Gjakovë/Đakovica, and

Glllogovc/Glogovac. During these visits, the CRT lawyer distributed pamphlets and conducted presentations to inform pupils of their rights and how to complain about human rights violations.

Throughout the second half of 2006, the CRT continued to advertise its activities in each of the following daily newspapers: The Albanian-language Koha Ditore, the Turkish-language Yeni Dönem and the Serbian-language Jedinstvo.

Throughout the reporting period, the CRT lawyer and the Deputy Director of Investigations coordinating the team participated in several meetings and conferences abroad that addressed children's rights. From 26 to 28 September 2006, the CRT lawyers participated as observers in a meeting of the European Network of Ombudsmen for Children (ENOC) which was held in Athens, Greece. Following that, on 29-30 September they attended a conference in Athens jointly organised by the Commissioner for Human Rights of the Council of Europe, the Ombudsman for Human Rights in the Russian Federation and the Greek Ombudsman. Key issues were discussed in the field of children rights, such as "Establishing independent offices for children's rights: The different models" and "Listening to children, involving them and strengthening their voices".

On 19-20 October 2006, the CRT lawyers took part in a conference on "The establishment of a network of Ombudsmen for Children's Rights in South-East Europe", organised in Novi Sad (Serbia proper) by the Ombudsman of Vojvodina. At this conference, the Deputy Director of Investigations conducted a presentation on "The applicability of the UN Convention on the Rights of the Child through domestic laws".

From 14 to 17 November 2006, a psychologist from the Greek Ombudsman's office conducted a training course for the CRT at the headquarters of the Ombudsperson Institution in Prishtinë/Priština. The aim of this training was to provide the CRT lawyers with advice on how to deal with children rights cases from the perspective of a psychologist. The representative of the Greek Ombudsman's Office also conducted a training session for all legal staff of the Ombudsperson Institution.

On 1 and 2 December 2006, an international expert on children rights and professor at the Human Rights Centre in Ghent University in Belgium conducted training sessions for professional staff of the Ombudsperson Institution on the topic of children rights according to the UN Convention on the Rights of the Child. During two days of intensive training, the professor covered the Convention article by article, connecting the various provisions to the current children rights situation in Kosovo.

On 26 and 27 March 2007, representatives of the US NGO Peace Initiatives Institute (PII) visited Kosovo. Facilitated by the CRT, they met with different local and international children's rights NGOs operating in Kosovo. The aim of the visit was to explore the possibility of developing a "Media Initiative for Children" for pre-school children in Kosovo, so as to teach them to respect diversity and educate them at an early age about tolerance towards others.

On 7 April 2007, the CRT lawyer participated in a meeting held in Novi Sad and organised by the Ombudsman of Vojvodina on behalf of the network of Ombudsmen for Children's Rights in South-East Europe. The subject of the meeting was "healthy eating – healthy life-styles", and the CRT lawyer held a presentation on the subject "How much is poverty a factor in disenabling the realisation of healthy life-styles?"

The CRT used children's drawings, taken from the previous reporting period's drawing competition in schools throughout Kosovo, to prepare class timetables featuring various articles of the UN Convention on Human Rights. These timetables were disseminated in schools throughout Kosovo. The project was realised with the valuable support of UNICEF.

During this reporting period, the CRT prepared a compilation of Kosovo laws related to children's rights. This compilation is expected to be published at the beginning of the new academic school year, and will be launched at a special event inviting central and municipal authorities and representatives of local and international NGOs.

The CRT was also active in investigating a number of cases involving children's rights issues. These included children's access rights to both parents (especially when those parents are separated), lengthy court proceedings on access rights, child-support payments, the verification of paternity and cases involving child abduction by one parent. Other cases involved the execution of court decisions and administrative decisions related to children's rights. The CRT also intervened following complaints of inadequate living conditions, the right to pre-school education, lack of oxygen for infants in the Prishtinë/Priština University Clinic, and the right to shelter and adequate health care.

Throughout the reporting period, the CRT conducted meetings with various international and local stakeholders, as well as representatives of civil society, in order to foster cooperation with the aim of protecting and promoting children rights. The CRT also collaborated with UNICEF, the OSCE Mission in Kosovo, the NGO Save the Children, as well as various other NGOs operating in the field of children's rights in Kosovo.

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

Established in March 2005, the Non-Discrimination Team (NDT) consists of two lawyers specialising in non-discrimination issues. The NDT investigates complaints or other information received by the Ombudsperson Institution indicating that in individual cases or general situations, discrimination may have occurred. The NDT, like other specialised teams within the Ombudsperson Institution, is coordinated by the Institution's Deputy Director of Investigations.

The legal basis for the existence of the NDT is the Kosovo Assembly's Anti-Discrimination Law, promulgated by UNMIK Regulation No. 32/2004 on 29 August 2004, which authorises the Ombudsperson to accept and investigate complaints involving

allegations of discrimination. According to Article 4 of the Anti-Discrimination Law, this also includes allegations of discrimination in the private sector.

On 14 December 2006, NDT representatives took part in a conference on the compilation of a strategy for the integration into society of the Roma, Ashkali and Egyptian communities. The conference was organized by the Government of Kosovo in cooperation with the OSCE Mission in Kosovo. Since then, NDT representatives have attended several working groups on the implementation of this strategy.

On 18 April 2007, the Acting Ombudsperson attended a roundtable on “Implementing the Anti-Discrimination Law”, organised by the OSCE Mission in Kosovo. During the roundtable he gave a presentation on the competencies of the Ombudsperson Institution to investigate complaints linked to discrimination. The presentation was based on the Anti-Discrimination Law, the work of the NDT (including specific cases), as well as reports issued by the Ombudsperson Institution related to discrimination.

In order to raise awareness of discrimination and the work of the NDT, the Team initiated an anti-discrimination campaign in mid-May 2007, which will continue into the beginning of the next school year in September. NDT representatives visited teachers and directors in primary and secondary schools, municipal representatives and NGOs (especially those advocating for the rights of disabled people) in the Municipalities of Podujevë/Podujevo, Prishtinë/Priština, Gračanica/Graçanicë, Prizren, Rahovec/Orahovac, Gjakovë/Đakovica, Pejë/Peć and Mitrovicë/Mitrovica. The campaign aims to disseminate knowledge on the principles and various forms of discrimination. The NDT hopes that victims of discrimination will thus be able to better recognise such human rights violations, and know where to turn to in order to complain about them. From September 2007, the NDT intends to visit other Municipalities in the southern, central and eastern regions of Kosovo.

During their visits to the mentioned institutions, NDT representatives gave brief lectures on what discrimination is and how to combat it. They also distributed materials recently published as part of the campaign, including posters and stickers (“Stop discrimination!”), as well as a leaflet informing the public about discrimination and how to complain about it to the NDT. The leaflet also includes a quiz whereby readers can test their awareness of the various forms of discrimination.

As part of the anti-discrimination campaign, the NDT organised an art competition in cooperation with the local NGO “Youth Initiative for Human Rights”. Artists from all over Kosovo were asked to respond to the question: “What does discrimination mean to you?”. An exhibition of the best works was held in Prishtinë/Priština in May 2007. The winners were able to participate in the Youth Initiative’s Exchange Programme between young artists in Belgrade and Prishtinë/Priština.

During the reporting period, the NDT investigated a number of complaints involving alleged cases of discrimination in various parts of public life. Many of these complaints involved a lack of access to documents, employment and education due to the

complainant's lack of proficiency in one of the official languages in Kosovo, usually Albanian. Others involved alleged cases of discrimination in the provision of humanitarian accommodation in the Municipality of Glogovac/Glogovac, complaints that children with physical disabilities could not pursue their education in the Municipality of Podujevë/Podujevo and discrimination with regard to certain benefits received from the public administration. Another claim the NDT received was from an NGO and dealt with the rights of deaf people; the claim involved the lack of sign-language interpreters in almost all institutions in Kosovo. Due to this lack of interpreters, deaf people often find it difficult to communicate properly with officials working in public administration.

Another case worth mentioning involves a complaint of age discrimination that was submitted by former employees of the former socially-owned enterprise "Modeli" in Gjakovë/Đakovica. Following this enterprise's privatisation, all employees above the age of 42 complained that they had lost their employment positions. The employees' complaint is also directed against the Kosovo Government, which they say did not take any measures to protect the rights of persons aged between 45 to 62 years. The employees complain that they will experience difficulties finding new work places, a predicament made worse by the fact that they are not entitled to pensions or other forms of social assistance.

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

The Gender Equality Unit (GEU) reviews cases involving allegations of gender discrimination. Apart from legal analyses, prevention and monitoring of human rights violations related to gender, it also engages in activities to promote the principle of gender equality. The GEU was founded in accordance with Article 6 of the Kosovo Assembly's Gender Equality Law as promulgated by UNMIK Regulation No. 2004/18, and is the only entity in Kosovo mandated to accept and investigate allegations of gender discrimination. The GEU is also competent to review laws and raise issues related to the proper implementation of laws and of the Gender Equality Law in particular.

The GEU currently consists of one lawyer specialising in gender equality issues and women's rights, under the coordination of the Institution's Deputy Director of Investigations. Initially funded by donations from the Norwegian government, this lawyer's salary has been covered by the Kosovo Consolidated Budget since March 2007.

Many complaints to the GEU involve domestic violence and gender discrimination in various fields, in particular employment, hardships faced by single mothers and problems related to child custody or the division of property after divorce proceedings. The number of complaints of domestic violence received during this reporting period has increased in comparison to the last reporting period. The GEU has sought to cooperate on a regular basis with the KPS, the Victims Protection Division within the Ministry of Justice, social welfare centres, safe houses and NGOs.

During this period, the GEU has conducted regular meetings with various international and local stakeholders, as well as with representatives of civil society, in order to advance cooperation to reach common goals such as gender equality and the promotion of women's rights in Kosovo society. The GEU also cooperated with representatives from UNDP, UNIFEM, SIDA, and various representatives of women NGO operating in Kosovo.

During the reporting period, the GEU also conducted a number of activities and attended various trainings and seminars.

Two days before the International Day for the Elimination of Violence against Women on 25 November 2006, the GEU, in cooperation with the UNDP, organised a roundtable on the implementation of UNMIK Regulation No. 2003/12 on Protection Against Domestic Violence. Fifty-six local and international experts participated in this event, among them representatives from the KPS, judges, representatives from the Ministry of Justice, Agency for Gender Equality, lawyers of victims, as well as representatives from social welfare centres, civil society and NGOs.

The aim of the round table was to discuss the poor implementation of the above UNMIK Regulation and to identify ways in which competent authorities such as the police, courts and other governmental and non-governmental organisations could cooperate in future. The Ombudsperson Institution issued an *ex-officio* report at the roundtable on the execution of Sections 7 and 9 of UNMIK Regulation No. 2003/12. Based on investigations conducted by the GEU, this report found that most courts were not issuing protection orders within the time limits specified in these provisions.

Another report issued in the reporting period involved gender discrimination in vacancy announcements in the public sector. Investigations of the GEU revealed that in a number of these vacancies, public employers had opened positions only for female candidates. The Acting Ombudsperson considered that this violated domestic and international legislation prohibiting discrimination based on gender.

In terms of training, the GEU lawyer attended the second part of a seminar entitled "Regional program on the equal status of women's rights", held in August 2006 and organised by the Swedish Raoul Wallenberg Institute of Human Rights and Humanitarian Law. The seminar took place in Kiev, Ukraine, and was attended by activists, state representatives and human rights NGOs from various European states. The programme involved a series of lessons, study visits and debates about the role of key human rights instruments and institutions engaged in the protection of women's rights, and each participant was obliged to present an action plan for his/her state or region. The GEU lawyer was able to take part in this programme thanks to the generous support of UNIFEM.

Other conferences attended by the GEU in 2006 included the conference on "Ombudsmen against the double discrimination of women", organised in November 2006 in Novi Sad by the Ombudsman in Vojvodina. In December 2006, the GEU lawyer took

part in a meeting organised by the Agency for Gender Equality within the Office of the Prime Minister on the topic “Article 70 of the Kosovo Family Law and implications for its execution in practice”. In general, the GEU maintained regular contacts and meetings with the Agency for Gender Equality; the GEU was invited to attend all the events organised by this agency during the reporting period.

On 14 February 2007, the women’s NGO “Medica” from Gjakovë/Đakovica organised a roundtable at the offices of the Ombudsperson Institution on the topic “Developing the process of integrating women who have suffered sexual abuse during the conflict in Kosovo into the Kosovo Assembly’s Law on the Status and Rights of Families of Martyrs, Invalids, Veterans and Members of the Kosovo Liberation Army and Families of Civil Victims of War”. The Institution’s Deputy Director of Investigations gave a presentation on this topic. After this round table, the Deputy Director of Investigations and representatives of “Medica” had a meeting with the Minister for Social Welfare, during which they asked for the Minister’s support in requesting that women who were victims of sexual abuse in 1998-99 be included in the above law.

During the reporting period, the GEU lawyer met with numerous NGOs dealing with various aspects of women’s rights, among them the Swedish women’s NGO “Kwina to Kwina”, the Kosovo women’s NGOs “Kosovo Centre for Gender Studies”, “Norma” and “Gratë për Gratë” (Women for Women), the Serbian women’s NGO “Ruka Ruci” from Fushë Kosovë/Kosovo Polje and the ethnic Turkish women’s NGO” Zybejde Hanim” from Prizren.

Conferences attended in 2007 in the field of gender and women’s rights included a seminar organised in March 2007 in Gjakovë/Đakovica by the NGO “Shoqata e Gruas” (Women’s Association). At this conference, the Deputy Director of Investigations held a speech on the topic “The Implementation of the UNMIK Regulation Against Domestic Violence”. She also attended a two-day workshop on “The Situation of Women in the Western Balkans Region”, organised by the Regional Centre for Minorities in Belgrade in mid-May 2007. Two main issues discussed during this workshop were “Employment and how to stimulate the economic development of women” and “Domestic violence”. The Deputy Director of Investigations gave a presentation on the situation of women in Kosovo in relation to these topics. Apart from strengthening regional cooperation of ombudsmen and other human rights institutions working in this field, the workshop facilitated the exchange of experiences and best practices between its participants.

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

Throughout the reporting period, the Ombudsperson Institution continued to be in close contact with the OSCE Mission in Kosovo, the Office of the High Commissioner for Human Rights (OHCHR) in Prishtinë/Priština and various offices within UNMIK, mainly the Office of Communities, Refugees, and Minority Affairs. The Acting Ombudsperson raised certain issues of importance to the SRSB, including the independence of the

judiciary and matters involving the exercise of property rights by inhabitants of the Roma Mahalla neighbourhood in the southern part of Mitrovicë/Mitrovica.

The OSCE continues to offer major support to the Ombudsperson Institution, mainly by providing special advisors to the staff of the Institution in the areas of law, policy and public affairs. Until spring 2007, an additional advisor was paramount in ensuring the proper functioning of the Ombudsperson Institution's administration. The OSCE's Information and Communications Technology Section regularly provided valuable assistance in ensuring the functionality of the Ombudsperson Institution's IT system and deserves special thanks for their commitment and support.

In the second half of 2006, the UNDP gave substantial support by assisting in the organisation of a roundtable, held at the Ombudsperson Institution's main office in Prishtinë/Priština, on the implementation of UNMIK Regulation No. 2003/12 on Protection Against Domestic Violence.

Another significant event, which was realised with the substantial support of the OHCHR staff (both from the office in Prishtinë/Priština and the headquarters in Geneva) and OSCE translators and administration, was the Regional Ombudsman Conference held in Prishtinë/Priština on 8 and 9 June 2007.

The Ombudsperson Institution continued its frequent contacts with the Executive Director 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 HPD. There were certain cases, however, where the recommendations of the Acting Ombudsperson were not discussed or implemented.

The Ombudsperson Institution also contacted the Kosovo Trust Agency (KTA) regarding a number of cases, but did not always receive an answer to correspondence sent in this respect. As of spring 2007, however, the KTA has demonstrated a greater cooperation with the Institution.

The Acting Ombudsperson maintained his co-operation with the UNMIK Standards Coordinator, mainly by informing him about a number of human rights issues being investigated by the Institution.

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

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

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

- The EU Commission
- The EU Monitoring Mission
- Human Rights Watch
- The Humanitarian Law Centre in Belgrade and its Prishtinë/Priština Office
- The ICRC Office in Prishtinë/Priština
- IOM
- The Spanish NGO “Movement for Peace, Disarmament and Freedom”
- Save the Children
- The Swedish Helsinki Committee for Human Rights in Stockholm and its office in Belgrade
- UNHCR
- UNICEF
- UNIFEM

### **Cooperation with local institutions**

Throughout the reporting period, the Acting Ombudsperson met with numerous representatives of the PISG at the central level – including the President of Kosovo, the Prime Minister of Kosovo and the President of the Kosovo Assembly – to discuss various human rights questions and the future of the Ombudsperson Institution. A number of human rights units created within the ministries have also cooperated with the Ombudsperson Institution on an individual basis. In March 2007, the Prime Minister issued an administrative instruction obliging these human rights units to communicate and exchange information with the Ombudsperson Institution.

The Acting Ombudsperson regularly addressed requests for information and intervention letters to various ministers, 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. The most notable exceptions to this rule were the Municipalities of Vushtrri/Vučitrn and Fushë Kosovë/Kosovo Polje, which usually responded promptly to the Ombudsperson’s requests and recommendations. At the other end of the spectrum, the Municipalities of Prishtinë/Priština, Skenderaj/Srbica and Mitrovicë/Mitrovica continued not to cooperate with the Institution. With regard to the latter two municipalities, the Ombudsperson Institution issued a special report in which the Acting Ombudsperson considered that this lack of cooperation violated these municipalities’ obligations to

cooperate with the Institution under UNMIK Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo.

During the reporting period, cooperation with the Kosovo Assembly was greatly enhanced, especially with the Assembly's Committee for Judicial, Legislative Matters and Constitutional Framework. Examples of positive cooperation were constant discussions regarding the Assembly's Draft Law on the People's Advocate, the active participation of the Committee's Chairperson in the Regional Ombudsman Conference and cooperation with regard to a project, organised and funded by the International Centre for Democratic Transition in Hungary, for strengthening democratic institution in the Balkan region.

The staff of the Ombudsperson Institution were 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 for a long time failed to respond to the Acting Ombudsperson's requests.

### **Cooperation with local NGOs**

Apart from the cooperation with international NGOs mentioned above, the Ombudsperson Institution also increased its cooperation with Kosovo NGOs. Staff of the Ombudsperson Institution met regularly with a number of women's and children's NGOs, such as the Centre for the Protection of Women and Children. Collaboration and the exchange of information continued with the NGO Handikos, which deals with the protection of the rights of disabled persons.

Staff of the Ombudsperson Institution also collaborated with certain NGOs in awareness-raising projects. One such project was an art competition on the topic "What does discrimination mean to you?" organised by the Institution together with the NGO "Youth Initiative for Human Rights"; this was part of the Institution's general anti-discrimination awareness-raising campaign, initiated in spring 2007. The art competition culminated in an exhibition held on the premises of the Youth Initiative in May 2007, and the authors of the best works were awarded prizes provided by the Youth Initiative.

Another project organised with an NGO was the roundtable on the rights of women who had suffered sexual abuse during the fighting in 1998-99, which the Ombudsperson Institution hosted at its Prishtinë/Priština headquarters upon the request of the women's NGO "Medica".

### **Internships**

In this reporting period, the Ombudsperson Institution awarded monthly internships to 25 students from the political science and law faculties of the University of Prishtinë/Priština. Internships at the Ombudsperson Institution were also awarded to two

students who had participated in the finals of the Kosovo Case Challenge 2007, a mock trial during which participants were asked to simulate proceedings before the International Court of Justice. For the first time, the Ombudsperson Institution had two interns working at different times with the Institution's Public Affairs Office.

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

The Ombudsperson Institution stepped up its media relations and awareness-raising efforts during this reporting period with the development of a broader public information strategy and a greater attention to broadening the scope of the Public Affairs Office. There was also an increased focus on establishing and fostering partnerships with media and civil society groups to better promote the work of the Ombudsperson Institution and human rights issues generally.

For the first time since its inception, the website of the Ombudsperson Institution was thoroughly overhauled during this reporting period. Apart from a new design and more user-friendly content structure, the website now offers such features as a photo gallery, press clippings archive, search engine, and links to various resource sites. It is hoped that these added features will attract more hits to the website and better promote the Ombudsperson Institution's reports, public statements and other activities. The new website will be posted in July 2007 on the Institution's existing website address ([www.ombudspersonkosovo.org](http://www.ombudspersonkosovo.org)).

Another first for the Ombudsperson Institution during this reporting period was the publication of a complaint form, which also includes basic information about the Institution. By completing the form prior to speaking to one of the Institution's lawyers, complainants can now clarify the key facts related to their cases, which serves to improve and expedite the initial consultation process. Copies of the complaint form are available at the offices and website of the Ombudsperson Institution, as well as in public administration buildings, courts, and prisons throughout Kosovo.

The Acting Ombudsperson and senior staff of the Institution have continued their positive relations with local and international media, taking part in press conferences, radio and television debates, as well as one-to-one interviews with the aim of promoting various human rights issues to the general public. In particular, there was a greater interest amongst local journalists in covering and following up on the Institution's reports. Local media have also followed with particular interest the appointment process for the post of Ombudsperson, which is yet to be finalised.

A Regional Ombudsperson Conference, hosted for the first time by the Ombudsperson Institution in June 2007, drew wide media attention to the Institution's current activities and priorities. The event's international character and active participation of local stakeholders further boosted the public perception of the Institution as Kosovo's leading mechanism for the protection *and promotion* of human rights.

The Ombudsperson's Special Teams continue to raise public and stakeholder awareness of the issues related to their work. The Children's Rights Team (CRT) continued its "Children's Rights Awareness Campaign", initiated during the last reporting period and consisting of visits and distribution of promotional materials to schools throughout Kosovo. The CRT has also prepared a compilation of laws related to children's rights, which will be distributed to various stakeholders in the latter half of 2007. The Gender Equality Unit (GEU), on the other hand, turned its attention in this reporting period to raising awareness of gender issues and fostering partnerships amongst civil society. An example of such cooperation was a roundtable on domestic violence, hosted by the Ombudsperson Institution in cooperation with UNDP, which gathered NGOs and other stakeholders to address the implementation of certain provisions of the UNMIK Regulation No. 2003/12 on Protection Against Domestic Violence.

The Non-Discrimination Team (NDT) was particularly active in the public domain, launching a "Stop Discrimination" campaign that consisted of briefings about non-discrimination issues to schools, civil society groups and local authorities throughout Kosovo. Newly-produced pamphlets, posters and stickers were also distributed as part of the campaign. Additionally, and in co-operation with the local NGO "Youth Initiative for Human Rights", the NDT organised a competition of art works responding to the question "What does discrimination mean to you?" An exhibition of the best works submitted from across Kosovo was held in Prishtinë/Priština in May 2007. Further information on the Special Teams' awareness-raising activities can be found within the activities section of this Annual Report.

For the first time, the Ombudsperson Institution's Public Affairs Office hosted two interns during this reporting period, one in August-September 2006 and the other in April-May 2007. In addition, a Senior Translation and Information Officer was added to the Ombudsperson Institution team in June 2007, thereby enabling the Public Affairs Office to further broaden its scope of activities and effectiveness into the next reporting period.

### **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 Ombudsmen of Montenegro, Albania, FYR of Macedonia, Croatia, Slovenia, Spain, Switzerland, Norway and Finland.

In addition, 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 organisations from surrounding countries and throughout Europe.

### **Collaboration: Conferences, seminars and workshops**

In **August 2006**, a lawyer from the Ombudsperson Institution's Gender Equality Unit (GEU) attended the second part of a seminar entitled "Regional programme on the equal status of women's rights", organised by the Swedish Raoul Wallenberg Institute of Human Rights and Humanitarian Law. The seminar took place in Kiev, Ukraine, and was attended by activists, state representatives and human rights NGOs from various European states. The GEU lawyer was able to take part in this programme thanks to the generous support of UNIFEM.

On **31 August 2006**, the Ombudsperson Institution's Deputy Director of Investigations participated in a seminar, organised in Prishtinë/Priština by the OSCE Mission in Kosovo for police inspectors, where she presented the role of the Ombudsperson Institution in the protection of human rights.

On **14-16 September 2006**, a representative of the Ombudsman Institution participated in a seminar with other ombudsman institutions from across southeastern Europe. The representative conducted a presentation on the topic "The Ombudsman as an institution of administrative reform". The seminar was held in Ohrid, FYR of Macedonia and organised by the Greek Ombudsman as part of the EUNOMIA project.

On **21 September 2006** the Ombudsperson Institution's Deputy Director of Investigations, along with representatives from the human rights units of the Kosovo Government ministries, attended a seminar hosted by the Kosovo Judicial Institute in Prishtinë/Priština in co-operation with the OSCE and the Prime Minister's Advisory Office of Good Governance, Human Rights, Equal Opportunity and Gender Issues. The Institution's representative presented the role of the Ombudsperson Institution in protecting human rights and called for increased cooperation between the human rights units and the Institution.

From **26 to 28 September 2006**, the lawyers of the Ombudsperson's Children's Rights Team (CRT) participated as observers at the European Network of Ombudsmen for Children (ENOC), organised and hosted by the Greek Ombudsman in Athens. The CRT lawyers used this opportunity to exchange information and best practices with ombudsman institutions from other countries.

On **29-30 September 2006**, the CRT lawyers participated in a conference hosted in Athens and jointly organised by the Commissioner for Human Rights of the Council of Europe, the Ombudsman for Human Rights in the Russian Federation, and the Greek Ombudsman. Some of the key topics discussed included "Establishing independent offices for children's rights: the different models" and "Listening to and involving children to strengthen their voices".

On **6-7 October 2006**, lawyers from the Ombudsperson Institution attended a seminar held in Prishtinë/Priština on the topic "Rule of Law and Good Governance Issues". The

seminar was organised by the Council of Europe and funded by the Swedish International Development Agency (SIDA).

On **19-20 October 2006**, the CRT lawyers took part in a conference on “The establishment of a network of ombudsmen for children’s rights in southeastern Europe”, held in Novi Sad (Serbia proper) and organised by the Ombudsman of Vojvodina. One of the CRT lawyers conducted a presentation at the conference on “The applicability of the UN Convention on the Rights of the Child through domestic laws”.

On **23-27 November 2006**, a lawyer and legal assistant of the Ombudsperson Institution participated in a seminar on the topic “Peace Building, Conflict Transformation and Post–War Rebuilding, Reconciliation and Resolution”, held in Cluj-Napoka, Romania and organised by the NGO “Transcend-Peace and Development Network”.

On **25 November 2006**, the GEU, in cooperation with the UNDP, organised a roundtable on the implementation of UNMIK Regulation No. 2003/12 on Protection Against Domestic Violence. Fifty-six local and international experts participated in this event, among them representatives from the KPS, judges, representatives from the Ministry of Justice, lawyers of victims, as well as representatives from social welfare centres, civil society and NGOs.

In **December 2006**, a GEU lawyer took part in a roundtable in Prishtinë/Priština organised by the Agency for Gender Equality within the Office of the Prime Minister on the topic “Article 70 of the Kosovo Family Law and implications for its execution in practice”.

On **13-14 December 2006**, the Deputy Director of Investigations participated in a workshop in Prishtinë/Priština aimed at developing human rights strategies in Kosovo. The workshop was organised by the Advisory Office of Good Governance, Human Rights, Equal Opportunity and Gender Issues within the Prime Minister’s Office in collaboration with the Council of Europe and the UN’s Office of the High Commissioner for Human Rights.

On **14 December 2006**, NDT representatives took part in a conference on the compilation of a strategy for the integration into society of the Roma, Ashkali and Egyptian communities. The conference was held in Prishtinë/Priština and organised by the Government of Kosovo in cooperation with the OSCE Mission in Kosovo.

On **7 February 2007**, Acting Ombudsperson Mr. Hilmi Jashari was a panelist at a conference entitled “Accountability, equality and the rule of law: Towards a democratic future”, organised by the Youth Initiative for Human Rights in Prishtinë/Priština.

On **14 February 2007**, the Ombudsperson Institution hosted a roundtable organised by the women’s NGO “Medica” on the topic “Developing the process of integrating women who have suffered sexual abuse during the conflict in Kosovo into the Kosovo

Assembly's Law on the Status and Rights of Families of Martyrs, Invalids, Veterans and Members of the Kosovo Liberation Army and Families of Civil Victims of War".

On **3-4 March 2007**, a lawyer from the Ombudsperson Institution participated as a judge in the Kosovo preliminary rounds of a moot court competition. This competition was part of the regional "Balkan Case Challenge 2007", organised by the World University Service (WUS) of Austria. On **28 May-1 June 2007**, another lawyer from the Ombudsperson Institution participated as a judge in the final rounds of the competition held in Vienna, Austria.

On **29-30 March 2007**, the Acting Ombudsperson participated in the "Supplementary Human Dimensions Meeting on Freedom of Assembly, Association and Expression: Fostering Full and Equal Participation in Pluralist Societies", held in Vienna, Austria. The meeting was organised by the OSCE Office for Democratic Institutions and Human Rights and the Spanish OSCE Chairmanship.

On **7 April 2007**, a CRT lawyer participated in a meeting held in Novi Sad and organised by the Ombudsman of Vojvodina on behalf of the network of Ombudsmen for Children's Rights in South-East Europe. The subject of the meeting was "Healthy eating – healthy life-styles"; the CRT lawyer presented the topic: "How much is poverty a factor in disabling the realisation of healthy life-styles?"

On **11 April 2007**, a representative of the International Centre for Democratic Transition (ICDT) - an independent institution established by the Hungarian Government – visited the Ombudsperson Institution as part of a project aimed at strengthening democratic institution in the Balkans region.

On **18 April 2007**, the Acting Ombudsperson attended a roundtable on "Implementing the Anti-Discrimination Law", organised by the OSCE Mission in Kosovo, at which he conducted a presentation on the competencies of the Ombudsperson Institution in investigating complaints linked to discrimination.

On **24 April 2007**, the Acting Ombudsperson and the Deputy Ombudsperson participated in a Regional Roundtable on "The Role of the Ombudsman in Protecting Human Rights and Freedoms in the Future Constitution of Montenegro". The roundtable was organized by the Montenegro Ombudsman and OSCE Mission in Montenegro, and was held in Podgorica, Montenegro.

In **May 2007**, the Institution's Deputy Director of Investigations attended a conference on the topic "The Situation of Women in the West Balkans Region", hosted in Belgrade by the Regional Centre for Minorities. She gave two presentations at the conference, one on women's rights in the employment market and the other on domestic violence in Kosovo.

On **8 and 9 June 2007**, the Ombudsperson Institution hosted its first Regional Ombudsman Conference under the title: “Support and Obstacles to the Protection of Human Rights”. The conference gathered representatives of ombudsman institutions from across southeastern Europe, as well as local authorities, civil society groups and media. The event is described in more detail below, and the recommendations issued at the conclusion of the conference are attached in Annex 4 of this Annual Report.

On **27 June 2007**, a delegation from the ICDT visited the Institution to hold a working group with representatives of the Institution, the PISG, international organisations, civil society groups and other stakeholders. The working group was organised to assist the ICDT in formulating recommendations for the Kosovo Assembly’s draft legislation on the Ombudsperson as well as the future structure of the Institution.

### **Capacity-building: Study visits and training**

From **September 2006**, the Ombudsperson Institution’s Procurement Manager started a training course in public procurement at the University of Business and Technology in Prishtinë/Priština. The programme is being funded by SIDA and ends in November 2007.

On **12 September 2006**, the Ombudsperson Institution’s legal and administrative staff attended a training session on proper archiving procedures. The training was held as part of the Swedish International Development Agency’s (SIDA) ongoing capacity-building and support to the Ombudsperson Institution and was organised by the Council of Europe. Following this session, the expert from the Kosovo Archives conducted coach training at Ombudsperson Institution offices across Kosovo in the second half of September 2006.

On **18-19 September 2006**, staff of the Ombudsperson Institution attended a two-day training session focusing on environmental issues. The sessions were funded by the Kosovo Consolidated Budget and conducted by the senior lawyers of the Greek Ombudsman at the Institution’s main offices in Prishtinë/Priština.

From **October 2006**, the legal staff of the Ombudsperson Institution began attending the second cycle of a SIDA-funded English legal terminology course conducted by the Cambridge School Prishtinë/Priština. The course will partially continue into the next reporting period.

On **6-7 October 2006**, lawyers from the Ombudsperson Institution attended a seminar held in Prishtinë/Priština on the topic “Rule of Law and Good Governance Issues”. The seminar was organised by the Council of Europe and funded by the Swedish International Development Agency (SIDA).

On **16-20 October 2006**, two lawyers from the Ombudsperson Institution visited the Ombudsman Offices in Tuscany, Italy, as part of an exchange programme between the

Institution and the Ombudsman of the Associated Municipalities of Valdinievole (Tuscany). The visit was funded by a US Government donation for the Institution's capacity-building initiatives.

From **October–December 2006**, the administrative staff and translators of the Ombudsperson Institution attended a Business English course at the New Age School in Prishtinë/Priština. The cost of the course was funded by the US Government.

In **November 2006**, Ombudsperson Institution staff attended SIDA-funded Albanian and Serbian writing skills courses at the Institution's main offices. The courses were conducted by a Kosovo Assembly trainer and organised by the Council of Europe.

On **14-17 November 2006**, a psychologist from the Office of the Greek Ombudsman conducted coach training for the CRT at the Ombudsperson Institution's main offices in Prishtinë/Priština funded by the Norwegian government. The training aimed to advise the CRT lawyers on dealing with children's rights cases from a psychologist's perspective.

On **1-2 December 2006**, an international expert on children's rights and professor at the Human Rights Centre in Ghent University in Belgium conducted training sessions for staff lawyers at the Ombudsperson Institution's main offices in Prishtinë/Priština, funded by a generous donation of the Norwegian government. The sessions focused on the various provisions of the UN Convention on the Rights of the Child.

On **4-8 December 2006**, a delegation from the Ombudsperson Institution visited the Office of the Hungarian Ombudsman in Budapest to exchange legal and administrative best practices. This study visit was funded by SIDA.

On **27–29 March 2007**, the Ombudsperson Institution's translators traveled to the International Criminal Tribunal for the Former Yugoslavia in The Hague, the Netherlands. This SIDA-funded study visit enabled the translators to experience first hand the practices and professionalism of the Court's simultaneous interpreters. The trip was organised by the Council of Europe.

In **May 2007**, the Ombudsperson Institution's translators attended a three-day training course on simultaneous interpretation conducted by a freelance interpreter from Bosnia and Herzegovina. This training was funded by SIDA, organised by the Council of Europe and held at the Institution's main offices in Prishtinë/Priština.

On **2-30 May 2007**, the Ombudsperson Institution's management and administration attended various SIDA-funded training sessions on planning and budgeting, human resources and office management, conducted in Prishtinë/Priština by the consultancy "Management and Development Associates". The training was organised by the Council of Europe.

On **14-25 May 2007**, an Ombudsperson Institution lawyer took part in a training course entitled "When citizens complain: The role of the Ombudsman in improving public

services”. The course was held in London and organised by Public Administration International (PAI), a UK-based organisation that provides training and other support for public sector institutions. The lawyer’s participation in the training was financed by SIDA.

On **23-30 June 2007**, two lawyers and a translator from the Ombudsperson Institution attended the International Summer School on Human Rights in Warsaw, Poland. The sessions focused on various articles of the European Convention on Human Rights; the staff members’ participation was organised by Poland-based Helsinki Foundation for Human Rights and funded by SIDA.

### **Regional Ombudsman Conference**

During this reporting period, the Ombudsperson Institution hosted its very first Regional Ombudsman Conference. Entitled “Support and Obstacles to the Protection of Human Rights”, the conference was held in Prishtinë/Priština on 8-9 June 2007 with the financial support of the US Office in Prishtinë/Priština and organisational assistance of the OSCE Mission in Kosovo. The conference was chaired by the head of the OHCHR in Prishtinë/Priština.

The conference gathered representatives of ombudsman institutions from across southeastern Europe, as well as international organisations operating in Kosovo, local authorities, civil society groups and media. Opening remarks were made by the Acting Ombudsperson, as well as the Head of the OSCE Mission in Kosovo, the President of Kosovo and the Minister of Justice.

Presentations were given by a number of regional ombudsmen and their representatives regarding the work of their offices and the everyday challenges they faced. Other, more general presentations regarding the nature and mandate of ombudsman institutions and their collaboration with the media were given by the Legal Advisor to the Council of Europe’s Office of the Human Rights Commissioner and the Chairman of the International Ombudsman Network (European Region) respectively. The President of the Helsinki Foundation for Human Rights and former international Ombudsperson in Kosovo also spoke about the establishment of the Ombudsperson Institution in Kosovo in 2000. In general, discussions focused on the various mandates of ombudsmen, their cooperation with public authorities and other matters of interest for participants. Whilst a number of those participants represented the PISG, civil society and media, their contributions to the discussions were for the most part limited.

At the conclusion of the conference, participants agreed on a set of recommendations to be published and distributed to all stakeholders in the forthcoming period. An attending representative from the OHCHR’s headquarters in Geneva, as well as the head of the OHCHR in Prishtinë/Priština, were instrumental in formulating these recommendations. The recommendations are included in Annex 4 of this Annual Report.

Given the participants' agreement that the event was such an overwhelming success, it is expected that this Regional Ombudsman Conference marks the first in what will be a significant addition to the annual calendars of the ombudsman institutions of the region, and that local authorities, civil society groups and the media will take an even greater interest in next year's event.

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

As with any independent *sui generis* institution, the Ombudsperson Institution in Kosovo can only conduct its work properly if it is financially independent from the executive, judicative and legislative powers in Kosovo. Such independence means that the Institution is not financially accountable to those parts of the government managing the Kosovo Consolidated Budget. None of these powers should be able to influence the actual work of the Institution, including its investigations. In the case of the executive, this also means that it may not interfere in the annual budget process, since any such interference could indirectly influence the running of the Institution and its work. This is stipulated in Section 17.1 of UNMIK Regulation No. 2006/06 on the Ombudsperson Institution. The same provision states that if the Institution considers that budgetary proposals from the Government may compromise its ability to carry out its functions fully and independently, it may draw the attention of the Kosovo Assembly to this issue.

During discussions with the Ministry of Economy and Finances regarding the Institution's budget for 2007, 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 as well as the Budgetary Committee of the Assembly of Kosovo, it was only due to the support of the SRSG that the Acting Ombudsperson's budget request was satisfied in part at the end of 2006.

To date, the Ombudsperson Institution has managed to keep most of its staff members due to the ongoing contributions of international donors. It must be stressed once again, however, that paying for these staff salaries and other activities with donor funds is not a sustainable solution, and does not absolve the public authorities in Kosovo from their responsibility to provide the Institution with adequate funding. While the Institution is well aware of the Kosovo budget's limitations, this fact should not impede the jurisdiction and functions of what remains the only independent human rights mechanism in Kosovo.

It is expected that, in future, there will be a more active participation of the PISG in supporting and guaranteeing the future financial sustainability of the Institution, and that the ongoing and contentious discussions with respect to the Institution's budget will soon be a thing of the past. The competent authorities must recognise the importance of retaining the current professional legal staff of the Institution. Salaries must remain at a level appropriate to the Institution's high standard of work. In 2003, the then-SRSG recognised this problem and approved a special salary scheme for professional legal staff

of the Institution. The Ombudsperson Institution expects that such recognition will be shared by the competent offices within the PISG, so that the important work of the Institution can continue as it has over the past six years.

## **Financial and material support**

During the reporting period, the Ombudsperson Institution was provided funds by the Kosovo Consolidated Budget, the Swedish International Development Agency (SIDA) and by the governments of the following countries: Austria, Belgium, Finland, Lichtenstein, Norway, Turkey and the United States of America.

### **Projects**

#### **SIDA**

In September 2005, the Ombudsperson Institution began implementing a three-year capacity-building project, financed by SIDA, which 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.

In this reporting period, SIDA funded a seminar on the rule of law and good governance, English legal terminology courses with the Prishtinë/Priština office of the Cambridge School, a study visit to the Hungarian Ombudsman's Office and the participation of the Institution's staff members in a number of summer schools on rule of law and human rights issues. These included a human rights summer school organised by the Polish Helsinki Foundation for Human Rights, a training held in London and organised by the organisation "Public Administration International" on how ombuds-institutions can improve their services to the public, as well as training on peace-building and conflict transformation organised in Cluj Napoca in Romania by the Transcend Network for Conflict Transformation by Peaceful Means. SIDA also funded the participation of the Institution's Procurement Manager in a nine-month course on procurement at the University for Business and Technology. Since the last reporting period, a Council of Europe expert has been preparing a new database system for case management, which was tested in April 2007 and is expected to be installed in July 2007.

The SIDA project also included training on simultaneous interpretation and a study visit to the International Criminal Tribunal for the Former Yugoslavia for the Ombudsperson Institution's translators. Other training funded by SIDA and implemented by the Council of Europe in this reporting period included courses in Albanian and Serbian writing skills conducted by an expert from the Kosovo Assembly, as well as various training sessions for administrative staff on budgeting, human resources and office management.

## **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 has continued to fund the Ombudsperson Institution's field office in Gračanica/Gračanice throughout the reporting period.

## **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 and to publish the Quarterly Information Sheet in four languages. This project is still ongoing.

## **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.

## **LICHTENSTEIN**

Until the end of 2006, this grant was used to cover the salary of an Information Technology Manager within the Institution.

## **NORWAY**

Until the end of 2006, a Norwegian donation was used to remunerate three lawyers and cover the costs of a number of the Institution's publications, activities of the Children's Rights Team and external translation services.

In January 2007, the Ombudsperson Institution received another Norwegian donation for a new project. This grant has been used to cover the cost of publications and translations, the special projects of the 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/Gračanice.

## **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.

## **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.

During the reporting period, this fund has been used to cover the costs of a Business English course for the administrative staff of the Institution and a visit by two lawyers to the Ombudsman Offices in Tuscany, Italy, as part of an exchange programme between the Ombudsperson Institution and the Ombudsman of the Associated Municipalities of Valdinievole (Tuscany). In addition, the grant funded the purchase of accounting software and much-needed office equipment for the main offices in Prishtinë/Priština.

A large part of this grant was used to fund the Institution's first Regional Ombudsman Conference, held on 8-9 June 2007 in Prishtinë/Priština and entitled: "Support and Obstacles to the Protection of Human Rights". The fund was closed at the end of June 2007.

### **Other forms of support:**

During 2006-2007, the OSCE Mission in Kosovo continued to support the Institution in a number of areas. The Mission provided two, in-house special advisors covering administrative, legal, policy and public affairs issues. A third OSCE advisor was based at the Institution until January 2007. In addition, the OSCE continued to offer its technical support by providing the Institution with translation equipment for seminars and conferences as well as extensive advice on IT-related issues.

Other organisations that sponsored activities or provided support to the Institution's activities during the reporting period were:

- EUNOMIA Ombudsman Program
- Kosovo Youth Initiative for Human Rights
- UNICEF
- UNDP

## **OVERVIEW OF CASES AND STATISTICS**

### **Overview of cases**

During the reporting period, approximately 4 612 people contacted the Ombudsperson Institution at its main offices in Prishtinë/Priština and the field offices to lodge formal complaints or to ask for advice and assistance. During the 109 Open Days held during the reporting period, approximately 1 013 people met personally with the Acting Ombudsperson, his Deputy or the Director of Investigations. The statistics below are divided into three categories of cases: “Cases for Reaction (CR) cases, applications, and complaints, although their respective statistics are not always directly comparable.

Prior to 2006, cases pending before the Ombudsperson Institution were divided into applications and CR-cases (these cases did not follow formal proceedings due to their nature or urgency). It was only in January 2006 that this distinction disappeared and all cases were called complaints. In the current reporting period, the Institution continued to investigate and close CR cases and applications opened prior to 2006.

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

### **Interim measures and reports**

When the Ombudsperson considers that immediate action by public authorities is necessary, he may formally request that the competent administrative body take or suspend a particular action as an interim measure, so as to prevent irremediable harm to complainants or their property. See Annex 2 for a summary of the interim measure request issued by the Acting Ombudsperson in this reporting period.

When intervention letters and attempts at mediation have not been successful, the Ombudsperson may issue a report, providing an in-depth analysis and public exposure of a violation of human rights or applicable law, complete with recommendations to the respective public institution on how to remedy the violations. The Institution uses reports as a last resort method of advocacy and submits copies of the report to the offending public authority and to the Assembly of Kosovo, which in some cases is asked to discuss certain situations involving human rights violations. See Annex 1 for summaries of the reports issued during the reporting period and of how public authorities have responded to those reports.

## Statistical overview of cases<sup>1</sup>

<b>Cases for Reaction (C.R. cases) :</b>		
C.R. cases closed from 1 July 2006 - 30 June 2007		
	Declared inadmissible	26
	Positively resolved	33
	Other Reasons	88
<i>Total</i>		<b>147</b>
<b>Applications :</b>		
Applications closed from 1 July 2006 - 30 June 2007		
	Declared inadmissible	18
	Other reasons	79
	Positively resolved	70
<i>Total</i>		164
<b>Complaints :</b>		
Complaints registered from 1 July 2006 – 30 June 2007		690
Ethnicity of complainants		
	Albanian:	515
	Serbian:	124
	Other:	51
Respondent Parties		
	Courts	190
	Municipalities:	131
	Other	68
	Government Ministries:	174
	HPD	74
	KPS	51
	UNMIK	5
	KFOR	4
Complaints closed from 1 July 2006 – 30 June 2007		

	Declared inadmissible	145
	Positively resolved	163
	Other reasons	94
<i>Total</i>		402
<b>Subject of complaint</b>		
	Administrative silence and related issues	181
	Procedural and other fair trial issues (civil proceedings)	105
	HPD issues	72
	Abuse of authority	82
	Economic, Social and Cultural Rights	81
	Property-related issues (other than HPD)	68
	Employment-related issues	56
	Access to court (civil proceedings)	32
	Fair hearing issues (criminal proceedings):	25
	Failure to investigate a crime	26
	Good Offices	18
	Other rights protected by the ECHR	40
	Impunity of authorities	24
	Right to liberty	5
<b>Investigations and reports</b>		
(1 July 2006 – 30 June 2007)		
	Special Reports	3
	Ex.Officio Reports	2
	Case Reports	10
	Ex-Officio investigations opened	9
	Requests for interim measures	1

## ANNEX I: SUMMARIES OF REPORTS

Pursuant to his authority under Section 4 of UNMIK Regulation No. 2006/06 on the Ombudsperson Institution and the Institution's Rules of Procedure, the Ombudsperson Institution issued the following reports to the Assembly of Kosovo during the reporting period.

### *Ex officio* Registration Number 48/05

#### **Regarding the matter of gender-based discrimination in vacancy announcements for filling working places in the public sector**

**On 5 October 2006**, the Acting Ombudsperson published a report on the above issue. It was the result of an analysis of around 1,000 vacancy announcements for positions in the public sector published in the daily newspaper "Koha Ditore". Following his investigations, the Acting Ombudsperson concluded that in a number of cases, the phrasing of the announcements referring only to the female word for certain positions had excluded male candidates from applying.

In the report, the Acting Ombudsperson concluded that there was no reasonable justification for such gender-based limitations. These limitations constituted a direct form of discrimination in violation of both domestic law (mainly the Law on Gender Equality), as well as international legal instruments (primarily the International Covenant on Civil and Political Rights, which protects individuals against all forms of discrimination).

The Acting Ombudsperson recommended that the Kosovo Assembly conduct a debate within the Committee for Judicial, Legislative Matters and the Constitutional Framework to find ways of ensuring the direct implementation of relevant legal provisions that prohibit gender-based discrimination in access to employment. Moreover, he recommended that the Assembly request regular updates from the human rights units within the Kosovo Ministries and other relevant bodies to provide regular information on the implementation of the Law on Gender Equality by the Ministries, the enterprise "Termokos" and PTK. The Acting Ombudsperson also asked the Assembly to guarantee that this report be disseminated to all public institutions in Kosovo.

The Acting Ombudsperson has not received a response to this report and has not been informed as to whether the Kosovo Assembly has discussed or intends to discuss his recommendations.

***Ex officio* Registration Number 1/06**  
**Regarding the implementation of Sections 7 and 9 of**  
**UNMIK Regulation No. 2003/12 on Protection against Domestic Violence**

**On 23 November 2006**, at a roundtable organised by the Ombudsperson Institution and UNDP on the implementation of the above UNMIK Regulation, the Acting Ombudsperson published a report on this matter. The Ombudsperson Institution's investigation focused on whether municipal courts in Kosovo had abided by the time-limits for issuing protection orders in cases of domestic violence set out in Sections 7.1 and 9.1 of the above-mentioned Regulation. These sections specified that courts needed to decide on requests for protection orders within 15 days and requests for emergency protection orders within 24 hours.

The Acting Ombudsperson noted in the report that in all cases under investigation, the courts had taken exceeded the time limits provided for in UNMIK Regulation No. 2003/12 by weeks and even months. Such delays were in violation of Sections 7.1 and 9.1 of the Regulation. Moreover, such conduct demonstrated that the respective courts had not fulfilled their obligations to protect victims of domestic violence in compliance with the applicable law, thus constituting a violation of these victims' rights to be free from inhuman and degrading treatment as provided for by Article 3 of the European Convention on Human Rights. The Acting Ombudsperson also noted that the courts had not abided by their obligation to ensure that the victims could exercise their rights to security, peace, and dignity within their homes. This was in violation of Article 8 of the Convention, which protects the right to private life and home. Finally, the Acting Ombudsperson found that the absence of any legal remedy in cases when courts delayed such proceedings constituted a violation of Article 13 of the European Convention on Human Rights, which protects every person's right to an effective legal remedy.

The Acting Ombudsperson recommended that the presidents of municipal courts in Kosovo should ensure that cases involving protection orders for victims of domestic violence be given priority so that these orders could be issued within the time limits laid out in UNMIK Regulation No. 2003/12. He also asked the presidents of the municipal courts to ensure that the report be disseminated to all judges at their relevant courts. Finally, the Acting Ombudsperson recommended that the Judicial Council of Kosovo should appoint and train, as soon as possible, a sufficient number of judges to deal with cases of domestic violence.

The Acting Ombudsperson received no response to this report and was not informed as to whether or not his recommendations had been or would be followed by the relevant stakeholders.

**Registration Number 1362/04**  
**Regarding the length of proceedings in the case of Xhemajl Pllana**

**On 31 October 2006**, the Acting Ombudsperson published a report with regard to the above-mentioned case involving a property dispute pending before local courts since 2001. In the report, the Acting Ombudsperson observed that the District Court in Prishtinë/Priština had taken over two years to convene a panel to sit on the case. The Acting Ombudsperson considered this to be in violation of the complainant's right to a fair trial within a reasonable time under Article 6 para. 1 of the European Convention on Human Rights. According to the Acting Ombudsperson, the insufficient number of judges working at the District Court (a fact which the President of the District Court argued as justification for the delay) could only excuse such delay if it was temporary. Since the problem of too few judges attempting to resolve an ever-growing case load had existed for a long time, and since no long-term plans had been taken to resolve the large backlog of cases pending before the District Court, the above argument was insufficient cause to justify the delay. The Acting Ombudsperson also noted that a lack of proper case management within the court appeared to have contributed to the length of proceedings. 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.

Given that the case was again pending before the Municipal Court in Prishtinë/Priština at the time of the report being published, the Acting Ombudsperson recommended that the President of the Municipal Court ensure that this Court issue a decision in the complainant's case without further delay. Furthermore, the Acting Ombudsperson appealed to the President of the District Court to ensure that the management and distribution of cases within this court be subjected to an independent assessment with a view to improving court management. Finally, the Acting Ombudsperson recommended that the Kosovo Assembly initiate discussions with all competent organs and institutions on drafting a relevant legal instrument that would, in cases involving length of proceedings before court, constitute an effective remedy within the meaning of Article 13 of the Convention.

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.

**Special Report No. 11**  
**Regarding the failure of the President of the Municipal Court in Ferizaj /Uroševac**  
**to co-operate with the Ombudsperson Institution in Kosovo**

**On 6 April 2007**, the Acting Ombudsperson published a special report with regard to the above-mentioned issue. In this report, the Acting Ombudsperson examined whether the

failure of the President of Municipal Court in Ferizaj/Uroševac to respond to correspondence received from the Ombudsperson Institution was in violation of his obligation to cooperate with the Institution under Sections 4.6 and 4.8 of UNMIK Regulation No. 2006/6 on the Ombudsperson Institution in Kosovo.

Between November 2005 and September 2006, the Ombudsperson and the Acting Ombudsperson had sent a number of letters to the President of the Municipal Court asking for information on different cases pending before the Ombudsperson Institution and involving delays in civil and criminal proceedings before this court. To the date on which the special report was published, the Ombudsperson Institution had never received a response to any of these letters. In the special report, the Acting Ombudsperson came to the conclusion that the President of the Municipal Court's failure to cooperate had violated the above provisions of UNMIK Regulation No. 2006/06, which require all public institutions to assist the Ombudsperson Institution in its work and to respond to its requests for information and documents within a reasonable time.

The Acting Ombudsperson recommended that the President of the District Court in Prishtinë/Priština (as the higher instance court responsible for supervising the Municipal Court in Ferizaj/Uroševac) ensure that the President of the Municipal Court respond with no further delay to all previous and future requests and interventions of the Acting Ombudsperson. He also recommended to the Kosovo Judicial Council that it disseminate copies of this report to all courts in Kosovo.

**On 18 April 2007**, the Acting Ombudsperson received a letter from the President of the Supreme Court of Kosovo, on behalf of the Kosovo Judicial Council, informing him that the Kosovo Judicial Council had asked the President of the Municipal Court in Ferizaj/Uroševac to cooperate with the Ombudsperson Institution.

**On 26 June 2007**, the Acting Ombudsperson received a letter from the Chairperson of the Sub-Committee for Gender Equality, Petitions and Public Complaints and Missing Persons within the Assembly of Kosovo, stating that the Sub-Committee had examined the above-mentioned special report and that it would ask the President of the Municipal Court in Ferizaj/Uroševac to review this report. The Chairperson of the Sub-Committee added that the Sub-Commission would also ask the President of the District Court of Prishtinë/Priština to review this report.

#### **Registration Number 1736/2005**

#### **Sheribane Ademi against the Municipal Court in Vushtrri/ Vučitrn, the District Court in Mitrovicë/Mitrovica and the Supreme Court of Kosovo**

**On 10 May 2007**, the Acting Ombudsperson published a report with regard to a case involving lengthy court proceedings in a property dispute; the proceedings had been initiated in mid-2001 and were still ongoing at the time of the report being published.

The Acting Ombudsperson found that the failure of these courts to resolve the complainant's case within an adequate time violated Article 6 para. 1 of the European Convention on Human Rights, which protected every person's right to a fair trial within a reasonable time. While not denying that the case involving inherited property may have been complex, the Acting Ombudsperson found that this by itself could not justify the way in which proceedings had been conducted. The violation did not arise out of any court inactivity, but rather, the delays leading to an overall unreasonable length of proceedings were caused by the repeated examination of the case over two instances. This reflected a serious deficiency in the judicial system, in particular as regards the proper application of the law and the functioning of the hierarchical structure of this system. Moreover, the Acting Ombudsperson noted that the absence of a legal remedy by which to seek relief against lengthy court proceedings violated the complainant's right to an effective remedy under Article 13 of the European Convention on Human Rights.

As the case had once again been pending before the Municipal Court in Vushtrri/Vučitrn at the time when the report was published, the Acting Ombudsperson recommended that the Court decide on the complainants' case no later than 10 June 2007. Furthermore, he recommended that the President of the District Court in Mitrovicë/Mitrovica and the President of the Municipal Court in Vushtrri/Vučitrn begin discussing, as soon as possible, how best to apply substantive and procedural law and prevent the repeated examination of cases in future. Finally, the Acting Ombudsperson recommended that the Kosovo Assembly initiate discussions with the SRSG concerning the promulgation of a legal instrument that would constitute an effective remedy in terms of Article 13 of the Convention.

**On 21 May 2007**, the Acting Ombudsperson received a letter from the President of the District Court in Mitrovicë/Mitrovica, in which he agreed with the Acting Ombudsperson's findings. The President of the District Court pointed out, however, that the Ombudsperson Institution's report should include not only the omissions of the courts, but also the omissions of other institutions such as the UNMIK administration and other judicial bodies responsible for appointing judges and other court employees. These persons should also be obliged to undertake the necessary measures to prevent and deal with the present situation in the judiciary. This situation continued to impact upon the right to a fair trial within a reasonable time limit as guaranteed by Article 6 of the European Convention on Human Rights. Moreover, the President of the District Court noted that the regional courts and the Supreme Court did cooperate. Such cooperation involved discussions on various legal issues, especially with regard to the application of substantive and procedural law as well as the participation of judges in training sessions organised by the Kosovo Judicial Institute. Finally, the President of the District Court promised that he would be fully engaged in ensuring that the complainant's case was resolved.

To date, the Municipal Court in Vushtrri/Vučitrn has not issued a new judgment in the complainant's case.

**Registration Number 1734/2007**

**Jeton Kurshumliu against the Municipal Court in Mitrovicë/Mitrovica, the District Court in Mitrovicë/Mitrovica and the Supreme Court of Kosovo**

**On 10 May 2007**, the Acting Ombudsperson published a report on a case involving lengthy court proceedings in a dispute over a debt, initiated in January 2003.

The Acting Ombudsperson found that the failure of these courts in resolving the complainant's case within an adequate time period 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. Although the Acting Ombudsperson noted that the courts involved in the case had not remained inactive, the delays leading to an overall unreasonable length of proceedings were caused by the repeated examination of the case over several instances. This reflected a serious deficiency in the local judicial system, particularly with regard to the proper application of the law and the functioning of the hierarchical structure of this system. The Acting Ombudsperson also noted that the absence of a legal remedy by which to seek relief against lengthy court proceedings had violated the complainant's right to an effective remedy under Article 13 of the European Convention on Human Rights.

The Acting Ombudsperson recommended that as the case was still pending before the Supreme Court, the President of this Court should take urgent steps to issue a decision on the case without further delay, considering that the matter had been pending before different courts for over four years. He also asked to be informed of any actions taken in response to this report.

The Acting Ombudsperson further recommended that the President of the Supreme Court, the President of the District Court in Mitrovicë/Mitrovica and the President of the Municipal Court in Mitrovicë/Mitrovica discuss how to apply substantive and procedural laws in future so as to prevent the frequent examination of cases over three instances. Finally, the Acting Ombudsperson recommended that the Kosovo Assembly initiate discussions with all relevant bodies, including Kosovo institutions, on drafting a legal instrument that would constitute an effective remedy in line with Article 13 of the Convention.

**On 21 May 2007**, the Acting Ombudsperson received a letter from the President of the District Court in Mitrovicë/Mitrovica, in which he agreed with the findings of the Acting Ombudsperson's case report. However, the President of the District Court pointed out that the report should include not only the omissions of the courts, but also the omissions of other institutions such as the UNMIK administration and other judicial bodies responsible for appointing judges and other court employees. These persons should also be obliged to undertake the necessary measures to prevent and deal with the present situation in the judiciary. This situation continued to impact upon the right to a fair trial within a reasonable time period as guaranteed by Article 6 of the European Convention on Human Rights. Moreover, the President of the District Court noted that there was an ongoing cooperation between the regional courts and the Supreme Court. Such

cooperation involved discussions on various legal issues, especially with regard to the application of substantive and procedural law and the participation of judges in training sessions organised by the Kosovo Judicial Institute. Finally, the President of the District Court promised that he would be fully engaged in ensuring that the complainant's case was resolved.

**On 17 May 2007**, the Supreme Court of Kosovo, sitting as a panel of five judges, issued a decision rejecting the defending party's request for revision of the District Court's decision. As the District Court had confirmed a judgment of the Municipal Court deciding in favour of the complainant, there were now no more obstacles to the swift and proper implementation of this court judgment.

### **Special Report No.13**

#### **On the failure of the municipal authorities in Skenderaj/Srbica and Mitrovicë/Mitrovica to cooperate with the Ombudsperson Institution in Kosovo**

**On 22 May 2007**, the Acting Ombudsperson published a special report in which he investigated the question of whether the failure of the municipal authorities in both Skenderaj/Srbica and Mitrovicë/Mitrovica to respond to correspondence received from the Ombudsperson Institution was in violation of these municipalities' obligations to cooperate with the Institution under Sections 4.6 and 4.8 of UNMIK Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo.

Between September 2005 and March 2007, both the former Ombudsperson and later the Acting Ombudsperson sent a number of letters regarding specific cases to the Directorate for Education in the Municipality of Skenderaj/Srbica, and later to the President of the Municipality. No response was received. Similar problems were encountered with letters sent on other cases to different organs in the Municipality of Mitrovicë/Mitrovica. The Ministry of Local Government Administration and the Ministry of Education, Science and Technology were informed about this lack of cooperation, but also failed to respond to any letters sent by the Ombudsperson Institution.

The Acting Ombudsperson concluded that the failure, over more than a-year-and-a-half, of the municipal authorities in Skenderaj/Srbica and Mitrovicë/Mitrovica to respond to correspondence sent by the Ombudsperson Institution was in violation of Sections 4.6 and 4.8 of UNMIK Regulation No. 2006/06, which oblige all public institutions in Kosovo to assist the Ombudsperson Institution in its work and to respond to its requests for information and documents within a reasonable time. He also found that the failure of the Ministry of Local Government Administration and the Ministry of Education, Science and Technology to ensure that these municipal authorities fulfilled their obligations under UNMIK Regulation No. 2006/06 constituted a violation of their obligations to administrative oversight over municipalities and their directorates. This obligation is stipulated under UNMIK Regulation No. 2004/50 on New Ministries and the Establishment of the Posts of Deputy Prime Minister and Deputy Ministers in the

Executive Branch, as well as under Appendix IV of UNMIK Regulation No. 2001/19 on the Executive Branch of the PISG in Kosovo.

The Acting Ombudsperson recommended that the Minister of Local Government Administration and the Minister for Education, Science and Technology ensure that the President of the Municipality of Skenderaj/Srbica and the President of the Municipality of Mitrovicë/Mitrovica and their employees respond with no further delay to the previous and future requests and interventions of the Ombudsperson Institution. He further asked the above Ministers to ensure that copies of the special report be disseminated to all municipal directorates in municipalities across Kosovo, and that the Ministries inform the Acting Ombudsperson of any action undertaken as a response to his report.

The Acting Ombudsperson has not received a response to this report, nor have his recommendations regarding cooperation in these and future cases been followed by the municipal authorities in Skenderaj/Srbica and Mitrovicë/Mitrovica.

### **Special Report No.12**

#### **On the failure of certain municipalities to reconstruct houses destroyed in 1999**

**On 28 May 2007**, the Acting Ombudsperson published a special report that investigated whether the failure of certain municipalities to fulfill their promises to reconstruct houses damaged or destroyed during the fighting in 1998-1999 constituted a violation of the house-owners' property rights as protected by Article 1 of Protocol No.1 to the European Convention on Human Rights.

While noting that the municipalities established by UNMIK were not responsible for the damages inflicted on these houses, the Acting Ombudsperson did consider that, by promising to reconstruct these houses, certain municipalities had raised for the respective house-owners a legitimate expectation that this would happen. While noting that the municipalities in Kosovo had small budgets, the Acting Ombudsperson considered that this did not absolve them from their obligations to cooperate with the house-owners in order to find a solution to this problem. Measures that could have been taken included the allocation of a part of the municipal budget to the reconstruction of these houses (as had been the case in the Municipality of Prizren), actively involving the central authorities or requesting donor funding. By not taking any action to fulfill their promises to reconstruct houses damaged or destroyed in 1998-99, these municipalities had violated the house-owners' rights to effective enjoyment of their properties under Article 1 of Protocol No. 1, which also protects the legitimate expectation of obtaining this right. Furthermore, the fact that the Kosovo Government took no action to support these municipalities in fulfilling their obligations under the Convention constituted a serious lack of responsibility bearing in mind the extent of the problem. The Acting Ombudsperson also found that this inaction had violated the house-owners' rights to effective enjoyment of their possessions.

The Acting Ombudsperson recommended that the respective municipalities and the Kosovo Government should, without further delay, prepare strategies on how to secure the reconstruction of the remaining houses, including the procurement of donor funding or the allocation of special funds from the Kosovo Consolidated Budget. The Acting Ombudsperson further asked to be informed of any actions undertaken in response to this special report.

**On 16 June 2007**, the Acting Ombudsperson received a response to the special report from the President of the Municipality of Vushtrri/Vučitrn, in which the President welcomed the commitment of the Ombudsperson Institution in raising the issue of the municipalities' failure to reconstruct houses destroyed in 1999. The President of the Municipality stressed that his Municipality had thus far not been in a position to properly deal with this issue due to a lack of financial resources. He also informed the Acting Ombudsperson that the Municipality of Vushtrri/Vučitrn had built accommodation for collective housing sheltering 13 families. The Municipality further promised that it would build some 20 houses for homeless people during the course of the year.

**Registration Number 1669/05**  
**Regarding the length of proceedings in the case of Elmi Dragusha**

**On 4 June 2007**, the Acting Ombudsperson published a report on lengthy appeals proceedings before the District Court of Prishtinë/Priština in a labour dispute.

Bearing in mind the diligence that must be applied in labour cases, the Acting Ombudsperson concluded that the District Court had violated its obligations under Article 6 of the European Convention on Human Rights, which protects the right to a fair trial within a reasonable time. Bearing in mind the arguments of the President of the District Court, who complained that the delays in the proceedings were due to the lack of a sufficient number of judges and large backlog of cases, the Acting Ombudsperson considered that a delay of almost two years to conclude that the complainant had not exhausted domestic remedies could not be justified; such a delay, furthermore, demonstrated a lack of effective case management. He also noted that a large backlog of cases could only justify delays in court proceedings if they were temporary and unexpected. This was not the case here, since the District Court in Prishtinë/Priština had been faced with an ever-growing number of cases for the last seven years.

The Acting Ombudsperson also found that the absence of a legal remedy by which to seek relief against lengthy court proceedings violated the complainant's right to an effective remedy under Article 13 of the European Convention on Human Rights.

The Acting Ombudsperson recommended that the President of the District Court in Prishtinë/Priština take urgent steps to ensure that the District Court decide on the complainant's case without further delay, bearing in mind that his case had been pending for more than five years. He further recommended that the President of the District Court in Prishtinë/Priština ensure, by whatever legal means necessary, that the management and

dissemination of cases within this court be subjected to an independent evaluation so as to improve the case management within the court. The Acting Ombudsperson asked to be informed of all actions undertaken in response to his recommendations. Finally, the Acting Ombudsperson recommended that the Kosovo Assembly initiate, without delay, discussions with all competent bodies and Kosovo institutions with the aim of drafting a legal instrument that would constitute an effective remedy in line with Article 13 of the Convention.

**Registration Number 1704/2006**  
**Idriz Morina against the Ministry of Health**

**On 21 June 2007**, the Acting Ombudsperson released a report involving an individual's complaint that the Ministry of Health had failed to implement a decision granting him financial means for his daughter's medical treatment outside of Kosovo.

In this report, the Acting Ombudsperson found that by promising to cover the costs for the medical treatment in Turkey and issuing a decision to this effect, the Ministry of Health had created a legitimate expectation of obtaining effective enjoyment of a proper right on the side of the complainant, which is protected by Article 1 of Protocol No. 1 to the European Convention on Human Rights. The fact that the Ministry's decision may not have been valid (since it was not signed by the Ministry of Economy and Finances) was not relevant in this context because the complainant could not be expected to make this distinction. 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 provision. In this context, the lack of financial means cited as a justification by the Ministry of Health could not justify the Ministry's failure to fulfill its promise. Since the Ministry needed to assess the feasibility of such a project in advance, it should have informed the complainant about the lack of finances for medical treatment from the beginning, rather than after the decision granting him a sum of money had been sent. In the end, the complainant was obliged to borrow the necessary finances from relatives and friends. Unfortunately, despite receiving treatment in Turkey, his daughter eventually died.

The Acting Ombudsperson recommended that the Ministry of Health, in cooperation with the Ministry of Economy and Finances, ensure that the complainant receive the money originally allocated to him as compensation for any loss or damage sustained due to the Ministry's previous inability to execute its decision. The Acting Ombudsperson further recommended that the Ministry of Health and the Ministry of Economy and Finance should coordinate their activities in future by creating joint strategies for the proper implementation of the Program for Medical Treatment Abroad.

**On 2 July 2007**, the Acting Ombudsperson received an-email from the Coordinator of the Human Rights Unit within the Ministry of Economy and Finance stating that due to a lack of financial means, neither the Ministry of Health nor the Ministry of Finance had signed the document approving the decision of the Executive Board by the Medical Commission within the Ministry responsible for the above programme. He further stated that the other decision granting the complainant a sum of money had been signed only by

the Ministry of Health, and by the Ministry of Finance as required,. The Coordinator of the Human Rights Unit explained that the decision on allocating such a sum of money issued by the Executive Board had to be signed by both ministries.

**Registration Number 1806/2005**  
**Ali Juniku against the Municipal Court in Gjakovë/Đakovica**

**On 28 June 2007**, the Acting Ombudsperson issued a report on the lengthy court proceedings in a property dispute pending before the Municipal Court of Gjakovë/Đakovica ca. The complainant was not satisfied with the fact that following an oral court decision issued by the Municipal Court during a hearing held in February 2005, it took seven months for him to receive a written judgment.

The Acting Ombudsperson found in the report that, due to the continuously large backlog of cases and lack of judges, the Municipal Court's delay in sending a written judgment to the parties was in violation of Article 337 of the applicable Yugoslav Code of Civil Procedure, which stipulates that a judgment must be put in writing within eight days from the date upon which it was passed.

The Acting Ombudsperson further noted that the District Court in Pejë/Peć, in its appeals proceedings, had taken approximately 16 months to form a panel to debate the matter.

Bearing in mind the complaints of the presidents of both courts that the delays in court proceedings were due to the lack of a sufficient number of judges and large backlog of cases, the Acting Ombudsperson concluded that neither of the above delays could be justified. The preparation of a written judgment by the competent Municipal Court judge did not require any additional hearing or in-depth examination of the case, and the formation of a judges' panel to debate a case should not have taken 16 months. Both cases revealed a lack of effective case management. The Acting Ombudsperson also noted that a lack of judges and a large backlog of cases could only justify delays in court proceedings if they were temporary and unexpected, and yet the Municipal Court and the District Court had been faced with an ever-growing number of cases for the preceding seven years.

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

Since the case was again pending before the Municipal Court in Gjakovë/Đakovica akovica, and bearing in mind the previous delay in proceedings, the Acting Ombudsperson recommended that the President of this Court ensure that a judgment be issued in the complainant's case as soon as possible after the hearing. The Acting Ombudsperson further recommended that the President of the District Court in Pejë/Peć should ensure, by whichever legal means necessary, that the management and distribution

of cases within the District Court be subject to an independent assessment with a view to improving court management.

Finally, the Acting Ombudsperson recommended that the Assembly of Kosovo immediately initiate discussions with all competent organs and institutions in Kosovo with respect to drafting a legal instrument that would constitute an effective remedy within the meaning of Article 13 of the European Convention on Human Rights.

**Registration No. 1486/04**  
**Regarding the length of proceedings in the case of Gani Bajrami**

**On 29 June 2007**, the Acting Ombudsperson released a report related to the length of appeals proceedings before the District Court in Prishtinë/Priština in a labour dispute.

In the report, the Acting Ombudsperson observed that the District Court in Prishtinë/Priština had taken over three years to convene a panel to hear the case. The Acting Ombudsperson considered this to be in violation of the complainant's right to a fair trial within a reasonable time under Article 6 para. 1 of the European Convention on Human Rights. According to the Acting Ombudsperson, the insufficient number of judges working at the District Court (a fact which the President of the District Court argued as justification for the delay) could only excuse such delay if it was temporary. Since the problem of too few judges attempting to resolve an ever-growing case load had existed for a long time, and since no long-term plans had been taken to resolve the large backlog of cases pending before the District Court, the Acting Ombudsperson deemed the cited argument as insufficient cause to justify the delay. Bearing in mind the due diligence required in labour disputes, the Acting Ombudsperson noted that a large part of the delay appeared to have been caused by poor case management.

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 District Court in Prishtinë/Priština ensure, by whichever means necessary, that the management and distribution of cases within the District Court be subjected to an independent assessment with a view to improving court management. He also asked the President of the District Court to inform him of any action taken in response to the report.

Moreover, the Acting Ombudsperson recommended that the Assembly of Kosovo, without undue delay, initiate discussions with all competent organs and institutions in Kosovo on drafting a legal instrument that would constitute an effective remedy within the meaning of Article 13 of the Convention (which provides for both preventive and compensatory relief with respect to complaints about excessively long civil court proceedings).

### **Complaint No. 1276/2006**

#### **Regarding the failure of the Directorate of Inspections in Suharekë/Suva Reka Municipality to implement an agreement aimed at finding a solution to the problem of sewage and black water in the village of Leshan/Lešan**

**On 29 June 2007**, the Acting Ombudsperson issued a report regarding a complaint submitted by a representative of the village Leshan/Lešan in the Municipality of Suharekë/Suva Reka. The case involved the village's dissatisfaction with the Municipal Directorate of Inspections, which had failed to implement an agreement concluded with Leshan/Lešan and the neighbouring village of Shirokë/Široka. This agreement foresaw a number of measures to prevent the continuing pollution of the village stream in Leshan/Lešan; this pollution was being caused by sewage and black water emanating from the sewage system in Shirokë/Široka.

The Acting Ombudsperson found in his report that the failure of the Municipal Directorate of Inspections to implement the cited agreement was in violation of its obligations to actively protect the rights of the inhabitants of Leshan/Lešan to enjoy their private lives (under Article 8 of the European Convention on Human Rights), which had been considerably affected by their inability to use the village stream for drinking water and irrigation. The Acting Ombudsperson also noted that there had still been no official investigation into the effects the polluted state of the village stream had had on the inhabitants of Leshan/Lešan. As a result, the village's inhabitants had been kept in a state of anxiety concerning not only their water supply, but also their general health.

The Acting Ombudsperson recommended that the Municipal Directorate of Inspections should, as soon as possible, ensure that the agreement achieved between the Directorate and the villagers be fully implemented by whatever means necessary (including the acquisition of donor funding). He also asked to be informed of any action taken by the Municipal Directorate in response to his recommendation.

### **Registration No. 1643/05**

#### **Besim Jashari and others against the Municipality of Vushtrri/Vučitrn**

**On 29 June 2007**, the Acting Ombudsperson released a report involving the failure to implement a court decision and a decision issued by the Independent Oversight Board. The decisions ordered the Municipality of Vushtrri/Vučitrn to permit the former Chief Executive Officer and the Heads of four Municipal Directorates to return to their work positions. The Municipal Assembly had dismissed the complainants for the first time in May 2004. The Assembly then dismissed them a second time in January 2005, two weeks after a court judgment had reinstated them to their positions.

With regard to the proceedings following the first dismissal, the Acting Ombudsperson observed that UNMIK Regulation No. 2001/36 on the Kosovo Civil Service had mandated the Independent Oversight Board to decide on employment disputes between civil servants and their employers. The Acting Ombudsperson also noted that at the time

when the complainants initiated proceedings against the Municipality, this Board had not yet been operative.

The Acting Ombudsperson found that the complainant's objections to their dismissal could constitute arguable claims that their rights under Article 8 of the European Convention on Human Rights (protecting the right to property) had been violated. According to the case law of the European Court of Human Rights, this Article also guarantees protection relating to a person's profession. The Acting Ombudsperson further debated whether, in the absence of a functioning Independent Oversight Board, there had been any alternative legal remedies available to the complainants with which they could raise these arguable claims. While noting that there had been general confusion on the issue of which court was responsible to decide on employment matters involving civil servants, the Acting Ombudsperson found that as the Municipal Court in Vushtrri/Vučitrn had eventually decided on the case and executed its judgment, the complainants had not been deprived of an effective legal remedy within the meaning of Article 13 of the European Convention on Human Rights. With regard to proceedings following their first dismissal, therefore, there had been no violation of Article 13.

With regard to proceedings following the complainants' second dismissal, the Acting Ombudsperson noted that, although the Independent Oversight Board had been operative by then, the Municipality had refused to implement its decision. The Acting Ombudsperson found that due to the lack of a proper enforcement procedure for such cases, the Independent Oversight Board did not constitute an effective remedy within the meaning of Article 13 of the Convention. The Acting Ombudsperson also noted that there was no clear appeals procedure. As a result, the accumulation of existing remedies did not satisfy the requirements of Article 13.

The Acting Ombudsperson recommended that the Independent Oversight Board, in cooperation with the Prime Minister and the SRSG, ensure that the Board's decision in the complainants' cases be executed and that the Municipality of Vushtrri/Vučitrn permit the complainants to return to their work places. He also asked the Board to inform him about any action taken in response to the report.

The Acting Ombudsperson further recommended that the Kosovo Assembly, without undue delay, initiate discussions with UNMIK and all other competent organs and institutions in Kosovo on the necessity of drafting proper enforcement proceedings for decisions of the Independent Oversight Board and proper appeals proceedings against such decisions.

**Registration No. 537/02**

**M.M against the District Public Prosecutor in Prishtinë/Priština  
and the Kosovo Police Service (KPS)**

**On 29 June 2007**, the Acting Ombudsperson released a report involving the competent authorities' allegedly sub-standard investigations into the disappearance of her husband in July 1999, who has been missing ever since.

Although the Ombudsperson Institution's investigations had initially been conducted against UNMIK Police, they were later limited to the local investigative authorities following the promulgation of UNMIK Regulation No. 2006/6, which excluded UNMIK from the Ombudsperson Institution's mandate.

The Acting Ombudsperson firstly noted that Article 2 of the European Convention protecting the individual's right to life also applied to the disappearance of individuals in a life-threatening context. As the situation in Kosovo had not yet stabilised following the NATO intervention in spring 1999, it could be considered as life-threatening. Thus the Acting Ombudsperson considered Article 2 to be applicable in the instant case.

The Acting Ombudsperson further noted that Article 2 of the Convention required that investigations should lead to the identification and punishment of those responsible for such a criminal act. While noting that the competent District Public Prosecutor had not been aware of the case until the Ombudsperson had informed him about it in October 2004, the Acting Ombudsperson nevertheless found that the District Public Prosecutor, after having being informed of the case, had failed to pursue investigations with the due diligence required by Article 2 of the Convention and implied by the Provisional Criminal Code of Kosovo. Additionally, the fact that neither UNMIK Police nor the KPS had responded to the few requests made by the District Public Prosecutor indicated serious deficiencies in the cooperation between the police and the prosecution.

The Acting Ombudsperson recommended that the District Public Prosecutor should actively cooperate and liaise with the competent police authorities on a regular basis to ensure that investigations into the circumstances of the disappearance of N.N., including the questioning of suspects and witnesses, progressed in an efficient and expeditious manner (the case had been under investigation for almost eight years at the time of the report being published). The Acting Ombudsperson also requested that the District Public Prosecutor inform him about any action taken in response to his recommendation.

## **ANNEX II: SUMMARIES OF INTERIM MEASURES**

### **An attempt to prohibit the religious rituals in the Grand Mosque in Gjilan/Gnjilane**

**On 26 October 2006**, the Ombudsperson Institution received a complaint from the Islamic Community Council of Kosovo (ICCK) in Gjilan/Gnjilane concerning an order, issued by the Chief Executive Officer in the Municipality of Gjilan/Gnjilane, prohibiting religious rituals on the premises of the Grand Mosque in Gjilan/Gnjilane. At the same time, representatives of the ICCK complained that the KPS had exercised violence against the faithful when implementing the above order at this mosque.

**On 30 October 2006**, the Acting Ombudsperson sent an interim measure request to the President of the Municipality of Gjilan/Gnjilane, noting that the Municipality's order had not been based on a court decision as required by law. The Acting Ombudsperson asked the President of the Municipality to ensure that further implementation of the above order be suspended until a court decision was issued.

**On 2 November 2006**, the Acting Ombudsperson received a letter from the President of the Municipality in Gjilan/Gnjilane, in which the latter pointed out that the Municipality's order was not in violation of the applicable law (Article 8 of the Kosovo Law on Freedom of Religion). In the same letter, the President of the Municipality observed that the above order was not issued to interfere with religious rituals in places of worship, and that it involved the implementation of certain provisions of Law No. 2004/15 on Construction and a related administrative instruction (dealing with special security requirements, access to private and public areas, and the completion of construction work).

**On 14 November 2006**, the President of the ICCK in Gjilan/Gnjilane sent a letter to the Ombudsperson Institution acknowledging the Institution's actions and thanking it for its quick and appropriate intervention in the case.

**On 25 November 2006**, a representative of the Ombudsperson Institution met with representatives of the ICCK to receive an update on the case. The Institution's representative was informed that, following the intervention of the Ombudsperson Institution, the general situation was now resolved and there was no reason for the Institution to pursue the case.

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

### **The confiscation of vehicles by the Kosovo Police Service**

**On 5 May 2006**, the Acting Ombudsperson sent a letter to the Director of the UNMIK Customs Service regarding a complaint concerning the confiscation of a vehicle by the Kosovo Police Service. This had happened, he was told, because his vehicle had allegedly been registered illegally. According to the UNMIK Customs Service, since the complainant had not paid all necessary taxes prior to registering the vehicle, he had not adhered to the applicable law in Kosovo. He was further told that his first registration with former Yugoslav license plates, completed in Serbia proper, was considered illegal; it had allegedly been undertaken by parallel institutions operating in Kosovo, which were not recognized by the applicable law in Kosovo.

**On 16 June 2006**, the Acting Ombudsperson sent a reminder letter to the Director of the UNMIK Customs Service reiterating his request for information regarding this and similar cases dealing with the confiscation of vehicles.

**On 26 June 2006**, the Acting Ombudsperson received a response from the Director of the UNMIK Customs Service stating that he had examined the case. As the respective complainants were habitual residents of Kosovo, they were not entitled to drive vehicles without paying the relevant taxes. Since their vehicles had been imported first into Serbia and Montenegro and then to Kosovo, these vehicle owners had only been obliged to pay excise duty tax and VAT. The failure to pay these taxes rendered their vehicles liable to forfeiture and the vehicles were seized accordingly. The Director of the UNMIK Customs Service further stressed that these taxes had to be paid prior to registering vehicles in Kosovo. Since this had not been done, the vehicles were considered to have been registered illegally. He additionally noted that the payment of duties and taxes on the vehicles in Serbia and Montenegro did not exempt their owners from the obligation to pay excise duty tax and VAT in Kosovo, since Kosovo was a separate customs territory.

**On 30 June 2006**, the Acting Ombudsperson sent another letter to the Director of the UNMIK Customs Service, referring to their previous correspondence. The letter stated that the applicable UNMIK Regulation No. 32/2005 on Excise Tax in Kosovo had not entered into force until 1 July 2005, which was one year after the complainants had registered their vehicles. There were no provisions in the above UNMIK Regulation that would indicate that it applied retroactively. The Acting Ombudsperson also asked the Director of the UNMIK Customs Service to review the legal aspects of the respective cases and respond to the questions raised in the letter.

**On 4 July 2006**, the Acting Ombudsperson received another response from the Director of the UNMIK Customs Service saying that there was no question of excise duty taxes being applied retrospectively. Instead, the vehicles in question had allegedly been registered illegally and under the currently applicable law, excise duty tax and VAT

applied to such vehicles prior to registration. The Director of the UNMIK Customs Service stated that the competent prosecuting authorities were considering the cases of numerous vehicles that had allegedly been registered illegally. He added that the UNMIK Customs Service was involved in the process and was seeking a way forward to resolve the tax-related aspects of these matters.

**On 23 February 2007**, the Acting Ombudsperson sent a letter to the Assistant to the Deputy Commissioner of the Kosovo Police Service (KPS) regarding the confiscation of the complainant's vehicle and the failure of the KPS to execute the decision of the Municipal Public Prosecutor in Mitrovicë/Mitrovica to return the vehicle to the complainant.

**On 23 March 2007**, the Acting Ombudsperson sent a reminder letter to the Assistant to the Deputy Commissioner of the KPS reiterating his request for information regarding this case.

**On 29 March 2007**, the Acting Ombudsperson received a response from the Assistant to the Deputy Commissioner of the Kosovo Police Service. The letter included an attached copy of an interoffice memorandum received from the KPS Headquarters, which stated that following the Mitrovicë/Mitrovica Public Prosecutor's order, a certificate for the release of the confiscated items had been issued to the vehicle owner on 23 March 2007. When the complainant had asked the UNMIK Customs Service to release the vehicle, he was told that the request would be refused without payment of the necessary taxes.

**On 28 May 2007**, the Acting Ombudsperson received a letter from the Deputy Director of the Anti-Smuggling Department in the UNMIK Customs Service stating that the General Director of the UNMIK Customs Service had requested that his Department ask the complainant to bring a certificate proving that he had paid customs tax in Serbia proper. Once the complainant had paid excise duty tax and VAT, the vehicle would be released to him. The Deputy Director of the Department explained that the complainant had informed him that he had attempted, on several occasions and without success, to obtain a copy of the requested documentation in Serbia proper. The complainant was apparently not willing to pursue these attempts and refused to pay any taxes for his vehicle. The Deputy Director also stated that his Department had officially requested from the responsible authorities in Serbia proper the necessary documentation proving that the complainant had paid customs taxes in Serbia proper.

#### **The lack of functioning equipment in the University Clinic Centre in Prishtinë/Priština**

**On 24 August 2005**, the Kosovo daily newspaper "Lajm" published a report concerning the malfunctioning of a coronary graphic apparatus in the University Clinic Centre in Prishtinë/Priština two years ago.

**On 8 June 2006**, a representative of the Ombudsperson Institution met with representatives of the Department of Internal Medicine within the University Clinic Centre in Prishtinë/Priština and was informed that following the solemn inauguration of the coronary graphic apparatus, the apparatus was never able to function. The main reasons for this were the lack of additional equipment and the fact that the coronary graphic apparatus had been placed in a room that was still undergoing repairs. During the meeting, the representative of the Ombudsperson Institution was also informed that fifteen doctors had been trained in the FYR of Macedonia, England and Turkey in the use of the apparatus and were ready to commence work.

**On 16 June 2006**, the Acting Ombudsperson sent a letter to the Minister for Health asking for information on whether the Ministry had taken or was planning to take any action to have the coronary graphic apparatus functioning as soon as possible.

**On 13 July 2006**, the Acting Ombudsperson received a letter from the Minister for Health stating that he had become engaged in the matter recently and would soon issue a tender for the purchase of a haemodynamics monitor and proper software to ensure the functioning of the equipment.

**On 23 February 2007**, the Acting Ombudsperson sent a letter to the Prime Minister of Kosovo expressing his concern that although the University Clinic Centre had been equipped with a coronary graphic apparatus for two years, the apparatus was still not functioning. The Acting Ombudsperson asked the Prime Minister to make use of the authority vested in him and undertake all necessary measures to ensure the functioning of the apparatus.

**On 20 June 2007**, the Acting Ombudsperson again sent a letter to the Prime Minister in which he reiterated his previous request.

### **The ill-treatment of “Vetëvendosje” activists by KPS officers**

**On 25 August 2006**, the Ombudsperson Institution received a complaint from activists of the “Vetëvendosje” (Self-determination) movement claiming that they had been ill-treated on 23 August 2006 by members of the KPS during a protest that took place before the Assembly of Kosovo and UNMIK Headquarters in Prishtinë/Priština. The activists stated that they had been arrested during the protest and that KPS officers had beaten them after having brought them to the police station in Prishtinë/Priština.

**On 25 August 2006**, the Acting Ombudsperson sent a letter to the Chief Prosecutor of Kosovo concerning the alleged ill-treatment of “Vetëvendosje” activists on the premises of a KPS police station in Prishtinë/Priština. The Acting Ombudsperson asked the Chief Prosecutor to urgently initiate investigations with regard to this incident and to inform him of their results.

**On 11 December 2006**, the Acting Ombudsperson sent a reminder letter to the Chief Prosecutor of Kosovo reiterating the request for information in his letter of 25 August 2006.

**On 19 December 2006**, the Acting Ombudsperson received a letter from the Chief Prosecutor of Kosovo stating that he had submitted the Acting Ombudsperson's request and all accompanying documentation to the Municipal Public Prosecutor's Office in Prishtinë/Priština on 31 August 2006. On the same date, the Chief Prosecutor of Kosovo had asked the above office to undertake all appropriate actions in compliance with the applicable law.

**On 16 January 2007**, the Acting Ombudsperson sent a letter to the Chief Prosecutor at the Municipal Public Prosecutor's office in Prishtinë/Priština requesting information on the investigations into the alleged incidents of 23 August 2006.

**On 19 January 2007**, the Acting Ombudsperson received a response from a prosecutor working at the Municipal Public Prosecutor's Office. The letter stated that upon receiving correspondence from the Office of the Public Prosecutor of Kosovo, the prosecutor had initiated investigations in this case. In cooperation with the KPS Regional Command Headquarters in Prishtinë/Priština, the competent Municipal Public Prosecutor had managed to identify the names of the police officers allegedly responsible for ill-treating the activists due to their identification numbers having been mentioned in the Acting Ombudsperson's letter. Finally, the prosecutor stated that the case was still under investigation, and that following a thorough investigation the Ombudsperson Institution would be notified of their results.

**On 18 April 2007**, the Acting Ombudsperson sent a letter to the Chief Prosecutor at the Municipal Public Prosecutor's Office in Prishtinë/Priština requesting information on the stage of proceedings and any actions that had been taken by his office in the meantime with respect to the case.

By the end of the reporting period, the Ombudsperson Institution had not received a response to the letter dated 18 April 2007.

#### **Lack of oxygen in the Department of Neonatology in the Gynecological Clinic in Prishtinë/Priština**

*A newspaper article published in the Kosovo daily newspaper "Lajm Exclusive" on 1 September 2006 reported that during the night of 31 August 2006 there had been a lack of oxygen at the Neonatology Department in the Gynecological Clinic in Prishtinë/Priština, which is part of the University Clinic Centre of Kosovo (UCCK). As a result, the article claimed, a baby's life had been put at risk.*

**On 4 September 2006**, a representative of the Ombudsperson Institution contacted the Director of the Gynecological Clinic, who informed him that oxygen pressure had fallen

twice more during the night of 31 August 2006. The Director of the Clinic also noted that the Department of Neonatology had faced the same problem two months earlier, and that a commission had been formed to investigate the causes of the decrease in oxygen pressure during the night of 31 August 2006.

**On 7 September 2006**, the Acting Ombudsperson sent a letter to the Executive Director of the UCCK in which he raised the issue of the lack of oxygen in the Gynecological Clinic. He asked the Executive Director to take all appropriate measures to ensure that this situation was not repeated in future, bearing in mind the serious nature of the problem and its effect on the health of infants receiving treatment at the UCCK. The Acting Ombudsperson further asked the Executive Director to establish a commission to investigate the cause of the decrease in oxygen and to submit a report on the results of the investigation.

**On 22 September 2006**, the Ombudsperson Institution received a letter from the Executive Director of the UCCK stating that a commission had completed investigations and prepared a report on their findings. In the report, the commission had concluded that the lack of oxygen in the Neonatology Department had been caused by the fact that the employee in charge had not been performing his duties properly.

**On 23 January 2007**, the Acting Ombudsperson addressed a letter to the Executive Director of the UCCK requesting information on any measures taken thus far to ensure that, in future, professional supervision in the UCCK would prevent situations that could put patients' lives at risk.

**On 23 January 2007**, the Acting Ombudsperson also sent a letter to the Chief Inspector in the Health Inspectorate of Kosovo requesting information on any actions that the Health Inspectorate, which had been mandated to exercise external professional supervision over health institutions, had taken with regard to the above-mentioned case. The Acting Ombudsperson also asked for a copy of any report prepared with regard to this matter.

**On 31 January 2007**, the Acting Ombudsperson received a letter from the Chairman of the Interim Executive Board of the UCCK informing him that once the cause for the lack of oxygen had been identified, disciplinary action had been taken against the responsible employee; the same employee had also received a written warning for failing to perform his work duties.

**On 19 March 2007**, the Acting Ombudsperson received a response from the Chief Inspector of Health notifying him that all relevant documentation had been examined and that the Head of Technical Services at the UCCK and the Director of Human Resources of UCCK had been contacted. Following this, the management of the UCCK had formed a commission to investigate the matter. At the conclusion of these investigations, a disciplinary commission had decided to suspend the responsible employee from work with pay and to issue him a written warning. The Chief Inspector of Health also noted that the Health Inspectorate had only after some delay been involved in the events that

had taken place on 31 August. It was not the first time that such a problem had arisen, and the Director of Human Resources in the UCK had ordered the suspension from work of the responsible employee in each case - on 8 March 2006 and 28 September 2006 - for one month with pay. Furthermore, the Chief Inspector notified the Acting Ombudsperson that he had recommended to the Interim Executive Board that the management undertake measures to ensure that such cases were not repeated in future. The Health Inspectorate also supported the disciplinary commission's recommendation that the number of employees in this service should be increased.

### **Lack of funds for staff in the health centre in Fushë Kosovë/Kosovo Polje**

*On 14 January 2006, the Ombudsperson Institution received a complaint from employees of the Main Family Health Centre "Dr. Fatmir Krasniqi" in Fushë Kosovë/Kosovo Polje with regard to the failure of the Centre to extend the labour contracts of certain employees, as well as the fact that others had not received all of their salary payments due to a lack of funds from the 2006 Kosovo Consolidated Budget.*

*Between January and May 2006, the Acting Ombudsperson sent a number of letters to the Minister of Health, the President of the Municipality of Fushë Kosovë/Kosovo Polje and the Prime Minister asking them to resolve this matter. The letters also reminded them that this health centre was the only multiethnic health institution in the Municipality of Fushë Kosovë/Kosovo Polje, employing members of both the Albanian and Serbian communities. The Acting Ombudsperson considered that the failure to maintain this health centre would put into question the Municipality's attempts to form a functional, multi-ethnic society.*

**On 6 September 2006**, the Acting Ombudsperson again sent a letter to the Prime Minister of Kosovo informing him about a meeting he had had with the President of Municipality of Fushë Kosovë/Kosovo Polje. The latter had informed him that the employees of the health centre were in a difficult financial situation and were addressing him on a daily basis to ask for assistance. According to the President of the Municipality, the financial problems faced by the health centre had existed for some time and should have been resolved long ago.

**On 16 January 2007**, a representative of the Ombudsperson Institution met with a representative from the Municipality of Fushë Kosovë/Kosovo Polje. He was informed during the meeting that the problems faced by the health centre had partially been resolved; the financial means for outstanding salary payments had been approved for 13 employees of minority communities, whose labour contracts had been extended for 2007. However, the problems faced by ethnic Albanian employees continued, despite the fact that some of them had more than 25 years of work experience.

**On 2 February 2007**, the Acting Ombudsperson sent another letter to the Prime Minister of Kosovo informing him of the 16 January meeting between representatives of the Ombudsperson Institution and the Municipality of Fushë Kosovë/Kosovo Polje. The

Acting Ombudsperson noted in the letter that, taking into account the unique, multi-ethnic character of the health centre, the competent public authorities should be more engaged in ensuring its sustainability and the equal treatment of all employees.

By the end of the reporting period, the Ombudsperson Institution had received no response to any of the letters sent in the above-mentioned case.

### **The failure to implement Article 13 of the Law on Disability Pensions**

*On 13 March 2006, the Ombudsperson Institution received a complaint from a disabled person who complained that the Kosovo Energy Corporation (KEK) refused to exempt him and other disabled persons from paying the full amount of charges for electricity consumption despite Article 13 of the Law on Disability Pensions foreseeing that, among other benefits, the above charges should be reduced for disabled persons.*

*Following a number of letters sent to the managing authorities of KEK and copied to the Ministry of Energy and Mines and the Ministry of Labour and Social Welfare, the Acting Ombudsperson received information from the Deputy Director of KEK on 4 May 2006 that the competent ministries had not yet issued the necessary sub-legal acts for the proper implementation of Article 13 of the above law, and that once this had happened, KEK would engage in the execution of these acts. The Acting Ombudsperson also received a letter from the Director of the Kosovo Department for Pensions Administration within the Ministry of Labour and Social Welfare on 19 May 2006, informing him that the Ministry of Energy and Mines and the Ministry of Economy and Finances had been notified in due time about their obligation to issue the necessary administrative instructions to implement the Law on Disabilities. The Director of the Department noted that he had not been informed as to whether these administrative instructions had been issued.*

**On 15 September 2006**, the Acting Ombudsperson sent a letter to the Prime Minister of Kosovo expressing his concerns that the necessary administrative instructions for implementing the Law on Disability Pensions had not yet been issued. The Acting Ombudsperson considered that the failure to issue such administrative instructions constituted negligence on the part of the competent authorities. Such negligence was in contrast to the need for good governance and the respect for human rights, which should be the goal of every government. The Acting Ombudsperson was even more concerned by the idea that the central authorities themselves may have been guilty of such negligence and thereby denied the rights of individuals as protected by this law. The Acting Ombudsperson pointed out that as soon as the necessary administrative instructions had been issued to implement the above-mentioned law, their retroactive applicability would justify the current omission and contribute to the establishment of democratic values and the proper functioning of the rule of law. Furthermore, the Acting Ombudsperson asked the Prime Minister to make use of his authority to ensure that the relevant ministries approve the necessary sub-legal acts as soon as possible, thereby ensuring the implementation of the above-mentioned law.

## **Concerns regarding the pollution of Llap River caused by industrial waste from the “Pajtimi” Company**

*At the beginning of May 2006, the Kosovo media published information regarding the pollution of Llap River caused by industrial waste released by the Food Factory “Pajtimi Company”, which is located in Llugë village in the Municipality of Podujevë/Podujevo.*

**On 15 May 2006**, the Acting Ombudsperson sent a letter to the President of the Municipality of Podujevë/Podujevo in which he raised concerns about the well-being of the inhabitants of villages located on the banks of the Llap River. These people had been facing serious problems, including health risks for their children and the inability to use the river’s water for irrigation. This had been the case ever since the factory started working and water from its sewage system began polluting the river. In his letter, the Acting Ombudsperson asked the President of the Municipality to undertake all necessary investigative measures and inform the Acting Ombudsperson on any action taken.

**On 5 October 2006**, the Acting Ombudsperson sent a reminder letter to the President of the Municipality of Podujevë/Podujevo in which he asked him to respond to his previous letter.

**On 19 October 2006**, the Acting Ombudsperson received a response from the Chief Executive Officer of the Municipality of Podujevë/Podujevo informing him that upon receiving the first complaint concerning the pollution of the river in April 2004, he had conducted an on-site inspection along with the competent municipal inspector and the municipal coordinator for environmental issues. During that inspection, it was found that the food factory “Pajtimi Company” possessed no cesspool or system to ensure the proper flow of sewage. The Chief Executive Officer pointed out that the Ministry of Environment and Spatial Planning had been notified and asked to evaluate the impact this had on the surrounding environment. He also said that, in August 2005, a joint team including representatives from the Ministry, the President of Municipality, the Chief Executive Officer, the Director of Urbanism and a sanitary inspector had conducted another on-site inspection; on this occasion, they closely examined the process of inserting filters to treat industrial waste emanating from the factory. According to the Chief Executive Officer, the project had been completed, and for a certain time there had been no more complaints of pollution. On 23 May 2006, the Municipality received another complaint from inhabitants of surrounding villages through the KPS, who had visited the site and established that the river was once again polluted and that many fish had died as a result. The Chief Executive Officer stated that his Municipality had contacted the Ministry of Environment and Spatial Planning with regard to these recent developments.

**On 20 October 2006**, the Acting Ombudsperson received a letter from the Permanent Secretary at the Ministry of Environment and Spatial Planning. The Permanent Secretary stated that after the factory had modified its technological processes, it had been ordered

to provide a new report to evaluate the impact of its industrial waste on the environment, and that the company had applied for a water permit from the Ministry of Environment and Spatial Planning.

**On 28 February 2007**, the Acting Ombudsperson sent a letter to the Permanent Secretary at the Ministry of Environment and Spatial Planning requesting information on recent developments in the case. In particular, the Acting Ombudsperson wanted to know whether or not the company had met the criteria for obtaining an environmental permit and a water permit, whether such permits had been granted and, if not, whether the company had been continuing to operate without them.

**On 10 May 2007**, the Acting Ombudsperson sent a reminder letter to the Permanent Secretary at the Ministry of Environment and Spatial Planning requesting a response to his letter of 28 February 2007.

**On 21 May 2007**, the Acting Ombudsperson received a letter from the Permanent Secretary at the Ministry of Environment and Spatial Planning stating that the Inspectorate of the Ministry had inspected the above-mentioned company five times and established that the flow of industrial waste was not being dealt with properly. The Inspectorate thereupon ordered the company to treat its industrial waste water based on legal norms and standards and to put in place an effective filtering system. The Permanent Secretary also stated that the company had applied to obtain the environmental permit, which had been rejected due to the fact that the measures proposed by the company could not guarantee a decrease in the potential to pollute in accordance with the applicable environmental legislation. Due to modifications in its technological processes, the company was ordered to present a new report evaluating the impact of its industrial waste on the surrounding environment.

Finally, the Permanent Secretary pointed out that no punitive legal action had been taken, since samples obtained from the river and from the company's sewage demonstrated that the pollution had not caused an alarming situation (perhaps due to the fact that the flow of the river had rinsed away the polluted water). Inspectors had been ordered to keep up regular shifts until the extent of the pollution caused by industrial waste from the company had been completely assessed.

By the time this Annual Report was published, representatives of the Ombudsperson Institution had arranged further meetings with village representatives and the company to assess whether or not the situation had improved.

### **The length of proceedings in a property dispute against the KTA**

**On 18 October 2006**, the Acting Ombudsperson sent a letter to the President of the Municipal Court in Istog/Istok with regard to the alleged length of proceedings in a property dispute. The proceedings had been initiated before the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters, which had then

decided to transfer the case to the Municipal Court in Istog/Istok. In the letter, the Acting Ombudsperson asked the President of the Court to inform him of any actions taken by the Court to resolve the complainant's case.

**On 17 November 2006**, the Acting Ombudsperson sent a letter to the Director of the Kosovo Trust Agency (KTA) following the KTA's decision to privatise the disputed property. He informed the Director of the KTA about the Special Chamber's decision to transfer the case to the Municipal Court in Istog/Istok. The Acting Ombudsperson asked the Director of KTA to provide him with information as to the privatisation procedure of the disputed property, and whether it was continuing as long as the case was still pending before the Municipal Court in Istog/Istok.

**On 25 January 2007**, the Ombudsperson Institution received a letter from the Director of the KTA stating that the Municipal Court in Istog/Istok had issued a judgment on the case on 6 November 2006. The KTA had appealed against this judgment to the Special Chamber and the matter was still pending.

At the time of the publication of this Annual Report, the court proceedings in this case were still ongoing.

#### **A request for a prisoner transfer 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 in 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 informing him about the respective case.

**On 13 March 2007**, after having contacted the Ombudsman of the FYR of Macedonia regarding this case, the Acting Ombudsperson received a letter from the Ombudsman of the FYR of Macedonia. The letter informed him that the person detained in Skopje had been sentenced to 3 years' imprisonment and had been detained in this facility 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 by the FYR of Macedonia and UNMIK on 9 March 2006. The Ombudsman of the FYR of Macedonia informed the Acting Ombudsperson that the procedure for transferring this person was 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 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 stating that the court was not competent to decide on such matters, and that the Department of Justice's requests had to be decided by 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 included 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.

By the date of publication of this Annual Report, the Ombudsperson Institution had not received any response to his letters sent to the UNMIK Department of Justice and the District Court of Prishtinë/Priština.

#### **Non-compliance with UNMIK Regulation No. 2005/14 on a Vehicle Road Tax**

**On 11 December 2006**, the Acting Ombudsperson sent a letter to the Minister of Internal Affairs stating that the Department of Vehicle Registration had been forcing individuals to pay vehicle road tax on imported vehicles as soon as their owners attempted to register the vehicles; this despite the fact that UNMIK Regulation No. 2005/14 on a Vehicle Road Tax decrees that people importing vehicles into Kosovo have thirty days within which to pay vehicle road tax following the date upon which they paid all import taxes. Even in cases where this time period had not elapsed, people falling under this category who were found driving their vehicles without having paid the vehicle road tax were being threatened with fines. Taking into account the seriousness of the matter, the Acting Ombudsperson asked the Minister to intervene in the interests of protecting the rights of people in line with the applicable law in Kosovo and the rule of law in general.

**On 10 April 2007**, the Acting Ombudsperson sent another letter to the Minister of Internal Affairs in which he reiterated his concerns and requested that the Minister respond to his letter dated 11 December 2006.

**On 24 April 2007**, the Ombudsperson Institution received a letter from the Head of the Department of Vehicle Registration, who informed him about the legal interpretation of Annex A item 10 of UNMIK Regulation No. 2005/14. According to the Minister, this provision applied to persons who had imported vehicles and paid all import taxes. It stipulated that in such cases, the vehicle owners were entitled to pay vehicle road tax within a time period of 30 days. During this 30-days-period, administrative fines based on Sections 4.3 and 4.4 of the above-mentioned Regulation would not be imposed.

### **The inability to obtain civil documentation in the Municipality of Pejë/Peć**

**On 15 December 2006**, the Acting Ombudsperson sent a letter to the Minister of Public Services requesting information on a complaint received from the Head of the Civil Status Service in Pejë/Peć. The complaint referred to problems that certain people in his Municipality had been experiencing in obtaining civil documentation, in particular documentation issued between 1990 and 1999. The Head of the Civil Status Service had already filed several complaints to various institutions asking for help in resolving this issue.

**On 16 February 2007**, the Acting Ombudsperson sent a reminder letter to the Minister of Public Services requesting a response to his letter dated 15 December 2006.

**On 29 March 2007**, the Acting Ombudsperson received a response from a legal officer at the Ministry of Public Services stating that his office, in cooperation with the Civil Status Department of the Ministry of Public Services, had issued Administrative Instruction No. MPS 2006/07 on the preparation of civil state registers. According to the legal officer, this instruction sets out rules and procedures on the renewal of civil state registers that have been lost, destroyed or damaged. He also stated that the Ministry for Public Services was finalising the Draft Law on Civil Status, and that the renewal of civil registers was set out in Article 21 of the draft law.

### **The failure to compensate the owners of properties expropriated for the construction of a road**

*Since mid-2005, the Ombudsperson and later the Acting Ombudsperson have been contacting the competent ministries regarding complaints received by the Institution involving the de facto expropriation of a number of people living in the Municipality of Lipjan/Lipljan. The expropriations were the result of the construction of a road leading from Komoran/Komorane in Glllogovc/Glogovac Municipality through the Municipality of Lipjan/Lipljan to Caralevë/Caraljevo in the Municipality of Shtime/Štimlje. The last information received by the Acting Ombudsperson in the previous reporting period was from the Minister of Transport and Post-Telecommunication who, in a letter sent in March 2006, stated that his Ministry had signed a memorandum of understanding with the three municipalities involved in the construction of the road. In this memorandum, the above municipalities undertook to resolve all property disputes in connection with the Komoran/Komorane-Caralevë/Caraljevo road passing through their territories. The Minister stated that he had asked the municipalities to resolve all cases regarding the expropriation of properties as required by the above-mentioned agreement.*

**On 22 December 2006**, the Acting Ombudsperson sent a letter to the Minister of Transport and Post-Telecommunication informing him that according to the complainants, the implementation of the road project affecting their properties was continuing, but that the competent municipalities had not yet initiated expropriation

proceedings with regard to their properties. According to information received from the respective municipalities, the municipalities had already started to conduct a technical evaluation of the properties that were to be expropriated without following the regular expropriation proceedings. The Acting Ombudsperson also requested information on how far the implementation of the road project had advanced and on the proceedings with regard to compensation for the expropriated individuals.

**On 13 April 2007**, the Acting Ombudsperson sent a second letter to the Minister of Transport and Post-Telecommunication in which he reiterated the concerns raised in his letter of 22 December 2006.

**On 27 April 2007**, the Ombudsperson Institution received a letter from the Minister of Transport and Post-Telecommunication in which he gave a detailed explanation of the importance of the road project for the inhabitants of affected municipalities. Despite certain difficulties that had arisen during the implementation of the project, the Ministry of Transport and Post-Telecommunication was engaged in executing the project involving the construction of the road Komoran/Komorane-Caralevë/Caralevo.

#### **Difficulties in obtaining property documentation from Yugoslav times**

**On 22 January 2007**, the Ombudsperson Institution received a complaint concerning an individual's inability to prove ownership of a property due to lost documentation. According to the complainant, the missing ownership deed was in the name of his deceased grandfather and proved ownership of over 16 hectares of land in the Municipality of Pejë/Peć. According to the complainant, the necessary documents were archived in what used to be federal archives in Skopje, FYR of Macedonia.

**On 29 January 2007**, the Acting Ombudsperson sent a letter to the Ombudsman of the FYR of Macedonia requesting information with regard to the complainant's allegations that his ownership documents were stored in archives in Skopje.

**On 22 February 2007**, the Acting Ombudsperson received a letter from the Ombudsman of the FYR of Macedonia informing him that the State Archives of the FYR of Macedonia did not contain any documents relating to property owned in former Yugoslavia or ownership deeds concerning real estate. In addition, the archives did not contain any documents under the name of the complainant's grandfather.

#### **The non-execution of a court decision in Glogovc/Glogovac**

**On 26 January 2007**, the Acting Ombudsperson sent a letter to the Minister of Justice explaining that following court proceedings before the Municipal Court in Glogovc/Glogovac, neither the Municipal Court nor the Municipal Assembly in Glogovc/Glogovac as the case defendant had taken any action to execute this court's judgment involving a dispute over debt. The Acting Ombudsperson pointed out that the

failure to execute final court decisions was in contravention to the proper administration of justice, good governance and respect for the rule of law. He stressed that the matter was of even more concern if municipal authorities refused to follow the above principles. The Acting Ombudsperson asked the Minister of Justice to use his powers, in cooperation with other affected Ministries and in particular the Ministry of Economy and Finances, and pay due attention to such cases, in order to help ensure that final court decisions be implemented properly. The Acting Ombudsperson further asked the Minister of Justice to issue an administrative instruction or a circular in which municipal authorities would be instructed on the execution of final court decisions. The Acting Ombudsperson considered that this would have an impact on improving the rule of law, which was an important precondition for the functioning of a legal and democratic system.

**On 4 June 2007**, the Ombudsperson Institution received a letter from the Permanent Secretary in the Ministry of Justice, in which the latter pointed out that as an executive authority, the Ministry of Justice was not competent to intervene in court decisions and judicial proceedings. The Permanent Secretary promised, however, that his Ministry would do its best to clarify and facilitate proceedings on the execution of court decisions in cooperation with the relevant authorities.

### **The implementation of the Law on Administrative Procedure**

**On 29 January 2007**, the Acting Ombudsperson sent a letter to the Prime Minister of Kosovo concerning the lack of proper implementation by the public administration of the Kosovo Assembly's Law on Administrative Procedure. The Acting Ombudsperson stated in his letter that a number of complaints related to different matters had made him aware of this problem. He specified that as a consequence of the lack of proper implementation of the law, individuals often had to wait for months for certain administrative proceedings to be completed. People were also deprived of their right to appeal as many administrative acts did not contain information on the right to appeal. Other administrative acts did not include reasons or explanations for certain administrative decisions, and when individuals affected asked for these reasons, they often failed to receive a response from administrative offices. The Acting Ombudsperson asked the Prime Minister to advise all competent administrative bodies to engage more in the implementation of the Law on Administrative Procedure, citing some of them as examples of malpractice.

**On 20 February 2007**, the Ombudsperson Institution received a letter from the Director of the Office of Legal Services in the Office of Prime Minister of Kosovo. The letter informed the Acting Ombudsperson that the Kosovo Government had been engaged in ensuring that the provisions of the Law on Administrative Procedure and all other laws and acts be implemented completely by the responsible persons in administrative bodies and institutions. Moreover, the office informed the Acting Ombudsperson that the cases referred to in his letter had been forwarded to the competent authorities and that the heads of these authorities had been asked to ensure that the consequences caused by the

previous behaviour of their staff be eliminated as soon as possible. The office added that in future they should strive to avoid such omissions.

**On 19 April 2007**, the Acting Ombudsperson received a response from the Permanent Secretary of the Ministry of Labour and Social Welfare informing him that a decision had been issued to set up a working group of five people within the Ministry to draft proper forms for all decisions, in compliance with the Law on Administrative Procedure in order to avoid potentially erroneous administrative acts.

### **Industrial refuse and dangerous gases emanating from a metal foundry**

**On 6 February 2007**, the Ombudsperson Institution received a complaint from an inhabitant of the village Keçekollë in the Municipality of Prishtinë/Priština. The inhabitant alleged that industrial waste and gases emitted by the nearby foundry “Galena” were seriously threatening the health of his family and the health of inhabitants of that area.

**On 6 February 2007**, a representative of the Ombudsperson Institution visited Keçekollë village and confirmed the complainant’s description of the situation that industrial waste from the foundry flowed into the nearby river, which runs to Lake Battlava. The waste could therefore potentially contaminate the drinking water for the Municipality of Prishtinë/Priština supplied by this lake.

**On 8 February 2007**, the Acting Ombudsperson sent a letter to the Director of the National Institute of Public Health in Kosovo demanding urgent action to prevent the harmful consequences that the pollution was having on people’s health; the letter also requested that the Ombudsperson Institution be informed of any actions taken in this matter. The Acting Ombudsperson sent a copy of the letter to the Minister of Environment and Spatial Planning and to the President of the Municipality of Prishtinë/Priština.

**On 16 February 2007**, the Ombudsperson Institution received a letter from the Director of the National Institute of Public Health in Kosovo in which he pointed out that upon receiving the Acting Ombudsperson’s letter, the Institute had sent a specialist for human ecology and a senior sanitary technician to inspect the foundry “Galena” in Keçekollë village. The inspection team concluded that the foundry premises presented not only a threat to the environment, but also a threat to the health of the inhabitants of Keçekollë and of all people in Prishtinë/Priština that consumed water from Lake Battlava.

The National Institute of Public Health recommended that, as a result of this threat, the Ministry of Environment and Spatial Planning, the Department for the Protection of the Environment and the Department for Water should prepare an expert report on this issue based on the Kosovo Law on Water 2004/24.

By the time this Annual Report was published, representatives of the Ombudsperson Institution had arranged further meetings with the Municipality of Prishtina/Priština and the Ministry of Environment and Spatial Planning to see whether the situation had improved.

### **Complaints concerning the double payment of RTK fees**

*On 20 April 2006, the Ombudsperson Institution received a compliant from an individual who was obliged to pay the Radio Television of Kosovo (RTK) fee twice due to the fact that he had two electric metres on his property, and irrespective of the fact that he had only one television.*

*When a representative of the Ombudsperson Institution met with the Consumer Manager in KEK one month later, he was informed that KEK had sent a letter to the SRSG requesting the amendment or repeal of the competent administrative instruction whereby RTK fees were collected by electric metre and not by household.*

**On 6 February 2007**, the Acting Ombudsperson sent a letter to the Consumer Manager in KEK in which he referred to the last meeting held with regard to this issue in May 2006. Since he had not received any update from KEK in the meantime, the Acting Ombudsperson asked the Consumer Manager what actions had or would be taken to resolve this problem.

**On 21 February 2007**, the Ombudsperson Institution received a letter from the Head of the Sector for Consumer Care in KEK noting that, according to the Law on Radio and Television of Kosovo, all legal and physical entities located on the territory of Kosovo were obliged to pay the public broadcast fee. An entity was to be regarded as a unit with a single bill for electricity or other public utilities. The Head of this Sector added that the Department for Consumers had raised the issue of public broadcast fees several times in departmental meetings, but had never addressed any written request to the steering bodies of KEK with regard to the RTK subscription fee.

### **Alleged delays in the KPS' investigation into a missing person's case**

**On 8 February 2007**, the Acting Ombudsperson sent a letter to the KPS Liaison Officer for National and International Institutions regarding a case in which a father whose son had gone missing had complained that investigations conducted by the KPS into the case had been delayed. According to the complainant, his son had gone missing on 21 February 2004 in the "Taslixhe" neighbourhood in Prishtinë/Priština, and he had never received any information from the KPS on the status of investigations proceedings following his son's disappearance. The Acting Ombudsperson requested that the KPS inform him of any actions taken concerning this case in the meantime.

**On 5 April 2007**, the Acting Ombudsperson received a letter from the Deputy Commissioner of the KPS informing him that after the complainant had notified the KPS of his son's disappearance on 16 March 2004, two police officers were appointed to investigate the case. The police officers had interviewed various individuals whom the victim had known, but with no result. He further stressed that, throughout the investigation, the competent police investigators had kept the complainant informed as to the status of the proceedings. The Deputy Commissioner stated that the case was now being investigated by the KPS Regional Investigations Unit in Prishtinë/Priština; the Unit was following various lines of inquiry and would inform the Ombudsperson Institution of its results in due time.

**The lack of transparency and independence of investigations into the circumstances surrounding the deaths of two Kosovans during protests on 10 February 2007**

**On 13 February 2007**, the Acting Ombudsperson sent a letter to the Special Representative of the Secretary-General (SRSG) and the Prime Minister of Kosovo expressing his concerns about the circumstances surrounding the deaths of two Kosovans during a protest on 10 February 2007. The protest had been organized by the "Vetëvendosje" [*Self-Determination*] movement. According to media reports, the UNMIK Police Commissioner had promised to initiate an internal investigation into the behaviour of the police during the protest; the Acting Ombudsperson stated that it was extremely important that independent investigations into the events of 10 February be initiated as soon as possible, irrespective of such internal investigations. Such investigations could be conducted either by the competent prosecutorial bodies or by an independent commission created specifically for this purpose. The Acting Ombudsperson stressed that internal investigations conducted by the police did not sufficiently fulfill the requirements of public accountability or of independence and transparency as enshrined in international human rights standards. The Acting Ombudsperson urged the SRSG and the Prime Minister to ensure that an independent investigation be conducted into the behaviour on 10 February 2007 of both the Kosovo Police Service and UNMIK Police.

**On 5 March 2007**, the Acting Ombudsperson received a response from the SRSG stating that he fully agreed that investigations had to be thorough, transparent and independent. The SRSG had therefore taken the investigation of the 10 February 2007 events out of the competences of UNMIK Police and placed it under the direction of an international prosecutor. The SRSG stressed that the investigation would focus primarily upon the possibility of criminal conduct on the part of the police on 10 February 2007; he added, however, that the investigation would also seek to find conclusions with respect to the operational arrangements for policing, including systems of command and control. The SRSG further noted that to guarantee additional transparency, the Police Inspectorate of Kosovo had been invited to oversee and monitor the investigation. Additionally, the Police Inspectorate of Kosovo had initiated its own management review into the performance of the KPS on 10 February 2007, and a local prosecutor from the Kosovo

Special Prosecutor's Office was liaising closely with the competent international prosecutor in the investigation.

In March and April, both the Police Inspectorate of Kosovo and the international public prosecutor issued reports on the conduct of police during the above protests. The Police Inspectorate of Kosovo came to the conclusion that communication between KPS officers on the ground and those in the main office had been problematic, and that some police officers had complained that they had not been properly equipped for the protest. The international public prosecutor found that the deaths of the two protestors had been unnecessary and avoidable. It appeared that both protestors had been killed by rubber bullet shots fired by one or more UNMIK police officers who were Romanian nationals. He concluded, however, that the evidence gathered did not meet the threshold required for reasonable suspicion of a criminal action.

### **The alleged violation of property rights**

*In the instant case, the complainant had received a decision from the HPD Claims Commission confirming her right to repossess her apartment in Prishtinë/Priština on 7 June 2003. Although the HPD had evicted an illegal occupant from the apartment in July 2006, the Municipal Court in Prishtinë/Priština, following court proceedings initiated by the illegal occupant, issued a judgment ordering the complainant to vacate the property and leave it at the free disposal of the other party. In its judgment, the Municipal Court did not mention the previous decision issued by the HPD in the complainant's favour. The complainant appealed against this judgment to the District Court in Prishtinë/Priština.*

**On 2 March 2007**, the Acting Ombudsperson sent a letter to the Executive Director of the Kosovo Property Agency (the successor agency to the HPD) informing him that the decision of the HPD Claims Commission issued in this case had not been respected by the Municipal Court in Prishtinë/Priština. The Acting Ombudsperson also asked for clarification on the impact the court decision had on the validity of the HPD's decision and whether the latter decision was now still in force.

**On 16 April 2007**, the Acting Ombudsperson received a letter from the Executive Director of the Kosovo Property Agency (KPA) stating that, pursuant to Section 2.7 of UNMIK Regulation No. 1999/23, decisions issued by the HPD Claims Commission were binding, enforceable and not subject to review by any other judicial or administrative authority in Kosovo. He further added that the decision of the Municipal Court in Prishtinë/Priština of 10 November 2006 had been delivered without legal authority and in abrogation of the Claims Commission's exclusive jurisdiction to settle such property disputes. The court order whereby the complainant had been obliged to vacate her apartment was therefore null and void. The Executive Director of the KPA further stated that since the HPD had on 26 July 2006 executed the Claims Commission's decision and delivered the keys of the apartment to the complainant, it could no longer exercise jurisdiction over the property, which was thus reverted back to local authorities. The

Executive Director of the KPA stressed that any new enforcement of the Claims Commission's decision needed to be executed by the Kosovo Police Service.

### **The inability to appeal against final decisions of the HPD Claims Commission**

**On 2 March 2007**, the Acting Ombudsperson sent a letter to the Executive Director of the Kosovo Property Agency (KPA) following the dissatisfaction of a complainant with a final decision issued by the HPD Claims Commission, which had denied his request for reconsideration of a previous decision. The complainant also objected to the fact that he could not appeal against this final decision to any other judicial or administrative body in Kosovo. According to the complainant, he had submitted to the HPD in Mitrovicë/Mitrovica all necessary documentation related to the case, including documents certifying his ownership of the disputed property. According to the HPD Claims Commission, however, he had sold the apartment. The complainant had requested that his allegations be investigated and that the question of whether he could address this issue to a competent court in Kosovo be considered further. The Acting Ombudsperson asked the Executive Director of the KPA to inform him about any action taken in this case.

**On 30 March 2007**, the Acting Ombudsperson sent a reminder letter to the Executive Director of the KPA in which he reiterated his previous request for information.

**On 18 May 2007**, the Acting Ombudsperson sent another request for information to the Executive Director of the KPA asking for a response to his previous letters of 2 and 30 March 2007.

**On 21 May 2007**, the Acting Ombudsperson received a letter from the Executive Director of the KPA stating that in first instance proceedings, the HPD Claims Commission had issued a decision dismissing the complainant's claim and had later rejected his request for reconsideration. The Executive Director of the KPA noted that, based on UNMIK Regulation No. 1999/23, the HPD Claims Commission had been established as an independent organ with exclusive jurisdiction to settle the categories of claims listed in Section 1.2 of UNMIK Regulation No. 1999/23.

### **Length of proceedings concerning a request for damage compensation for an unjustified detention**

**On 9 March 2007**, the Acting Ombudsperson sent a letter to the Director of the UNMIK Department of Justice informing him about a case in which an individual 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 complained that the UNMIK Department of Justice had still not paid him compensatory damages for this time.

**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 this 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 any request from 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 Commission for Compensation for Wrongfully Accused, Convicted and/or Wrongfully Detained Persons requesting information on the complainant's case.

### **Delays in issuing a medical autopsy**

**On 26 January 2007**, the Acting Ombudsperson opened an ex officio investigation into the alleged suicide of a detainee at the police station in northern Mitrovicë/Mitrovica on 25 January 2007. According to information received from the police officers investigating the case, the body was sent to the UNMIK Office on Missing Persons and Forensics immediately after his death had been confirmed on 25 January 2007, thus facilitating the accurate determination of the cause of death. During his investigations, the Acting Ombudsperson was informed that almost two months after the body had been sent for an autopsy to the UNMIK Office on Missing Persons and Forensics, the medical autopsy had not yet been completed.

**On 16 March 2007**, the Acting Ombudsperson sent a letter to the Head of the UNMIK Office on Missing Persons and Forensics asking her to ensure that an autopsy report be prepared, as soon as possible, so that police investigations could continue and the case could be resolved. The Acting Ombudsperson also asked the Head of the Office to provide him with a copy of the autopsy report as soon as possible.

**On 27 March 2007**, the Acting Ombudsperson received a response from the Head of the UNMIK Office on Missing Persons and Forensics stating that the autopsy had been performed on this person on 25 January 2007, and that the respective autopsy report had been completed within a month (February). She further added that although the investigating police had been aware of the report, they had not collected the report until 19 March 2007.

With respect to the Acting Ombudsperson's request for a copy of the autopsy report, the Head of the above-mentioned Office stated that the autopsy had been conducted following an order of the competent pre-trial judge and that the autopsy report had been submitted only to this judge, the competent prosecutor and the investigating police. She

advised the Acting Ombudsperson to request a copy of the autopsy report directly from the pre-trial judge.

### **Outstanding salary payments to a primary school teacher in Obiliq/Obilić**

**On 26 March 2007**, the Acting Ombudsperson sent a letter to the Chief Executive Officer of the Municipality of Obiliq/Obilić addressing the fact that a teacher at the primary school “Pandeli Sotiri” in Obiliq/Obilić had not received his salary for 5 months in 2005. The Acting Ombudsperson asked the Chief Executive Officer to inform him about any actions that he had taken or intended to take in order to resolve the complainant’s problem.

**On 18 April 2007**, the Acting Ombudsperson received a letter from the Chief Executive Officer of the Municipality of Obiliq/Obilić stating that the Municipal Directorate for Education was not to blame for the failure to issue salary payments, since the municipal administration, along with the Directorates for Education and Health, were funded by the Kosovo Consolidated Budget. According to the Chief Executive Officer, the Municipality was not permitted to include employees receiving their salaries from this budget in the pay roll without the consent of the competent ministry.

**On 27 April 2007**, the Acting Ombudsperson sent a letter to the Minister of Education, Science and Technology informing him about the complainant’s case and asking him, as the highest authority in the field of education in Kosovo, to intervene in this matter so that the complainant could enjoy his legal right to receive a salary according to the civil servants’ employment contracts.

**On 15 May 2007**, the Acting Ombudsperson received a response from the Chief Inspector at the Ministry of Education, Science and Technology, stressing that the issue of salary systemisation fell under the competences of the Ministry of Public Services and of the Municipal Assembly. The Chief Inspector added that the Department of Education in the Municipality of Obliq/Obilić had processed the letter requesting payment of the complainant’s salary, but that there may have been a delay due to technical errors or negligence on the side of the respective service.

Shortly before the end of the reporting period, the Acting Ombudsperson was informed by the complainant that he was yet to receive the outstanding salary payments.

### **The exemption from paying real estate taxes on houses damaged in the earthquake in Gjilan/Gnjilane**

**On 4 May 2007**, the Acting Ombudsperson sent a letter to the Acting Chief Executive Officer of the Municipality of Gjilan/Gnjilane informing him that a number of people from the village of Uglarë/Uglare were complaining that they had been discriminated against by the municipal authorities, who had imposed taxes on houses severely damaged

during an earthquake in 2002. The Acting Ombudsperson stated that while some of the owners of damaged houses had been ordered to pay taxes, others had been exempted from this duty. The Acting Ombudsperson recommended that the municipal authorities annul their decision to impose taxes on the owners of the damaged houses.

**On 23 May 2007**, the Acting Ombudsperson received a response from the Manager of the Real Estate Tax Sector in the Municipality of Gjilan/Gnjilane. The letter stated that all owners of houses belonging to a certain category of badly damaged houses had been released from the obligation to pay real estate taxes for the year 2003. He then added that according to the applicable law, an exemption from the duty to pay taxes was impossible without an evaluation of the damaged properties. He further noted that the Municipal Chief Executive Officer had established a commission for evaluating this issue and that appeals proceedings were still ongoing.

**On 2 June 2007**, the Acting Ombudsperson received an e-mail from the Acting Chief Executive Officer of the Municipality of Gjilan/Gnjilane stating that he had examined the case. He informed the Acting Ombudsperson that the owners of a certain category of damaged houses who had appealed against the decision ordering them to pay taxes had been exempted from paying taxes for 2003. He reiterated that the applicable law did not foresee tax exemptions, and that a commission had been established within the Municipality to evaluate the amount of tax to be paid for the damaged properties. At the end of his letter, the Acting Chief Executive Officer thanked the Acting Ombudsperson for his cooperation.

#### **Length of proceedings before the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters**

**On 7 May 2007**, the Acting Ombudsperson sent a letter to the Special Chamber of the Supreme Court on Kosovo Trust Agency Related Matters regarding a complaint involving lengthy proceedings in his case against the former socially-owned enterprise “Ibër Lepenc” regarding the selection process for the position of Managing Director of the enterprise.

**On 15 May 2007**, the Ombudsperson Institution received a response from the International Registrar of the Special Chamber of the Supreme Court on Kosovo Trust Agency Related Matters stating that, according to Section 14.2 of UNMIK Administrative Direction No. 2006/17 (AD), the presiding judge had assigned each claim filed with the Special Chamber to a judge rapporteur. The Acting Ombudsperson was informed that the complainant’s claim was being examined by a judge rapporteur and that, considering this judge’s workload, there had been no delays in processing the complainant’s claim.

This case was still pending at the time of this Annual Report’s release.

### **The distribution of the children's magazine "Zog Mëngjesi" in the FYR of Macedonia**

**On 14 May 2007**, the Director of Investigations of the Ombudsperson Institution sent a letter to the Ombudsman of the FYR of Macedonia regarding the complaint of a Kosovo publishing company wishing to distribute its children's magazine "Zog Mëngjesi" in the FYR of Macedonia. Allegedly, a request submitted to the Macedonian Ministry of Education and Culture had been pending since 9 December 2004, and although the complainant had re-sent this request on 11 September 2006, the competent Ministry in the FYR of Macedonia had still not replied. The Director of Investigations asked the Macedonian Ombudsman to investigate this matter and inform the Ombudsperson Institution on the stage of proceedings following the complainant's request before the Ministry of Education and Culture.

**On 24 May 2007**, the Ombudsperson Institution received a response from the Ombudsman in the FYR of Macedonia, who stated that he had asked the Ministry of Education and Culture to review the case and inform him about its reasons for not having responded to the complainant's request. The Ombudsman of the FYR of Macedonia had also urged the Ministry to consider this request and promised to inform the Ombudsperson Institution in Kosovo of his further actions.

### **Another confiscation of a vehicle by the KPS**

**On 21 May 2007**, the Acting Ombudsperson sent a letter to the Director General of the UNMIK Customs Service concerning the confiscation of a vehicle by the KPS in Prishtinë/Priština. The police informed the complainant that his vehicle was allegedly registered in illegally, and that his case had been forwarded to the UNMIK Customs Service and to the Public Prosecutor's Office in Mitrovicë/Mitrovica for further proceedings. The KPS officers had also accused the complainant of not complying with the applicable law by not paying customs taxes prior to the registration of his vehicle with Kosovo license plates (KS-plates).

**On 7 June 2007**, the Acting Ombudsperson received a response from the Director of the Anti-Smuggling Department within the UNMIK Customs Service stating that his Department had examined and reviewed the complainant's case. He added that the Anti-Smuggling Department had met with the complainant on several occasions to explore the legal options for returning the complainant's vehicle once he paid import taxes. The Director of the Department further stressed that the complainant had submitted an official request to the Administrative Office of the UNMIK Customs Service asking that his vehicle be returned once he paid the taxes. He additionally noted that the complainant, after seeing his vehicle on the premises of the UNMIK Customs Service, had orally expressed his will to discontinue proceedings and thanked the UNMIK Customs Service for their help in finding ways to resolve his problem.

**On 11 June 2007**, a representative of the Ombudsperson Institution informed the complainant about the response received from the UNMIK Customs Service. The

complainant denied requesting the discontinuation of proceedings and presented a copy of his original request, submitted to the Director General of the UNMIK Customs Service, asking that his vehicle be returned following his payment of import taxes.

**On 26 June 2007**, representatives of the Ombudsperson Institution met with the complainant and promised to meet with representatives of the UNMIK Customs Service with the aim of resolving his case.

### **The right of inhabitants of the Roma Mahalla neighbourhood in Mitrovicë/Mitrovica to sell their houses**

*The Roma Mahalla neighbourhood in the southern part of Mitrovicë/Mitrovica was destroyed in July 1999 during the NATO intervention in Kosovo. The reconstruction of this neighbourhood did not begin until six years later. By May 2007, a number of former inhabitants had moved into newly constructed houses and apartments following a tripartite agreement signed by each of the inhabitants, the donor and the Municipality of Mitrovicë/Mitrovica. These tripartite agreements did not include any clause restricting the sale of rebuilt houses.*

In **May 2007**, the Acting Ombudsperson was informed that following the attempt of one of the beneficiaries to sell his newly reconstructed house, UNMIK representatives in Mitrovicë/Mitrovica had met with the President of the District Court and the President of the Municipal Court in Mitrovicë/Mitrovica to discuss the legal situation. It appears that during this meeting, UNMIK's representatives asked for legal advice on how to prevent the future sale of houses in the Roma Mahalla. The President of the District Court had informed them that such sales could not be prevented under the existing legal provisions. UNMIK could only prevent the sales of these houses by attaching an annex to the tripartite agreement stipulating that the beneficiary of the agreement would not be able to sell his/her house unless the other two signatories agreed to this. Once this had happened, the donor and the Municipality could address a letter to the competent municipal courts requesting them to register sales contracts involving houses in the Roma Mahalla only if there was evidence that all signatories to the tripartite agreement had agreed to this. The President of the District Court stated that until this was effected, the courts could suspend the registration of all sales contracts falling under this category of cases.

**On 22 May 2007**, the Acting Ombudsperson sent a letter to the SRSG addressing these events. While noting that he fully understood the legitimate concerns of the international community regarding the sale of houses in the Roma Mahalla (given the efforts and funds that had been put into the project of reconstructing this neighbourhood), the Acting Ombudsperson added that the strategies discussed by UNMIK and the courts in Mitrovicë/Mitrovica had raised some concerns. Apart from the fact that such actions could compromise the independence of the courts, the Acting Ombudsperson stressed that the right to property could only be limited in very specific circumstances. He doubted whether there was any legal basis for requiring the consent of third parties before selling a part of someone's property unless such a requirement had already been included

in the original sales contract. Since this did not appear to be the case here, there seemed to be no legal justification for limiting returnees' rights to sell their houses. The Acting Ombudsperson also found that an annex added to an already signed contract could not become a valid part of that contract unless the annex itself had been signed by all signatories. The Acting Ombudsperson suggested that drafting such annexes as new contracts might be a more appropriate manner of preventing the immediate sale of houses in the Mahalla, and would be more in keeping with the applicable law and rule of law standards in general. Moreover, returnees could be convinced not to sell their houses and to remain in Kosovo if their lives were more sustainable. Coordinated efforts and projects would ensure an improvement of the living standards in the Roma Mahalla. The Acting Ombudsperson sent a copy of this letter to other institutions in Kosovo, including the President of the District Court in Mitrovicë/Mitrovica.

**On 28 May 2007**, the Acting Ombudsperson received a letter from the President of the District Court in Mitrovicë/Mitrovica, in which he explained that the above-mentioned contacts between representatives of the international community and the courts in Mitrovicë/Mitrovica were part of their general cooperation. Moreover, the President of the District Court specified that the tripartite agreements were very explicit: There was no legal basis permitting courts to obstruct legal transactions with regard to the houses in the Roma Mahalla, and the inhabitants of this neighbourhood had the right to exercise complete control over their properties as they saw fit.

**On 19 June 2007**, representatives of the Ombudsperson Institution met with UNMIK municipal representatives in Mitrovicë/Mitrovica, who stated that the meetings they had had with the President of the District Court and with the President of the Municipal Court in Mitrovicë/Mitrovica had been very friendly, and that they had merely asked the respective judges whether there were any legal grounds that could prevent the sale of houses in the Roma Mahalla. The UNMIK representatives stated that they respected the work and independence of the courts and had taken the Acting Ombudsperson's concerns into consideration. They were concerned, however, that the tendency to sell reconstructed houses in the Mahalla could impact on other former inhabitants of this neighbourhood who were intending to return but had not yet done so.

### **The failure to execute a court judgment concerning outstanding salary payments**

**On 11 June 2007**, the Acting Ombudsperson sent a letter to the President of the Municipal Court in Vushtrri/Vučitrn concerning the failure of the Municipal Court to execute a judgment in which it had ordered the Directorate for Education in the Municipality of Vushtrri/Vučitrn to pay the complainant outstanding salary. The Acting Ombudsperson also asked the President of the Municipal Court to inform him of any action taken to enforce the court judgment.

**On 18 June 2007**, the Acting Ombudsperson received a response from the President of the Municipal Court in Vushtrri/Vučitrn, stating that the Municipal Directorate for Education had objected to the decision allowing execution proceedings to begin as a

result of the Directorate's difficult financial position. According to the President of the Municipal Court, his Court had rejected the Directorate of Education's proposal to suspend execution proceedings, against which the Municipal Directorate could submit an appeal to the District Court within eight days. If an appeal was not submitted within this time period, the Municipal Court would issue a decision on execution, thereby blocking the Directorate's bank account until the Directorate had implemented the Municipal Court's judgment.

## **ANNEX IV: JOINT RECOMMENDATIONS FROM THE PARTICIPANTS OF THE REGIONAL OMBUDSMAN CONFERENCE (8-9 JUNE 2007)**

- Representatives of ombudsman institutions and international organizations meeting in Prishtinë/Priština discussed ways in which ombudsman institutions can cooperate with the public administration, media and civil society for the realization of human rights.
- Ombudsman institutions will be most effective in the promotion and protection of human rights if, at a minimum, they are in full compliance with the Paris Principles\*.
- Participants recognized that maladministration and poor quality of public administration staff—including a lack of human rights training—have an adverse effect on the follow-up of recommendations made by the ombudsman institutions.
- Participants also recognized that ombudsman institutions should function independently from Parliament and that they have a mutually reinforcing and reciprocal relationship.
- It was recognized that ombudsman institutions operating in transition or post-conflict situations face unique challenges, such as in awareness-raising, investigation, the provision of advice, and reconciliation. They play a crucial role in the establishment of the rule of law, and are ideally placed to address the human rights concerns of minorities and other vulnerable groups.
- Participants recognized that there are arguments for and against having a specialized ombudsman institution mandated to deal with specific human rights issues such as minority rights. On the one hand, it may contribute to public confusion, contradictions and overlap in mandates, or a weakening of the national ombudsman institution. On the other hand, a specialized institution would allow for specific expertise and authority in addressing certain human rights issues. In any case, either option provides a crucial human rights protection mechanism.
- It was recognized that ombudsman institutions form a crucial part of a national human rights protection system, which also includes an independent judiciary, the proper administration of justice, a representative national parliament and a strong and dynamic civil society. Effective cooperation between these elements is indispensable

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□ The United Nations *Principles relating to the status of national institutions for the promotion and protection of human rights* (the Paris Principles) were approved by the UN General Assembly in 1993 (annexed to Resolution 48/134 of 20 December 1993). In summary the six key criteria in the Paris Principles are: 1. Independence guaranteed by statute or constitution; 2. Autonomy from government; 3. Pluralism, including in membership; 4. A broad mandate based on universal human rights standards; 5. Adequate powers of investigation; 6. Adequate resources.

in establishing and strengthening the rule of law, protecting human rights, and fighting impunity and corruption.

- Ombudsman institutions should engage in exchanging information on approaches, experiences and best practices amongst themselves and with international and regional networks as well as international partners which have a specific mandate in this respect.
- It was recognized that ombudsman institutions in the region operate within a variety of mandates and resource limitations. The following recommendations are intended to present aspirations in the work of these institutions.

#### **A Cooperation between ombudsman institutions and the public administration**

1. To ensure the proper functioning of a democratic society, the public administration should have an effective working relationship with ombudsman institutions and operate in the service of its citizens. The administration should also be given sufficient space to clarify a situation brought to its attention by the ombudsman institution.
2. Ombudsman institutions should play an important role in addressing maladministration, which is often due to legislative gaps.
3. Ombudsman institutions should address maladministration through proposals for legislative amendments or capacity building initiatives to improve the quality of the work output of public administration staff.
4. Ombudsman institutions should play a role in improving the quality of public administration through individual complaints-handling, the issuing of special reports, training of administrators and personal contact with administrators.
5. The public administration should establish a level of cooperation with the ombudsman institution that is timely, adequate and responsive to the recommendations submitted to it by the ombudsman institution. The public administration is also obliged to cooperate with the ombudsman institution by providing it with information and facilitating its investigations.
6. Ombudsman institutions should ensure engagement with persons whose rights have been violated, through ongoing outreach and awareness-raising activities.
7. In the case of a public administration's non-compliance with the ombudsman institution's recommendations, the latter should, where appropriate and after careful consideration, explore additional avenues—including the media—to ensure compliance.

#### **B. The role of parliament as a partner to the ombudsman institution**

8. Parliaments should establish an appropriate legislative framework for the establishment of an ombudsman institution, in accordance with the Paris Principles
9. Parliaments should ensure the highest standards regarding the election process and nomination of the ombudsman.
10. Ombudsman institutions should engage in awareness-raising activities for parliamentarians on international human rights, as well as the mandate and work of the ombudsman institution.
11. Parliaments and ombudsman institutions should develop an effective working relationship with the goal of promoting and protecting human rights.
12. Parliament should ensure that adequate resources and facilities are provided to the ombudsman institution to enable it to perform its functions effectively.
13. The ombudsman institution should be under a statutory obligation to submit annual reports to Parliament, as well as special reports in cases where a human rights issue requires urgent attention.
14. The annual and special reports of an ombudsman institution should be sent to Parliament and other State entities promptly, so as to increase transparency and awareness.
15. The annual and special reports should be debated in Parliament promptly, and the Government's response to the reports should be tabled in Parliament promptly.
16. Parliamentarians should invite the ombudsman to meet with them regularly to discuss issues of interest and concern.
17. Parliamentarians should ensure that their constituents, or the public at large, are made aware of the work of the ombudsman institution.
18. Parliamentarians should ensure that part of the mandate of the ombudsman institution is to advise Parliament on the conformity or otherwise of any legislation that may affect the enjoyment of human rights, and to address cases of maladministration.
19. When its mandate allows, an ombudsman institution should advise Parliament on the human rights implications of proposed legislation, constitutional amendments as well as existing laws, and recommend any necessary legislative amendments.
20. Parliamentarians should ensure that recommendations of the ombudsman institution are followed-up.

**C. The role of the ombudsman institution in post-conflict situations or transition**

21. Ombudsman institutions should be endowed with sufficient powers to play an important role in the reform and strengthening of law enforcement institutions—including the police and prison administrations—and in monitoring the application of standards of good governance.
22. Ombudsman institutions should ensure that the administration of justice conforms to human rights standards and provides effective remedies, particularly to minorities and the most vulnerable groups in society.
23. Ombudsman institutions are crucial in developing transitional justice strategies that can ensure accountability for past crimes, and in facilitating the creation of effective mechanisms for reconciliation.
24. Ombudsman institutions play a key role in fighting impunity and addressing critical human rights issues such as torture and arbitrary detention.
25. Ombudsman institutions should play an educative role in the training and public awareness-raising of human rights issues in order to foster a culture of human rights understanding.
26. Ombudsman institutions should consider the investigation of issues related to the root causes of past conflicts and human rights violations as a priority.
27. Ombudsman institutions should issue recommendations to the Government on how to deal with human rights issues that were the cause or proximate cause of past conflicts.
28. Ombudsman institutions should pay particular attention to cases concerning persons in psychiatric institutions, particularly in a post-conflict environment.
29. Ombudsman institutions, especially those in conformity with the Paris Principles, should remind the Government of their unique position in fulfilling the role of a preventive mechanism, as envisaged under the Optional Protocol to the Convention against Torture.

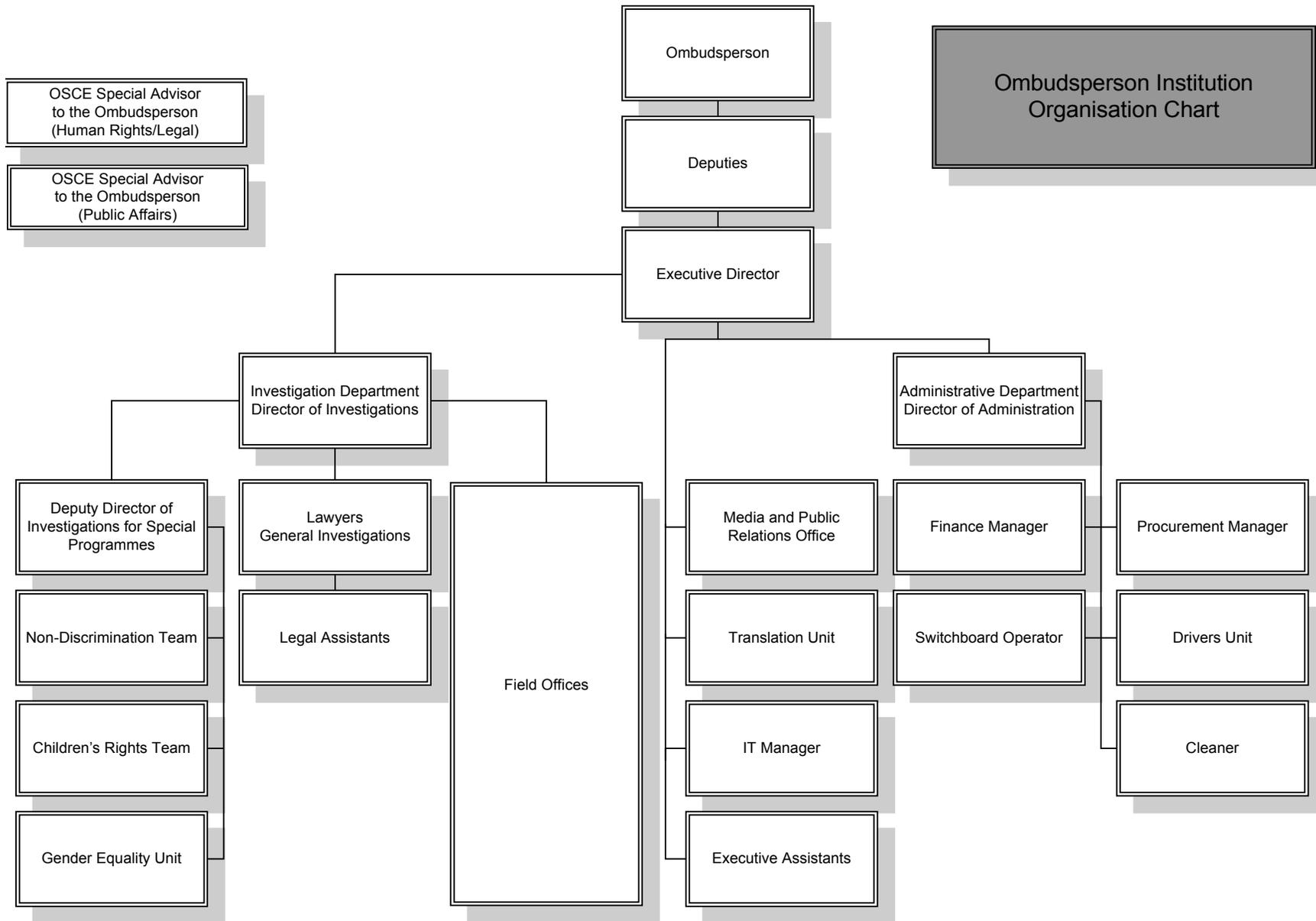
**D. The role of the ombudsman in protecting the rights of minorities and other vulnerable groups**

30. Ombudsman institutions should play an important role in objective mediation between all actors concerned and in the promotion of public debate.
31. Ombudsman institutions have an investigative and enforcement role through the handling of complaints (including between private parties), *ex officio* investigations, and the provision of legal aid and expert opinions.

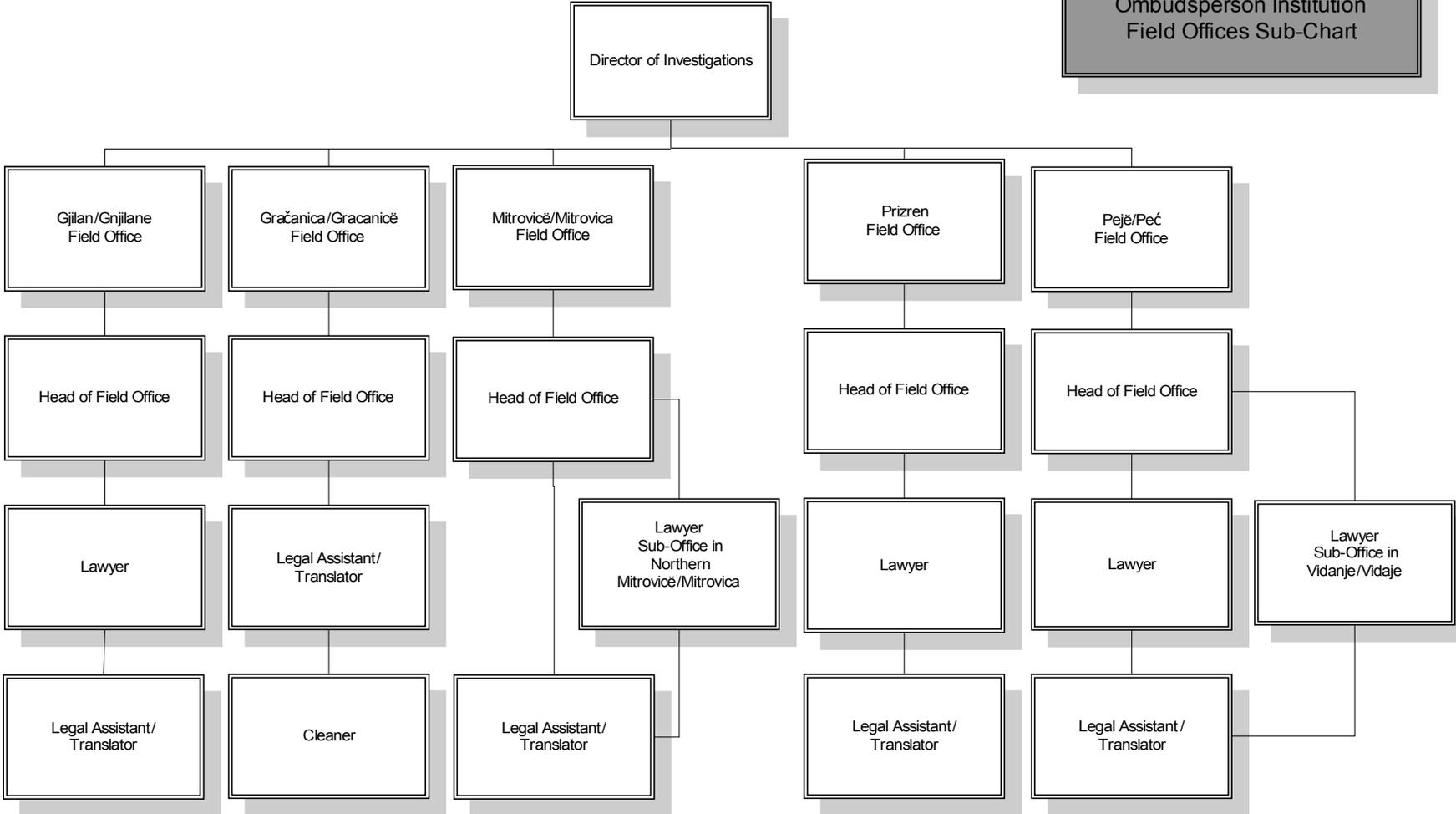
32. Ombudsman institutions have a policy and legislative role through the provision of comments and proposed amendments on (draft) legislation, as well as the promotion of the ratification and implementation of international human rights standards.
33. Ombudsman institutions have an educative and information role through the conducting of awareness raising campaigns, promotion of public debate, publication and dissemination of reports, dissemination of international human rights standards, and the provision of training to public officials.
34. Ombudsman institutions should also consider raising public awareness and promoting social dialogue through the use of the media.
35. The ombudsman institution should cooperate, where possible, with civil society in educative and awareness-raising activities, the organization of seminars / roundtables on minority rights issues, and in receiving complaints through NGOs.

**E. The media's cooperation with the ombudsman in combating nepotism and corruption**

36. Ombudsman institutions should fight cases of nepotism and corruption in public institutions based upon sound and reliable information and, where appropriate, bring a situation to the attention of the public at large.
37. Ombudsman institutions should keep the specific goals of the media in mind—particularly the need to appeal to as wide an audience as possible—when relying upon it as a source of information.
38. Ombudsman institutions should make appropriate use of the media to give additional weight to its arguments when addressing public authorities, whilst at the same time ensuring that its independence is retained.
39. Ombudsman institutions and the media are natural partners that should complement each other and be well informed about each other's functioning. Ombudsman institutions should also make optimal use of the media to raise awareness among the general public about its mandate and daily work.



Ombudsperson Institution  
Field Offices Sub-Chart



## ANNEX VI: LIST OF STAFF

### **Staff members (update 30 June 2007)**

Deputy Ombudsperson/Acting Ombudsperson	Hilmi Jashari
Deputy Ombudsperson	Ljubinko Todorović
Executive Director	Hanife Statovci
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/Gracanicë	Aleksandra Dimitrijević
Head of the Field Office in Mitrovicë/Mitrovica	Naim Krasniqi
Head of the Field Office in Pejë/Peć	Hasie Islami
Head of the Field Office in Prizren	Murlan Prizreni
Lawyer	Agron Kelmendi
Lawyer	Faton Morina
Lawyer for CRT	Igballe Rrahmani
Lawyer for GEU	Luljeta Domaniku
Senior Lawyer for NDT	Dragana Rodić
Senior Lawyer for NDT	Merita Syla
Lawyer, Gjilan/Gnjilane	Isuf Sadiku
Lawyer, Northern Mitrovicë/Mitrovica	Miljana Scekić
Lawyer, Pejë/Peć	Shqipe Ibraj-Mala
Lawyer, Prizren	Hunaida Pasuli
Lawyer, Vidanje/Vidaje	Vlado Prođović
Director of Administration	Përparim Vula
Media and Public Relations Officer	Ibrahim Arslan
Senior Translator/Media Officer	Jetmir Sefa
IT/Website Officer	Leonora Ibraj
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
Legal Assistant, Gračanica/Gracanicë	Dušan Dimitrijević
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
Chief of Drivers	Shpëtim Reçica
Driver	Sami Kuqi
Driver	Goran Stević
Switchboard	Mentor Myftari
Courier	Hakif Imeri
Cleaner	Gëzime Lepaja
Cleaner, Gračanica/Gracanice	Vesna Cvejić

**Persons who left the Ombudsperson Institution during the reporting period**

Lawyer for CRT	Thellenza Arifi
IT Manager	Flamur Gogolli
Senior Translator	Lirak Hamiti
Senior Translator	Alban Stafai
Translator	Marko Djekić
Legal Assistant	Venera Rizvanolli
Driver	Tamer Gas
Chief of Security Guards	Bekim Bunjaku
Security Guard	Muhamet Jahiri
Security Guard	Avni Osmani
Security Guard	Besim Osmani
Cleaner	Nekibe Hoxha

**International Advisors (update 30 June 2007)**

OSCE Special Advisor to the Ombudsperson Institution (Human Rights/Legal)	Alice Thomas
OSCE Special Advisor to the Ombudsperson (Policy and Public Affairs)	Richard Medić

**International Advisors who left the Ombudsperson Institution during the reporting period**

OSCE Special Advisor to the Ombudsperson (Human Rights)	Antonella Ingravallo
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## ANNEX VII: 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
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